

# Unofficial Document

When recorded return to:  
Burch & Cracchiolo, P.A. (CHA)  
702 East Osborn, Suite 200  
Phoenix, Arizona 85014

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
BELL WEST RANCH**

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**DATE:** April 29, 1999

**DECLARANT:** ELLIOTT HOMES, INC., an Arizona corporation, referred to herein as "Declarant."

**SUBJECT:** All of Bell West Ranch, a subdivision, which is more particularly described in that certain subdivision plat, including the real property which is legally described as Bell West Ranch Parcel 4, according to the Plat recorded in Book 495 of Maps, Page 33 thereof and at Instrument No. 99-0219283, Official Records of Maricopa County, Arizona, and such other real property as is included within Bell West Ranch as provided for herein..

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 <sup>but not limited to</sup>, 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 Annexation Property" means any real property and all improvements thereon that may be added to the property by Declaration of Annexation.

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 VI 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 Bell West Ranch 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.  
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1.11 "Association Rules" means the rules, guidelines and standards adopted by the Association, as those rules may be amended from time to time.

1.12 "Board" means the Board of Directors of the Association.

1.13 "Bylaws" means the Bylaws of the Association.

1.14 "Common Area" means those areas of land shown as Tracts A through H, inclusive, 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 and which are owned by the Association. Such Common Areas are exempt from the assessments described in Article V of this Declaration.

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

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

1.17 "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.

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

1.19 "Declaration Date" means the date on which this Declaration is recorded.

1.20 "Designee" means a person designated by a Member to exercise certain rights pursuant to Section 4.06 below.

1.21 "Dwelling Unit" means any building or part thereof situated upon a Lot and intended for use and occupancy as a place of residence.

1.22 "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) Any and all areas designated as a Common Area on an approved and Recorded subdivision plat.

1.23 "First Mortgage": See Mortgage.

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

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

1.26 "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.

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



1.28 "Mortgagor" means the person delivering a Mortgage.

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

1.30 "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.

1.31 "Person" means any individual, corporation, partnership, trustee or other entity capable of holding title to real ~~property~~ Unofficial Document

1.32 "Plat" means that certain map or plat of the Property placed of public record, as the same may be amended from time to time.

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

1.34 "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.

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

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

1.37 "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.

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

1.39 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to an individual six (6) 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.

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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 Common Area.

2.03 Title to Common Area. Declarant covenants that it will convey fee simple title to any portion of the Common Area owned by them to the Association free and clear of all encumbrances except current real and personal property taxes and other easements, conditions, reservations and restrictions then of record. The conveyance shall be made to the Association by the Declarant prior to the conveyance of the first Lot from any Declarant to any purchaser, but after all of the improvements to the Common Area have been completed.

2.04 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.

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

(a) Residential-Single Residence 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 Common Area.

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 Common Areas 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 charged 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 and 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 <sup>Unofficial Document</sup> 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 Fines for Violations of Declaration; Rules or Bylaws. The Board may impose reasonable monetary penalties on Members for violations of the Declaration, Rules or Bylaws of the Association, provided notice of the violation and an opportunity to be heard is provided to the offending individual. Any monies paid by a Member for an unpaid penalty shall be applied first to the principal amount unpaid and then to the interest accrued.

3.05 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 the Declaration or any amendatory 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.

3.06 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:

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- (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.

3.07 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 and Accounting Agreements. Each Owner, by becoming such, shall be deemed to have agreed to be bound by the terms and conditions of all management or accounting agreements entered into by the Association with respect to the Property. A copy of all such management or accounting agreements shall be available to each Owner and Mortgagee for reasonable inspection at the offices of the Association. Any management or accounting agreement entered into by the Association shall be for a term not in excess of three (3) 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 thirty (30) days' written notice by either party.

3.08 Membership. Unofficial Document 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.

3.09 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 or if a Member is in violation of any term, covenant or condition of this Declaration, the Articles, Bylaws, Rules or Design Guidelines of the Property.

3.10 Voting Classes. For purposes of casting votes in the Association, there shall be two (2) 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.

3.11 Members' 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 (1) vote 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 (3) votes for every Lot owned.

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

(a) Ninety <sup>(90) days following</sup> Unofficial Document the date on which the total votes vested in Class A Members excluding Declarant equal or exceed the total votes vested in Class B Declarant.

(b) January 1, 2006;

(c). Such earlier time as Declarant shall designate in writing.

3.12 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board has been 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.

3.13 Control in Developer. It is recognized that because of the sequential development of the Property, management or control of the Association by the Declarant is likely to continue after one hundred percent (100%) of the Lots in the initial covered Property are sold. In the event voting control of the Association passes to the Owners prior to annexation of additional property and such annexation restores voting control to the Declarant, all other Declarant rights herein shall be restored as though never discontinued and all Class B votes shall be restored to Lots owned by Declarant.

3.14 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 ten (10) days after he becomes the Owner of a Lot.

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**ARTICLE IV**

**COMMON AREA**

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 upon the sale of the first Lot; provided, however, that the Common Areas shall be conveyed to the Association free and clear of all encumbrances before the F.H.A. or V.A. or similar governmental agency insures the first mortgage or deed of trust for that Parcel. The Association shall have all rights, powers, privileges, duties and obligations as to Common Area that a fee owner of land has by law, including the duty to pay ad valorem taxes.

4.02 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to Common Area 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 supplement or amendment, and subject to the further limitation that such easement shall be in conformance with the contemplated use of the Common Area.



4.03 Rules Regulating Use of Common Area. 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 Common Area (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).

4.04 Special Use Fees, Including Fees Chargeable to Users of Common Area. 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 Common Area. 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.

4.05 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 amendment or <sup>Unofficial Document</sup> supplement remain delinquent and unpaid or during any period in which such Owner is in violation of this Declaration, the Articles, Bylaws or Rules of the Association.

4.06 Delegation of Use; Designee. Any Owner may, in accordance with the rules adopted pursuant to this Declaration, and this Declaration and any amendment thereto delegate his right of enjoyment in the Common Area 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.

4.07 Change of Use of Common Area 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 Common Area 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 Common Area.

4.08 Conveyance or Encumbrance of Common Area and Procedure. Except as otherwise provided herein, the Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B member of the Association and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by each class of Members of the Association. Notwithstanding anything contained herein to the contrary, the Board shall have the power and right to sell, assign, dedicate, give, convey or otherwise transfer (hereinafter called "transfer") to any person, entity or public body or to any nonprofit organization to be devoted to a purpose similar to that of the Association, all or any part or parts of the Common Area free and clear of all rights, easements and privileges.

4.09 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 Common Area. 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 condemner 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, Unofficial Document including by application to restoration and replacement of the Common Area 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.

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

## ARTICLE V

### COVENANTS FOR ASSESSMENTS

5.01 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 Common Area 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 attorneys' 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 Common Area; (c) for the purchase of liability insurance to cover the liability of the Association and its Members for the use of the Common Area; (d) for the establishment of reserves; and (e) 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 first day of the month following the close of escrow on the first Lot sold 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 twenty-five percent (25%) of the Annual Assessment levied against Lots owned by Persons other than the Declarant. If a Lot ceases to qualify for the twenty-five percent (25%) 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 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 THREE HUNDRED THIRTY-SIX and No/100 Dollars per Lot (\$336.00) for Class A members. Each succeeding Annual Assessment shall be at a rate set by the Board or the Members as provided herein. Annual Assessments may, but need not be, collected in monthly installments.

(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 the amount proportional to the amount of increase during the prior fiscal years 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), not more than ten percent (10%) per year above the maximum Annual Assessment established for the previous years. The maximum Annual Assessment may be increased in an amount greater than provided heretofore upon an affirmative vote of two-thirds (2/3) 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 thirty (30) days prior to the beginning of such Assessment Period. If the Board fails to set or fails to notify the Members of such Annual Assessment, 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 thirty (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 (2/3) 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 (2/3) 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 Reserve Fund. The Board shall establish a "Reserve Fund" to be used only as a sinking fund to make capital improvements to the Property and for the maintenance, repair and replacement of improvements within the Common Area. The amount of the reserve shall be identified in the Association budget as a line item and the Board shall maintain records which support the amount of the reserves. Money deposited in the Reserve Fund 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 thereafter. No mortgagee or beneficiary under a deed of trust shall be required to collect Assessments and fees.

(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 on the due date shall be

delinquent, and shall bear interest from the date fifteen (15) days after the due date 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 in accordance with Arizona Revised Statutes. 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. Failure of any Member to pay the Annual Assessments or Special Assessments or installments thereof shall not constitute a default under any insured mortgage or deed of trust.

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 <sup>Unofficial Document</sup> and that a notice of lien 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 Capitalization of Association. Upon acquisition of title to a Lot by the first Owner thereof, other than Declarant, a contribution shall be made by or on behalf of the Owner to the working capital of the Association in an amount equal to two (2) months' installments of the Annual Assessment for that year. This amount shall be in addition to, not in lieu of, the Annual Assessment and shall not be considered an advance payment of such Annual Assessment. This amount shall be deposited into the purchase and sale escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

5.15 Association's Rights in Spending Funds From Year to Year. 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 allocate such surplus to the next year's budget or expense such surplus to reserves or may carry forward from year to year as surplus certain limited amounts as permitted under Internal Revenue Code provision for non-profit corporations as the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and accomplishment of its purposes.

5.16 Declarant's Obligation When Paying Reduced Assessments. Notwithstanding anything contained herein to the contrary, during any period when Declarant is paying reduced Assessments pursuant to this Article, Declarant shall contribute to the Association such funds as may be required from time to time to meet any budget deficit which results from Declarant having paid such reduced Assessments. Declarant may contribute in-kind materials or services which have a value which is not less than any amount owed by the Declarant to the Association in lieu of payment of its reduced Assessments or funding of any Association budget deficit; provided, however, in no event shall Declarant be obligated to fund any budget deficit which exceeds the total amount which Declarant would have paid if Declarant had paid the full Assessment due for each Lot owned by Declarant.

## 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 (3) individuals who need not be Members. The Architectural Committee 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, 2006, or such earlier time as Declarant shall designate in writing. Thereafter, the members shall be appointed or removed by the Board of the Association upon such terms as shall be provided in the Bylaws. The Architectural Committee shall select a chairman.

6.03 Architectural Rules. The Architectural Committee, by unanimous vote or unanimous written consent, may adopt, <sup>amend, ~~add~~ or repeal</sup> Unofficial Document 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 written approval of the Architectural Committee. The Committee shall refuse to approve any plans or 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 (30) 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 thirty (30) days of the Committee decision. A vote of not less than two-thirds (2/3) of the Board is required to reverse a decision of the Committee. The decision of the Board