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SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR NEPENTHE

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR NEPENTHE is made effective as
of the 26th day of July 2000, by Nepenthe Homeowners Association, Inc., an Arizona non-profit
corporation.



Recitals

A. Declarant caused the Declaration of Homeowner Benefits and Covenants, Conditions and Restrictions for Nepenthe Homeowners Association (the "Declaration"), dated November 29, 1995, to be recorded in the official records of Yavapai County, Arizona in Book 3142 Page 124 and the First Amendment to Declaration ("First Amended Declaration") dated May 14, 1996, to be recorded in the official records of Yavapai County, Arizona in Book 3207 Page 801.

B. Section 15.5 of the Declaration provides that the Declaration may be amended upon the approval of the Members of the Association holding at seventy-five percent (75%) or more of the total number of eligible votes in the Association.

C. The Members have voted and more than seventy-five percent (75%) of the total votes of the Association approved and desire to amend the First Amended Declaration in accordance with the following provisions:

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the undersigned, pursuant to Section 15.5 of the Declaration, intending to be legally bound, hereby declare, covenant and agree and otherwise amend the Declaration as follows:

1. The First Amended Declaration is hereby deleted in its entirety.

2. **WHEREFORE**, the First Amended Declaration is hereby deleted in its entirety.

3. Except as otherwise provided in this Declaration, the Board shall have the power and authority to purchase and maintain such public liability, casualty, officers' and Directors' liability and indemnity, workmen's compensation and other insurance, and such fidelity bonds as the Board shall deem necessary or appropriate from time to time. Policies shall be on such terms and conditions as the Board shall direct. All such policies and claims thereunder shall be administered by the Board. The Association shall make information available to Owners regarding the coverage of the Association's policies in order to permit Owners to determine which particular items are included within the coverage so that Owners may insure themselves as they see fit if certain items are not insured.

4. **WHEREFORE**, Section 6.1 of the Declaration is hereby deleted in its entirety and replaced with the following:

6.1 Authority to Purchase

Except as otherwise provided in this Declaration, the Board shall have the power and authority to purchase and maintain such public liability, casualty, officers' and Directors' liability and indemnity, workmen's compensation and other insurance, and such fidelity bonds as the Board shall deem necessary or appropriate from time to time. Policies shall be on such terms and conditions as the Board shall direct. All such policies and claims thereunder shall be administered by the Board. The Association shall make information available to Owners regarding the coverage of the Association's policies in order to permit Owners to determine which particular items are included within the coverage so that Owners may insure themselves as they see fit if certain items are not insured."

5. A multi peril policy covering the entire Property, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and providing fire and extended coverage, and against any other risks of direct physical loss, including those covered by a standard "all risk" endorsement or "broad form" coverage, and all other coverage in kind and amount customarily acquired or required for properties similar in construction, location and use, including, but not limited to, vandalism and malicious mischief, in an amount not less than One Hundred Percent (100%) of the current replacement value of the insured property (less reasonable deductibles), and if available, an inflation guard endorsement.

6. **WHEREFORE**, Section 6.2.1 of the Declaration is hereby deleted in its entirety and replaced with the following:

"6.2.1 A multi peril policy covering the entire Property, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and providing fire and extended coverage, and against any other risks of direct physical loss, including those covered by a standard "all risk" endorsement or "broad form" coverage, and all other coverage in kind and amount customarily acquired or required for properties similar in construction, location and use, including, but not limited to, vandalism and malicious mischief, in an amount not less than One Hundred Percent (100%) of the current replacement value of the insured property (less reasonable deductibles), and if available, an inflation guard endorsement."

7. It shall be each Owner's responsibility to provide any insurance on the Owner's interest in any furnishings and personal property on the Lots, the Owner's personal property stored elsewhere within the Property, the Owner's personal liability and such other insurance as the Owner desires, to the extent not covered by insurance obtained by the Association. Each Owner shall be responsible for determining which items are included within the coverage maintained by the Association and whether any additional insurance is necessary or desirable.

8. **WHEREFORE**, Section 6.4 of the Declaration is hereby deleted in its entirety and replaced with the following:

"6.4 Owners Responsibility

It shall be each Owner's responsibility to provide any insurance on the Owner's interest in any furnishings and personal property on the Lots, the Owner's personal property stored elsewhere within the Property, the Owner's personal liability and such other insurance as the Owner desires, to the extent not covered by insurance obtained by the Association. Each Owner shall be responsible for determining which items are included within the coverage maintained by the Association and whether any additional insurance is necessary or desirable."

9. In the event that the Property requires repair, replacement, or reconstruction, the Association shall make any proceeds from the Association's insurance available for such repair, replacement, or reconstruction.

10. **WHEREFORE**, Section 9.1.8 of the Declaration is hereby deleted in its entirety and replaced with the following:

"9.1.8 In the event that the Property requires repair, replacement, or reconstruction, the Association shall make any proceeds from the Association's insurance available for such repair, replacement, or reconstruction."

11. As amended hereby, the Declaration shall remain in full force and effect.

12. This Amendment shall become effective upon recording in the official records of Yavapai County, Arizona.

NEPENTHE HOMEOWNERS ASSOCIATION,
an Arizona non-profit corporation, on behalf of Owners
holding more than seventy-five percent (75%)
of the total votes in the Association

By: Nedda Viscovich
Nedda Viscovich
Its: President

By: Brenda Tuxbury
Brenda Tuxbury
Its: Secretary

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 26 day of July 2000, by Nedda Viscovich, the President of Nepenthe Homeowners Association, and Arizona non-profit corporation, on behalf of the owners of more than seventy-five percent (75%) of the total eligible votes in the Association.



My Commission Expires

Christina M. Rodriguez
Notary Public

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 26 day of July 2000, by Brenda Tuxbury, the Secretary of Nepenthe Homeowners Association, and Arizona non-profit corporation, on behalf of the owners of more than seventy-five percent (75%) of the total eligible votes in the Association.



My Commission Expires

Christina M. Rodriguez
Notary Public

When recorded return to:

CONFORMED COPY

REC. DATE 5-17-96

BK. 3207 PG. 801

11/0

FIRST AMENDMENT
TO
DECLARATION

This First Amendment to Declaration (the "Amendment") is made and entered into as of the 14th day of May, 1996, by Nepenthe Development Company, L.L.C., an Arizona limited liability company ("Developer").

RECITALS

A. On December 1, 1995, Developer caused to be Recorded, at Book 317, Pages 605 through 670, in the real property records of Yavapai County, Arizona, that certain Declaration of Covenants, Conditions and Restrictions for Nepenthe (the "Declaration") dated as of the 29th day of November, 1995.

B. Developer is the Developer under the Declaration.

C. Section 15.5 of the Declaration reserved to the "Developer" the right to amend the Declaration, so long as Developer owns more than seventy-five percent of the Lots subject to the Declaration.

D. The conditions of Section 15.5 are satisfied and Developer desires to amend the Declaration as provided herein.

DECLARATIONS

Now, therefore, Developer hereby amends the Declaration and declares as follows:

1. Defined terms have the first letter of each word in the term capitalized. Unless otherwise expressly provided herein, all defined terms herein shall have the same meanings they are given in the Declaration.

2. Section 6.1 of the Declaration is hereby amended so that Section 6.1 hereafter provides in its entirety as follows:

"6.1 Authority to Purchase.

The Board shall have the power and authority to purchase and maintain such public liability, casualty, officers' and directors' liability and indemnity, workmen's compensation and other insurance, and such fidelity bonds as the Board shall deem necessary or appropriate from time to time (including, but not limited to, casualty insurance on the structural and other similar improvements to the Lots if the Board determines, in its sole and absolute discretion, that such collective casualty insurance serves the interests of the Owners). Policies shall be on such terms and conditions as the Board shall direct. All such policies and claims thereunder shall be administered by the Board. The Association shall make information available to Owners regarding the coverage of the Association's policies in order to permit Owners to determine which particular items are included within the coverage so that Owners may insure themselves as they see fit if certain items are not insured."

3. Section 6.4 of the Declaration is hereby amended so that Section 6.4 hereafter provides in its entirety as follows:

"6.4 Owner's Responsibility.

It shall be each Owner's responsibility to provide any insurance on his own Lot, including any Areas of Common Responsibility on the Lot, and the Owner's interest in any additions and improvements thereto, furnishings and personal property therein, his personal property stored elsewhere within the Property, his personal liability and such other insurance as the Owner desires, to the extent not covered by insurance obtained by the Association. Each Owner shall be responsible for determining which items are included within the coverage maintained by the Association and whether any additional insurance is necessary or desirable."

4. The Declaration is hereby amended to add the following Section 9.1.8:

"9.1.8 If the Board has elected to maintain casualty insurance on structural improvements on Lots, in the event that any improvements which the Association has collectively insured are damaged, the Association shall make any proceeds from the Association's insurance available for repair or rebuilding of the improvements."

5. Section 15.5 of the Declaration is hereby amended so that Section 15.5 hereafter provides in its entirety as follows:

"15.5 Required Approvals.

Notwithstanding the provisions of the foregoing subsections of this Section 15, so long as Developer owns more than seventy-five percent (75%) of the Lots subject to this Declaration, any amendment to this Declaration shall be signed by Developer and recorded in the records of Yavapai County, Arizona. At any time Developer does not own at least seventy-five percent (75%) of the Lots subject to this declaration, any amendment approved pursuant to Section 15.1 of this Declaration or by the Board pursuant to Section 15.2 or 15.3 of this Declaration shall be recorded with the County Recorder of Yavapai County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by Developer pursuant to Section 15.2 or 15.3 shall be signed by Developer and recorded with the County Recorder of Yavapai County, Arizona. Amendments once properly adopted shall be effective upon Recording in the appropriate governmental offices, or at such later date as may be specified in the amendment."

6. As amended hereby, the Declaration shall remain in full force and effect.

7. This Amendment shall become effective upon recording in the official records of Yavapai County, Arizona.

IN WITNESS WHEREOF, Developer has caused this Amendment to be duly executed.

L.L.C.

NEPENTHE DEVELOPMENT COMPANY.

By: 

John D. Miller, Managing Member

By: 

Jack Sheehan, Managing Member

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this
14th day of May, 1996, by John D. Miller and Jack
Sheehan, both Managing Members of Nepenthe Development Company, L.L.C., an
Arizona limited liability company being authorized to do so on behalf thereof.



Danice F. Bruno
Notary Public

My commission expires:

3-31-2000

CONSENT TO AMENDMENT TO DECLARATION

The undersigned as the beneficiary of that certain Deed of Trust dated January 22, 1996, recorded on January 25, 1996, as Instrument No. 9604397, in Book 3146, on Page 015 and Page 017, in the real property records of Yavapai County, Arizona hereby consents to the Amendment to Declaration to which this Consent is attached.

INDEPENDENT LENDING CORPORATION,
a Delaware corporation, d/b/a Construction
Lending Corporation of America

By: _____

Marsha Jennings

Marsha Jennings
Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

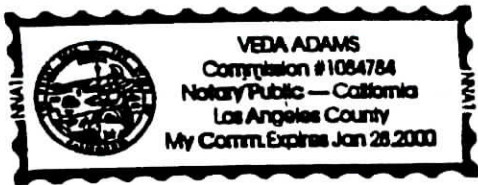
State of California

County of Los Angeles

On 5-16-96 before me, Veda Adams, Notary Public

personally appeared Marsha Jennings

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal
[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

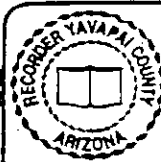
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

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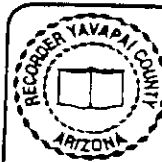


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OFFICIAL RECORDS OF
YAVAPAI COUNTY
MARGO W. CARSON
REQUEST OF:

FIRST AMERICAN TITLE INS
DATE: 01/18/96 TIME: 10:40
FEE: 66.00 SC: 4.00 FT:
BOOK 3142 PAGE 124 PAGES: 066

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INSTRUMENT # 9561972
OFFICIAL RECORDS OF
YAVAPAI COUNTY
MARGO W. CARSON
REQUEST OF:

FIRST AMERICAN TITLE INS
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BOOK 3117 PAGE 605 PAGES: 066

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DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
NEPENTHE

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
NEPENTHE

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DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
NEPENTHE

This Declaration of Covenants, Conditions, Restrictions and Easements is made and entered into as of the 29th day of November, 1995, by Nepenthe Development Company, L.L.C., an Arizona limited liability company (the "Developer").

RECITALS

A. Defined terms appear throughout the Declaration with the first letter in each word of the term capitalized. Unless the context clearly requires otherwise, defined terms shall have the meanings given to them in Section 1 hereof or elsewhere herein.

B. Developer is the record owner of the real property situated in Yavapai County, Arizona, described on Exhibit "A" attached hereto and by reference made a part hereof (herein called the "Parcel").

C. Developer desires to submit and subject the Parcel, 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 thereto (all of which constitute a part of the "Property" as hereinafter defined), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein. Developer further desires to establish and authorize a plan of development to be implemented by Developer pursuant to, and under the authority of, the Declaration.

D. Developer desires that the Property be developed in accordance with the Plat (as hereinafter defined) for residential use and related facilities.

E. Developer 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 within the Property.

F. Developer also deems it desirable for the efficient management of the Property to create an owners' association, to which will be delegated and assigned the powers of (i) owning, managing, maintaining and administering the Common Areas within the Property, (ii) managing, maintaining and administering any Areas of Common Responsibility (to the extent provided for herein), (iii) administering and enforcing these covenants, conditions, restrictions

and easements, (iv) collecting and disbursing funds pursuant to the Assessments and charges hereinafter created, (v) establishing and enforcing Design Guidelines as necessary or desirable in the Board's opinion, and (v) performing such other acts as are herein provided or which generally benefit its members, the Property, and the owners of any interests therein.

G. Nepenthe Homeowners Association, a nonprofit corporation, has been, or will be, incorporated under the laws of the State of Arizona for the purpose of exercising the powers and functions of an owners' association for the Property.

H. Developer desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth herein, all of which are declared to be in furtherance of a plan to promote and protect the Property.

DECLARATIONS

NOW, THEREFORE, Developer, for the purposes above set forth, declares that the Property shall be used for residential use and shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth herein, all of which shall run with the land and be binding upon the Property 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 Developer, the Related Entities and every other owner of any interest in the Property or any part thereof, the Association and each Member of the Association.

1. DEFINITIONS

The following terms used in the Declaration are defined as follows:

1.1 "Area of Common Responsibility" means those areas, if any, which are not Common Areas but for which, by the terms of this Declaration or other applicable covenants, or by contract, the Association has maintenance, repair, and/or operational responsibility. Any such areas shall be Areas of Common Responsibility only so long as the Association's responsibility for them continues.

1.2 "Articles" means the Articles of Incorporation of the Association, as amended from time to time, and of any successor thereto.

1.3 "Assessment Lien" means the lien created and imposed by Section 5.1.

1.4 "Assessments" include the following:

1.4.1 "Regular Assessment" is defined Section 5.4.

1.4.2 "Capital Improvement Assessment" is defined in Section 5.6.

1.4.3 "Reconstruction Assessment" is defined in Section 7.

1.5 "Association" means Nepenthe Homeowners Association, an Arizona nonprofit corporation, its successors and assigns.

1.6 "Association Rules" means the rules and regulations adopted by the Board pursuant to Section 3.11 and any amendments or supplements thereto.

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

1.8 "Business Use" shall be construed with respect to occupancy or use of a Lot to have its ordinary, generally accepted meaning and shall include any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the foregoing, an activity shall not be considered "Business Use" of a Lot if it meets all of the following requirements: (a) is not apparent or detectable by sight, sound or smell from outside the Lot on which it occurs, (b) does not involve individuals coming onto the Lot who do not reside in the Lot or solicitation of residents of the Property by anyone, whether or not a resident, and (c) is consistent with the residential character of the Lot and not a nuisance, or a hazardous or offensive use, as may be determined in the sole discretion of the Board. By way of illustration, but not limitation, activities conducted from within a residence solely by telephone, facsimile, or computer, without the use of employees other than those who reside on the Lot, to outside parties off of the Property (or wholly without communication to outside parties) are not considered "Business Use" but "Business Use" will exist if the activity involves or requires visits to the Lot by actual or prospective customers, clients, or patients, or by others (excluding once a day document delivery services such as Federal Express), as a result of business activities by the Owner or Occupant of the Lot. Similarly, the fact that family members or other occupants of a residence are employed in business affairs within the Lot will not make such employment a "Business Use" of the Lot but visits to the Lot by employees who do not reside there will be "Business Use" if the individuals are employed for the business purposes of the Owner or Occupant of the Lot and the activities do not fall within the leasing exemption provided for above. The definition of "Business Use" for purposes of this instrument may be clarified, supplemented and interpreted by the Board from time to time, as it may choose in its sole discretion, so long as not materially inconsistent with the terms set forth above.

1.9 "Bylaws" means the Bylaws of the Association adopted in accordance with the Articles, as such Bylaws may be amended or supplemented from time to time, and of any successor to the Association.

1.10 "City" means the City of Sedona, Arizona, a municipal corporation of the State of Arizona.

1.11 "Class A Member" and "Class A Membership" are defined in Section 3.3 and Section 3.18.

1.12 "Class B Member" and "Class B Membership" are defined in Section 3.3 and Section 3.18.

1.13 "Common Areas" means all real property and the improvements or amenities thereon which may from time to time be owned or leased by the Association or otherwise held by the Association for the common use and enjoyment of the Owners and Occupants. The Common Areas include, but are not limited to, the Private Roads. The Common Areas do not include any Areas of Common Responsibility. Any real property, and improvements or amenities thereon, which is described as part of the "common areas" on the Plat shall be deemed to be part of the Common Areas for the common use and enjoyment of the Owners and Occupants, as may be provided, and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to the Declaration, unless otherwise specified on the Plat.

1.14 "Common Expenses" means the costs incurred by the Association in conducting its operations and activities, in administering, maintaining and operating the Property, and in the Association's owning or leasing any portions thereof, including, but not limited to, the following:

(a) The costs of any maintenance, management, operation, repair and replacement of the Common Areas, including the Private Roads, and all other areas in the Property which are maintained by the Association (including, but not limited to, any Areas of Common Responsibility) other than those areas being managed or maintained as an Individual Charge pursuant to Section 5.5;

(b) Unpaid Assessments and Individual Charges;

(c) The costs of any maintenance by the Association of areas within the right-of-way of any public streets in the vicinity of the Property which may be provided for in the Declaration or pursuant to agreements with the County:

(d) The costs (including contributions toward shared costs) for maintenance, operation, and repairs of private roads which are not on or a part of the Property but which serve the Property;

(e) The costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(f) The costs of utilities and services including, but not limited to, water, electricity, gas, sewer, trash pick up and disposal, which are provided to the Association or the Property and not individually metered, assessed, or billed by Lot, landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Association;

(g) The costs of insurance maintained by the Association as permitted herein, together with reasonable reserves for the payment of deductibles in the event of a loss under any insurance maintained by the Association;

(h) Reasonable reserves for contingencies, replacements and other proper purposes, if deemed appropriate by the Board, to meet anticipated costs and expenses including, but not limited to, maintenance, repairs and replacement of those Common Areas, and any Areas of Common Responsibility, which must be maintained, repaired, or replaced on a periodic basis;

(i) The costs which the Board may elect to incur to bond the members of the Board, officers of the Association, any professional managing agent or any other Person handling the funds of the Association;

(j) Taxes paid by the Association;

(k) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portion(s) thereof or the Association's interest in any Areas of Common Responsibility;

(l) The costs incurred by the Design Review Committee;

(m) The costs incurred by any other committees established by the Board or the President; and

(o) Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, or any Areas of Common Responsibility, or the costs of any other item or items designated by, or to be provided or performed by, the Association pursuant to the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.15 "County" means the County of Yavapai, a political subdivision of the State of Arizona.

1.16 "Declaration" means this instrument, as this instrument may be amended from time to time.

1.17 "Default Rate of Interest" means an annual rate of interest equal to the prime rate in the Money Rates column of the Wall Street Journal from time to time while interest is accruing (with interest hereunder adjusted as and when the announced prime rate is adjusted), plus 4% per annum, but never less than 18% (so that if, during any periods while interest is accruing, the announced prime rate plus 4% per annum is less than 18%, interest shall accrue during any such periods at 18% per annum). Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such a Person during any such periods shall be the highest lawful rate. If the Wall Street Journal should cease publication or no longer announce a prime rate, the Board may elect to use 18% as the Default Rate of Interest, or may specify the rate, in lieu of the announced prime rate, for purposes of the computation hereunder, which the Association would reasonably have to pay to borrow money at the time. Notwithstanding the foregoing, the Board may at any time chose to specify a reasonable Default Rate of Interest which does not require computation based on a floating rate of interest.

1.18 "Design Guidelines" means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted by the Design Review Committee pursuant to Section 10.2.

1.19 "Design Review Committee" means the committee provided for in Section 10.

1.20 "Developer" means Nepenthe Development Company, L.L.C., an Arizona limited liability company, its successors and assigns, or any Person to whom Developer's rights hereunder are hereafter assigned in whole or in part by Recorded instrument, or any Mortgagee of Developer which acquires title to or succeeds to the interest of Developer in any Lot or other portion of the Property by reason of the foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under the Mortgage of the Mortgagee. The term "Developer", as used herein, shall include not only the named Developer but also any of the foregoing successors, assigns, assignees of right(s) and Mortgagees. An assignment by Recorded instrument of all of Developer's rights shall vest in the assignee all of Developer's rights hereunder (including, but not limited to, all of Developer's easements, rights of consent or approval and voting rights) on the same terms that they were held by Developer pursuant hereto. An assignment by Recorded instrument of part of Developer's rights shall vest in the assignee the specific Developer's right(s) named in the instrument of assignment on the same terms that they were held by Developer pursuant hereto. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Developer's rights shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist *under the Declaration* if the assignor had retained all of the Developer's rights hereunder.

1.21 "Eligible Holder" means any First Mortgagee or Institutional Guarantor that requests notice of certain matters in accordance with Section 12.7 hereof.

1.22 "Exempt Property" is defined in Section 5.8.

1.23 "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.24 "First Mortgagee" means the holder of a First Mortgage and includes, as appropriate in the context of the regulations of any interested Institutional Guarantor, any such Institutional Guarantor with respect to such a note or First Mortgage.

1.25 "Individual Charge" is defined in Section 5.5.

1.26 "Institutional Guarantor" means the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association, including any successor thereto, if such an agency purchases any note, or guarantees or insures the payment of any note, secured by a First Mortgage.

1.27 "Insurance Trustee" is defined in Section 7.6.

1.28 "Lot" means a portion of the Property shown as a subdivided lot on the Plat. A "Lot" includes the residential dwelling unit, garages, structures and other improvements constructed thereon.

1.29 "Majority of Members" means the Members holding more than 50% of the total votes entitled to be cast by Members (including Developer so long as Developer or any Related Entity Owner owns any property subject to the Declaration) with respect to a given matter (not just those represented at a meeting); and any specified fraction or percentage of the Members (or any Class of Members) means that fraction or percentage of the total votes entitled to be cast by Members (including Developer so long as Developer or any Related Entity Owner owns any property subject to the Declaration), or by the Class of Members, with respect to a given matter. A "[specified fraction or percentage] of all of the Members except Developer" or of "the Class A Members (excluding Developer)" means that fraction or percentage of the total votes of all Members entitled to be cast other than votes held by Developer. Unless otherwise specified, any provision herein requiring the approval of the Members means the approval of a majority of a quorum of Members, as provided in the Articles and Bylaws. A "majority of a quorum of Members" means the Members holding more than 50% of the total votes entitled to be cast by the Members who are present (in person or by proxy) at a meeting at which a quorum of Members (as defined in the Bylaws) is present.

1.30 "Member" means every Person who is a member of the Association.

1.31 "Membership" means a membership in the Association.

1.32 "Mortgage" means any Recorded, filed or otherwise perfected instrument, which is not a fraudulent conveyance under Arizona law, given in good faith and for valuable consideration as security for the performance of an obligation, including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.33 "Mortgagee" means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

1.34 "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.

1.35 "Owner" means the Record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, of any Lot, including contract purchasers but excluding those having such an interest merely as security for the performance of an obligation. If fee simple title to any Lot is vested of Record in a trustee pursuant to Arizona law, legal title shall be deemed to be in the beneficiary.

1.36 "Parcel" means the real property referred to in the Recitals hereof and described in Exhibit "A" hereto.

1.37 "Person" means an individual, corporation, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.

1.38 "Plat" means the plat of subdivision of the Parcel as first Recorded in the real property records of Yavapai County, Arizona, in Book 32 of Maps, at page 32, and as thereafter from time to time amended or supplemented. The Plat may depict real property not subject to the Declaration without effecting an annexation of such property or subjecting it in any manner to the provisions hereof.

1.39 "President" means the duly elected or appointed president of the Association.

1.40 "Private Roads" and "Private Streets" are synonymous and mean any street, roadway, drive, sidewalk, walkway, path or other right-of-way within, or partly within, the Property which, except as hereinafter provided, has not expressly been dedicated to the public use (and include, but are not limited to, any streets and rights-of-way designated as private access ways and public utility easements on the Plat). In the event that the Association elects to dedicate a Private Road to public use and expenses must be incurred for the purpose of bringing the Private Road into conformance with specifications of the County, the expenses shall be considered costs of capital improvements and subject to the provisions hereof for Capital Improvement Assessments.

1.41 "Property" means the Parcel, 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 thereto.

1.42 "Proportionate Share" means that fraction wherein the numerator is one and the denominator is the total number of Lots in the Property at the time of calculation.

1.43 "Record," "Recording" or "Recordation" means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Yavapai County, Arizona.

1.44 "Related Entity" means any partner in Developer and any partner, trustee, officer, director, shareholder, principal or similar Person holding an interest or position in any partner in Developer, and their successors and assigns.

1.45 "Related Entity Owner" means any Related Entity to whom a Lot is transferred by distribution or by means other than a purchase for value.

1.46 "Retail Purchaser" means a Person who purchases a Lot in a retail transaction and shall not include Developer, any Related Entity, any Related Entity Owner, or any other Person who acquired the Lot (i) by distribution (as distinguished from purchase), (ii) in a bulk sale transaction, or (iii) in any similar transaction.

1.47 "Taking" is defined in Section 8.1.

1.48 "Transition Date" is defined in Section 3.3.

2. RIGHTS OF ENJOYMENT

2.1 Owners' Right of Enjoyment.

Every Owner and Occupant shall have a nonexclusive easement to use and enjoy the Common Areas, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in the Declaration, including, but not limited to, the following provisions:

2.1.1 The right of the Board to impose reasonable limits on the number of guests of Owners and Occupants and to impose reasonable limits on the use of the Common Areas by Persons who are not Owners or Occupants.

2.1.2 The right of the Board to establish reasonable rules and regulations pertaining to or restricting the use of the Common Areas by Owners, Occupants or other Persons.

2.1.3 The right of the Board to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or Areas of Common Responsibility, or adding new Common Areas and, in aid thereof, to mortgage the Association's interest in any such property, provided that the rights of the lender thereunder shall be subordinated to the rights of the Owners. Notwithstanding the foregoing, the consent of two-thirds (2/3) of each Class of Members shall be required prior to mortgaging or pledging any portion of the Common Areas.

2.1.4 The right of the Board to suspend the right of an Owner or any Person (including, but not limited to, a member of the family of an Owner) to use the Common Areas or any designated portion thereof (and to suspend the Owner's voting rights) during any time in which any Assessment or Individual Charge respecting the Owner or the Owner's Lot remains unpaid and delinquent, or for any infraction of the Association Rules or breach of the Declaration by the Owner or an Occupant or any other Person using the Property with the consent of the Owner or an Occupant for a period not to exceed 60 days, and for any repetition of such a payment delinquency or infraction, in accordance with the provisions of the Declaration and the Bylaws. Notwithstanding the foregoing, the Board shall not have the right hereunder to limit or suspend any Owner's rights to such an extent that the Owner is denied access to his Lot.

2.1.5 The right of the Board to dedicate or transfer all or any part of, or interest in, the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners, provided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Owners entitled to cast two-thirds of the votes of each Class of Members has been recorded, agreeing to the dedication, transfer, purpose or condition.

2.1.6 Except for the Association's right to grant easements for utilities and similar and related purposes, the Common Areas may not be alienated, released, transferred, hypothecated or otherwise encumbered without the prior approval of two-thirds of each Class of Members in the Association and two-thirds (2/3) of all First Mortgagees.

2.2 Delegation of Use.

No Owner may delegate his right to use and enjoy the Common Areas to any Person, except to the members of his immediate family, to Occupants of his Lot or to his invitees as permitted by the Association Rules.

2.3 Waiver of Use.

No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments or Individual Charges, and no Owner may release any Lot owned by him from the liens, charges and other provisions of the Declaration, the Articles,

Bylaws, Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of, the Owner's right to use and enjoy the Common Areas, or by the abandonment of the Owner's Lot.

2.4 Conveyance of Common Areas.

At such time as improvements on the Common Areas have been completed and the Association has been formed and is able to operate and maintain the Common Areas, legal title to the Common Areas shall be conveyed to the Association, free and clear of all liens and encumbrances except the lien for real property taxes (if any) not yet due and payable. Developer shall provide to the Association, at Developer's expense, a title insurance policy insuring good and marketable title to the Common Areas in the Association.

3. ASSOCIATION

3.1 Purpose of Association.

The Association has been, or will be, incorporated as a nonprofit corporation to serve as a property owners' association and the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property; the assessment of expenses, payment of losses and disposition of casualty insurance proceeds; and other matters as provided in the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of the Declaration, the Articles and the Bylaws.

3.2 Membership in Association.

Each Owner shall be a Member of the Association so long as he is an Owner. Membership shall automatically terminate when the Owner ceases to be an Owner. Upon the transfer of his ownership interest, the new Owner succeeding to the ownership interest shall likewise automatically succeed to the Membership in the Association. A Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot to which it appertains (and then only to the purchaser of the Lot) or by intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to the Lot (and then only to the Person to whom fee simple title is transferred). Any attempt to make a prohibited transfer of a Membership is void and will not be recognized by or reflected upon the books and records of the Association. If the Owner of any Lot fails or refuses to transfer the Membership registered in his name to the purchaser of his Lot, the Association shall have the right to record a transfer upon the books of the Association and issue a new Membership to the purchaser. Thereupon, the old Membership outstanding in the name of the seller shall be terminated as though it had been surrendered.

3.3 Classes of Memberships: Voting Rights.

The Association shall have two Classes of voting Membership:

Class A. Class A members shall be all Owners with the exception of the Developer, until the termination of the Class B Membership. Class A members shall be entitled to one vote for each Lot owned on each matter to be decided. If the Owner of a Lot is other than one individual or entity, the Owner shall specify in writing to the Association the individual or entity who is entitled to exercise the rights and privileges of the Member of the Association for the Lot. In the absence of such a written specification, Assessments and Individual Charges shall nevertheless be charged against the Lot and Owner thereof, but there shall be no right to cast the Membership vote. The Member must be an individual who is either an Owner, or if the Owner is or includes a Person other than an individual, an individual who is a partner, if the Owner is or includes a partnership; or an officer of the corporation, if the Owner is or includes a corporation; or a member of the limited liability company, if the Owner is or includes a limited liability company; or a beneficiary of the trust, if the Owner is or includes a trust; or an owner of the entity, if the Owner is or includes a Person other than an individual, a partnership, a corporation, a limited liability company or a trust. The Member, as so specified, shall be the only Person entitled to vote for the Owner of the Lot at Association meetings and elections. An Owner may change the individual who is the Member for his Lot, provided each such individual is eligible to be a Member hereunder, in such manner and with such frequency, and subject to such reasonable processing fees, as the Board from time to time may permit.

Class B. The Class B member shall be Developer, who shall hold one Class B Membership for each Lot owned by Developer or any Related Entity Owner and shall be entitled to three votes for each Class B Membership on each matter to be decided. Developer may cast its votes in such proportions on any matter as Developer may determine. Class B Memberships shall cease and be converted to Class A Memberships, without further act or deed, upon the happening of any of the following events, whichever occurs first:

(a) The voting rights relating to any particular Lot shall be converted upon the sale or other disposition of the Lot by Developer, other than in connection with an assignment by Developer of all or substantially all of its rights under this Declaration (including a pledge or assignment by Developer to any lender as security) or in connection with a distribution to a Related Entity Owner; or

(b) With respect to all remaining Class B Memberships, upon the first to occur of the following (the "Transition Date"):

(i) 90 days following the date upon which one hundred percent (100%) of the Lots within the Property have been conveyed to Retail Purchasers, or

(ii) if earlier, the date upon which Developer voluntarily turns over control of the Association to the Owners.

3.4 Pledge of Voting Rights.

Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his Lot to a Mortgagee as additional security, only the vote of the Mortgagee will be recognized in regard to the matters designated in the proxy or assignment if a copy of the proxy or other instrument pledging the vote has been filed with the Association. In the event that more than one such instrument has been filed, the Association shall recognize the rights of the first Mortgagee to file, regardless of the priority of the Mortgages themselves.

3.5 Developer's Voting Rights and Assignment Thereof.

Notwithstanding anything to the contrary herein, Developer shall be entitled to any Membership(s) and any votes for each Lot owned by Developer or any Related Entity Owner. Such Membership(s) shall be Class B Memberships until the Transition Date, as provided in Section 3.3. If any lender to whom Developer has assigned, or hereafter assigns, all or substantially all of its rights under the Declaration as security succeeds to the interests of Developer by virtue of such an assignment, the voting rights of Developer provided for in this Section 3.5 and in Section 3.18 shall not be terminated thereby, and the lender shall hold Developer's memberships and voting rights on the same terms as they were held by Developer pursuant hereto.

3.6 Board of Directors.

The affairs of the Association shall be conducted by the Board as herein provided and in accordance with the Articles and Bylaws. Except for directors elected by Developer and directors that are employees of Developer, each director shall be a Member. If a director ceases to meet these qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant. Developer shall have the absolute right and power to appoint and remove the members of the Board until the Transition Date. After the Transition Date, the Members of the Association shall have the right and power to elect and remove the Members of the Board as provided in the Articles and Bylaws. Developer may (but shall not be required to) relinquish its rights under this section prior to the Transition Date by recording a notice of relinquishment.

3.7 Duties and Powers of the President.

The powers of the President shall be as established in the Bylaws. To the extent not prohibited by law, or as otherwise herein expressly limited, the President of the Association may be empowered under the Bylaws to exercise control over the affairs of the Association and to act on behalf of, and bind, the Association in every instance wherein the Association is required or permitted to take any action.

3.8 Board's Determination Binding.

In the event of any dispute or disagreement between or among any Owners, Members, or any other Persons subject to the Declaration, relating to the Property, or any question of interpretation or application of the provisions of the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the determination thereof by the Board shall be final and binding on each and all of such Owners, Members or Persons in the absence of ruling by a court of competent jurisdiction (and subject to Section 13 hereof). The Board, at its election, may delegate the resolution of any such dispute or disagreement to the President or a committee appointed by the Board.

3.9 Approval of Members.

Unless elsewhere otherwise specifically provided in the Declaration, the Articles or Bylaws, any provision of the Declaration, the Articles or Bylaws which requires the vote or written assent of the Members of the Association or of any Class of Members shall be deemed satisfied by the following:

(a) The vote in person or by proxy of the specified percentage of Members (or Class) entitled to vote at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings of the Members; or

(b) Written consents signed by the specified percentage of Members (or Class) entitled to vote, if permitted in the Bylaws; or

(c) If no percentage of Members (or of the particular Class of Members) is otherwise specified, then the vote or written assent of a Majority of Members (or of the specified Class) shall be required.

3.10 Additional Provisions in Articles and Bylaws.

The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and Members not inconsistent with law or the Declaration. Until the

Transition Date, neither the Articles nor the Bylaws may be amended, supplemented or withdrawn without the prior consent of Developer.

3.11 Association Rules.

The Board shall be empowered to adopt, amend and repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to the Declaration and governing the use and/or occupancy of the Common Areas and any other part(s) of the Property. The Association Rules may include the establishment of a system of fines and penalties enforceable as Individual Charges. The Association Rules shall govern such matters in furtherance of the purposes of the Association including, but not limited to, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among similarly situated Owners and Members except as expressly provided or permitted herein, and shall not be inconsistent with the Declaration, the Articles, Bylaws or Design Guidelines. The Association Rules shall have the same force and effect as if they were set forth in and were part of the Declaration and (subject to Section 13 hereof) shall be binding on the Owners and Members, and all other Persons having any interest in, or making any use of, the Property. The Association Rules shall be available at the principal office of the Association to each Owner or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any provisions of the Declaration, or the Articles, Bylaws or Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of the Declaration, the Articles, Bylaws or Design Guidelines to the extent of any such conflict.

3.12 Indemnification.

To the fullest extent permitted by law, every director and officer of the Association, every member of the Design Review Committee, Developer and every Related Entity (to the extent a claim may be brought against Developer or any Related Entity by reason of any 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 any such capacity on behalf of the Association (or in the case of Developer or any Related Entity, 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.

3.13 Non-Liability of Officials.

To the fullest extent permitted by law, Developer, the Board, the Design Review Committee, any Related Entities and other committees of the Association and all members thereof, and any officers of the Association, shall not be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Developer, the President, the Board, the Related Entity or such committees or Persons reasonably believed to be within the scope of their respective duties.

3.14 Easements.

In addition to the blanket easements granted in Section 4.1, the Board is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, security lines, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas and any Areas of Common Responsibility or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from such a grant shall be repaired by the Association at its expense.

3.15 Accounting.

The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise. Notwithstanding anything to the contrary herein, the Association's records of account may be kept on a cash accounting basis if the Board so elects, subject to the requirements of applicable law.

3.16 Records.

Upon reasonable written request and pursuant to procedures established in the Bylaws, the Association shall make the books, records and financial statements of the Association available for inspection by each Owner and Member together with current copies, as amended from time to time, of the Declaration and the Articles, Bylaws, Association Rules and Design Guidelines. Developer shall be under no obligation to make its own books and records available for inspection by any Owner, Member or other Person.

3.17 Managing Agent.

All powers, duties and rights of 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 management, or any other contract providing for services to the Association, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' written notice.

3.18 Transition.

Notwithstanding anything in the Declaration to the contrary, until the Transition Date, Developer shall hold a Class B Membership for each Lot in the Property owned by Developer or any Related Entity Owner, and Developer shall maintain absolute control over the Association, including, but not limited to, amendment of the Articles, appointment of the President, the members of the Board, and the members of the Design Review Committee. Other Owners will be Class A Members and hold a Class A Membership for each Lot owned. Until the first annual meeting of the Association after the Transition Date, only Class B votes will be entitled to be cast with respect to the election of directors to the Board, removal of directors or any other matter requiring the approval of the Members except a vote of the Members as required in accordance with Sections 2.1, 3.19, 5.6, 7.3, 12.8.2, 15.1 and 16. Notwithstanding the foregoing, prior to the Transition Date Developer may from time to time (but shall not be required to) allow the Class A Members to vote on any or all matters to be decided hereunder (in addition to those specified in the preceding sentence). Any vote permitted by Developer pursuant to the preceding sentence shall not cause the Transition Date to occur and shall not affect or impair Developer's Class B voting rights hereunder. By way of illustration and not limitation, prior to the Transition Date, Developer may from time to time (but shall not be required to) allow the Class A Members to vote on one or more matters as to which the Declaration would require a vote of Members if the decision occurred after the Transition Date.

3.19 Mergers, Consolidations and Federations.

The Association shall have the right and power to participate in mergers, consolidations and federations with any other non-profit corporations or associations regardless of whether the objects, purposes, rights and powers of such non-profit corporations or associations are lesser than, the same as, or greater than those of the Association. After the Transition Date, any such merger, consolidation or federation shall be consummated only upon an affirmative vote of two-thirds of the Class A Members (excluding Developer). Upon any such merger or consolidation, all of the properties, rights and obligations of the other non-profit corporation or association shall be transferred to and assumed by the Association as the survivor, or alternatively, all the properties, rights and obligations of the Association shall be transferred to and assumed by the surviving or newly created non-profit corporation or association.

3.20 Termination of Association. If the Association is terminated or dissolved, the assets of the Association shall be transferred to a successor owners' association, a public agency or a trust for the benefit of the Owners and Mortgagees, whichever appears to the Board, in its sole and absolute discretion, to then be the most reasonable and equitable distribution thereof consistent with applicable tax and other laws.

4. EASEMENTS

4.1 Blanket Easements.

There is hereby created a blanket easement upon, across, over and under the Property for ingress and egress for the purposes of installing, constructing, replacing, repairing, maintaining and operating all utilities (whether public or private), including, but not limited to, water, sewer, gas, telephone, electricity, cable (including, but not limited to, television cable), security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for Developer and its contractors, and/or the Association, and/or the providing utility company to construct (including, but not limited to, underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property, including, but not limited to, the Lots, and to enter upon the Property, including, but not limited to, the Lots, to accomplish the foregoing.

4.2 Use of Common Areas.

Except for the use limitations provided in Section 4.3, each Owner shall have the nonexclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Lot owned by the Owner or Common Areas available for the Owner's use. The right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner. This right to use the Common Areas shall be appurtenant to each respective Lot, subject to and governed by the provisions of the Declaration, the Articles, Bylaws and Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

4.3 Exclusive Use Rights.

Certain portions of the Common Areas may be reserved by the Declaration (or any amendment or supplement thereto), the Plat (or any amendment or supplement thereto) or the Board for the exclusive control, possession and use by the Owner of a Lot or the Owners of more than one but fewer than all Lots. If such an area serves as access to and from two or more Lots, the Owners of the affected Lots shall have joint control, possession and use of the portion of the area that reasonably serves the Lots. The exclusive use rights created herein are subject to the blanket utility easement, maintenance, and architectural

and landscape control provisions contained in the Declaration and to such reasonable rules and regulations with respect to possession, control, use and maintenance as the Board may from time to time promulgate. Easements are hereby created in favor of and running with each Lot having such an area for the exclusive control and use of each such area. Each Owner, by accepting title to a Lot, and each Member shall be deemed to have further ratified the easements and rights to exclusive use created by this Section.

4.4 Wall or Fence Easement.

There is hereby created an affirmative easement in favor of Developer, and the Association, their employees and agents, upon, over and across each Lot affected for reasonable ingress, egress, installation, replacement, maintenance and repair of any perimeter wall, fence or other boundary control for the Property constructed by or on behalf of Developer.

4.5 Developer Easement.

There is hereby created an affirmative, nonexclusive easement in favor of Developer (and the employees, agents, invitees, licensees, contractors and guests of Developer), and appurtenant to portions of the Property owned by Developer or any Related Entity Owner for ingress and egress over all Common Areas, including, but not limited to, Private Streets, and for Developer (and the employees, agents, invitees, licensees, contractors and guests of Developer) to go over, under and across, and to enter and remain upon all Common Areas and all unoccupied Lots for all purposes reasonably related to Developer's rights and obligations hereunder and to the development, management, administration, operation, maintenance, advertisement and sale or rental of the portions of the Property owned by Developer or any Related Entity Owner.

4.6 Easements for Driveways, Utilities and Access.

Non-exclusive easements for driveways, utilities and any other means of access across various Lots ("Burdened Lots") for the purpose of accessing or servicing one or more neighboring Lots ("Benefitted Lots") are hereby established by Developer over portions of the Burdened Lots as may be reflected on the Plat as a "common access easement" (or similar designation) or, in the absence of such a designation on the Plat, extending along the "as-built" alignment of improvements constructed by Developer expressly for such purposes (collectively, all such easements being referred to herein as "Common Access Easements"). Common Access Easements shall be subject to the terms and conditions set forth below and, at the option of Developer, may be subject to additional terms and conditions set forth in any additional instrument Recorded by Developer hereafter (but prior to sale of the affected Lot to a Retail Purchaser) for the purpose of supplementing the easements (so long as the additional terms and conditions do not conflict with the terms and conditions set forth below):

4.6.1 Each Common Access Easement shall be for the benefit of the Benefitted Lots, and the Owners of the Benefitted Lots so long as they are the Owners thereof

(and for the contractors, invitees and agents of the Owners), to permit reconstruction, operation, use, maintenance and repair of driveways, utilities and related improvements serving any one or more of the Benefitted Lots.

4.6.2 Notwithstanding anything in this Section to the contrary, except for the improvements originally constructed by or on behalf of Developer, no Common Access Easement (or any portion thereof) shall be utilized pursuant to this Section to reconstruct, repair or maintain improvements, or otherwise alter the appearance or physical characteristics of a Burdened Lot, unless the Design Review Committee has determined, in its sole discretion, following a request for such a determination by a Person entitled to the benefits of the Common Access Easement, that physical conditions (including, but not limited to, topography, drainage and aesthetics) make such a use of the easement essential to a reasonable enjoyment of a Benefitted Lot and leave no reasonable alternative to the proposed use. In the event such a determination is made, the Design Review Committee may condition its approval upon such use of only specified portions of the Common Access Easement area and upon such other conditions as the Design Review Committee may specify.

4.6.3 Subject to the foregoing, it shall be expressly permissible for each Owner of a Benefitted Lot, or other benefitted Person, to enter upon the Common Access Easement area and undertake such work as may be necessary or convenient to the full enjoyment of the rights established under this Section as well as full enjoyment of the rights and satisfaction of the maintenance responsibilities established in Section 9.1 below, including, but not limited to, excavation, compaction, re-contouring, revegetating, paving and similar development work, provided, however, that no such work shall be commenced or continued except in strict compliance with applicable provisions of this Declaration including, but not limited to, the provisions of Section 10 and any applicable requirements of the Design Guidelines and the Design Review Committee.

4.6.4 The Design Review Committee may, but shall not be required to, authorize alterations to previously approved improvements within the Common Access Easement area at the time of, or in connection with review and approval of, proposals for subsequent improvements by other Owners of Benefitted Lots or other benefitted Persons.

4.6.5 Once authorized improvements have been placed in the Common Access Easement area by Developer, they may not thereafter be relocated or materially altered by any Owner or Person within the easement area except as, and to the extent, permitted above.

4.6.6 Upon the request of the Association, any lender with a security interest in either a Burdened Lot or a Benefitted Lot, or Developer, or when required by governmental authorities including, but not limited to, the City, an Owner of the Burdened Lot and/or the Benefitted Lot(s), or other Persons benefitted (or burdened) by a Common Access Easement, shall execute and deliver for Recording one or more separate instruments memorializing the nature and/or location of improvements placed within the Common Access Easements established under this Section 4.6 by the Owner or his agents.

4.6.7 The maintenance obligations, and allocation of costs thereof, associated with shared improvements constructed within the Common Access Easements are addressed in Section 9.1.

4.7 Easement for Encroachments.

Each Lot and the Common Areas shall be subject to an easement for encroachments including, but not limited to, encroachments of walls, ceilings, ledges, floors, eaves and roofs (including scuppers) created by construction, settling and overhangs, whether as originally designed or as constructed, or as created by discrepancies between the Plat and the actual construction. If any improvements to the Common Areas actually encroach upon a Lot or if any improvements to a Lot actually encroach upon any portion of another Lot or upon the Common Areas, as the Lots and Common Areas are shown on the Plat, there shall be an easement for the encroachments (and for maintenance and repair of them) as long as the encroachments exist. If any encroaching improvements to a Lot or to the Common Areas are repaired, altered or reconstructed, similar encroachments shall be permitted and an encroachment easement for the repaired, altered or reconstructed improvements shall exist. Each Lot and the Common Areas shall also be subject to an easement for drainage or runoff onto the Lot (including any adjacent roof or other improvements constructed thereon) of rainwater or other precipitation from roofs and overhangs created by construction, settling and overhangs, whether as originally designed or as constructed, or as created by discrepancies between the Plat and the actual construction. Owners and any other individuals or entities acquiring any interest in the Lots or the Common Areas shall be deemed to have acquiesced and agreed to the existence of any such encroachments, drainage, runoff and easements by accepting the deed or acquiring an interest in the Lot or Common Areas by any other manner.

5. ASSESSMENTS

5.1 Creation of Lien and Personal Obligation.

Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot and/or title thereto, is deemed to covenant and agree to pay to the Association: Regular Assessments, Individual Charges, Capital Improvement Assessments, and Reconstruction Assessments, such Assessments and Individual Charges to be established and collected from time to time as provided in the Declaration. The Assessments and Individual Charges, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien (the "Assessment Lien") upon any Lot against which the Assessments and Individual Charges are made. Each Assessment and Individual Charge, together with such interest and other costs, shall also be the personal obligation of the Owner to whom the Assessment or Individual Charge relates. The personal obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by him.

5.2 Purpose of Assessments.

The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Association and all other Common Expenses, and otherwise to further the interests of the Association. Where a Lot has separate security, gas, electrical, sewer or other similar services, all costs related to them (including, but not limited to, service charges, repairs and maintenance) shall be the personal obligation of each Owner and shall not be a part of the Common Expenses to be paid through Regular Assessments.

5.3 Commencement of Assessments.

Assessments shall not commence until the sale and delivery of the first Lot with a completed residence on it by Developer or a Related Entity Owner to a Retail Purchaser. Notwithstanding the foregoing, after the sale and delivery of the first Lot with a completed residence on it by Developer or a Related Entity Owner to a Retail Purchaser, no Assessments shall be payable with respect to any Lot until a completed residence has been constructed thereon. For purposes of this Section 5, the term "completed residence" shall mean a residence for which a certificate of occupancy or comparable approval has been issued by the applicable governmental authority.

5.4 Regular Assessments.

5.4.1 Obligation to Pay. Except as otherwise specifically provided herein, each Owner shall pay as his Regular Assessment for his Lot the Owner's Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Board for the purpose of paying and satisfying Common Expenses other than expenses related to capital improvements (dealt with in Section 5.6) and to reconstruction of Common Areas (dealt with in Section 7).

5.4.2 Annual Calculation. Not less than 45 days nor more than 60 days prior to the beginning of each fiscal year of the Association starting with the fiscal year in which Assessments commence, the Board shall make available for review by each Owner a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for the fiscal year. The Board shall at that time determine the amount of the Regular Assessment to be paid by each Owner for his Lot and notify the Owner thereof. Subject to Section 5.4.4, the Regular Assessment to be paid by each Owner for each Membership subject to Assessments shall equal the Owner's Proportionate Share of the estimated total Common Expenses (or any supplemental estimate under Section 5.4.3 below). Each Owner shall thereafter pay his Regular Assessment to the Association at such regular intervals as may be fixed by the Board. Each such installment shall be due and payable on the date set forth in the written notice sent to Owners. The fiscal year

of the Association shall be the calendar year, unless otherwise specified in the Articles or Bylaws.

5.4.3 Adjustment During a Year. Subject to Section 5.4.4, Regular Assessments may be adjusted during any fiscal year as follows:

(a) 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 Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the President shall then immediately determine the approximate amount of the inadequacy and, with the consent of the Board, issue a supplemental estimate of Common Expenses and determine the revised amount of Regular Assessments to be paid for each Lot for the balance of the year, and the date or dates when due.

(b) If the estimated total Regular Assessments for any current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain the 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. 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 are based.

5.4.4 Maximum Regular Assessments. The maximum annual Regular Assessment for each fiscal year of the Association shall be as follows:

(a) Until January 1 of the year following the first conveyance of a Lot with a completed residence on it by Developer or a Related Entity Owner to a Retail Purchaser, the maximum amount which any Owner shall be required to pay as his Regular Assessment may not exceed \$1,400.00 per year. Until January 1 of the year immediately following conveyance of the first Lot with a completed residence on it by Developer or a Related Entity Owner to a Retail Purchaser, the Board may fix and thereafter adjust the assessment payable by all Owners for Common Expenses at such amounts as the Board reasonably elects, provided the maximum amount payable by each Owner does not exceed the maximum amount set forth in the preceding sentence.

(b) From and after January 1 of the year following the first conveyance of a Lot with a completed residence on it by Developer or a Related Entity Owner to a Retail Purchaser, the maximum annual amount which each Owner may be required to pay as his Regular Assessment shall increase by the greater of (i) 10% of the maximum annual Regular Assessment for the immediately preceding fiscal year, or (ii) an amount equal to the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) United States City Average (1982-84 = 100), as published by the United States Department of Labor, Bureau

of Labor Statistics (or such other government index with which it may be replaced), for the preceding year times the amount of the maximum Regular Assessment for the preceding year.

(c) Notwithstanding the foregoing, from and after January 1 of the year following the first conveyance of a Lot with a completed residence on it by Developer or a Related Entity Owner to a Retail Purchaser, if two-thirds of each Class of Members of the Association approve, the maximum allowable assessment may be increased by an amount greater than otherwise permitted pursuant to this Section 5.4.4.

5.5 Individual Charges.

Individual Charges shall be levied by the Association against an Owner and his Lot for:

5.5.1 Costs incurred in bringing an Owner or his Lot into compliance with the provisions of the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines;

5.5.2 Any other charge designated as an Individual Charge in the Declaration, the Articles, Bylaws or Association Rules;

5.5.3 Fines levied or fixed by the Design Review Committee as provided herein; and

5.5.4 Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, an Individual Charge in accordance with the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines.

In the event the Association undertakes to provide materials or services which benefit individual Owners or Lots (or any Occupant of such a Lot) and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services (or allowing them to be accepted by any Occupant of the Owner's Lot, agree that the costs thereof shall be an Individual Charge.

5.6 Capital Improvement Assessments.

In addition to the Regular Assessments, the Board may levy a Capital Improvement Assessment, for the purpose of defraying, in whole or in part, the cost of any action or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of capital improvements upon the Common Areas, including the necessary fixtures and personal property related thereto, to the extent the cost is not covered by the provisions affecting Reconstruction Assessments in Section 7, provided that any Capital Improvement Assessment is approved by a Majority of each Class of Members of the Association. All amounts collected as Capital Improvement Assessments (a) may only be used

for capital improvements, (b) shall be deposited by the Association in a separate bank account to be held in trust for such purposes, (c) shall not be commingled with any other funds of the Association, and (d) shall be deemed a contribution to the capital account of the Association by the Owners.

5.7 Uniform Assessment.

Except as provided in Section 5.8 and Section 5.16, Regular Assessments and any Capital Improvement Assessments and Reconstruction Assessments shall be uniform for all Lots.

5.8 Exempt Property.

All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority or utility (whether public or private) shall be exempt from the Assessments and charges created herein for so long as they continue to qualify as Exempt Property.

5.9 Time and Manner of Payment; Late Charges and Interest.

Assessments and Individual Charges shall be due and payable by Owners in such manner and at such times as the Board shall designate. If not paid when due, each such Assessment and Individual Charge shall have added to it a late charge equal to 10% of the amount of Assessment or Individual Charge, or such other charge as the Board may specify from time to time. Thereafter, any such delinquent Assessment or Individual Charge and the applicable late charge shall bear interest from the tenth day after the due date at the Default Rate of Interest until paid. Alternatively, the Board may from time to time fix a schedule of late charges (not directly requiring the computation of changing interest rates) applicable to delinquent Assessments and Individual Charges. The Board may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of his delinquency and, if any suit, action or arbitration proceeding is brought to collect and/or foreclose the Assessment Lien for any such Assessment or Individual Charge, then there shall be added to the amount thereof the costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

5.10 No Offsets.

All Assessments and Individual Charges shall be payable in the amount specified in the Assessment or by notice and no offsets against the specified amount shall be permitted for any reason, including, but not limited to, a claim that (a) the Association, the Board, the President or Developer is not properly exercising its duties and powers as provided

in the Declaration; (b) Assessments for any period exceed Common Expenses; or (c) an Owner has made, or elects to make, no use of the Common Areas or Areas of Common Responsibility.

5.11 Homestead Waiver.

To the extent permitted by law, each Owner hereby waives the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter, to the extent of any liens created pursuant to the Declaration, whether such liens are now in existence or are created at any time in the future.

5.12 Reserves.

Any reserves included in the Common Expenses, which are collected as part of the Regular Assessments, shall be deposited by the Board in a separate bank account to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to non-profit corporations or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Association by Owners. The responsibility of the Board (whether while controlled by Developer or the other Members) shall be only to provide for such reserves, if any, as the Board in good faith deems reasonable, and neither Developer, any Related Entity, nor the Board (nor any member thereof) shall have any liability to any Owner or to the Association if reserves prove to be inadequate after the Board satisfied the obligations provided for in this sentence. All reserves for the payment of deductibles under insurance policies maintained by the Association shall be separately designated.

5.13 Certificate of Payment.

Any Person acquiring an interest in any Lot shall be entitled to a certificate from the Board setting forth the amount of due but unpaid Assessments and Individual Charges relating to the Lot, if any, and such a 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 and Individual Charges which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such Assessments and Individual Charges.

5.14 Enforcement of Lien.

The lien provided for in this Section 5 may be foreclosed by the Association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 5 relating to the enforcement of the lien provided for herein (including, but not limited to, the provisions of this Section 5.14), as well as the provisions of Section 14, shall apply with equal force in each other

instance provided for in the Declaration, the Association Rules or Design Guidelines wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by the lien provided for in this Section 5. Nothing herein shall be construed as requiring that the Association take any action required hereunder in any particular instance, and the failure of the Association to take action at any time shall not constitute a waiver of the right to take the same or similar action at a later time or in a different instance.

5.15 Pledge of Assessment Rights as Security.

The Association shall have the power to pledge its assessment powers and rights provided for in the Declaration as security; provided, however, that any such pledge occurring after the Transition Date shall require (a) the prior affirmative vote or written assent of a Majority of Class A Members (excluding Developer), and (b) the consent of Developer (so long as Developer or any Related Entity Owner owns any property subject to the Declaration).

5.16 Reduced Assessments Payable by Developer.

Notwithstanding anything in this Section 5 or in Section 7 to the contrary, until the Transition Date, the share of Common Expenses for each Lot owned by Developer or a Related Entity Owner or by any trustee for any of them shall be an amount equal to one-quarter of the amount otherwise payable hereunder. Until the Transition Date, Developer shall be obligated to pay, in addition to Assessments, an amount equal to the lesser of (a) the amount by which the Common Expenses of the Association, for a budget year in which such an election is effective, exceed the Assessments payable by Owners (including Developer at the reduced rate), and (b) the amount by which the full Assessments Developer would have paid without the reduced assessment exceeds the reduced Assessments paid by Developer. The obligations of Developer set forth in the preceding sentence shall be a lien against Lots owned by Developer pro rata and shall be enforceable by the Association in the same manner as Assessments provided for herein.

6. INSURANCE

6.1 Authority to Purchase.

The Board shall have the power and authority to purchase and maintain such public liability, casualty, officers' and directors' liability and indemnity, workmen's compensation and other insurance, and such fidelity bonds as the Board shall deem necessary or appropriate from time to time. Policies shall be on such terms and conditions as the Board shall direct. All such policies and claims thereunder shall be administered by the Board. The Association shall make information available to Owners regarding the coverage of the Association's policies in order to permit Owners to determine which particular items are included within the coverage so that Owners may insure themselves as they see fit if certain items are not insured.

6.2 Scope of Coverage.

Commencing not later than the time of the first conveyance of a Lot to a Retail Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

6.2.1 Property insurance on the Common Areas insuring against all risk of direct physical loss, including those covered by a standard "all risk" endorsement or "broad form" coverage, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, as determined by the Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy, and, if available, an inflation guard endorsement;

6.2.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas and other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

6.2.3 Workmen's compensation insurance to the extent necessary to meet the requirements of applicable law;

6.2.4 Fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers 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 the greater of: (i) one and one-half times the Association's estimated annual operating expenses and reserves or, (ii) the sum of three months' Assessments on all Lots then within the Project plus the reserve funds held by the Association. In connection with such coverage, an appropriate endorsement to the policy to cover any individual who serves without compensation shall be added if the policy would not otherwise cover volunteers;

6.2.5 If the enforcement of any building, zoning, or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, the Association's property coverage shall include a building ordinance or law endorsement, if available.

6.2.6 If applicable, steam boiler and machinery coverage evidenced by the standard form of boiler and machinery insurance policy or endorsement and providing,

as minimum coverage per accident, the lesser of \$2,000,000.00 or the insurable value of the building(s) housing the boiler or machinery.

6.2.7 If applicable, all hazard insurance policies shall include agreed amount, demolition cost and increased cost of construction endorsements.

6.2.8 If applicable, all liability insurance policies shall include coverage for bailee's liability, elevator collision liability, garage keeper's liability, host liquor liability, and contractual liability, in an amount of at least \$1,000,000.00 per occurrence.

6.2.9 Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for similar projects established by any interested Institutional Guarantor, except to the extent such coverage is not reasonably available or has been waived in writing by the Institutional Guarantor.

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

6.3 Other Insurance Requirements.

6.3.1 Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(a) The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

(b) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or adversely affect recovery on the Policy;

(c) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

(d) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Association or other Owners or Occupants;

(e) A statement naming the Association as the insured shall be included in all policies, in form and substance similar to the following:

"Nepenthe Homeowners Association, for the use and benefit of the individual owners" [designated by name, if required].

(f) For policies of hazard insurance, a standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association, for the use and benefit of Mortgagees as their interests may appear, or which must be otherwise endorsed to fully protect the interest of First Mortgagees, their successors and assigns.

(g) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify and Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

6.3.2. Each hazard insurance policy shall be written by a hazard insurance carrier which has a Best's Insurance Reports rating of B or better and is assigned a financial performance index rating of 6 or better, or by an insurance carrier which has a Best's Key Rating Guide rating of A or better and is assigned a financial size category of VIII or larger as established by A. M. Best Company Inc., or if that rating service is discontinued, an equivalent rating by a successor thereto or a similar rating service.

6.3.3 For hazard insurance policies, unless a higher maximum amount is required by Arizona law, the maximum deductible amount for policies maintained by the Association shall be the lesser of \$10,000.00 or 1% of the face amount of the policy.

6.4 Owner's Responsibility.

It shall be each Owner's responsibility to provide any insurance on his own Lot, including any Areas of Common Responsibility on the Lot, and the Owner's interest in any additions and improvements thereto, furnishings and personal property therein, his personal property stored elsewhere within the Property, his personal liability to the extent not covered by public liability insurance obtained by the Association, and such other insurance as the Owner desires.

6.5 Non-Liability of Association, Board and Officers.

The Association, Board members and officers of the Association, Related Entities and Developer shall not be liable to any Owner, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate.

It shall be the responsibility of each Owner, Mortgagee and other 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 the Owner, Mortgagee or other Person may desire.

6.6 Premiums.

Premiums for insurance policies purchased by the Board shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas or any Areas of Common Responsibility, by an Owner, or an Occupant of the Owner's Lot, or the agent, employee or invitee of either, shall be assessed against the Owner as an Individual Charge.

6.7 Insurance Claims.

The Association, through such Persons as the Board may delegate to represent the Owners in connection therewith, is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board, at its discretion, may appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

6.8 Benefit.

Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any Insurance Trustee shall be held or disposed of for the Association and the Owners, or other interested Persons, as their interests may appear.

7. DAMAGE AND DESTRUCTION OF COMMON AREAS

7.1 Duty of Association.

In the event of partial or total destruction of any improvements on the Common Areas, or any insurable improvements of the Association in any Areas of Common Responsibility, it shall be the duty of the Association to make reasonable repairs as promptly as practical, subject and pursuant to this Section 7. The proceeds of any casualty insurance maintained pursuant to the Declaration shall be used to the extent available for such purposes, subject to the prior rights of Mortgagees whose interests may be protected by the policies.

7.2 Automatic Reconstruction.

If the amount available from the proceeds of any insurance policies for restoration and repair, together with any uncommitted or unreserved capital of the Association, is at least 75% of the estimated cost of restoration and repair, the affected Common Areas and Areas of Common Responsibility shall be repaired and a Reconstruction Assessment shall be levied by the Association against each Owner in his Proportionate Share for each Lot he owns to provide the necessary funds for reconstruction and repair as a supplement to funds otherwise available for such purposes. The Association shall thereupon cause the damaged or destroyed Common Areas or improvements in Areas of Common Responsibility to be restored to substantially the condition they were in prior to the destruction or damage.

7.3 Vote of Members.

If the amount available from the proceeds of any insurance policies for restoration and repair, together with any uncommitted or unreserved capital of the Association, is less than 75% of the estimated cost of restoration and repair, the areas shall be replaced or repaired unless two-thirds (2/3) of the Members, at a special meeting held for such purpose, disapprove of the replacement or repair. If the Members do not disapprove the proposed replacement or repair, the Board shall levy a Reconstruction Assessment against each Owner in his Proportionate Share for each Lot he owns, and cause the damaged or destroyed areas to be repaired as closely as practical to their former condition prior to the destruction or damage. If the Members disapprove of the repair or restoration as provided above, the damaged or destroyed areas shall be cleared and restored to a safe and presentable condition determined by the Board and the costs thereof shall be paid from the insurance proceeds (to the extent available).

7.4 Excess Insurance Proceeds.

In the event any excess insurance proceeds remain after any repair or reconstruction by the Association pursuant to this Section, the Board, in its sole discretion, may retain the excess sums in the general funds of the Association or may distribute all or a portion of the excess to the Owners in their Proportionate Shares, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Association and subject to any requirements of applicable law. The rights of an Owner or the Mortgagee of a Lot to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

7.5 Use of Reconstruction Assessments.

All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Section 7 and shall be deposited by the Association in a separate bank account for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by

the Owners. Any Reconstruction Assessment shall be secured by the lien provided for in Section 5.

7.6 Insurance Proceeds Trust.

Upon receipt by the Association of any insurance proceeds, the Board may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Yavapai County, Arizona, designated by the Board to be trustee (the "Insurance Trustee"). Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of the Declaration and which shall be entered into between the Insurance Trustee and the Board. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Yavapai County, Arizona.

8. EMINENT DOMAIN

8.1 Definition of Taking.

The term "Taking" shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

8.2 Representation in Condemnation Proceedings.

The Owners hereby appoint the Association, through such Persons as the Board may delegate, to represent all of the Owners in connection with any threatened Taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

8.3 Award for Common Areas.

Any awards received by the Association on account of the Taking shall be paid to the Board. The Board may, in its sole discretion, retain any award in the general funds of the Association, expend the funds for repair of Common Areas, or distribute all or any portion thereof to the Owners in their Proportionate Shares, or as their interests otherwise may appear, subject to any requirements of applicable law. The rights of an Owner and the Mortgagee of his Lot to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

9. MAINTENANCE, REPAIRS AND REPLACEMENTS; WASTEWATER TREATMENT

9.1 Owner's Responsibility.

9.1.1 Except for the exterior surfaces of structures which are the responsibility of the Association pursuant to Section 9.2 below (and any additional maintenance responsibility hereafter assumed by or assigned to the Association pursuant to any other declaration of covenants (or similar instrument) applicable to the Lot, or by a written agreement with the Association), each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Lot in a manner consistent with all applicable covenants. The Owner's maintenance, repairs and replacements shall include, but not be limited to, all windows, glass doors, and locks on the Lot, and the air conditioning, ventilation and heating units (wherever located) serving the Lot.

9.1.2 For purposes of this Section only, any portion of a driveway serving a Lot which lies between the perimeter boundary line of the Lot and the curb line of the abutting Private Street shall be deemed a part of the Lot and the Owner of the Lot shall be responsible for it even though a portion of it lies outside of the boundaries of the Lot.

9.1.3 If a Lot shares a common driveway or related improvements in connection with a Common Access Easement with one or more other Lots, the Owners of all Lots benefitted by such improvements shall be responsible for maintenance, repair and replacement of the shared portions thereof and shall bear the expense of the shared obligations on a reasonably pro rated basis.

9.1.4 Each Owner shall be responsible for, at his own expense, the maintenance, repair and replacement of utility lines (such as electric lines, natural gas lines, water lines, sewer lines, cable television lines, and telephone lines) that serve improvements on his Lot, from the point of connection to the main line in the Private Street. For purposes of this Section only, any portion of a utility line serving a Lot which lies between the perimeter boundary line of the Lot and the curb line of the abutting Private Street shall be deemed a part of the Lot and the Owner of the Lot shall be responsible for it even though a portion of it lies outside of the boundaries of the Lot. If a Lot shares common utility lines in connection with a Common Access Easement with one or more adjacent Lots, the Owners of all Lots sharing the utility lines shall be responsible for maintenance, repair and replacement of the shared portions of the utility lines and shall bear the expense of the shared obligations on a reasonably pro rated basis.

9.1.5 In the event any maintenance, repair, replacement or reconstruction is required for such shared driveways, utilities or other improvements involving more than one Lot and the Owners of the affected Lots do not agree about who should perform the work, or about the allocation of the cost thereof, the decision shall be made by the Board and (subject to the provisions of Section 13 below) the decision shall be final and binding upon the affected Owners. In the event the affected Owners fail or refuse to undertake such remedial

work in a timely fashion, the Association is hereby authorized, but not obligated, to cause such work to be undertaken at the affected Owners' expense and such Owners shall each be levied an Individual Charge, pursuant to Section 5.5 hereof, equal to each such Owner's allocated cost thereof, together with any and all administrative costs and costs of enforcement incurred by the Association in connection therewith.

9.1.6 Each Owner of a Lot having a shared driveway or other access, benefitting from a "parking easement", or having shared utility lines, and the Association, pursuant to Section 9.1.5, shall have an easement over any other Lot sharing the driveway or access, or the utility lines, to the extent reasonably required for the performance of the duties, and the enjoyment of the benefits, provided for in this Section and contemplated by the shared facilities.

9.1.7 If the dwelling unit or any other permitted structures on a Lot are partially or totally destroyed, the Owner of the Lot shall repair and rebuild them promptly. If an Owner repairs or rebuilds any such damaged or destroyed improvements to the same state they were in prior to the damage or destruction, the Owner need not apply for or receive approval of the work by the Design Review Committee. If damaged improvements are shared or physically connected to improvements on an adjacent Lot (for example, adjoining units sharing a common wall), the affected Owners shall coordinate repairs among themselves so as to accomplish the repairs as promptly and efficiently as reasonably possible.

9.2 Association's Responsibility.

9.2.1 Maintenance, repairs and replacements of the Common Areas and Areas of Common Responsibility shall be furnished by the Association as part of the Common Expenses, subject to the Bylaws and the Association Rules, and subject to the provisions of Section 9.2.3 below concerning the liability of Owners for damage. Areas of Common Responsibility shall include the following (to the limited extent described):

(a) maintenance, repair and replacement of exterior surfaces of structures on Lots including, but not limited to, roofs, gates, exterior walls of all residential dwelling units, building walls, site walls, retaining walls, entry doors, garage doors and exposed wood trim;

(b) maintenance, repair and replacement of all landscaping and other flora, and related improvements situated upon Lots (exclusive of enclosed planters and patio areas), including irrigation lines, that were planted or installed by Developer or, if not planted or installed by Developer, are expressly assumed as supplemental Areas of Common Responsibility by the Association, through Board action; and

(c) maintenance, repair and replacement of any property and facilities owned by Developer and made available, on a temporary basis, for the primary use and enjoyment of the Association and its Members. Any such areas or facilities will be identified

by written notice from Developer to the Association and will be treated as a part of the Common Areas and maintained by the Association until such time as Developer revokes the privilege of use and enjoyment by written notice to the Association.

9.2.2 If the Association decides that repair work is necessary to the performance of its maintenance obligations and is not minor (in the Board's sole discretion), the Owner of the Lot on which such repairs are necessary shall promptly make the repairs so as to avoid delaying the performance of the Association's maintenance functions. If any Owner requests maintenance or repair work by the Association for the Owner's Lot and the Association determines, in its sole discretion, the work is not appropriate at that time as a Common Expense, the Association may allow the Owner to perform the requested work, at the Owner's expense, upon such terms and conditions as the Association may prescribe (including, but not limited to, adequate assurances of responsibility for expenses and potential damage and liability).

9.2.3 If, due to the intentional act or negligence of an Owner or his invitee, guest or other authorized visitor, or an Occupant of the Owner's Lot, damage is caused to the Common Areas or to a Lot or a residential dwelling unit owned by others, or to any improvements in the Areas of Common Responsibility for which the Association is responsible, or maintenance, repairs or replacements are required which would otherwise be a Common Expense, then the Owner shall pay for the damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance, and the payment obligation shall be an Individual Charge against the Owner. The failure of any such Owner to pay amounts required when due shall carry with it the same consequences as the failure to pay any Individual Charge hereunder when due.

9.3 Right of Access.

An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or Areas of Common Responsibility, and any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas or Areas of Common Responsibility, and to perform any of the Association's duties or responsibilities hereunder, including, but not limited to, maintenance and repairs pursuant to Section 9.2 hereof and the administration and enforcement of the Design Guidelines.

9.4 Wastewater Treatment Facility.

If the Arizona Department of Environmental Quality ("ADEQ") requires that a wastewater treatment facility (the "Wastewater Treatment Facility") be installed and operated to serve the Property, the Developer intends to install the Wastewater Treatment Facility on property located adjacent to the Property. The Wastewater Treatment Facility shall be owned by the Developer and the Association shall be responsible for the management, operation, maintenance, repair and replacement of the Wastewater Treatment Facility. It is

anticipated that the Property will be connected to the City of Sedona central sewer project, but each Owner or other Person acquiring any ownership or other interest in the Property, by acceptance of a deed of other conveyance of fee title, or any other interest, in all or any portion of the Property, acknowledges that no assurance is made that the Property will be connected to the City of Sedona central sewer project. The Wastewater Treatment Facility shall be operated until such time as the Property is connected to the City of Sedona central sewer project and the ADEQ no longer requires that the Wastewater Treatment Facility serve the Property. The Association may hire an on-site manager and other personnel to manage, operate, maintain, repair and replace the Wastewater Treatment Facility. The costs of managing, operating, maintaining, repairing and replacing the Wastewater Treatment Facility shall be Common Expenses. At such time as the ADEQ no longer requires that the Wastewater Treatment Facility serve the Property, the Developer shall be responsible for de-commissioning the Wastewater Treatment Facility and the Developer shall be entitled to recover any residual value of the Wastewater Treatment Facility. By accepting a deed or other conveyance of fee title, or by otherwise acquiring any interest other than fee title, to all or any portion of the Property, each Owner and each other Person acquiring such an ownership or other interest, acknowledges that the Property is or may be subject to various neighboring conditions associated with the operation and maintenance of wastewater treatment facilities, including, but not limited to, noise and odor from operation of the facility. Each such Owner and other Person accepts the risk of all such conditions and releases Developer, the Association and every Related Entity from all claims, demands, damages, costs, liabilities and obligations (known and unknown) resulting from management, operation, maintenance, repair or replacement of the Wastewater Treatment Facility (including, but not limited to, those resulting from negligence), except those which may arise from gross negligence or willful or wanton conduct of the party seeking to be so released.

10. ARCHITECTURAL AND LANDSCAPE CONTROL

Developer expects to construct residences on Lots and sell completed residences to Retail Purchasers. Consequently, it is anticipated that purchasers of Lots will not need to apply for or obtain approval of plans for residences or for other improvements to the Lots and it is also anticipated that exterior changes to Lots or the completed improvements constructed or installed by Developer (including, but not limited to, in-general landscaping) will not be permitted after Lots are sold to Retail Purchasers. Nonetheless, the following provisions will apply to any above-ground landscaping and related improvements which an owner desires to install on his Lot and will also apply (i) in the event that any Lot is sold to an Owner (other than a Related Entity Owner) without a completed residence on it at the time of sale and (ii) in the event that any Owner of a Lot wishes to make changes to the Lot or improvements on the Lot after the

Lot is initially sold by Developer (or a Related Entity Owner) to a Retail Purchaser if the Board is willing to consider such a change.

10.1 Appointment of Design Review Committee.

The Association shall, when necessary, have a Design Review Committee consisting of that number of persons, no fewer than three nor more than five individuals, specified from time to time by resolution of the Board. Developer initially shall appoint the members of the Design Review Committee. Developer shall retain the right to appoint, augment or replace all members of the Design Review Committee until the Transition Date. Thereafter, members of the Design Review Committee shall be appointed by the Board. Individuals appointed to the Design Review Committee, other than those appointed by Developer, must satisfy such requirements as may be set forth in the Design Guidelines. Developer voluntarily may (but shall not be required to) permit Class A Members to appoint one or more members of the Design Review Committee at any time.

10.2 Design Guidelines.

The Design Review Committee shall, as necessary or convenient to the performance of its duties, from time to time establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"), which the Design Review Committee may, from time to time in its sole discretion, amend, repeal or augment. The Design Guidelines are incorporated herein and shall be deemed to be a part of the Declaration and shall be binding on all Owners, Members and other Persons as if expressly set forth herein. A copy of the current Design Guidelines, if any, shall at all times be a part of the Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

10.2.1 Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines.

10.2.2 Procedures for assuring conformity of completed improvements to drawings and specifications approved by the Design Review Committee; provided, 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, executed by the Design Review Committee, is Recorded with the County Recorder of Yavapai County, Arizona, and given to the Owner of the Lot within one year of the expiration of the time limitation described in Section 10.2.1 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 the one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review Committee and in compliance with the architectural standards of the Association and the Declaration, but only with respect to purchasers and encumbrancers in good faith and for value.

10.2.3 Such other limitations and restrictions as the Design Review Committee, in its reasonable discretion, shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, 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, but not limited to, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement, exterior artwork and works of art visible from other Lots and Common Areas including, but not limited to, sculpture and statues.

10.2.4 SUBJECTIVE DETERMINATIONS AND/OR CRITERIA BEARING ON COMPATIBILITY WITH OTHER RESIDENCES, THE TERRAIN WITHIN THE PROPERTY OR VISIBLE FROM IT AND SUCH OTHER MATTERS AS THE DESIGN REVIEW COMMITTEE MAY CONCLUDE, IN GOOD FAITH BUT IN THE EXERCISE OF THE COMMITTEE'S ABUNDANT DISCRETION, ARE RELEVANT OR APPROPRIATE TO A HARMONIOUS APPEARANCE AND LIFESTYLE WITHIN THE PROPERTY.

10.3 General Provisions.

10.3.1 The Design Review Committee may assess reasonable fees in connection with its review of drawings and specifications.

10.3.2 The Design Review Committee may delegate its responsibilities for review of drawings and specifications, except final review and approval as may be required by the Design Guidelines, to one or more of its members or architectural consultants retained by the Design Review Committee. Upon any such delegation, the interim approval or disapproval of drawings and specifications by the member or consultants shall be equivalent to interim approval or disapproval by the entire Design Review Committee.

10.3.3 The address of the Design Review Committee after it is formed shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines or by written notice to Owners. The Design Review Committee's address shall be the place for the submittal of drawings and specifications and the place where the current Design Guidelines shall be kept.

10.3.4 The establishment of the Design Review 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 Declaration, the Bylaws or Association Rules.

10.3.5 The Design Review Committee shall approve or disapprove any drawings and specifications submitted to it in accordance with the Design Guidelines within such period as may be specified in the Design Guidelines.

10.3.6 The Design Review Committee, at the request of an Owner (including, but not limited to, Developer) may, but shall have no obligation to, approve the changing of the natural grade of a Lot, or portions thereof, by cut, fill or similar procedures.

10.3.7 Nothing contained in this Section 10 shall be construed to (a) affect or impair in any way any development, operation, construction or improvement of property that is not within the Property, or (b) require the establishment of any design guidelines with respect to any property that is not within the Property.

10.3.8 As a part of the Design Review process, the Design Review Committee may prohibit entirely all or any improvements to the Lot proposed by the Owner (other than a single residential structure), based upon the Design Review Committee's determinations with respect to aesthetics, views to and from the Lot, land planning principles, drainage, topography, and such other factors as the Design Review Committee may choose to consider.

10.4 Approval and Conformity of Drawings and Specifications.

No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot, landscaping, grading or drainage thereof, including, but not limited to, the painting (other than painting with the same color and type of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with drawings and specifications therefor which have been submitted to and approved by the Design Review Committee, in accordance with the Design Guidelines, as to harmony of external design and location in relation to surrounding structures and topography.

10.5 Non-Liability for Approval of Drawings and Specifications.

Drawings and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances; and by approving such drawings and specifications neither the Design Review Committee, any member thereof, the Association, any Member, any officer or director of the Association, any Related Entity, nor Developer assumes any liability or responsibility therefor, or for any defect in any structure constructed from such drawings and specifications. Neither the Design Review Committee, any member thereof, the Association, any Member, any officer or director of the Association, any Related Entity, nor Developer shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved drawings and specifications, (c) the development, or manner of development of any property within the Property, (d) the changing of the natural grade of any Lot, or (e) the execution and filing of an estoppel certificate pursuant to the Design

Guidelines (whether or not the facts therein are correct) if the action, with the actual knowledge possessed by him, was taken in good faith. Approval of drawings and specifications by the Design Review Committee, or the approval of a change in the natural grade of any Lot is not, and shall not be deemed to be, a representation or warranty that the drawings, specifications or changes comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

10.6 Inspection and Recording of Approval.

Any member or authorized consultant of the Design Review 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, in order to inspect improvements constructed or being constructed on such Lot by any Owner other than Developer (or a Related Entity Owner), or any changes in the grade thereof, to ascertain that such improvements or changes have been or are being built or changed in compliance with the Design Guidelines and the Declaration to the extent they are applicable. The Design Review Committee shall cause such an inspection to be undertaken within 30 days of a request from any Owner as to his Lot, if approval of work on the Lot by the Design Review Committee is required hereunder. If such an inspection reveals that the improvements or changes located on such a Lot have been completed in compliance with this Section 10 and the Design Guidelines, the Design Review Committee shall provide the Owner a notice of approval in Recordable form which, when Recorded, shall be conclusive evidence of compliance with the provisions of this Section 10 and the Design Guidelines as to the improvements or changes described in the Recorded notice, but as to such improvements or changes only.

10.7 Reconstruction of Common Areas.

Any reconstruction of Common Areas or Areas of Common Responsibility by the Association or Developer after destruction by casualty or otherwise, which is accomplished in substantial compliance with "as built" plans for the Common Areas or Areas of Common Responsibility, shall not require compliance with the procedural provisions of this Section 10 or the Design Guidelines.

10.8 Additional Powers of the Design Review Committee.

The Design Review Committee may promulgate as a part of the Design Guidelines such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with the Declaration.

11. USE AND OCCUPANCY RESTRICTIONS

The following "Use and Occupancy Restrictions" shall apply to the Property from and after the effective date hereof, provided, however, the Board May from time to time amend, supplement and/or rescind them by Association Rules if it so elects without amending the Declaration.

11.1 Residential Use.

Each Lot may be used only for residential purposes and none other. No business or commercial building may be erected on any Lot and no Business Use or other nonresidential use may be made of any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the Design Guidelines. Nothing herein contained shall be deemed to limit Developer's rights as set forth in Section 13.

11.2 Violation of Law or Insurance.

No Owner shall permit anything to be done or kept in or upon his Lot or in or upon any Common Areas which will result in the cancellation, or increase in premium, or reduction in coverage of insurance carried by the Association or which would be in violation of any law or other applicable requirements of governmental authorities.

11.3 Signs.

No sign of any kind shall be displayed to the public view from any Lot or any Common Area without the approval of the Board (or, if it has then been formed, the Design Review Committee) except: (a) such signs as may be used by Developer in connection with the development, management, administration and sale or leasing of Lots and residences; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; and (c) such signs as may be required for traffic control and regulation of Common Areas. The Board may from time to time promulgate Association Rules governing the display of "For Sale" or "For Rent" signs.

11.4 Animals.

No animals, including, but not limited to, horses or other domestic farm animals, fowl or poisonous reptiles of any kind, may be kept, bred or maintained in any Lot or in or upon any Common Area, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's Lot without a leash, or conduct itself so as to create an unreasonable annoyance. All such domestic pets must be registered with the Association and shall have proof of proper immunization presented with their registration.

11.5 Nuisances; Construction Activities.

No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners, Developer, Occupants or authorized Persons to use and enjoy the Common Areas, or annoy them by unreasonable noises or otherwise, nor shall an Owner commit or permit any nuisance or commit or suffer any illegal act to be committed therein or thereabout. Each Owner shall comply with the Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property. Normal construction activities, parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by the Declaration unless they are a violation of the Association Rules, the Design Guidelines or the requirements of the Design Review Committee, but Lots and Common Areas shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Design Review Committee, which also may require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any unreasonable annoyance or nuisance under the Declaration.

11.6 Boats and Motor Vehicles.

Except as specifically permitted by the Association Rules, (a) no boats, trailers, busses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except within an enclosed garage as permitted by the Association Rules or Design Guidelines or as permitted under (c) below; (b) no vehicle shall be repaired, serviced or rebuilt in any Lot or upon the Common Areas; and (c) nothing shall be parked on the Private Streets except in such parking areas as may be designated by the Board (or, if is then formed, the Design Review Committee) or the Plat (or any amendment or supplement thereto). The Board may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

11.7 Lights.

No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot which, in any manner, will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot, unless expressly permitted by the Board (or, if it is then formed, the Design Review Committee) or the Design Guidelines.

11.8 Antennas.

No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed

or maintained upon any Lot except as may be permitted by the Association Rules or in accordance with the Design Guidelines.

11.9 Garbage.

No garbage or trash shall be kept, maintained or contained in or upon the Property so as to be visible from a Lot or the Common Areas except temporarily, in containers approved by Association Rules, for pickup. No incinerators shall be kept or maintained on the Property. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on the Property. Notwithstanding the foregoing, the Board (or, if it is then formed, the Design Review Committee) may (but shall not be obligated to) designate one or more locations within the Property to be centralized collection points for recycling of trash, garbage, or similarly reusable materials.

11.10 Mining; Wells; Potable Water.

No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind. Without limiting the generality of the foregoing, no wells for the pumping or removal of water shall be placed or maintained in or upon the Property. The Owner of each Lot shall obtain potable water for the Lot, at the Owner's expense, from the water utility providing water service to the Lot.

11.11 Safe Condition.

Without limiting any other provision in this Section 11 but subject to the obligations of the Association within any Areas of Common Responsibility, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners and Occupants of their respective Lots or the Common Areas.

11.12 Fires.

Other than barbecues or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Property nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Areas or for other Owners.

11.13 Clothes Drying Area.

No portion of the Property shall be used as a drying or hanging area for laundry of any kind. All such facilities shall be provided within the buildings to be constructed on each Lot.

11.14 No Further Subdivision.

No Lot shall be divided or subdivided after it is purchased by an Owner but, without the approval or consent of the Association or any other Owner, Developer (i) may relocate the property lines of any Lot(s) owned by Developer or by any Related Entity Owner (with the consent of the Lot Owner) and (ii) may replat or resubdivide Lots owned by Developer or by any Related Entity Owner (with the consent of the Lot Owner), if the adjustments or other changes are approved by the County.

11.15 No Obstructions to Drainage.

No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on a Plat, or other Recorded instrument, as a "drainage easement" except that, with the prior consent of the County and the Board (or, if it is then formed, the Design Review Committee), nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

11.16 Rental of Lots.

Notwithstanding anything herein to the contrary, any Owner may rent or otherwise grant occupancy rights to any Lot (but not less than an entire Lot) owned by him, with the lessee, renter or other Occupant being entitled to the same privileges of use of the Lot and Common Areas and subject to the same restrictions as the Owner of the Lot. All lease or other occupancy agreements, including those for a month-to-month tenancy, shall be in writing and provide that the terms of the agreement shall be subject in all respects to this Declaration and the Articles, Bylaws and rules and regulations of the Association, and that failure to comply with the provisions of such documents shall constitute a default under the agreement. A copy of the agreement shall be delivered by the Owner to the Board on or before the commencement of occupancy under the agreement. Each Owner granting occupancy rights to his Lot shall remain jointly and severally liable with the Occupant for the payment of any assessment required hereunder and compliance with this Declaration, the Articles, Bylaws and rules and regulations of the Association, including any fines or penalties levied as a result of a violation thereof.

11.17 Prohibited Vehicles.

Unlicensed vehicles are prohibited on the Private Roads except as may be expressly permitted from time to time by the Association Rules. The Association Rules may also from time to time prohibit from the Private Roads other types of vehicles deemed by the Board to be inappropriate, whether they are motorized or not.

11.18 Enforcement.

The Association or its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct the violation at the expense of the Owner of the Lot. The Association's expenses, and such fines as may be imposed pursuant to the Bylaws, Association Rules or Design Guidelines, shall be an Individual Charge secured by a lien upon the Lot enforceable in accordance with the provisions of Section 5 hereof.

11.19 Party Walls.

Except as may be otherwise expressly provided herein, the rights and duties of Owners, Members and the Association with respect to party walls, exterior site walls running along Lot lines, and other such shared elements (collectively, "Party Walls") shall be as follows:

11.19.1 Owners of contiguous Lots who share a Party Wall shall equally have the right to use the Party Wall, provided that the use by any one Owner does not unreasonably interfere with the use and enjoyment of the Party Wall by any other Owner.

11.19.2 If any Party Wall is damaged or destroyed through the act or neglect of an Owner, Member, Occupant, or any other individual or entity for whom an Owner is responsible (whether or not the act is negligent or otherwise culpable), it shall be the obligation of the Owner to rebuild and repair the Party Wall without cost to any other Owner (or other individual or entity) sharing the Party Wall. Any dispute over an Owner's liability for damage to a Party Wall shall be resolved by the Board after giving all affected Owners (and other individuals and entities) notice and an opportunity to be heard, but any liability imposed on an Owner under this Section shall not prevent the Owner from seeking indemnity from the individuals or entities responsible for the damage.

11.19.3 If any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and from the lapse of time), other than by an act falling within the provisions of Section 11.19.2 above, or by a casualty covered by insurance of the Association to the extent adequate insurance proceeds are made available, it shall be the obligation of all Owners whose Lots adjoin the Party Wall to rebuild and repair the Party Wall at their joint expense, with such expenses to be allocated among the Owners in proportion to the portion of the Party Wall abutting their Lots.

11.19.4 Notwithstanding anything to the contrary herein, there shall be no impairment of the structural integrity of any Party Wall without the prior consent of all Owners sharing the Party Wall, whether by way of easement or in fee, and the Association.

11.19.5 In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or with respect to the sharing of costs arising

from such work, the affected Owners shall submit the dispute to the Board and the decision of the Board shall be binding.

11.20 Water Conservation Measures.

All toilets installed in the residences constructed within the Property shall be 1.6 gallons per flush low flow toilets and all shower heads installed in the residences constructed within the Property shall be low flow shower heads.

11.21 Modification.

The Board may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Lots by reasonable rules and regulations of general application adopted by the Board from time to time, which shall be incorporated into the Association Rules.

12. RIGHTS OF MORTGAGEES

12.1 General Provisions.

Notwithstanding and prevailing over any other provisions of the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the following provisions shall apply to and benefit each holder of a First Mortgage (and, in the case of Sections 12.4 and 12.6, to the holder of any Mortgage) upon a Lot.

12.2 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 or Individual Charge shall be subordinate to the lien of a prior Recorded First Mortgage on the Lot, acquired in good faith and for value, except to the extent the lien secures the amount of any unpaid Assessment or Individual Charge (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto) 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. If any lien for unpaid Assessments or Individual Charges that become payable after Recordation of the First Mortgage and prior to the date the First Mortgagee comes into possession of or acquires title to the Lot is not extinguished, to the extent it secures the unpaid Assessments or Individual Charges, by the process by which the First Mortgagee acquired title to the Lot, neither the First Mortgagee nor a third party purchaser shall be liable for the unpaid Assessments or Individual Charges, and, upon written request to the Association by the First Mortgagee or purchaser, the lien shall be released in writing by the Association to the extent it secures the unpaid Assessments or Individual Charges. Nevertheless, in the event the Owner against whom the original Assessment or Individual Charges was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association, or by the Board, for the respective Lot's

Assessment or Individual Charge including those due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment or Individual Charge shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board may use reasonable efforts to collect it from the Owner even after he is no longer the Owner of the Lot. Any unpaid Assessments and Individual Charges which are extinguished pursuant to this Section 12.2 may also be reallocated by the Board among all Owners as part of the Common Expenses. Except as above provided (and except for liens for taxes and other public charges which by applicable law are made prior and superior), the lien provided for in Section 5 shall be prior and superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed on any Lot.

12.3 No Personal Liability.

A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by prohibitory injunction or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 12.

12.4 Enforcement After Foreclosure Sale.

An action to abate the breach of any of the covenants, conditions, restrictions, and reservations in the Declaration may be brought against any Person who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to any such purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot.

12.5 Exercise of Owner's Rights.

During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may, but shall not be required to, exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner if the First Mortgagee or receiver gives the Association written notice of its claimed rights and such evidence as the Board may reasonably request demonstrating the existence of the claimed rights.

12.6 Subject to Declaration.

At such time as a Mortgagee comes into possession of or becomes Record Owner of a Lot, whichever first occurs, the Mortgagee shall be subject to all of the terms and conditions of the Declaration including, but not limited to, the obligation to pay (and be personally liable for) all Assessments and charges accruing thereafter, in the same manner as any other Owner.

12.7 Review of Records; Notice of Certain Matters.

12.7.1 First Mortgagees and Institutional Guarantors shall have the right upon reasonable written request to: (a) examine the books and records of the Association together with current copies, as amended from time to time, of the Declaration and the Articles, Bylaws, Association Rules and Design Guidelines, at reasonable times; (b) receive an annual financial statement of the Association within 90 days following the end of any fiscal year of the Association, which shall be audited by an independent accountant if required by the regulations of any Institutional Guarantor; and (c) receive written notice of all meetings of the Association and designate a representative to attend all such meetings.

12.7.2 Notwithstanding anything in this Declaration to the contrary, any First Mortgagee or Institutional Guarantor may submit a written request to the Association, which identifies the name and address of the First Mortgagee or Institutional Guarantor and the particular Lot or Lots subject to its rights as First Mortgagee or Institutional Guarantor, to receive timely written notice of all or any of the matters specified below. Any First Mortgagee or Institutional Guarantor which submits a request in the manner provided herein shall be considered an "Eligible Holder" for purposes of this Declaration. Those matters for which any First Mortgagee or Institutional Guarantor may request notice are:

(a) Any condemnation or casualty loss that affects either a material portion of the Project or a material portion of the Lot subject to its rights as Mortgagee or Institutional Guarantor;

(b) Any 30-day delinquency in the payment of Assessments or charges owed by the Owner of the Lot subject to its rights as Mortgagee or Institutional Guarantor;

(c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action that requires the consent of a specified percentage of Eligible Holders.

12.8 Additional Rights of First Mortgagees.

12.8.1 No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on the Lot. .

12.8.2 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) and Owners (other than Developer) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;

(ii) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except as specifically provided in Section 2.1.6.

(iii) Fail to maintain fire and extended coverage insurance on the Common Areas on current replacement cost basis as provided herein; or

(iv) By act or omission, seek to terminate this Declaration except where provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

12.8.3 No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

13. EXEMPTION OF DEVELOPER FROM RESTRICTIONS

Notwithstanding anything in the Declaration to the contrary, none of the covenants, conditions, restrictions, easements or other provisions contained in the Declaration shall be construed or deemed to limit or prohibit any act of Developer, its employees, agents and contractors, or parties designated by it in connection with (a) the administration, management, construction, completion, sale or leasing of the Lots, Common Areas, any Areas of Common Responsibility, the Property, and residences constructed by Developer, or (b) the administration, management, development or other activities with respect to facilities outside the Property.

14. REMEDIES

14.1 General Remedies.

In the event of any default by any Owner, Occupant or other Person under the provisions of the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the Association, or its successors or assigns, or its agents, and Developer shall have each and all of the rights and remedies which may be provided for in the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or which may be available at law or equity, and may prosecute any action or other proceedings against the defaulting Owner, Occupant or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided in the manner provided under the laws of the State of Arizona, and the appointment of a receiver for the Lot, or for damages or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and Individual Charges and interest accrued thereon, and to sell the Lot pursuant to this Section, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of the Owner. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs, including, but not limited to, reasonable attorneys' fees, expert witness fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments and Individual Charges hereunder and any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to the Declaration.

14.2 Expenses of Enforcement.

All expenses of the Association or Developer, or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Section, including court costs, reasonable attorneys' fees, expert witness fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the defaulting Owner and shall be an Individual Charge against the Owner and his Lot and the Association shall have a lien as provided in Section 5 therefor. In the event of any such default by an Owner or other Person, the Association and Developer, and the manager or managing agent of the Association, if so authorized by the Board, shall have the authority to correct the default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against the defaulting Owner and his Lot as an Individual Charge, which shall constitute a lien against the defaulting Owner's Lot as provided in Section 5. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or Developer.

14.3 Legal Action.

In addition to any other remedies available under this Section 14, if any Owner (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) violates any of the provisions of the Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines, as then in effect, then the Association, Developer and any affected or aggrieved Owner, shall each have the power to file an action against the defaulting Owner for a judgment or injunction against the Owner, or such other Person, requiring the defaulting Owner or other Person to comply with the provisions of the Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines, and granting other appropriate relief, including money damages.

14.4 Effect on Mortgage.

Notwithstanding anything to the contrary herein, any breach of the covenants, restrictions, reservations, conditions and servitudes provided for in the Declaration, or any right of reentry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot, but, except as herein specifically provided, each and all of the covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by sale, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

14.5 Limitation on Developer's Liability.

Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner, and each other Person acquiring an interest in the Property including, but not limited to, Mortgagees, by acquiring the interest in the Property, acknowledges and agrees that neither Developer (including, but not limited to, any assignee of the interest of Developer hereunder) nor any Related Entity (or any partner, shareholder trustee, officer, director, principal or similar Person holding an interest or position in any such assignee of the interest of Developer) shall have any personal liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) the Declaration, the Design Review Committee or the Association except to the extent of its interest in the Property; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

15. AMENDMENT

15.1 Amendment to Declaration.

Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as

otherwise specifically provided in the Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Except for amendments made pursuant to Section 15.2 and 15.5, the Declaration may be amended at any time only by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots.

15.2 Amendments for Compliance with Guidelines of Institutional Guarantors.

Developer, so long as Developer or any Related Entity owns any Lot, and thereafter, the Board, may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by Developer or the Board. Anything to the contrary herein notwithstanding, no amendment shall be effective to materially modify, change limit or alter the rights expressly conferred upon Mortgagees in this Declaration, or which is in any way materially inconsistent with the rules, regulations or requirements of any interest Institutional Guarantor, unless the amendment is approved in writing by the Institutional Guarantor.

15.3 Amendments to Correct Errors.

Developer, so long as Developer or any Related Entity owns any Lot, and thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration.

15.4 Effect of Amendment.

It is specifically covenanted and agreed that any amendment to the Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions, restrictions and easements contained herein which may be affected and any or all clauses of the Declaration or the Plat, unless otherwise specifically provided in the Section being amended or the amendment itself.

15.5 Required Approvals.

Notwithstanding the provisions of the foregoing subsections of this Section 15, so long as Developer owns more than seventy-five percent (75%) of the Lots subject to this Declaration, any amendment to this Declaration shall be signed by Developer and recorded in the records of Maricopa County, Arizona. At any time Developer does not own at least seventy-five percent (75%) of the Lots subject to this Declaration, any amendment approved pursuant to Section 15.1 of this Declaration or by the Board pursuant to Section 15.2

or 15.3 of this Declaration shall be signed by the President and shall be attested by the secretary of the Association and shall be recorded with the County Recorder of Yavapai County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by Developer pursuant to Section 15.2 or 15.3 shall be signed by Developer and recorded with the County Recorder of Maricopa County, Arizona. Amendments once properly adopted shall be effective upon Recording in the appropriate governmental offices, or at such later date as may be specified in the amendment.

16. TERM; TERMINATION

The Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of 20 years from the date this Declaration is recorded, and thereafter shall continue for consecutive periods of 10 years each, unless there is an affirmative vote, not more than 360 days prior to the date otherwise scheduled for commencement of the next extension of the term of the Declaration, to terminate the Declaration by a vote of a Majority of Members with or without a meeting of the Members pursuant to the provisions and procedures of the Bylaws. The Declaration may be terminated and the Plat may be withdrawn by Developer without the approval or consent of any other Person if such action is taken before there are any Class A Members. Thereafter, the Declaration may be terminated at any time upon a vote in favor of termination by 90% of the Class A Members and with the consent of Developer, at a duly held meeting of the Members for such purpose. Developer may, but shall not be obligated to, release its consent rights by Recorded instrument. Notwithstanding anything to the contrary herein, no vote to terminate the Declaration shall be effective unless and until the written consent to termination has been obtained, within a period of 180 days prior to the vote to 180 days after the vote, from the holders of Recorded First Mortgages on 75% of the Lots upon which there are such recorded First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Yavapai County, Arizona, and/or other appropriate governmental offices, a Certificate of Termination, duly signed by the President or a vice president of the Association and attested by the secretary or an assistant secretary of the Association, with their signatures acknowledged. Thereupon, the Declaration, as of the date of Recordation of the Certificate of Termination (or such later date as may be specified in the Certificate of Termination), shall have no further force and effect, and the Association shall be dissolved.

17. GENERAL PROVISIONS

17.1 Notices.

Notices to the Association provided for in the Declaration, the Bylaws, or Association Rules, shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice to all Owners. All notices to Owners shall be to their respective

Lots or to the last address shown on the records of the Association. Any Owner may designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person. Any notice to an Owner also shall constitute notice to the Member entitled to exercise the Association membership rights for that Owner's Lot.

17.2 Captions and Exhibits; Construction.

Captions given to various Sections herein, and the Table of Contents for the Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. Any exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of the Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

17.3 Severability.

If any provision of the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines shall be construed as if the invalid part were never included therein.

17.4 Rule Against Perpetuities.

If any of the options, privileges, covenants or rights created by the Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then the provision shall continue until 21 years after the death of the survivor of the now living descendants of Arizona Governor Fife Symington, and Arizona Senators Jon Kyle and John McCain.

17.5 Mortgage of Lots.

Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.

17.6 Power of Attorney.

Unless otherwise specifically restricted by the provisions of the Declaration, in any instance in which the Association is empowered to take any action or do any act, including, but not limited to, action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association (acting through the Board) as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming an Owner or a Member of the Association or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, or a membership in the Association, each Owner, Member and other Person shall be deemed and construed to have ratified and expressly granted the above power of attorney.

17.7 Gender.

Masculine, feminine and neuter references herein each shall include the others as the context requires.

17.8 Arizona Law.

The Declaration, the Articles, Bylaws, Association Rules and Design Guidelines shall be subject to, and construed in accordance with, Arizona law.

18. RIGHTS AND OBLIGATIONS

Each grantee of Developer, and each Owner, by the acceptance of a deed of conveyance, and each purchaser under any contract for such a deed of conveyance, and each purchaser under any agreement of sale, and each Person acquiring a membership in the Association, and each Person acquiring any other interest in the Property, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction, rights and powers created or reserved by the Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in the land, and shall inure to the benefit of any such Person in like manner as though the provisions of the Declaration were set forth in every deed of conveyance, purchase contract or instrument evidencing or creating the interest.

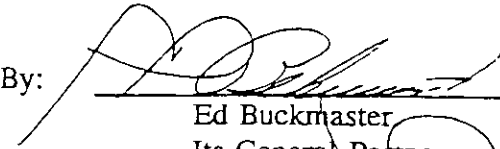
19. NO COVENANTS OR RESTRICTIONS


Nothing in the Declaration shall create, or be deemed to create, any express or implied covenants or restrictions with respect to any real property other than the Property.

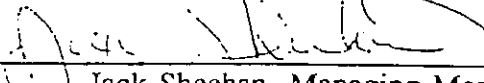
IN WITNESS WHEREOF, Developer has caused the Declaration to be duly executed.

NEPENTHE DEVELOPMENT COMPANY, L.L.C.

By: THUNDERBIRD MANAGEMENT LIMITED,
an Arizona limited partnership, a Member

By: 
Ed Buckmaster
Its General Partner

By: 
John D. Miller, Managing Member

By: 
Jack Sheehan, Managing Member

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 29th day of November, 1995, by Ed Buckmaster, the General Partner of Thunderbird Management Limited, an Arizona partnership, a Member of Nepenthe Development Company, L.L.C., an Arizona limited liability company being authorized to do so on behalf thereof.



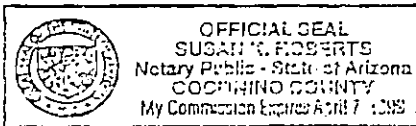
Susan K. Roberts
Notary Public

My commission expires:

April 7, 1999

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 29th day of November, 1995, by John D. Miller, a Managing Member of Nepenthe Development Company, L.L.C., an Arizona limited liability company being authorized to do so on behalf thereof.



Susan K. Roberts
Notary Public

My commission expires:

April 7, 1999

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 29th day of November, 1995, by Jack Sheehan, a Managing Member of Nepenthe Development Company, L.L.C., an Arizona limited liability company being authorized to do so on behalf thereof.



Susan K. Roberts
Notary Public

My commission expires:

April 7, 1999

EXHIBIT "A"
LEGAL DESCRIPTION

Lots 1A, B, C, D, E, F, G: Lots 2A, B, C, D, E: Lots 3A, B, C, D, E, F, G: Lots 4A, B, C, D, E: Lots 5 A, B, C, D, E: Lots 6A, B, C, D, E: Lots 7A, B, C, D, E, F, G: Lots 8A, B, C, D, E, F, G: Lots 9A, B, C, D, E: Lots 10A, B, C, D, E: Lots 11A, B, C, D, E: Lots 12A, B, C, D, E, *G: Lots 13A, B, C, D, E: Lots 14A, B, C, D, E: Lots 15A, B, C, D, E: Lots 16A, B, C, D, E, F, G: Lots 17A, B, C, D, E: Lots 18A, B, C, D, E, F, G: Lots 19A, B, C, D: Lots 20A, B, C, D: Lots 21A, B, C, D, E: Lots 22A, B, C, D, E: Lots 23A, B, C, D: Lots 24A, B, C, D, E: Lots 25A, B, C, D E: Lots 26A, B, C, D, E: Lots 27A, B, C, D, E, F, G: Lots 28A, B, C, D, E: Lots 29A, B, C, D, E: Lots 30A, B, C, D, E, F, G: Lots 31A, B, C, D, E: Lots 32A, B, C, D, E, F, G: Lots 33A, B, C, D, E, and Tracts C, D, E and F and.

Common Area/Open Space of NEPENTHE, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona in Book 32 of Maps, Pages 32 and 33.

*F,

BOOK 3142 PAGE 189

~~BOOK 3117 PAGE 670~~