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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS**

**AND EASEMENTS FOR**

**KAUFMAN AND BROAD AT  
GREENWAY PARC AT SURPRISE ONE**

**BY**

**KAUFMAN AND BROAD OF ARIZONA, INC.**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR KAUFMAN AND BROAD AT  
GREENWAY PARC AT SURPRISE ONE**

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Unofficial Document

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR KAUFMAN AND BROAD AT  
GREENWAY PARC AT SURPRISE ONE**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is executed to be effective as of the 10<sup>th</sup> day of August, 1999, by Kaufman and Broad of Arizona, Inc. ("Declarant").

**RECITALS:**

A. Declarant is the owner of certain real property located in Surprise, Arizona described on *Exhibit A* attached hereto and incorporated herein by this reference (the "Property"), to be developed as a community known as "Kaufman and Broad at Greenway Parc at Surprise One" (the "Project").

B. Declarant desires to form an Arizona nonprofit corporation to be known as the "Greenway Parc at Surprise One Community Association" for the purposes of, among other things, (i) holding title in fee or otherwise controlling all or portions of the Common Areas, in regard to which the Association <sup>Unofficial Document</sup> delegated certain powers to construct, administer, operate, repair and maintain the Common Areas and enforce this Declaration; and (ii) establishing, collecting, disbursing and enforcing the Assessments provided for or created herein.

C. Declarant desires and intends that the Property shall be held, sold, leased and/or otherwise conveyed subject to the easements, restrictions, covenants, conditions, servitudes, assessments, liens and reservations in this Declaration, which: (i) are for the purpose of protecting the desirability and attractiveness of the Property; (ii) shall run with all of the real property comprising the Property; (iii) shall be binding on all parties having any right, title or interest in the Property, or any part thereof; and (iv) shall inure to the benefit of said parties and their successors and assigns.

NOW, THEREFORE, Declarant, as the present fee owner of the Property, hereby declares, covenants and agrees as follows:

**ARTICLE 1**

**DEFINITIONS**

As used in this Declaration, the following terms shall have the following meanings:

**"Agency"** means FHA, VA, Federal National Mortgage Corp., Federal Home Loan Mortgage Corp., or other governmental, quasi governmental or private agency providing residential loan financing, guarantees or other accommodations.

**"Articles"** means the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

**"Annual Assessments"** means the Assessments levied by the Board pursuant to *Section 8.4*.

**"Assessments"** means all assessments levied pursuant to *Article 8* and all fees, fines, penalties and charges due under this Declaration or the Association Rules.

**"Association"** means "Greenway Parc at Surprise One Community Association", an Arizona nonprofit corporation, and its successors and assigns.

**"Association Rules"** means the reasonable rules and regulations adopted by the Association pursuant to *Section 6.3*.

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

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

**"City"** means the City of Surprise or other municipality within which a portion of the Property may be located now or in the future.

**"Class A Member"** has the meaning given to it in *Section 7.2*.

**"Class B Member"** has the meaning given to it in *Section 7.2*.

**"Committee"** means the Design Review Committee formed pursuant to *Article 4*.

**"Common Areas"** means (a) those portions of the Project, together with the buildings, structures and Improvements thereon, which the Association may, from time to time, own in fee or in which it may have an easement interest, for as long as the Association holds fee title or an easement interest; (b) all land within the Project which Declarant, by this Declaration or in any other Recorded instrument, makes available for use by Members of the Association or otherwise designates as Common Areas for purposes of this Declaration; (c) all land or right-of-way easements within the Project which are dedicated to the public or to the City, but which the City or other governmental agency requires the Association to

maintain; (d) any and all private internal streets; and (e) any other areas with respect to which the Association has assumed in writing administrative or maintenance responsibilities.

**"Common Expenses"** means the expenses of operating the Association.

**"Declarant"** means Kaufman and Broad of Arizona, Inc., an Arizona corporation, and each affiliate thereof including Kaufman and Broad Home Sales of Arizona, Inc. and any assignee of Declarant's rights. Declarant may assign its rights by express recorded instrument to a subsequent owner of all or part of the Property.

**"Declaration"** means this Declaration of Covenants, Conditions, Restrictions and Easements, as amended or supplemented from time to time as herein permitted.

**"Design Guidelines"** has the meaning given to it in *Section 4.1*.

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

**"FHA"** means the Federal Housing Administration.

**"First Mortgage"** means a <sup>deed of trust</sup><sub>Unofficial Document</sub> or mortgage recorded against a Lot which has priority over all other deeds of trust or mortgages recorded against the same Lot.

**"Improvement"** means any building, wall, structure, landscaping, equipment or other item and any addition, alteration, repair, change or other work regarding any such item, including exterior paint, which in any way alters the exterior appearance of any part of a Lot and is Visible From Neighboring Property.

**"Lot"** means a lot into which any part of the Property is subdivided, for purposes of construction of a Dwelling Unit thereon, as set forth in the Recorded subdivision plat for the Project.

**"Member"** means any Person entitled to a membership in the Association hereunder.

**"Membership"** means the combination of rights and duties of Members in the Association.

**"Occupant"** means any Person, other than an Owner, occupying or in possession of a Lot, or any portion thereof or any building or structure thereon, whether as a lessee under a lease or otherwise.



**"Owner"** (when capitalized) means (and any reference in this Declaration to "own", "owned" or "ownership" when used in reference to a portion of the Property shall be deemed to include) the Record holder of legal title to the fee simple interest in any Lot or, in the case of a Recorded "contract," as that term is defined in A.R.S. § 33-741(2), then the holder, of Record, of the purchaser's or vendee's interest under said contract, but excluding others who hold such title merely as security. If fee simple title to a Lot is vested of Record in a trustee pursuant to A.R.S. § 33-801 *et seq.*, then for purposes of this Declaration legal title shall be deemed to be held by the trustor (or the trustor's successor of Record), and not by the trustee.

**"Person"** means a natural person, corporation, partnership, trustee or any other legal entity.

**"Project"** means the planned community known as "Kaufman and Broad at Greenway Parc at Surprise One" to be developed on the Property.

**"Property"** means the real property more particularly described on *Exhibit A* attached hereto and incorporated by this reference.

**"Record" "Recording" and "Recorded"** means placing or having placed a document of public record in the Official <sup>1</sup>Unofficial Document <sup>2</sup>icopa County, Arizona.

**"Special Assessments"** means the assessments, if any, levied by the Board pursuant to *Section 8.7*.

**"VA"** shall mean the United States Veterans' Administration.

**"Visible From Neighboring Property"** means, with respect to any given object, that all or a part of such object is or would be visible to an individual six (6) feet tall, standing at ground level on any portion of any neighboring property.

## ARTICLE 2

### PROPERTY AND PERSONS BOUND BY THIS DECLARATION

**2.1 General Declaration.** This Declaration is established for the purpose of enhancing the value, desirability and attractiveness of the Property. Declarant hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as the same may be amended or modified from time to time. This Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Property and their successors in interest.

**2.2 Declarant's Disclaimer of Representations.** Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that the Property is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to a Lot agrees that Declarant shall have no liability with respect thereto.

### ARTICLE 3

#### EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS

**3.1 Easements and Rights of Enjoyment.** Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas which is appurtenant to and shall pass with the title to each Owner's Lot. All Occupants shall have a nonexclusive, nontransferable temporary li<sub>Unofficial Document</sub> and enjoy the Common Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

- (a) The right of the Association to suspend the voting rights and the right to use and enjoy the Common Areas of any Owner or the Owner's Occupant:
  - (i) for any period during which an Assessment remains delinquent;
  - (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association Rules; or,
  - (iii) for successive 60-day periods if any such delinquency or infraction is not corrected during any preceding suspension period;
- (b) The right of the Association to regulate and control use of the Common Areas pursuant to the Association Rules or otherwise in accordance with this Declaration; and,
- (c) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency, authority or utility for such purposes and

subject to such conditions as may be agreed to by the Association in accordance with **Section 10.5**.

**3.2 Delegation of Use.** Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his rights of use and enjoyment in the Common Areas to the members of his family or his Occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules.

**3.3 Easement for Common Areas Maintenance.** The Association shall have an easement upon, over, under and across all Lots and other property within the Project (except property owned by Declarant) for the purpose of (a) repairing, maintaining and replacing the Common Areas and all Improvements thereon, and (b) performing all other rights, duties and obligations of the Association under this Declaration.

## ARTICLE 4

### DESIGN CONTROL

**4.1 Design Review Committee.** Declarant shall establish the Committee to perform the functions of the Committee set forth in this Declaration. The Committee shall adopt procedural rules and regulations <sup>for its performance</sup> Unofficial Document of such duties, including procedures for the preparation, submission and consideration of the application for any approvals required by this Declaration. The Committee shall make its decision on an application for approval within sixty (60) days of the submission of such application. The Committee shall consist of such number of regular members and alternate members as Declarant may designate. All such members shall be appointed by Declarant for so long as Declarant owns property within the Project. Thereafter, the members of the Committee shall be appointed by the Board. The Committee shall promulgate design guidelines (herein, as amended from time to time, "Design Guidelines") to be used by the Committee in rendering its decisions. The Committee shall have all the powers, duties and authority conferred upon it by this Declaration and the Design Guidelines. The decisions of the Committee shall be final on all matters submitted to it pursuant to this Declaration.

**4.2 Variances.** The Committee may grant variances from the standards set forth in the Design Guidelines if the Committee determines the matter permitted under the requested 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 Project.

**4.3 Fee.** The Committee may establish a reasonable fee from time to time to defer the costs of the Committee in considering any requests for approvals submitted to the Committee, which fee shall be paid at the time the request for approval is submitted. The Committee may also authorize supplemental fees to cover the cost of retaining consultants

and other professional services needed to evaluate properly any matter submitted to the Committee for review.

**4.4 Personal Liability.** No Committee member shall be personally liable to any Owner, or to any other Person, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, unless such person has failed to act in good faith or has engaged in willful or intentional misconduct.

**4.5 Provisions if No Committee.** In the event there is no Committee in existence, then the Board shall undertake the Committee's responsibilities hereunder, including without limitation approvals required by this Declaration.

## ARTICLE 5

### PERMITTED USES AND RESTRICTIONS

**5.1 Residential Purposes.** No gainful occupation, profession, business, trade or other nonresidential use shall be conducted on or in any Dwelling Unit, provided that an Owner or Occupant may conduct limited business activities in a Dwelling Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve door-to-door solicitation of other Owners and Occupants; (d) the business activity does not generate drive-up traffic or customer or client parking; and (e) the business activity is consistent with the residential character of the property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other Owners, as may be determined in the sole discretion of the Board.

**5.2 Animals.** No animal, bird, livestock, poultry or fowl of any kind, other than a reasonable number of generally recognized house pets (as determined by the Board and set forth in the Association Rules) shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. Notwithstanding the foregoing, no pets may be kept upon the Property or on or in any Lot which, in the opinion of the Board, result in any annoyance or are obnoxious to Owners or Occupants of other Lots in the vicinity.

**5.3 Garbage.** No garbage, trash or debris shall be allowed, stored or placed on a Lot except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. No incinerator shall be maintained on any Lot and no trash, garbage or debris shall be burned thereon by open fire or otherwise. The Board shall

have the right to require all Owners and Occupants to place trash and garbage in containers located in areas designated from time to time by the Board or the City.

**5.4 Clothes Drying Facilities.** No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot unless they are not Visible From Neighboring Property.

**5.5 Window Coverings.** In no event shall the interior or exterior of any windows be covered with reflective material, such as foil, or with paper, bed sheets or other temporary coverings.

**5.6 Garages and Driveways.** The interior of all garages situated upon the Property shall be maintained by the respective Owners or Occupants thereof in a neat and clean condition. Such garages shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons. All driveways on Lots shall be of concrete construction. Detached garages shall not be permitted.

**5.7 Improvements and Construction.** The design, size, color, location and elevation of any Improvement or <sup>landscaping</sup> ~~landscaping~~ which is Visible From Neighboring Property, and all changes thereto, must be approved by the Committee prior to installation. All Improvements and landscaping constructed or installed by or for Declarant and all changes thereto done by or for Declarant shall be conclusively deemed approved by the Committee. A storage shed, other equipment and other Improvements which is/are Visible From Neighboring Property may not be placed or installed on a Lot unless approved by the Committee and such approval may be withheld in the Committee's sole discretion. Only houses constructed on the Property in accordance with this *Section 5.7* shall be occupied as residences.

**5.8 Heating, Ventilating and Air Conditioning Units.** No heating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Property, including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall which conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Committee.

**5.9 Solar Collection Panels or Devices.** Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power

for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Committee, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a person six (6) feet tall standing at ground level on adjacent properties. The restrictions in this **Section 5.9** shall be subject to any limitations imposed by law.

**5.10 Antennas, Poles and Towers.** No antenna, aerial, satellite dish or other device for the transmission or reception of television or radio (including amateur or ham radio) signals of any kind (collectively referred to herein as "antennas") will be allowed outside the Dwelling Unit, except:

(a) Those antennas whose installation and use is protected under federal law or regulations (generally Unofficial Document certain antennas under one meter in diameter), provided that an application for such an antenna must be submitted to the Committee and such application will be approved only if:

(i) the antenna is designed to assure the minimal visual intrusion possible (i.e., is located in a manner that minimizes visibility from the street or other Lots); and

(ii) the antenna complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (i.e., without precluding reception of quality signal, or unreasonably increasing the cost of the antenna).

Upon the written request of the Owner when submitting the application, the Committee shall consider such an application on a expedited basis and shall strive to render a decision within seven days, but in no event later than fourteen days, from the date the applicant submits a complete application.

or

(b) Dishes 18" in diameter or smaller in locations approved by the Committee for rear or side yard locations and appropriately screened.

Any transmission cable for a receiver to the house must be underground. The restrictions in this **Section 5.10** shall be subject to any limitations imposed by law.

**5.11 Basketball Goals.** Except as permitted by the next sentence, no basketball goal or similar structure or device (whether mounted on a pole, wall or roof) shall be placed or constructed upon the front yard, front elevation or front roof surface of any structure on any part of the Property. A basketball goal may be permitted which is mounted on a free standing pole and which complies with the Association Rules and Design Guidelines adopted by the Board. Initial guidelines are attached as **Exhibit B** hereto and incorporated herein by this reference and may be amended by the Board from time to time. For purposes of the foregoing sentence, the term "front" shall be deemed to mean visible from ground level view from the street(s) running immediately in front of or along the side of a Dwelling Unit or other structure.

**5.12 Vehicles.** Private, non-commercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or width or two hundred twenty-two (222) inches in length, may be parked on the Property within a garage or in a private driveway appurtenant to a Dwelling Unit but except as provided in the next sentence may not be parked elsewhere on the Property or streets adjoining the Property. The preceding <sup>sentence shall</sup> <sub>Unofficial Document</sub> not preclude occasional overflow parking in a street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners or Occupants of other Lots. No other vehicle (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents, or similar vehicles or equipment, commercial vehicles, or vehicles exceeding one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or width, or two hundred twenty-two (222) inches in length or similar vehicles or equipment) shall be kept, placed or maintained upon the Property or any roadway adjacent thereto, except: (a) within a fully-enclosed garage appurtenant to a Dwelling Unit; or (b) in such areas and subject to such rules and regulations as the Board may designate and adopt in its sole discretion (and the Board in its sole discretion may prohibit such other vehicles and equipment completely). No vehicle (including, but not limited to, those enumerated in the preceding sentences) shall be constructed, reconstructed or repaired on the Property or any roadway therein or adjacent thereto except within a fully enclosed garage. No motor vehicles of any kind which are not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit). The provisions of this **Section 5.12** shall not apply to vehicles of Declarant or its employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property.

**5.13 Fences, Interferences and Obstructions.** No fence, wall, hedge, shrub or other plant which obstructs sight lines at elevations between two (2) feet and six (6) feet above adjacent public streets shall be permitted on any corner Lot within the triangular

area formed by the streets and a straight line connecting those property lines at points twenty-five (25) feet from the intersection of those property lines (or, in the case of a rounded Lot corner, from the intersection of those property lines as extended). No tree shall be permitted to remain within such area unless the foliage line is maintained a sufficient height to prevent obstruction of such sight lines.

**5.14 Leasing; Obligations of Tenants and Other Occupants.** All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws and the Association Rules. Each Owner shall cause his, her or its tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents. No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. The provisions of this *Section 5.14* shall not apply to Declarant's use of Lots owned by (or leased to) Declarant as a model home or for marketing purposes.

**5.15 Landscaping and Maintenance; Reconstruction.** Within ninety (90) days of acquiring an improved Lot, each Owner (other than Declarant) shall landscape (if not already landscaped) such Lot and any public right-of way areas (other than sidewalks or bicycle paths) lying between the front or Unofficial Document side boundaries of such Lot and an adjacent street. Each Owner shall maintain the landscaping on such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Landscaping plans shall be approved by the Committee prior to installation and landscaping to be installed in compliance with applicable Design Guidelines and the approved plans. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean and attractive condition consistent in appearance with other properly-maintained, improved Lots within the Property. In the event any Dwelling Unit or other structure is totally or partially damaged or destroyed by fire, Act of God or any other cause, the Owner shall fully repair the damage and complete reconstruction of the Dwelling Unit or other structure within eighteen (18) months after occurrence of the damage or destruction. The provisions of this *Section 5.15* shall not apply to any Lot or other property owned by Declarant.

**5.16 Signs.** No signs of whatever nature shall be placed on any Lot which are Visible from Neighboring Property except (a) signs required by legal proceedings; (b) a maximum of two (2) street address identification signs for each individual residence, each with a maximum face area of 72 square inches or less; (c) "for sale" and "for lease" signs no larger than five (5) square feet; and (d) signs used by Declarant to advertise the Property during the construction and sales period.



**5.17 Prohibited Uses.** No use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance or unreasonable source of annoyance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Owner shall be permitted on any Lot. No use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the City or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot.

**5.18 Dust Control.** The areas on each Lot which are not improved with buildings ("Clear Areas") shall be landscaped as provided in *Section 5.15*. After a sale of the lot by Declarant, until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain its Lot in a manner which minimizes the possibility of dust being transmitted into the air and over adjacent properties.

**5.19 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion <sup>of the Property</sup> Unofficial Document for any unreasonable time, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Occupants. No loud, noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Board shall have the right, but not the obligation, to determine, in its sole discretion, whether the provisions of this *Section 5.19* have been violated. Any decision rendered by the Board shall be conclusive and shall be enforceable in the same manner as other restrictions in this Declaration.

**5.20 Drainage.** No Owner or Occupant shall interfere with the drainage established for his Lot, the Property or any other property adjacent to his Lot.

**5.21 Party Walls.** Except as provided in *Section 11.2*, the rights and duties of Owners of contiguous Lots which have shared walls or fences ("Party Walls") shall be as follows:

- (a) each Owner shall have an equal right to use the Party Walls to the extent such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the act or omission of an Owner or the Owner's Occupants, agents, guests or family (whether or not such act is negligent or otherwise culpable), such Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense (provided that this shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any insurer, Occupant, agent, guest or other Person who otherwise may be liable to such Owner);

(c) if any portion of a Party Wall is damaged or destroyed other than by the act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin such portion of the Party Wall to immediately rebuild and repair it, and the expense shall be ratably divided among such Owners based on the amount of linear footage of their respective Lots located along such portion of the Party Wall;

(d) if a dispute occurs between Owners regarding a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Committee, whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing the damage;

(e) The Association shall have the right, but not the obligation, to perform any work which an Owner or Owner(s) fails to do in a timely manner. The Owner(s) responsible for such work shall upon demand pay all costs incurred by the Association together with interest at twelve percent (12%) per annum and an administrative fee at ten percent (10%) of the amount incurred by the Association.

**5.22 Exemption of Declarant.** Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant (or its designated agents and contractors), during the period of development and construction on the Property, of any model homes and sales offices and parking incidental thereto, landscaping or signs deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of property within the Property.

**5.23 Miscellaneous.** The Board, in its good-faith discretion, may grant such waivers of the restrictions contained in this *Article 5* as it shall deem appropriate, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration. In addition, the Property shall continue at all times to be subject to applicable zoning laws and ordinances;

provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

## ARTICLE 6

### ORGANIZATION OF ASSOCIATION

**6.1 Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and as set forth in the Articles, the Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

**6.2 Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager and/or other staff members to be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to each such employee.

**6.3 Association Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the Unofficial Document provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Areas, provided that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules, as adopted or amended, shall be available for inspection at the office of the Association.

**6.4 Personal Liability.** No Board member, officer, committee member, employee or representative of the Association, nor the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, unless such person has failed to act in good faith or has engaged in willful or intentional misconduct.

## ARTICLE 7

### MEMBERSHIPS AND VOTING

**7.1 Membership.** Every Owner, including Declarant, automatically shall be a Member of the Association with voting rights as provided in this Declaration for so long as such ownership continues. A Person's Membership in the Association shall close and

terminate immediately when such Person is no longer an Owner. Each Owner's membership in the Association shall be appurtenant to, and may not be separated from ownership of, the Lot to which the membership is attributable. In the event any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership; provided, however, that if any one of such Persons casts a vote or votes representing a Lot without objection from any other Person sharing ownership of such Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing. Neither Membership in the corporation nor a Member's share, right, title or interest in and to the funds and assets of the corporation can be transferred, assigned or hypothecated except as an appurtenance to the Member's ownership of a Lot. Membership may be evidenced by an official list of Owners, which list shall be kept by the Secretary of the Association and as provided by applicable law.

**7.2 Votes.** The Association shall have two classes of voting Members. Class A Members shall be all Owners except Declarant. A Class A Member shall have one vote for each Lot owned by such Member. The Class B Member shall be Declarant. The Class B Member shall have three (3) votes Unofficial Document owned by Declarant. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives satisfactory evidence thereof. Fractional votes shall not be allowed. The Class B Membership shall automatically cease and be converted to a Class A Membership upon the happening of the first of the following events:

(a) the date which is 120 days after the date on which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Membership;

(b) the date which is twenty (20) years after the date this Declaration is Recorded; or

(c) the date on which Declarant relinquishes the Class B Membership by notifying the Class A Members in writing.

**7.3 Property Rights.** Every Owner shall have a non-exclusive right and easement of enjoyment in, to and over the Common Areas, subject to this Declaration and to reasonable rules adopted by the Board pursuant hereto. Any Owner may assign that right of enjoyment to (and share the same with) the members of his or her household and assign the same to and share the same with his, her or its tenants and invitees subject to the provisions of this Declaration and to reasonable regulation by the Board. An Owner who leases his, her

or its Lot shall be deemed to have delegated such Owner's rights and easements under this **Section 7.3** to the lessee of such Lot for the term of such lease.

## ARTICLE 8

### ASSESSMENTS

**8.1 Creation of Assessment Right; Covenants to Pay.** In order to provide funds to enable the Association to meet its obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Assessments (herein "Assessments") shall be for Common Expenses and shall be allocated equally among all Lots. Each Owner, by acceptance of his, her or its deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due shall also pay a late charge as set by the Board from time to time. The initial late charge shall be the greater of fifteen dollars (\$15) per month or ten percent of the unpaid Assessment. Late charges shall be subject to any limitations imposed by A.R.S. § 33-1803 or other law as amended from time to time. The Owner shall also pay all costs and reasonable attorneys' fees incurred by the Association in seeking to collect such Assessments and other amounts. The Assessments with respect to a Lot, together with interest, costs and reasonable attorneys' fees as provided in this **Section 8.1**, shall also be the personal obligation of the Person who was the Owner of such Lot at the time such Assessments arose with respect to such Lot; provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws.

**8.2 Lien for Assessments; Remedies; Foreclosure.** There is hereby created and established a lien in favor of the Association against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any other amounts levied against such Lot or the Owner thereof pursuant to the Declaration or the Articles, the Bylaws or the Association Rules). Such lien shall be prior and superior to all other liens affecting the Lot in question, except: (a) taxes, bonds, assessments and other levies which, by law, are superior thereto; and (b) the lien or charge of any First Mortgage. Recording of this Declaration constitutes record notice and

perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate). The Board may invoke any or all of the sanctions provided for herein, or any other reasonable sanction, to compel payment of any Assessment or installment thereof, not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

(a) Interest and Late Fees. The Board may impose late fees and interest in such amounts as it determines are appropriate from time to time, subject to any limitations stated in the Declaration or imposed by law;

(b) Suspension of Rights. The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights and rights to use and enjoy the Common Areas;

(c) Collection of Delinquent Amount. The Board may institute an action at law to recover a money judgment or any other proceeding to recover the Delinquent Amount, rent, interest and attorneys' fees without foreclosing or waiving the lien securing same;

Unofficial Document

(d) Recording of Notice. The Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in the Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of recording the notice, processing the delinquency and recording a notice of satisfaction of the lien; and

(e) Foreclosure of Lien. The Board may foreclose the Recorded lien against the Lot in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency). The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period the Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Areas.

### **8.3 Dates Assessments Commence; Declarant's Obligations.**

Assessments shall be payable with respect to a Lot commencing with the initial conveyance of such Lot to a purchaser by Declarant (or by a trustee, for the benefit of Declarant). Assessments with respect to a Lot shall be prorated as of the date of such initial conveyance. Declarant shall not be obligated to pay any Assessments with respect to Lots owned by Declarant, provided that Declarant shall pay or contribute to the Association cash, goods or services (as Declarant may elect) as may be necessary to make up any shortfalls of the Association resulting from Declarant's exemption from Assessments (but in no event shall Declarant be required to make such payments or contributions in excess of the Assessments Declarant would be required to pay, in the absence of this sentence, with respect to Lots owned by Declarant). Any Person who becomes an Owner after commencement of a fiscal year shall pay the Annual Assessment applicable to his Lot or Parcel as such becomes due, and shall pay any Special Assessment levied on or after the date the Person becomes an Owner. The previous Owner of such Lot shall remain liable for all unpaid and delinquent Assessments levied against the Owner of the Lot prior to such transfer of ownership.

### **8.4 Computation of Assessments; Annual Budget.**

The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the annual Assessments (herein the "Annual Assessments") for the applicable fiscal year (subject to the limitations of *Section 8.6*). Annual Assessments shall be payable annually or in installments as set by the Unofficial Document <sup>Unofficial Document</sup> a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall deliver or mail to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for that year. The failure to send or to receive such a statement shall not relieve any Owner of his obligation to pay such an Assessment on or before the due date. All Assessments shall be payable to the Association. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year or fails to determine the Annual Assessments for any year, then until and unless such budget is adopted or the determination is made (as applicable), the budget (and the amount of the Assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided in *Section 8.6*, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners and the Board may increase the Annual Assessments to meet the Association's expenses which exceed the amounts previously budgeted, if the Board determines that such Assessments become necessary or desirable during the fiscal year.

### **8.5 Due Dates.**

Assessments shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

**8.6 Maximum Annual Assessment.** The Annual Assessments provided for herein shall not at any time exceed the "Maximum Annual Assessment," as determined in accordance with this *Section 8.6*. For the fiscal year ending December 31, 1999, the Maximum Annual Assessment shall be Thirty Dollars (\$30.00) per month for each Lot. Thereafter, except as provided below, unless a greater increase is approved by a vote of two-thirds (2/3) of the votes of each class of Members represented in person or by proxy at a meeting of Members called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor); or (b) ten percent (10%). Further, notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by this Declaration to be maintained by the Association; and (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is greater than otherwise permitted under the third sentence of this *Section 8.6*. Increases in Annual Assessments shall be subject to any limitations imposed by A.R.S. § 33-1803 Unofficial Document such may be amended from time to time.

**8.7 Special Assessments.** In addition to levying Annual Assessments, the Board may levy a Special Assessment, but only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement owned by the Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment must be approved by at least two-thirds (2/3rds) of the votes of each class of Members voting in Person or by proxy at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners. Special Assessments shall not be subject to the Maximum Annual Assessment limitations set forth in *Section 8.6*.

**8.8 Working Capital Fund.** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person, with the exception of Declarant, who purchases a Lot shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to one-sixth (1/6) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this *Section 8.8* may be used by the Association for any purpose permitted under this Declaration. Payments made pursuant to this *Section 8.8* shall be nonrefundable and shall not be offset or credited against or considered as advance payment of any Assessments levied pursuant to this Declaration. Assessments pursuant to this *Section 8.8* shall not be subject to the Maximum Annual Assessment pursuant to *Section 8.6*.