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DOCKET : 10696
PAGED 1207
NO. OF PAGES; SE
SEQUENCE : 97209191
12/19/97
ARSTR 15134:00
AMOUNT PAID \$ 40.00

AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR QUAIL COVE

This Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions is made and entered into this 19th day of December 1997. by Fidelity National Title Agency, as Trustee under Trust No, 10,860 ("Declarant").

RECITALS

A. Declarant is record owner of that certain real property known as "Quail Cove Lots 1-137 & Common Area A" a subdivision of Pima County, Arizona, recorded in Book 47 of Maps at Page 70, official records of Pima County, Arizona (the "Property"),

B. The Property is currently subject to that certain "Declaration of Protective Covenants, Conditions and Restrictions for Quail Cove, Lots 1-137, recorded on October 2, 1995, in Docket 10140 at Page 1179, Pima County records (the "Original Declaration").

C. Declarant desires to amend and restate the Original Declaration in its entirety by this document and to submit and subject the Property, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining to thereto (all of which comprise a part of the Property), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein.

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

E. It is desirable for ale efficient management of the Property to create a homeowner's association to which should be delegated and assigned the powers of managing, maintaining and administering the common areas within the Property and administering and enforcing these covenants, conditions and restrictions and collecting and dispersing funds pursuant to the assessments and charges hereinafter created and to perform such other acts as are herein provided or which generally benefit its members, the Property and the owners of any interest therein.

F. The Quail Cove Homeowners Association, a nonprofit corporation, shall be incorporated under the laws of the state of Arizona For the purpose of such powers and Functions as provided herein.

C. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to, the covenants, conditions, restrictions, liens., assessments, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property.

NOW THEREFORE, Declarant hereby amends and restates the Original Declaration in its entirety and declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the idnd and be binding upon the Properly and all parties having or acquiring any right, title or interest in or to the Property or any part thereof and shall inure to the benefit of each owner thereof, the Association and each member of the Association.

ARTICLE I DEFINITIONS

Section 1.1. "Additional Property" shall mean any property which may be annexed pursuant to the Declaration and become a part of the Property.

Section 1.2. "Architectural Committee" Shall mean the committee established by the Board pursuant to Article 5 of this Declaration.

Section 1.3. "Architectural Standards" shall mean the standards and rules adopted by the Architectural Committee, pursuant to Article 5, as said rules may be amended from time to time.

Section 1.4. "Articles" shall mean Articles of Incorporation of the Association which have been, or will be, filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 1.5. "Association" shall mean "The Quail Cove Homeowners Association, Inc.," an Arizona nonprofit corporation, its successors and assigns.

Section 1.6. "Association Rules" shall mean the rules and regulations adopted by the Association, as some may be amended from time to time.

Section 1.7. "Board" shall mean the Board of Directors of the Association.

Section 1.8. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.9. "Common Area" shall mean all real property, and an "Improvements," as defined in Section 1.14 located thereon, for the common use and enjoyment of the Owners.

Section 1.10. "Declarant" shall mean Fidelity National Title Agency, inc., an Arizona corporation, as Trustee under Trust No. 10,860, its successors and any person or entity to whom it may expressly assign its rights under the Declaration.

Section 1.11 "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as some may from time to time be amended.

Section 1.12. "First Mortgage" shall mean and refer to any mortgage or deed-of trust with- first priority over any other mortgage or deed of trust.

Section 1.13. "First Mortgage" shall mean and refer to the holder of any First mortgage.

Section 1.14. "Improvement(s)" shall mean buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 1.15. "Lot" shall mean any parcel of real property designated as a lot on the "Plat," as defined in Section 1.18.

Section 1.16. "Member" shall mean any person, corporation, partnership, joint venture or other legal entity who is an Owner.

Section 1.17. "Owner" shall mean the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) the purchaser of a Lot under an executory contract for the sale of real property, (ii) persons or entities having an Interest in a Lot merely as security for the performance of an obligation, or (iii) a lessee or tenant of a Lot. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801., ct 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 shall be deemed to be the Owner.

Section 1.18. "Plat" shall the subdivision plat of Quail Cove, described. in Recital A, and all amendments thereto.

Section 1.19. "Project Docu Mean the Declaration, the Articles, the Bylaws, and any and all "Association Rules" Arch..... Committee Rules" and "Covenant Committee Rules" as may be promulgated by the Board of duly authorized committee.

Section 1.20. "Property" shall mean the Property as described in Recital A and Additional Properly annexed under this Declaration.

Section 1.21. "Purchaser" shall mean any person other than the Declarant who by means of a voluntary transfer acquires a legal or equitable interest in a Lot other than (i) a leasehold interest (including renewable options) of less than five (5) years or (ii) as security for an obligation.

Section 1.22. "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption; or a group of persons not all so related, not to exceed three (3) in number, who maintain a common household in a dwelling.

Section 1.23. "Single family residential use" shall mean the occupation or use of a residence by a single Family in conformity with the Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 1.24. "Visible from the neighboring property" shall mean, with respect to any given object. that such object is, or would be, visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being Viewed.

ARTICLE 2 THE ASSOCIATION

Section 2.1. Organization

The Association is a non-stock, not-for-profit corporation organized and existing under the laws of the State of Arizona. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws and the Declaration, as any may from time to time be amended However, the Articles and the Bylaws may not be amended or interpreted so as to be inconsistent with this Declaration.

Section 2.2. Membership

- A. Eligibility. Membership is appurtenant to the Lot giving rise to such membership and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Declaration.
- B. Members Right and Duties. Each member shall have the rights, duties and Obligations of a Member as set forth in the Declaration and any rules and regulations promulgated herewith.

- C. Voting Rights. The Association shall have two classes of voting membership.
1. Class A. Class A Members are all the Owners, except the Class B Member. Each Owner (whether one or more persons or entities) as Class A Member shall be entitled to one vote for each Lot owned.
 2. Class B. The Class B Member is Declarant, which shall have three votes for each Lot owned. The Class B membership and the Class B voting rights shall cease and be converted to class A membership and Class A voting rights upon the earlier of the Following events:
 - (a) when seventh five percent (75%) of the Lots have been conveyed to Owners other than Declarant.
 - (b) on December 31, 2002; and,
 - (c) upon written notice from the Class B Member to the Association.
- D. Exercise of Vote. The vote for any member that is held by more than one person or entity may be exercised by any one of them, unless any objection or protest by any co-holder of such membership is made prior to the completion of a vote, in which case the vote for such member shall not be counted.

Section 2.3. Powers and Duties of the Association.

The Association shall have all the powers and duties specifically set forth in the Declaration and those implied by or incidental to achieving the objectives or requirements set forth in the Declaration.

Section 2.4. Board of Directors.

Powers and Duties. The affairs of the Association shall be conducted by the Board of Directors, comprised of not less than three (3) nor more than seven (7) directors, as herein provided and in accordance with Articles and the Bylaws. While there is a Class B member, directors need not be Members, Thereafter, all directors shall be Members. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except those that are by law or the Declaration required to be exercised and done by the Members or Declarant. The Board shall have the power to adopt from time to time any rules and regulations and form such committees as are deemed necessary for the benefit and enjoyment of the Association and/or its Members. However, such rules and regulations and committees shall not be in conflict with law or the declaration. The Board may delegate to one or more of its board members or to a person or persons employed by the Board the authority to act on behalf of the Board on any matter not otherwise reserved in the Project Documents to the Board or the Members of the Association.

Section 2.5. Architectural Committee.

The Board shall act as or may establish an "Architectural Committee" consistent with Article 5 Hereof.

Section 2.6. Covenants Committee.

A. Composition, The Board shall act as or may establish a "Covenants Committee" for the purpose of dealing with alleged violations of the Project Documents by Members, their guests and Invitees and to promote the objective

of having and maintaining a more congenial community through arbitration and other non-judicial means of resolving conflicts when they arise. The jurisdiction of the Covenants Committee shall not extend to Declarant.

B. Powers and Duties. The Covenants Committee shall monitor and, subject to appeal to the Board of Directors if a separate Covenants Committee is established, enforce compliance by the residents with the Project Documents (except for such matters as are delegated to the Architectural Committee) in accordance with the procedures set forth in the Declaration. The Covenants Committee is empowered to issue a cease and desist request to any Owner, resident, or their guests and invitees, whose actions are inconsistent with the provisions of the Project Documents either upon petition of any Owner or Member or upon its own initiative. The Covenants Committee may from time to time provide interpretations of the Project Documents as to their intent, provisions and qualifications when requested to do so by a member of the Board or on its own initiative.

C Authority. The Covenants Committee shall have such additional duties, power and authority as the Board of Directors may from time to time provide by resolution. The Board may relieve the Covenants Committee of any of its duties, power and authority either generally or on a case-by-case basis.

Section 2.7. Indemnification.

To the fullest extent permitted by law, every director, officer or committee member of the Association, including, without limitation, the members of the Board of Directors, the Architectural Committee, the Covenants Committee, and Declarant (to the extent a claim may be brought against Declarant by reason of its appointment, removal or control over members of the Board or any Association committee) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of and at the request of the Association may, in the discretion of the Board, be indemnified by the Association. Such indemnification shall include all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of Declarant by reason of having appointed, removed or controlled or failed to control members of the Board or any Association committee) or any settlement thereof, whether or not he is a director, officer or committee member or serving in such other specified capacity at the time such expenses are incurred. Such indemnification shall be available only if the Board determines, in good faith, that such officer, director, committee member, or other person, or Declarant, did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

ARTICLE 3 COMMON AREA

Section 3.1. Obligations of the Association.

The Association, subject to the rights of the Members set forth in the Declaration, shall be responsible for the exclusive management and control, for the benefit of the Members, of the Common Area conveyed to it and all Improvements on the Common Area. The Association shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with standards set by the Association. The Association shall be responsible for payment of ad valorem taxes assessed against the Common Area.

Section 3.2. Damage, Destruction or Taking of Common Area.

A. Damage or Destruction by an Owner. Each Owner shall be liable to the Association for any damage to or destruction of Common Area or improvements to the Common Area resulting from an action or the negligence of the Owner or his guests, tenants, licensees, agents, invitees, or members of his family, both minor and adult. In the event of such damage or destruction, such Owner does hereby authorize the Association to repair the damaged or destroyed area in a good, workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been subsequently modified by the Association, in the discretion of the Board. The Association reserves the right, acting through the Board of Directors or the Covenants Committee and after notice and hearing, to charge a restoration assessment equal to: 1) the increase, if any, in any insurance premium directly attributable to such damage, and 2) the cost of correcting such damage, including any legal costs and costs of collection, In no event shall the Association be required to make any insurance claim related to such damage. In the case of joint ownership of a Lot or if the Owners of more than one Lot are involved, the Owners shall be jointly and severally liable.

B. Other Damage. In the event of major damage to or destruction of any Common Area or improvements to the Common Area, the Association shall be required to repair or restore the affected area unless the Class B Member, so long as it exists, and two-thirds (2/3) of the Owners agree not to repair or restore the area. The proceeds of insurance shall be applied to any such repair or restoration. Any such repair or restoration shall be substantially in accordance with the original plans and specifications of the area involved, or as the area may have been subsequently modified by the Association, at the discretion of the Board of Directors. Any costs of repair or restoration not covered by insurance may be paid from the operating reserve or a special assessment, at the discretion of the Board of Directors.

C. Condemnation or Taking. In the event that any portion of the Common Area is acquired or condemned by any authority exercising the power of eminent domain, all compensation and damages for or on account of such property taken shall be payable to the Association. Such payments may need not be used by the Association to acquire and develop alternative property and facilities or to further develop or improve existing Common Area or facilities on the Common Area, for the benefit and use of the- Members. The Board shall conduct a referendum of the Class A members and the Class B member (if it exists) to determine their will as to the use of such funds.

Section 3.3. Title to Common Area.

Subject to applicable law and the requirements of institutional lenders, Declarant may retain the legal tile to areas on the plat designated as Common Area, or portions thereof, until such time as it has completed improvements to the Common Area, However, the Declarant hereby covenants that, not later than December 31, 2002, it shall convey or will have conveyed all Common Area to the Association, free and clear of all liens and financial encumbrances. Members shall have all the rights and obligations imposed by the Declaration with respect to Common Area as each portion is completed and opened for use. The Common Area may not be mortgaged or conveyed by the Association without the consent of two-thirds (2/3) of the Owners (excluding Declarant).

Section 3.4. Exemption of Owner.

No Owner may exempt himself from ability for any assessments levied against his Lot pursuant to Article 4 or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.

Section 3.5. Maintenance of Reserve Fund.

Out of the Regular Assessments, the Association shall establish and maintain a reserve fund for the periodic maintenance, repair and replacement of Improvements to the Common Area that the Association is obligated to maintain under Article 8 of the Declaration.

ARTICLE 4 ASSESSMENTS

Section 4.1. Creation of Lien and Personal Obligations.

Except as provided in Section 4.14, each Owner of a Lot, by acceptance of a deed or owner conveyance, is deemed to covenant and agree to pay to the Association Regular assessments, Special Assessments and Capital Improvement Assessments as defined in this Article "Assessment(s)". Such Assessments are to be fixed, established and collected from time to time as hereinafter provided. The Regular Assessments, Special Assessments and Capital Improvement Assessments, together with such interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge on, and a continuing lien upon, the Lot against which each such Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time when the Assessment falls due.

Section 4.2. Purpose of Assessments.

The Assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the Owners of Lots within the Property, funding the obligations and duties of the Association as set forth in the Declaration; and payment of the other expenses (including any reserve fund) (collectivity, "Common Expenses").

Section 4.3. Regular Assessments.

A. The Board, in accordance with the Project Documents, shall fix and establish the amount, manner, and time of payment of the Regular Assessment. Such Regular Assessment shall be equal to each Owner's proportionate share of the annual Common Expenses. Subject to Article 4.14, such proportionate share shall be determined by multiplying the annual Common Expenses by a fraction equal to one divided by the total number of Lots then within the Property.

B. Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the total Common Expenses to be incurred for such fiscal year. The Board shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner thereof. Each Owner shall thereafter pay to the Association his Regular Assessment in monthly installments, in advance, or at such other intervals as the Board may determine, each such installment shall be due and payable on the date set forth in the written notice sent to owners. If the Board determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason (including actual Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year), the board shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. If the estimated total Regular Assessments for the current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the

amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate; provided, however, that no reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question is based.

Section 4.4. Special Assessments.

Special Assessments shall be levied by the Association against an Owner and any properly interest in the Property owned by such Owner, to reimburse the Association for:

- A. Costs incurred in bringing an Owner of resident into compliance with the provisions of the Project Documents:
- B. Any other charge designated as a Special Assessment in the Project Documents or by the Board:
- C. Fines levied or fixed by the Board as otherwise provided herein, and
- D. Attorney's fees, interest and other costs or charges to be paid as, or which are incurred in connection with, a Special Assessment in accordance with the Project Documents.

Section 4.5. Capital Improvement Assessments.

The Board may levy a Capital Improvement Assessment, applicable only to that particular year, against each Lot for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement, to the extent not covered by insurance, of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto. Each Owner's proportionate share shall be determined in the same manner as an Owner's share of Regular Assessments.

Section 4.6. Uniform Assessment.

Subject to Article 4.14. the Regular Assessments and Capital Improvement Assessments for each Owner shall be uniform.

Section 4.7. Exempt Property.

All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

Section 4.8. Date of Commencement of Regular Assessment.

The Regular Assessments provided for herein shall commence on the date of the conveyance by Declarant to an Owner of the first Lot within the Property. Prior to the commencement of the Regular Assessments as provided above, Declarant will provide for the maintenance of the Common Areas at no cost to the Association.

Section 4.9. Time and Manner of Payment: Late Charges. and Interest.

Assessments shall be due and payable by the Owners in such manner and at such times as the Board shall designate. If not paid within ten days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of the Assessment and thereafter bear interest as provided in Article 13 until paid. The Association may, in its sole and absolute discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge or interest in any particular instance.

Section 4.10. No Offsets.

All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association, the Board, or Declarant is not properly exercising its duties and powers as provided in the Declaration, (ii) Assessments for any period exceed Common Expenses; or (iii) an Owner has made, or elects to make, no use of the Common Area.

section 4.11. Reserves.

The reserves which may be collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners. The responsibility of the Board (whether while controlled by Declarant or the Members) shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither Declarant the Board or any member thereof shall have any liability to any Owner or to the Association if such reserves prove to be inadequate.

Section 4.12. Subordination of Lien.

Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment shall be subordinate to the lien of a First Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto). If any lien for unpaid Assessments prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such First Mortgagee came into possession of or acquired title to such Lot, such First Mortgage shall not be liable for unpaid Assessments arising prior to the aforesaid date. Upon written request the Association by such First Mortgages, such lien shall be released in writing by the Association. Any unpaid Assessments which are extinguished as provided herein shall continue to be the personal obligation of the delinquent Owner and may also be reallocated by the Association among, all other Owners as part of the Common Expenses.

Section 4.13. Certificate of Payment.

Any person acquiring any interest in any Lot shall be entitled to a certificate from the Association setting forth the amount of due unpaid Assessments relating to such Lot, if any, and such person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorneys fees and any late charges related to such Assessments, and the Association may charge a reasonable fee for issuance of such a certificate.

Section 4.14. Responsibility of Declarant for Assessments.

Notwithstanding any term or condition of this Declarant to the contrary, while Declarant continues to be a Class B member, Declarant shall pay the Association Regular Assessments and Capital Improvement Assessments On account of any Lot owned by Declarant upon which a house has been completed and 25% of Regular Assessments and Capital Improvement Assessments on account of any other Lot owned by Declarant.

ARTICLE 5
ARCHITECTURAL AND LANDSCAPE CONTROL

Section 5.1. Architectural Committees.

The Board shall act as the "Architectural Committee" or may create a separate Architectural Committee (which creation shall not preclude one or more Board members from serving thereon, provided they otherwise qualify), Any Architectural Committee created by the Board shall consist of not less than three (3) or more than five (5) persons, who need not be Members. Notwithstanding any term of the Project Documents to the contrary, until the earlier of, five (5) years after the date Class B voting membership expires, the date Declarant no longer owns any Lots, or when such right is assigned in writing to the Board, Declarant shall appoint the members of the Architectural Committee, to serve at the discretion of Declarant. Each member of a Board-created Architectural Committee shall serve for three (3) years and may be reappointed for successive terms, but initial committee members appointed by the Board shall serve either one (1), two (2), or three (3) year terms so as to stagger the expirations of their terms. In the event of the death, incapacity of resignation of any member of such Architectural Committee, the Board shall within thirty (30) days appoint a successor. If the Board fails to timely appoint a successor member, the remaining member(s) shall appoint a successor member. In the event that both the Board and the remaining, members of such Architectural Committee fail to appoint a successor member, the Owners may appoint a successor member by a written instrument executed by a majority of all the Owners, Any member of a Board-created Architectural! Committee who fails to attend three (3) consecutive meetings may be removed from such Architectural Committee 'by the unanimous vote of the remaining members thereof and the vacancy shall be filled as set forth above.

Section 5.2. Purpose.

The purpose of the Architectural Committee is to promote the construction or modification of each improvement or proposed Improvement on a Lot such that the character, design, exterior materials, color, roof, projections, elevation and site thereof is in harmony with its surroundings and not offensive or aesthetically detrimental to neighboring Lots or any portion of the Property, using reasonable and generally acceptable criteria of aesthetic and architectural judgment, in addition to any specific limitations set forth in this Declaration or the Architectural Standards (as defined in Section 5 3).

Section 5.3. Architectural Standards.

in furtherance of Aricie 5.2. the Architectural Committee may establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Architectural Standards") which the Architectural Committee may, from time to time in its sole discretion, amend, repeal or augment. Any such promulgated Architectural Standards are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners or other Persons as if expressly set forth herein. A copy of such Architectural Standards shall at all times be a part of the Association's records. The Architectural Standards may include, among other things, those restrictions and limitations set forth below:

A. Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required pursuant to this Declaration of to the Architectural Standards:

B. Review for conformity of completed Improvements to plans and specifications approved by the Architectural Committee. However, as to purchasers and encumbrancers in good faith and for value, unless notice of noncompletion or nonconformance identifying the violating Lot and specifying the reason for the notice is executed by the Architectural Committee recorded with the Pima County Recorder and given to the Owner of

such Lot within one year of the expiration of the time limitation described in Section 5.3.A above, or, if later, within one year following completion of the Improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, then the completed Improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee and in compliance with the Architectural Standards and this Declaration, but only with respect to purchasers and encumbrancers in good faith and for value; and

C. Such other limitations and restrictions as the Board or Architectural Committee in its reasonable discretion shall adopt, including, without limitation, the regulation of all landscaping (including an absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color, surface texture and location of any such Improvements.

Section 5.4. Approval of Plans for Improvements, or Alterations.

No Improvements, alterations, repairs, excavations, landscaping or other work which in any way alters the previously approved exterior appearance of any property or Improvements located thereon from its natural or improved state including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences shall be made or done except in compliance with plans and specifications therefore which have been submitted to and approved by the Architectural Committee ("Submitted Plans"). Submitted Plans shall include, at a minimum, the following: a fully dimensioned drawing of the proposed Improvement, alteration, repair, excavation, landscaping or other work; its location on a plot plan of the applicant's Lot, including distances to existing Improvements on the Lot, and a description of the materials to be used and the final color. No change or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. No Owner or other parties shall have recourse against the Architectural Committee for its refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping. Notwithstanding any other term or condition hereof, such planting and landscaping which is not visible from a Neighboring Property shall not require the prior written approval of the Architectural Committee provided such planting and landscaping does not otherwise violate the terms of the Declaration and no plants listed on the prohibited plants list, if any, are planted on the Lot. Declarant is expressly exempt from the provisions of this section.

Section 5.5. Decision of the Architectural Committee: Approval or Disapproval.

All decisions of the Architectural Committee shall be by the affirmative vote of a majority of its members. The Architectural Committee's approval or disapproval of a request made pursuant to these restrictions shall be in writing. In the event the Architectural Committee fails to approve or disapprove any matter within forty-five (45) days after final plans and specifications have been submitted to it, such matter shall be deemed approved notwithstanding the requirement of prior written approval of the Architectural Committee. An Owner may appeal a decision by a Board-appointed Architectural Committee in writing to the Board within thirty (30) days of the Architectural Committee's decision. Upon appeal, the Board may, in its sole discretion, sustain, alter, or reverse the decision of the Architectural Committee. If the Board fails to render a decision on an appeal within forty-five (45) days of its receipt of notice of appeal, the decision of the Architectural Committee shall be deemed sustained.

Section 5.6. Variances.

In the event of an Owner's hardship in complying with any requirement imposed by this Declaration or the Architectural Standards, the Architectural Committee shall have the power, but not the duty, to grant a variance from such requirement(s); provided, however, that the Architectural Committee shall not grant a variance unless

and until the applying Owner has obtained all necessary permits or variances from the County, the- State of Arizona or any other agency or department thereof having jurisdiction.

Section 5.7. General Provisions.

A. The Architectural Committee may assess reasonable fees in connection with its review of plans and specifications.

B. The Architectural Committee may delegate its plan review responsibilities, except for final review and approval as may be required by the Architectural Standards, to one or more of its members or architectural consultants retained by the Architectural Committee, upon such delegation, the approval or disapproval of plans and specifications by such person shall be equivalent to approval or disapproval by the entire Architectural Committee.

C. The address of the Architectural Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Architectural Standards. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Standards shall be kept.

D. The establishment of the Architectural Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in the Project Documents.

Section 5.8. Regulation of Solar Collectors and Satellite Dishes.

The Architectural Committee shall have the express right and power to regulate, but not prohibit, so long as such prohibition is contrary to local, state or federal law, the use of solar collector devices and the use of satellite dishes less than one meter in diameter within the Property. Solar collectors must be integrated with the design of Improvements constructed upon a Lot, shall be located as to minimize glare and reflection onto other Lots and as not to constitute a visual nuisance to neighboring Lots. The Architectural Committee may, in the exercise of its sole judgment, base its approval or disapproval of the proposed design or location of a solar collector solely upon matters of aesthetics or harmony with the architectural standards within the Property. Satellite dishes permitted under this Section must be located so as to be as unobtrusive as possible, preferably not visible from neighboring Property.

Section 5.9. Inspection and Recording of Approval.

Any member or authorized consultant of the Architectural Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice to the Owner as provided herein in order to inspect Improvements constructed or being constructed on such Lot to ascertain that such Improvements have been or are being built in compliance with the Architectural Standards and this Declaration. The Architectural Committee shall cause such an inspection to be undertaken within thirty (30) days of a request therefor from any Owner as to his Lot, and if such inspection reveals that the Improvements located on such Lot have been completed in compliance with this Section and the Architectural Standards, the Architectural Committee shall, at the Owner's request, provide to such Owner a notice of such approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this Section and the Architectural Standards as to the Improvements described in such recorded notice, but as to such Improvements only.

Section 5.10. Additional Powers of the Board.

The Board may promulgate as a part of the Architectural Standards such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration. Without limiting the generality of the preceding sentence, the Board may fix a fine of up to \$10,000.00 for failure to obtain required approval from the Architectural Committee.

Section 5.11. Nonwaiver.

The approval by the Architectural Committee of any plan, drawing or specification for any matter requiring prior written approval by virtue of this Declaration, shall not be deemed to constitute a waiver of the right to withheld approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 5.12. Nonliability.

Neither the Architectural Committee nor any member thereof shall be liable to any Owner or to any other Person for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plan, drawing or specification, whether or not defective or deficient; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any portion of the Property, provided that, with respect to the liability of a member of the Architectural Committee, such member has acted in good faith, on the basis of all information then actually possessed by him. Without limiting the generality of the foregoing provisions of this Section, the Architectural Committee or the individual members may, but shall not be required to, consult with or hear the views of any Owners with respect to any plans, drawings, specifications or any other proposals submitted to the Architectural Committee.

ARTICLE 6 PERMITTED USES AND RESTRICTIONS

Section 6.1. Scope.

Except as otherwise specified, the provisions of this Article shall apply to the Property in its entirety.

Section 6.2 Residential Use: Home Occupation.

A. Except for a "Home Occupation," as defined below, all Lots shall be used, improved and devoted exclusively to Single Family Residential Use and no gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot. Nothing herein shall be deemed to prevent the leasing of a Lot to a Single Family from time to time by the Owner thereof, subject to all the provisions of the Project Documents. Any Owner who leases his Lot shall promptly notify the Association and shall advise the Association of the term of the lease and the name of each lessee.

B. Notwithstanding Subparagraph A, above, a "Home Occupation" may be conducted on a Lot. For purposes of this Paragraph, "Home Occupation," means private consultation and advice in trades and professions, and the sales or creation of art work, small wares and miscellaneous goods at a retail level. but no portion of any Lot shall be used as a regular business meeting place, lodge, regular club or group meeting place, religious institution,

revivalist, cult or sect meeting place. Conduct of a Home Occupation shall be subject to the following rules, regulations and restrictions:

1. The existence or operation of the Home Occupation shall not be apparent from the outside of the dwelling unit, and no sound or smell shall be detectable from neighboring Lots.
2. The Home Occupation shall conform to all zoning requirements and conditions on the Plat for the Property and otherwise conform with the CC&R's and all applicable laws, ordinances and regulations.
3. The Home Occupation shall not generate frequent or annoying traffic in the subdivision nor involve door-to-door solicitation of residents of the Lots.
4. The Home Occupation shall be consistent with the residential character of the Property and shall not constitute a nuisance or hazardous or offensive use, nor threaten the security of safety of other residents in the subdivision.
5. No Home Occupation shall involve heavy equipment or machinery, manufacturing, drilling, burning nor the conversion of any garage or carport into a nuisance office, room or dedicated storage area, and
6. The Board of Directors shall have the discretion to determine whether, in a particular case, the conduct of a Home Occupation violates the provisions hereof. If such a determination is made, the Board of Directors shall have the authority to require that the Home Occupation in question cease immediately and if not immediately ceased, to exercise its remedies pursuant to Article 13 hereof.

Section 6.3. Animals.

No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner, the Covenants Committee shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet or nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Covenants Committee shall be enforceable to the same extent as other restrictions contained in the Declaration.

Section 6.4. Antennas.

No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property, whether attached to a building or structure or otherwise, unless approved by the Architectural Committee.

Section 6.5. Utility Service.

Except as approved in writing by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other

structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or structures approved by the Architectural Committee

Section 6.6. Temporary Occupancy.

No trailer, basement or any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time on any portion of the Property for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

Section 6.7. Trailers and Motor Vehicles.

No motor vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot if it is Visible from Neighboring Property, except that operating noncommercial automobiles and operating noncommercial trucks may be parked on the paved driveways of the Lots, space permitting, provided such vehicle does not encroach onto or over the sidewalk and except that recreational vehicles and campers may be parked temporarily for periods not to exceed twenty four hours and for not more than two such twenty four periods every thirty days on the paved driveways of the Lots, space permitting, provided such recreational vehicle or camper does not encroach onto or over the sidewalk.

Section 6.8. Nuisances.

No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or penetrate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any such property.

Section 6.9. Trash Containers and Collection.

No garbage or trash shall be placed or kept on any property except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible from Neighboring Property except to make the same available for collection and then, only for the shortest time reasonably necessary to affect such collection. The Board shall have the right to require all Owners to place their garbage or trash containers at a specific location for collection or to require all Owners to subscribe to a trash collection service. All rubbish, trash and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area.

Section 6.10. Clothes Drying Facilities.

Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any property so as to be Visible from Neighboring Property.

Section 6.11. Machinery and Equipment.

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence, appurtenant structures, or other Improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Property.

Section 6.12. Restriction on Further Subdivision.

No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board.

Section 6.33. Signs.

No signs whatsoever (including, but not limited to, commercial, advertising, political and similar signs) shall be erected or maintained anywhere on the Property including, but not limited to, the inside or outside of windows in any building located on the Property except:

A. Such signs as may be required by legal proceedings:

B. Not more than one (1) residential identification sign with a total face area of thirty-six (36) square inches or less for each Lot; and

C. One (1) "for rent" or "for sale" sign not larger than 24 inches by 36 inches for each Lot.

Section 6.14. Declarant's Exemption.

Notwithstanding any other provision of the Project Documents, shall be expressly permissible for the Declarant, or its duly authorized builders, employees, and represents lives, to maintain during the period of the sale of Lots, such facilities, structures and signs as are necessary of convenient, in the sole opinion of the Declarant to the sale of the Lots, including, but without limitation, a business office, storage area, construction yards, model homes and sales offices; provided, however that such must be reasonable and must not interfere with any Owner's use and enjoyment of the Common Area of its Lots, Declarant may assign its rights under this Subparagraph in conjunction with the sale of unimproved Lots to a person or Company which intends to construct homes on the purchased Lots and thereafter offer such homes for sale to the general public.

Section 6.15. Mineral Exploration.

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

Section 6.16. Diseases and Insects.

No Owner shall permit anything or condition to exist upon any property which shall induce, breed or harbor infectious plant diseases or noxious insects.

ARTICLE 7
PROPERTY RIGHT

Section 7.1. Owner's Easement of Enjoyment.

Every Owner shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

A. The right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and all facilities located thereon;

B. The right of the Association to suspend the voting rights, and other Owner rights, for a period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Declaration or the Bylaws, with consecutive periods of sixty (60) days beyond the original expiration date of any of the sixty (60) day periods if the infraction is still not corrected;

C. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members and no dedication, transfer or mortgaging shall extinguish ingress and egress rights to the Lots; and

D. The right of Declarant and its agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales facilities, and display and exhibit purposes.

Section 7.2. Delegation of Use.

Any Owner may delegate, subject to this Declaration and the Association Rules, his right of enjoyment to the Common Area to the members of his family, his tenants, his guests or invitees, provided such delegation is for a reasonable number of persons and at reasonable times, and in accordance with reasonable Association guidelines.

Section 7.3. Limitations.

An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

ARTICLE 8
MAINTENANCE

Section 8.1. Maintenance of Common Area by the Association.

The Association shall be responsible for the maintenance, repair, and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

A. Reconstruct, repair, or replace any Improvement or portion thereof upon any such area (to the extent that such work is not done by a government entity, if any, responsible for the maintenance and upkeep of such area);

B. Construct, reconstruct, repair, or replace any portion of the Common Area or other area for which the Board has agreed in writing to maintain, used as a road, street, walk, driveway, wail, landscaped area or parking area;

C. Replace injured and diseased trees or other vegetation in any such area, and plant (trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

D. Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof, and

E. Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purpose specified in this Declaration

Section 8.2. Adjacent Property Maintenance by Association.

In addition to the maintenance, repair, and replacement of the Common Area, and the improvements located thereon, the Association shall maintain, repair, and replace the landscaping and other Improvements on any area within or immediately adjacent to the Property providing the Board agrees that such maintenance shall be in the best interest of all the Members and agrees to such maintenance in writing.

Section 8.3. Maintenance By Owners.

Each Owner shall be solely responsible for the maintenance, repair, and replacement of his Lot and Improvements in accordance with the Project Documents including, but not limited to, maintaining the Lot free of weeds, debris and trash.

Section 8.4. Damage or Destruction of Common Area by Owners.

No Owner shall in any way damage or destroy any Common Area or interfere with the maintenance responsibilities of the Association, including, but not limited to, landscaping and wall maintenance. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand, to the Association and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of assessments.

Section 8.5. Nonperformance by Owners.

if any Owner fails to maintain any portion of his Lot or the Improvements located thereon which he is obligated to maintain under the provisions of the Declaration, the Association shall have the right, but not the obligation, after fourteen (14) days notice, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner. The cost-of any such work performed by or at the request of the Association shall be paid for by the Owner of the Lot upon demand from the Association, Amounts due shall be a lien upon the Owner's Lot and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of assessments.

ARTICLE 9
EASEMENTS AND BUFFERYARDS AND EASEMENT AREAS

Section 9.1. Utility Easement.

There is hereby created a blanket easement upon, across, Over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewers, gas, telephones, electricity and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area.

Section 9.2. Easements for Ingress and Egress.

Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their family, guests, tenants and invitees for pedestrian traffic over, through, and across sidewalks, paths, walks and lanes as the same from time to time may exist on the Common Area, and for vehicular traffic over, through, and across such portions of the Common Area as from time to time may be paved and intended for such purposes, and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

Section 9.3. Association's Right of Entry.

During reasonable hours, the Association, any member of the Architectural Committee, any member of the Board or any authorized representative of them, shall have the right to enter upon and inspect any Lot, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules and the Architectural Committee Rules are being complied with-by the Owner of said Lot.

Section 9.4. Association's Easement for Performing Maintenance Responsibilities.

The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area.

Section 9.5. Bufferyards and Easement Areas.

As shown on the Plat and/or site plan for the Property, certain Lots have "bufferyards," "sight visibility easements," and/or "landscape easements" which extend onto the Lots from their side and/or rear boundary lines (collectively, the "Bufferyards and Easements Areas"). On certain of such Lots, Declarant has located and constructed a wall on or about the Bufferyards and Easement Areas (the "Bufferyards and Easement Areas Walls") such that a portion of the Bufferyards and Easement Areas lie outside such walls, and a portion lies within such walls. The Association shall have the exclusive right and obligation to landscape, maintain and insure that portion of the Bufferyards and Easement Areas which lie outside the Bufferyards and Easements Areas Walls and shall do so as if such Bufferyards and Easement Areas were Common Area. For the purposes stated in this Section, the Owners of Lots with Bufferyards and Easement Areas hereby grant to the Association an easement over, upon, through and under that portion which lies outside the Party Walls.

ARTICLE 10
PARTY WALLS AND FENCES

Section 10.1. General Rules of Law to Apply.

Each wall or fence which is built as a part of the original construction of the homes upon the Lots and located on or about the boundary line between Lots shall constitute "Party Wall(s)," and, to the extent not inconsistent with provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 10.2. Rights of Owners and Association.

The Owners of contiguous Lots which share a Party Wall shall both equally have the right to use the Party Wall, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. Notwithstanding any provision herein, there shall be no impairment of the structural integrity of a Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

Section 10.3. Damage or Destruction.

In the event any Party Wall is damaged or destroyed through an act or failure of any Owner or resident or any invitee of such Owner or resident (whether or not such act is negligent or otherwise culpable), a shall be the obligation of such Owner to promptly rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot. Any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage. In the event any Party. Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act or failure to act of an adjoining Owner, his tenants, lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such Party Wall to rebuild and repair such Pasty Wall at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their lots on the Party Wall.

Section 10.4. Right of Contribution Runs With Land.

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors and title.

Section 10.5. Disputes.

In the event of any dispute arising concerning a Party Wall, such dispute shall be submitted to the Covenants Committee for resolution.

ARTICLE 11
ANNEXATION OF ADDITIONAL PROPERTY

Section 11.1. Annexation of Additional Property.

Declarant may elect to annex Additional Property to the property and to subject such Additional Property to the Declaration in increments of any size whatsoever, or to annex more than one such increment as any given time and in any given order. Declarant reserves the right, in its sole discretion and without the approval, assent or vote of the Association or the Members, to annex Additional Property to the Property at any time prior to the date

fifteen (15) years after the first recording of the Declaration and to subject all or any portion of such property to the plan of the Declaration. Although Declarant shall have the ability to annex Additional Property as provided in this Section, Declarant shall not be obligated to annex all or any portion of any property presently contemplated or intended to be included within the Property and such property shall not become subject to the Declaration unless and until a Declaration of Annexation shall have been recorded as herein provided.

Section 11.2. Annexation Declaration.

A Declaration of Annexation shall be a writing in recordable form which annexes the Additional Property to the plan of the Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of the Declaration and shall contain such other provisions as are set forth in the Declaration relating to Declarations of Annexation. Declarations of Annexation may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in the Declaration as may be necessary to reflect the different characteristics, if any, of the Additional Property and as are not inconsistent with the plan of the Declaration. In any event, however, shall any such Declaration of Annexation revoke, modify or add to the covenants established by the Declaration with or respect to the property already subject to the Declaration. The recording of the Declaration of Annexation together with a plat (the "Annexation Plat") describing the Additional Property, shall constitute and effectuate the annexation of the Additional Property described therein, making said real property subject to the Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said Additional Property shall be part of the Property for all intents and purposes of the Declaration and all of the owners of interests in the Additional Property shall automatically be subject to the Declaration. The effective date of an annexation shall be the date of recording of the Declaration of Annexation or such later date as may be specified therein.

ARTICLE 12

RIGHTS OF INSTITUTIONAL LENDERS AND FEDERAL, MORTGAGE AGENCIES

Section 12.1. Consent.

The Association shall not, without the prior written consent of the majority of institutional lenders holding first mortgages on Lots within the Property:

- A. Amend any provision of the Declaration that relates to the basis of assessment, or
- B. Mortgage, partition, subdivide, transfer or otherwise dispose of any of the Common Area or Improvements to the Common Area.

Section 12.2. Approvals.

As long as the developer has Class B membership rights, the following actions require the approval of the Federal Mortgage agencies, to the extent that they have an interest in the Property, or portion thereof annexation of additional property, amendment of the Declaration, dedication of the Common Area, mergers and consolidations, or mortgaging of the Common Area.

ARTICLE 13
COMPLIANCE AND DEFAULT

Section 13.1. Relief.

Each Owner shall comply with all provisions of the Declaration and shall be responsible for assuring compliance by members of his family, guests, tenants, invitees and the like. In addition to any other remedies that may be available to law or in equity, the Association, acting through any of its officers or through other authorized agents, shall be entitled to the following relief.

A. Costs and Attorney's Fees. in any proceeding arising out of an alleged default by an Owner where the Association has initiated legal action, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court;

B. No Waiver of Rights. The failure of the Association, any officer(s), or any Member(s) to enforce any provision of the Project Documents shall not constitute a waiver of the right of the Association, any officer, or any Member to enforce such provision in the future. All rights, remedies and privileges of the Association, any officer(s), or any Member(s) granted by the Declaration shall be deemed to be cumulative and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the exercising of other rights, remedies and privileges as may be enabled by the Declaration or by law.

C. Interest. In the event of a default by any Owner in paying any sum assessed against his Lot which continues for a period in excess of thirty (30) days, interest at a rate not to exceed eighteen percent (18%) per annum may be imposed at the discretion of the Board of Directors on the principal amount unpaid from the date due until paid;

D. Abating and Enjoining Violations. A violation of any provision of the Project Documents shall give the Board of Directors the right, in addition to any other rights set forth in the Declaration: 1) after expiration of any applicable grace periods, to enter the Lot on or in which, or as to which, such violations or breach exists and summarily to correct, abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the Declaration and the Board of Directors shall not thereby be deemed guilty in any matter of trespass; or 2) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of such breach; and

E. Legal Proceedings. Failure to comply with any of the provisions of the Declaration shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all Assessments, any other relief provided for in the Declaration, and any other relief afforded to or sought by the Association the Board of Directors, its manager, if any, or, if appropriate, by any aggrieved Member and pursuit of any one shall not constitute an election of remedies.

Section 13.2. Lien for Assessments.

A. Liens. It is hereby declared and each Owner, by acceptance of a deed, is deemed to covenant and agree that all regular and Special Assessments, Capital Improvements Assessments, and any other Assessments or any other sum duty levied (including without limitation, interest, late charges, etc) pursuant to the Declaration are a lien on the Owner's Lot. The Board of Directors or its designated agent, if any, may file or record in the appropriate public records notice of any such lien of such other or further documents as may be required to confirm the establishment and priority of such lien. Such notice shall contain at least the following information: name of the Association, references to the deed book and page number where the Declaration is recorded; name of the Lot Owner, Lot number, address, date of filing of the notice of lien and amount(s) due. Failure to record a lien does

not extinguish the personal obligation of an Owner or Owners who are delinquent on payments due to the Association. Upon payment by the Owner of the full amount due the Board of Directors shall promptly cause the lien to be released.

B. Acceleration. In any case where an Assessment is payable in installments, upon a default by an Owner in the timely payment of installments, the Board of Directors may accelerate the required payment of the installments and declare the entire balance of the Assessment due and payable in full by service of registered notice of such effect upon the defaulting Owner and notice to the First Mortgagee of the Lot if failure to cure the defect continues to exist ten (10) days after such notice.

C. Enforcement. The lien for Assessments may be enforced and foreclosed by the Board acting on behalf of the Association in the manner provided by the laws of the State of Arizona for foreclosing mortgages. During the pendency of such suit, the Owner shall be required to pay a reasonable rental for the Lot for any period prior to the sale pursuant to any judgment or order of any court having jurisdiction over the sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver.

D. Remedies Cumulative. A suit to recover a money judgment for unpaid Assessments may be maintained without foreclosing or waiving the lien securing the Assessments and a foreclosure may be maintained even while there is a suit in progress to recover a money judgment.

ARTICLE 14 INSURANCE

Section 14.4. Authority to Purchase.

The Association shall purchase and maintain certain insurance upon the Common Area, including, but not limited to, the insurance described in Section 14.5. Such policies and endorsements thereon or copies thereof shall be deposited with the Association.

Section 14.2. Owner's Responsibility.

It shall be the responsibility of each Owner, occupant or other person to provide for himself insurance on his own Lot, his additions and improvements thereto, furnishings and personal property therein, his personal liability and such other insurance as the Owner may desire.

Section 14.3. Coverage.

The Association shall maintain and pay for the following policies of insurance:

A. Multi-Peril. A multi-peril type policy covering all of the Common Area including improvements thereon, providing, at a minimum, fire and extended coverage and all other coverage in kind and amounts customarily acquired or required for projects similar in construction, location and use.

B. Liability. A comprehensive policy of public liability insurance covering all of the Common Area in a minimum amount of at least \$1,000,000.00 per occurrence, for personal injury, death or property damage. The scope of such coverage shall include all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, without limitation, water damage liability, liability for non owned and hired automobiles and liability for property of others,

C. Fidelity Bond. Fidelity bond coverage against dishonest acts on the part of the directors, managers, trustees, employees or volunteer responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event Less than one and one-half (1/2) times the Association's annual operating expenses and reserves in connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

D. Workman's Compensation. A workmen's compensation policy, if necessary to meet the requirement of law, and

E. Other. Such other insurance as the Board shall determine from time to time to be desirable.

Section 14.4. Required Provisions.

The insurance policies purchased by the Association shall, to the extend possible, contain the following provisions

A. No Contribution. The coverage afforded such policies shall not be brought into cont.... auton of proration with any insurance which may be purchased by Owners or First mortgages of any Lot.

B. Conduct of Owners. The conduct of any one or more Owners shall not constitute grounds for avoiding liability on any such policies.

C. Subrogation. There shall be no subrogation with-respect to the Association, its agents and employees, Owners and Member of their household and their families and employees, and each mortgagee of all on any part of the Property or of any Lot, or the policy(ies) should name said persons as additional insured. and each policy must contain a waiver of any defenses based on coinsurance or on invalidity arising the acts of the insured:

D. Severability of Interest. A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other owners

F. Statement of name. A statement of the name of the insured shall be included in all policies, in form and substance similar to the following.

"The Qual Cove Homeowners Association, for the use and benefit of the individual owners" [designated by name if required],

F. Mortgagee Notification. For policies of hazard insurance, a standard mortgage clause which shall provide that the insurance carrier shall notify any Mortgagee named as an additional insured at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy, and

G. Cancellation or Modification. Coverage may not be canceled or substantially modified without at least thirty (30) days (or such lesser period as otherwise provided herein) prior written notice to any and all insured, including First Mortgage, their successors and assigns.

Section 14.5. Non-Liability of Association or Board.

Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member shall be liable to any Owner or other person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate and it shall be the responsibility of each Owner or other interested person to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as may be desired.

Section 14.6. Premiums.

Premiums upon insurance policies purchased by the Association shall be paid by the Association, except that the amount of increase in any premium occasioned by the use or misuse of the Common Areas by an Owner shall be assessed against the particular Owner

ARTICLE 15
GENERAL PROVISIONS

Section 15.1. Enforcement.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter posed by the provisions of this Declaration, Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 15.2. Severability.

Invalidation of any one (1) or more of these covenants or restricts s by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 15.3. Duration.

The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated upon an affirmative vote for termination of not less (than ninety percent (90%) of the votes entitled to be cast

Section 15.4. Amendment by Owners.

This Declaration may be amended by the affirmative vote for amendment of not less than seventy-five percent (75%) of the votes entitled to be cast.

Section 15.5. Amendment by Board.

Notwithstanding anything to the contrary In this Declaration, the Board shall have the right to amend this Declaration, without obtaining the approval or consent of any other Owner or mortgagee, in order to conform the Declaration to the requirement or guidelines of the Federal National Mortgage Association the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration, provided, however, that any such amendment by the Board must be approved by the Veterans Administration or the Federal Housing Administration so long as there is a Class B membership in the Association.

Section 15.6. Violations and Nuisance

Every act or omission whereby any provision-of this Declaration is violated in whole, or in part. is hereby declared to be a nuisance and may be enjoined of abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association, or any Owner.

Section 15.7. Violation of Law.

Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation, or use of any property within the Property, is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein

Section 15.8. Remedies Cumulative.

Each remedy provided herein is cumulative and not exclusive.

Section 15.9. Delivery of Notices and Documents.

Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours-after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: if to the Association at 3550 North First Avenue, Suite 150, Tucson, AZ 85739. If to an Owner, to the address of his Lot or to any other address last furnished by the Owner to the Association; and if to Declarant, at c/o 3550 North First Avenue, Suite 150, Tucson, AZ 85719; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association and shall promptly notify the Association in writing of any subsequent change of address.

Section 15.10. Binding Effect.

By acceptance of a deed, or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees, and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, 10 all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. in addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof Furthermore, each such person fully understands and acknowledges that this Declaration shall

be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association, and the other rights created by this Declaration, shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 15.1. Management Agreements.

All powers, dues and rights of the Declarant, the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management or any other contract providing for services shall not exceed a term of one (1) year, which term may be renewed by agreement of the parties for successive one-year periods. Any professional management or service agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon ninety (90) days written notice; provided, however, that the Association may terminate such agreement for cause upon thirty (30) days written notice. The Association is expressly authorized to contract with Declarant, or an affiliate of Declarant, to provide management services or to perform other duties of the Association or the Board provided, however, that the compensation to be paid to Declarant, or its affiliates, under such contract shall not exceed a reasonable amount consistent with compensation paid to professional managers performing similar services in accordance with the standards of the industry.

Section 15.12. Gender.

The gender, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed

Section 15.13. Topic Headings.

The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or this Declaration.

Section 15.14. Survival of Liability.

The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incident thereto

Section 15.15. Construction.

In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules, Architectural Committee Rules, or any other rules, the provisions of this Declaration shall prevail

Section 18.16. Joint and Several Liability.

In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

Section 15.17. Attorneys' Fees.

In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration of to collect any assessments or other amounts due from an Owner, or to enforce compliance with or recover damages for any violation or noncompliance with the Project Document, the prevailing party to any such action shall be entitled to recover from the other party its reasonable attorneys' fees incurred in any such action.

DECLARANT

Fidelity National Title Agency, Inc.,
an Arizona corporation, as Trustee
under Trust No. 10,860 only and not
in its corporate capacity.

By: Suella Swart
Trust Officer

Note. The Beneficiary of Fidelity National Title Trust No. 10,860 is Quail Cove, L.L.C., an Arizona limited liability company.

STATE OF ARIZONA)
) ss.
COUNTY OF PINA)

This instrument was acknowledged before me this 19th day of December, 1997,
by Suella Swart Trust Officer for Fidelity National Title Agency, as
Trustee under Trust No. 10,860



[Signature]
Notary Public