

ARTICLES OF INCORPORATION  
OF  
NEPENTHE HOMEOWNERS ASSOCIATION

The undersigned incorporator, for the purpose of forming a private nonprofit corporation under and by virtue of the laws of the State of Arizona, hereby adopts the following Articles of Incorporation:

ARTICLE I

Name

The name of the corporation is NEPENTHE HOMEOWNERS ASSOCIATION.

ARTICLE II

Definitions

The words and terms used herein shall be deemed to have the same definitions and meanings as in the Declaration of Covenants, Conditions, Restrictions and Easements for Nepenthe, as amended or supplemented from time to time (the "Declaration"), which was first recorded in the land records of the office of the County Recorder of Yavapai County, Arizona, on December 1, 1995, in Book 317, at page 605-670, and the terms of which are incorporated herein by reference.

ARTICLE III

Duration

The Association shall exist perpetually, subject to the right of the Members to dissolve the Association pursuant to the Declaration.

ARTICLE IV

Purposes and Powers

The Association is not organized for the purpose of gaining pecuniary profit. No part of the net earnings of the Association, if any, shall inure to the benefit of or be distributable to any Member, director or officer nor to any other Person other than by acquiring, constructing or providing management, maintenance and care of the property of the Association and by a rebate of excess membership dues, fees or assessments. The Association is formed and its initial business will be the protection, improvement, alteration, maintenance, repair, replacement, ownership, administration and operation of the Common Areas for Nepenthe, the assessment of expenses, the payment of losses, the disposition of casualty insurance proceeds, and other

matters as provided in the Declaration, these Articles of Incorporation, the Bylaws of the Association or the Design Guidelines. Without limiting the generality of the foregoing, to the extent authorized by the Board, and in accordance with the provisions of the Declaration, the Association shall be empowered (but not obligated by these Articles):

(a) To accept such properties, improvements, rights, and interests as may be conveyed, leased, assigned, or transferred to the Association; to assume such obligations and duties as may be contained in any lease, assignment or transferral to the Association; to maintain, operate, and otherwise manage buildings, structures, improvements, landscaping, parking areas, walks, common elements, common areas, recreational areas and facilities now or hereafter constructed on the Property as provided in the Declaration; to pay taxes, assessments and charges, if any, which may properly be levied against properties of the Association; to repair, rehabilitate and restore the Property and buildings, structures and improvements on the Property; to purchase and maintain insurance as required or provided by the Declaration; to make assignments, assessments and charges for maintenance and operating charges as the Board shall determine in accordance with the Declaration and the Bylaws and to enforce the collection of such assessments and charges; to impose liens against individual Owners and/or Lots to secure the payment of obligations due from the Owners of such Lots, and to collect, sue, foreclose or otherwise enforce, compromise, release, satisfy and discharge such demands and liens in accordance with the Declaration; to pay all maintenance, operating and other costs and to do all things and acts which in the discretion of the President or the Board, as provided in the Declaration, shall be deemed to be in the best interests of the Owners and the Members of the Association or for the peace, comfort, safety or general welfare of the Owners and the Members of the Association, all in accordance with the Declaration; to make and amend rules and regulations respecting the use of the Property and any other matters relating to the Association and its Members; and to do all other things necessary or appropriate to carry out and to enforce the terms and provisions of the Declaration;

(b) To purchase or otherwise acquire title to Lots and Common Areas or to hold and exercise options to purchase the same, and to lease Lots and Common Areas in the Association's name as lessee and to sell and lease or to grant options to lease and purchase the same; and, if the Association becomes the Owner or lessee of the same, to perform all of the obligations of the Association as an Owner or lessee thereof and to assume and agree to pay any Mortgage constituting a lien thereon;

(c) To develop, construct, purchase, lease, own, improve, maintain, operate and hold real and personal property of every kind and description; to sell, convey, and lease such property; and to mortgage, assign and pledge or otherwise encumber such property;

(d) To borrow money, and to issue notes, bonds, and other evidences of indebtedness in furtherance of any or all of the objects and purposes of the Association, and to secure the same by mortgage, trust deed, pledge or other lien on or security interest in property of the Association with the consent of the Owners as required by the Declaration;

(e) To enter into, perform, and carry out leases and contracts of any kind necessary to or in connection with or incidental to the accomplishment of any one or more of the objects and purposes of the Association;

(f) To make any refunds of excess payments from Owners or Members as provided in the Declaration, these Articles or the Bylaws;

(g) To lend or invest its working capital and reserves with or without security;

(h) To act as surety or guarantor, agent, trustee, broker or in any other capacity when appropriate to the fulfillment and the furtherance of its objects and purposes;

(i) To pledge the right to exercise its powers to impose Assessments and charges as security for any obligation, as provided in the Declaration;

(j) In general, to do and perform such acts and things and to transact such business in connection with the foregoing objects and purposes as may be necessary or convenient; and

(k) To transact any and all lawful business for which corporations may be incorporated under the laws of the State of Arizona not inconsistent with the Declaration or these Articles of Incorporation.

#### ARTICLE V Character of Business

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

#### ARTICLE VI Membership; Classes of Members; Voting Rights

The Members of the Association shall be as provided in the Declaration. Other than its Members, the Association shall have no shareholders, and no capital stock shall be authorized or issued. The voting rights of the Members shall be as provided in the Declaration. It is hereby expressly acknowledged that the Declaration is subject to amendment to change the qualifications and requirements as to who are the Members of the Association and their voting rights.

ARTICLE VII  
Statutory Agent

FC Service Corporation, an Arizona corporation, whose address is Two North Central Avenue, Suite 2200, Phoenix, Arizona 85004-2390, is hereby appointed the initial statutory agent of the Association for the State of Arizona.

ARTICLE VIII  
Board of Directors and Officers

The business, property and affairs of the Association shall be managed, controlled and conducted by a Board of Directors. The number of directors, who shall serve without compensation, shall not be less than 3 nor more than 9, as shall be specified in the Bylaws. The initial Board shall consist of 3 directors. Except for any director appointed in these Articles, any director elected or appointed by Developer or any director that is an employee of Developer, each director shall be a Member; provided, however, if the Member is other than an individual, such Member shall be required to appoint an individual as its duly authorized representative to exercise the member's vote and to provide the President of the Association with written notice of the appointment. If a director ceases to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant. The names and addresses of the persons who shall serve as directors until the first annual election of directors or until their successors are elected and qualified are:

Name:	Address:
Jack Sheehan	40 Soldiers Pass Suite 1 Sedona, Arizona 86336
Susan Roberts	40 Soldiers Pass Suite 1 Sedona, Arizona 86336
Catherine S. Miller	40 Soldiers Pass Suite 1 Sedona, Arizona 86336

The Developer shall have the absolute power and right to appoint and remove the members of the Board of Directors until the Transition Date. Thereafter, the members of the Board of Directors shall be elected by a plurality of votes cast at the annual meeting of the Members at which a quorum of the Members is present (in person or by proxy). A director shall serve until removed or until his successor is duly elected and qualified. Subject to the

rights of the Developer, the Board of Directors may fill any vacancy occurring on the Board of Directors from whatever cause in the interval between the annual meetings of the Members.

The Board shall have the power to adopt the initial Bylaws. Until the Transition Date, the Developer may amend these Bylaws in its sole and absolute discretion. After the Transition Date, the power to alter, amend or repeal the Bylaws shall be reserved to the Members, except that the Developer, so long as the Developer owns any Lot, and thereafter, the Board, without a vote of the Members, may amend the Bylaws in order to conform the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency. The Bylaws shall prescribe, among other things, the date of the annual meeting of the Members of the Association.

The principal officers of the Association shall be a President, a Secretary, a Treasurer and, if deemed necessary by the Board, one or more Vice Presidents, all of whom shall be elected by the Board. Any two or more offices may be held by the same person except the offices of President and Secretary. The President shall have those powers, duties and responsibilities provided in the Declaration and the Bylaws.

#### ARTICLE IX Incorporator

The name and address of the incorporator is:

Selma F. Baharoglu  
Two North Central Avenue  
Suite 2200  
Phoenix, Arizona 85004-2309

#### ARTICLE X Private Property

The Members, committees, committee members, directors and officers of this Association, and Developer and any Related Entity (collectively, the "Protected Persons") shall not be individually or personally liable for the debts or other liabilities of this Association, and the private property of the Members, directors and officers of this Association and the Protected Persons shall be forever exempt from corporate debts or liabilities of any kind whatsoever.

#### ARTICLE XI Interdealing

No transaction, contract or act of this Association shall be either void or voidable or in any other way affected or invalidated by reason of the fact that any Protected Person, any Owner, or any officer, director, committee member or Member of this Association, or any other

corporation or other entity of which it or he may be an officer, director, member or shareholder, is in any way interested in such transaction, contract or act, provided the interest of such Protected Person, Owner, officer, director, committee member or Member is disclosed to or known by the members of the Board or such Members or directors as shall be present at any meeting at which action is taken upon any such transaction, contract or act. Nor shall any such Protected Person or any Owner, officer, director, committee member or Member be accountable or otherwise responsible to this Association for or in connection with any such action, contract or transaction or for any gains or profits realized by it or him by reason of the fact that it or he, or any other corporation or other entity of which it or he is an officer, director, member or shareholder is interested in any such transaction, contract or act. Any such Protected Person, Owner, officer, director, committee member or Member, if it or he is a director, after making full disclosure of his interest, may be counted in determining the existence of a quorum at any meeting of the Board which shall authorize or take action upon any such transaction, contract or act, and it or he may vote at any such meeting to authorize, adopt, ratify or approve any such transaction, contract or act to the same extent as if it or he, or any other corporation or other entity of which it or he is an officer, director, member or shareholder, were not interested in such transaction, contract or act.

## ARTICLE XII Indemnification

To the fullest extent permitted by law, every director and officer of the Association, every member of the Design Review Committee and any other committee, and the Protected Persons (to the extent a claim may be brought against any of the Protected Persons by reason of the appointment, removal or control over members of the Board or the Design Review Committee) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon him 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 the Protected Persons, by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the Person to be indemnified hereunder 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 XIII  
Limitation of Liability

To the fullest extent permitted by the Arizona Nonprofit Corporation Act, as it may be amended from time to time, every officer, director and committee member of the Association shall be exempt from personal liability to the Association, its Members, every Owner and every other Person for monetary damages for breach of fiduciary duty as an officer, director or committee member.

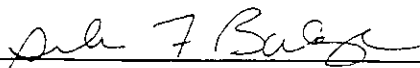
ARTICLE XIV  
Amendments

These Articles of Incorporation may be amended at a lawfully held meeting of the Members by the affirmative vote of Members representing at least seventy-five percent (75%) of the votes entitled to be cast by those Members present in person or by proxy at a duly held meeting at which a quorum of Members is present; provided, however, that the Developer, so long as Developer owns any Lot, and thereafter, the Board, without a vote of the Members, may amend these Articles in order to conform these Articles to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency. Notwithstanding the foregoing, for so long as Developer or any Related Entity Owner owns any property subject to the Master Declaration, no amendment of these Articles of Incorporation shall be effective without the approval of Developer. These Articles of Incorporation shall not be amended to contain any provisions that would be contrary to or inconsistent with the Declaration, and any provision of or purported amendment to these Articles of Incorporation which is contrary to or inconsistent with the Declaration shall be void to the extent of such inconsistency.

ARTICLE XV  
Inconsistency; Priority

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

IN WITNESS WHEREOF, the undersigned incorporator has hereunto affixed her signature this 6<sup>th</sup> day of December, 1995.

  
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Selma F. Baharoglu