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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR GILBERT HEIGHTS

THIS DECLARATION is made on the 9TH day of MAY, 1986, by Trade Winds Development & Construction, Inc., an Arizona corporation (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of the following described real property located in Maricopa County, Arizona, which real property, together with all improvements situated thereon and all rights and easements appurtenant thereto, shall be hereinafter referred to as the "Property":

Lots 1 through 78, inclusive, and Tract A, GILBERT HEIGHTS, according to the plat recorded in Book 296 of Maps, page 25, records of Maricopa County, Arizona.

WHEREAS, Declarant desires to impose certain covenants, conditions and restrictions upon the Property in order to establish a general scheme for the development, sale, use and enjoyment of the Property for the purpose of enhancing and protecting the value, desirability and quality of life within the Property.

NOW, THEREFORE, the Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
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ARTICLE 1

DEFINITIONS

1.1. "Architectural Committee" means the committee established by the Board pursuant to Section 2.4 of this Declaration.

1.2. "Architectural Committee Rules" means the rules adopted by the Architectural Committee.

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

1.4. "Assessments" means the annual and special assessments levied and assessed against each Lot pursuant to Article 3 of this Declaration.

1.5. "Association" means the Arizona nonprofit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "Gilbert Heights Owners Association," but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.

1.6. "Association Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

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

1.8. "Bylaws" means the bylaws of the Association, as such bylaws may be amended from time to time.

1.9. "Common Area" means all real property, and all improvements located thereon, owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to a Purchaser is described as follows:

Tract A, GILBERT HEIGHTS, according to the plat recorded in Book 296 of Maps, page 25, records of Maricopa County, Arizona.

1.10. "Declarant" means Trade Winds Development & Construction, Inc., an Arizona corporation, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.

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

1.12. "First Mortgage" means any mortgage or deed of trust with first priority over any other mortgage or deed of trust.

1.13. "First Mortgagee" means the holder of any First Mortgage.

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

1.15. "Lot" means any parcel of real property designated as a Lot on the Plat and, where the context indicates or requires, includes the Residential Unit and all other Improvements situated on the Lot.

1.16. "Member" means any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

1.17. "Owner" means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee

pursuant to Arizona Revised Statutes, Section 33-801, et seq., the trustor under the deed of trust shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.18. "Plat" means the plat of survey of Gilbert Heights which plat has been recorded with the County Recorder of Maricopa County, Arizona, in Book 296 of Maps, page 25, and all amendments thereto.

1.19. "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules and Architectural Committee Rules.

1.20. "Property" or "Project" means the real property described on page 1 of this Declaration together with all buildings and other Improvements located thereon, and all easements, rights and appurtenances belonging thereto.

1.21. "Purchaser" means any person other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot except for (i) an Owner who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale of other Lots or (ii) an Owner who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.22. "Residential Unit" means any building or portion of a building situated upon a Lot designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

1.23. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

1.24. "Single Family Residential Use" means the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.25. "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at the same elevation as the elevation of the base of the object being viewed or the elevation of the finished grade of such part of the neighboring property, whichever is greater.

ARTICLE 2

THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

2.1. Rights, Powers and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

2.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a board of directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and the Bylaws.

2.3. Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association rules as they may from time to time be adopted, amended or repealed, shall be available for inspection by the Members at reasonable times. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

2.4. Architectural Committee. The Board shall establish an Architectural Committee consisting of not less than three (3) members appointed by the Board to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board.

2.5. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

2.6. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

2.7. Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Until the termination of the Class B membership, the Class A membership shall be a nonvoting membership, and no Class A member shall have any voting rights in the Association. Upon the termination of the Class B membership, each Class A member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to one (1) vote for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of: (i) when the Declarant no longer owns any Lot; or (ii) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

2.8. Joint Ownership. When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

2.9. Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the

Let an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner or chief executive officer of such corporation, partnership or association shall have the power to vote the membership.

2.10. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current, and for a period not to exceed 60 days for any infractions of the Project Documents.

ARTICLE 3

COVENANT FOR MAINTENANCE ASSESSMENTS

3.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual assessments and special assessments. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

3.2. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the upkeep, maintenance and improvement of the Common Area; for promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property; and for the performance and exercise by the Association of its rights, duties and obligations under the Project Documents.

3.3. Annual Assessment.

(A) In order to provide for the operation and management of the Association and to provide funds for the Association to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each fiscal year of the Association commencing with the year in which the first Lot is conveyed to a Purchaser, shall assess against each Lot an annual assessment. The amount of the annual assessment shall be in the sole discretion of the Board except that (i) the annual assessment must be fixed at a uniform rate for each Lot and (ii) the Declarant shall be obligated to pay only twenty-five percent (25%) of the annual assessment attributable to Lots owned by the Declarant until a Residential Unit on such Lot has been occupied for Single Family Residential Use. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual assessment is attributable, the assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for each

rate. So long as there is a Class B membership in the Association, the Declarant shall pay to the Association any amounts which, in addition to the annual assessments levied by the Association, may be required by the Association in order for the Association to fully perform its duties and obligations under the Project Documents, including the obligation to maintain adequate reserve accounts.

(B) The Board shall give notice of the annual assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment.

(C) If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board.

3.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

3.5. Date of Commencement of Annual Assessments; Due Dates. The annual assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

3.6. Effect of Nonpayment of Assessments; Remedies of the Association.

(A) Any Assessment, or any installment of an assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the interest rate set from time to time by the Board. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent Owner as shown on the records of the Association, (2) the legal description or street address of the Lot against which the claim of lien is made, (3) the amount claimed as of the date of the recording of the notice including interest, lien recording fees and reasonable attorneys' fees, (4) the name and address of the Association. The Association's lien shall have priority over all liens or claims created subsequent to the recordation of the Notice of Claim of Lien except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens which are specifically described in Section 3.7 of this Declaration.

(B) Before recording a lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with interest and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, interest, lien fees and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

(C) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving any lien securing any such delinquent Assessments or

(ii) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

3.7. Subordination of the Lien to Mortgages. The lien of the Association for delinquent Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

3.8. Exemption of Owner. No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.

3.9. Maintenance of Reserve Fund. Out of the annual assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area.

3.10. No Offsets. All Assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

3.11. Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Lot, a sum equal to one-sixth (1/6th) of the annual assessment on his Lot. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

4.1. Residential Use. All Lots shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot.

4.2. Animals.

(A) Except as provided in Subsections (B) and (C) of this Section, no animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible from Neighboring Property. No Owner or any lessee or guest of an Owner shall permit any dog or other pet being kept on a Lot to relieve itself on another Owners' Lot. It shall be the responsibility of such Owner, lessee or guest to remove immediately any droppings from pets. No dog, cat or other pet shall be permitted to run at large, and each dog, cat or other pet shall be confined entirely to an owners' Lot except that a dog, cat or other pet shall be permitted to leave an owner's Lot if such dog, cat or other pet is at all times kept on a leash not to exceed six (6) feet in length and is under the direct control of the Owner.

(B) Subject to all applicable laws, ordinances, health codes and rules and regulations of all governmental entities and agencies having jurisdiction over the Project, not more than three horses may be kept on Lots 3, 4 or 5 or on Lots 8 through 15, inclusive. The horses shall be for personal use only, and there shall be no commercial breeding, raising or boarding of horses. All structures, buildings and other improvements with respect to the care and housing of horses must be approved in writing by the Architectural Committee. Any Owner who maintains horses on his Lot must care for the horses and maintain the facilities for the care and housing of the horses in a clean, neat and orderly fashion and in accordance with prevailing customs and methods so that the horses do not become a nuisance to other Owners and occupants of Lots in the Project.

(C) Horses and other animals except swine may be kept on Lot 1 of the Project if such horses and other animals are permitted under the applicable zoning ordinances of the municipality in which the Project is located. The horses and other animals must be kept in accordance with all applicable laws, ordinances, health codes and rules and regulations of all governmental entities and agencies having jurisdiction over Lot 1. The horses and other animals shall be for personal use only, and there shall be no commercial breeding, raising or boarding of horses or other animals. All structures, buildings and other improvements with respect to the care and housing of horses and other animals on Lot 1 must be approved in writing by the Architectural Committee. The owner of Lot 1 must care for the horses and other animals and maintain the facilities for the care and housing of the horses and other animals in a clean, neat and orderly fashion and in accordance with prevailing customs and methods so that the horses and other animals do not become a nuisance to other owners and occupants of Lots in the Project.

4.3. Antennas. No antenna, satellite television dish antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but without limitation, Citizen's Band or Ham Radio signals shall be erected, used or maintained outdoors on any Lot without the prior written approval of the Architectural Committee. The Architectural Committee shall not have the authority to approve (i) any antenna unless the antenna is adequately screened so that it is not Visible From Neighboring Property or (ii) any ham radio tower or antenna unless it is of the electrically or automatically raised type which shall be raised only when in use and lowered when not in use so as to not be Visible From Neighboring Property.

4.4. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure, landscaping or other improvement shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage channels in such easement areas or which may obstruct or retard the flow of water through drainage channels in such easement areas. Such public utility easement areas, and all improvements thereon, shall be

maintained by the Owner of the Lot on which the easement area is located unless such easement area is to be maintained by the utility company or a county, municipality or other public authority.

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

4.6. Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area so as to be Visible From Neighboring Property or from any street; except for (i) pickup trucks of less than 3/4 ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level or to mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in this Declaration and the Association Rules and are used on a regular and recurring basis for basic transportation and (ii) temporary parking of vehicles by the guests and invitees of the Owner or tenant of a Lot subject to the Association Rules.

4.7. Motor Vehicles. Except for emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Common Area or street, and no inoperable vehicle may be stored or parked on any Lot, Common Area or street, so as to be Visible From Neighboring Property or to be visible from any street. Except for the parking of motor vehicles by guests and invitees of the Owner or tenant of a Lot during such time as the guest or invitee is visiting the Owner or tenant, no automobile, motorcycle, motorbike, truck, camper, recreational vehicle or other motor vehicle and no mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, kept or maintained on any street in the Project.

4.8. Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupant. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except fire detection and security devices used exclusively for such purposes, shall be located, used or placed on any property.

4.9. Sight Distances at Intersection. No fence, wall hedge or shrub planting or other structure shall be placed or planted on corner Lots which obstructs sight lines at elevations between two and one half (2-1/2) feet and eight (8) feet above the top of the street edge within the triangular area formed by the junction of street edge lines and a line connecting such street edge lines at points thirty-five (35) feet from the junction of such street edge lines.

4.10. Landscaping and Ground Maintenance.

(A) All grass, hedges, shrubs, vines and plants of any type on each Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind.

(B) All Residential Units shall be kept at all times in good condition and repair and in a sanitary, healthful, attractive and safe condition. All yard equipment or storage piles shall be kept screened by a walled service yard or similar facility, so as not to be Visible From Neighboring Property and streets. Woodpiles shall be stacked and neatly maintained.

4.11. Trash Containers and Collection. No garbage, rubbish or trash shall be placed or kept on any Lot except in covered containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No incinerators shall be kept or maintained on any Lot.

4.12. Clothes Drying Facilities. Outside clothes-lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed or maintained in such a manner as to not be visible from Neighboring Property.

4.13. Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of twelve (12) feet.

4.14. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in connection with the use, maintenance or repair of a Residential Unit, appurtenant structures, or other Improvements constructed by the Declarant or approved by the Architectural Committee.

4.15. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, but adjoining or contiguous Lots, or parts thereof, may be conveyed in such a manner as to create parcels of land in common ownership as long as each parcel created has the same or greater street frontage as the Lot, or part thereof, which had the least street frontage of the Lots, or parts thereof, conveyed to create the new parcels.

4.16. Signs.

(A) At such time as a Residential Unit on a Lot has been substantially completed, an address identification sign must be erected and continuously maintained on the Lot. The size, style, color and location of the address identification sign must be approved in writing by the Architectural Committee.

(B) No signs whatsoever (including, but without limitation, commercial, "for sale" and "for rent" signs) shall be erected or maintained on any Lot except for (i) the address identification sign required by Section (A) of this Section, (ii) such signs as may be required by legal proceedings, and (iii) one "for sale", "for rent" or political sign with a total face area of five (5) square feet or less, which sign must be approved as to style, color, content, duration of posting and location by the Architectural Committee.

4.17. Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals or any kind, gravel, earth, or any earth substance of any kind and no derrick or other equipment designed or intended for any such activity shall be erected, placed, constructed or maintained on any Lot.

4.18. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property which could induce, breed or harbor infectious plant diseases or noxious insects, but this Section shall not prohibit the keeping of horses or other animals permitted under Section 4.2(B) or 4.2(C) of this Declaration so long as the horses and other animals and the Lot on which they are kept are maintained as provided in Section 4.2(B) or 4.2(C).

4.19. Improvements and Alterations.

(A) All Residential Units, buildings, structures and other Improvements constructed on Lots within the Project shall be of new construction, and no Residential Units, buildings, structures or other improvements shall be removed from other locations on to any Lot.

(B) Except for work performed by the Declarant or its employees, contractors or agents and except for Residential Units, buildings, structures, landscaping or other improvements existing on Lots as of the date this Declaration is recorded, no Residential Unit, building, structure, fence, wall, landscaping or other Improvement shall be constructed, erected or maintained on any Lot and no addition, alteration, repair, change or other work which alters the exterior appearance of the Lot or any Residential Unit, building, structure, fence, wall or other Improvement located thereon shall be made or performed without the prior written approval of the Architectural Committee.

(C) An Owner or other person desiring approval of the Architectural Committee for the construction, addition, alteration or repair of a Residential Unit, building, structure, fence, wall, landscaping or other Improvement shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, addition, alteration, repair, change or other work for which approval is requested together with three sets of working drawings with respect to the work for which approval is requested. Any Owner or other person requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request.

(D) If the Architectural Committee fails to approve or disapprove an application for the construction, alteration, addition, repair, change or other work within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it and the Architectural Committee has signed a receipt therefor, approval will be deemed to have been denied by the Architectural Committee.

(E) The approval by the Architectural Committee of any construction, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any other work subsequently submitted for approval and shall not relieve the Owner from obtaining any necessary building permits or other approvals or permits required by the county or municipality having jurisdiction over the Project. No person shall obtain a building permit for any construction, addition, alteration, repair, change or other work until such time as the construction, addition, alteration, repair, change or other work has been approved by the Architectural Committee in accordance with this Section.

(F) Upon receipt of approval from the Architectural Committee for any construction, addition, alteration, repair, change or other work, the Owner or other person receiving such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

(G) Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

(H) The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, alteration, addition, repair, change or other work pursuant to this Section which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

4.20. Party Walls.

(A) The rights and duties of Owners with respect to party walls or fences between Lots shall be as follows:

(i) The Owner of contiguous Lots who have a party wall or fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(ii) In the event that any party wall or fence is damaged or destroyed through the act of an Owner or any of his tenants, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection (v) of this Subsection, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any party wall or fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his tenants, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such party wall or fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall or fence.

(iv) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(B) In the case of party walls or fences between Common Areas and Lots, the Association shall be responsible for all maintenance thereof except that each Owner of a Lot shall be responsible for painting the portion of the party wall or fence facing his Lot. If any party wall between a Lot and the Common Area is damaged or destroyed through the willful or negligent act of an Owner, his family, guests, tenants or invitees, the cost incurred by the Association in repairing such damage or rebuilding the wall shall be paid to the Association by the adjoining Lot Owner upon demand and such amounts shall be a lien on the Owner's Lot and the Association

may enforce payment of such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of assessments.

(C) If any party wall encroaches on another Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the party wall shall and does exist in favor of the adjoining Owners and the Association, as the case may be.

(D) The Owners who share a party wall and, in the case of a party wall separating a Lot from the Common Area, the Owners and the Association who share the party wall, shall have an easement over the adjoining Lot or Common Area for the purpose of maintaining, repairing or replacing the party wall and otherwise exercising or performing their rights and duties under this Section.

4.21. Construction of Fences. Within thirty (30) days following the date on which the appropriate governmental agency issues a Certificate of Occupancy or similar permit for a Residential Unit on a Lot, the Owner of the Lot shall cause to be erected a solid block wall fence along the boundaries of the Lot to enclose the portion of the Lot behind the rear wall of the Residential Unit. The block wall fence shall be connected to the Residential Unit on both sides. The fence shall be at least six (6) feet in height. The front fence shall be constructed so that its design and style match the front elevation of the Residential Unit to the Lot line, and all remaining back walls are to be eight inch brown Superlite masonry block. No solid wall or fence over three (3) feet high shall be constructed or maintained nearer to the front street line of a Lot than a distance of ten (10) feet. The maintenance, repair and replacement of fences or walls which are party walls between Lots or between Lots and Common Area shall be governed by the provisions of Section 4.20 of this Declaration. All other fences and walls shall be maintained, repaired and replaced by the Owner of the Lot on which the wall is situated. Wherever a fence is constructed upon a Lot within the Project, immediately adjacent to the boundary line separating that Lot from another Lot, then the builder of that fence, if the Declarant, or if the fence is not built by the Declarant, then the Owner of the Lot upon which the fence is built shall be entitled to reimbursement for one-half (1/2) of the costs of the fence attributable to the length of that fence immediately adjacent to the property line between the two Lots. Reimbursement shall be paid by the adjoining Lot Owner to the Lot Owner or the Declarant who built the fence, upon completion by the adjoining Lot Owner of the Residential Unit upon his Lot. Reimbursement shall be based upon and shall not exceed one-half (1/2) the actual costs of the portions of the fence adjacent to the adjoining Lot.

4.22. Outdoor Burning. There shall be no outdoor burning of trash or other debris; provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills.

4.23. Fuel Tanks. No fuel tanks of any kind shall be erected, placed or maintained on the Property except for propane or similar fuel tanks permitted under the ordinances of the municipality in which the Property is located.

4.24. Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows of any Residential Unit or other structure without the prior written approval of the Architectural Committee. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residential Unit or other structure shall be constructed or installed in any residence or other structure without the prior written consent of the Architectural Committee.

4.25. Solar Panels. Except as initially installed by the Declarant and except for equipment existing as of the date this Declaration is recorded, no solar energy collecting unit or panels or other energy conservation equipment shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee.

4.26. Garages and Driveways. The interior of all garages situated on any Lot shall be maintained in a neat, clean and sightly condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and materials and shall not be used or converted for living quarters or recreational activities without the prior written approval of the Architectural Committee. All driveways shall be of concrete construction. Garage doors shall be left open only as needed for ingress and egress.

4.27. Drainage Plan. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained on any drainage easement as shown on the Plat, and no Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project or for any Lot on file with the county or municipality in which the Project is located.

4.28. Minimum Building Requirements.

(A) Type and Size of Residential Unit. No building or structure other than one single family Residential Unit plus appurtenant accessory and auxiliary garages shall be constructed, erected or maintained on any Lot. Each Residential Unit must contain a minimum of 3,000 livable square feet and, in the case of Residential Units which have a basement or more than one story, the ground floor of the Residential Unit must have at least 2,000 livable square feet. The Architectural Committee shall have the right to require a greater livable square footage for any Residential Unit in the Project. In such event, the Residential Unit must comply with the minimum livable square footage requirements as set by the Architectural Committee. Notwithstanding the approval of plans and specifications for a Residential Unit, no residential unit shall be constructed, erected or maintained on any Lot which does not meet the minimum livable square footage requirements set forth in this Subsection. In determining whether the minimum requirements set forth in this Subsection have been complied with, the square footage of any garages, carports, porches or patios shall be excluded. Each Residential Unit shall have a front elevation width of at least sixty-five feet (65'). Garage entries shall not face the front of the Lot.

(B) Roofs. All roofs of Residential Units and other structures constructed or erected on any Lot shall be either concrete tile or natural wood shake.

(C) Walls and Fences. All perimeter walls and fences on a Lot and all other walls and fences which are Visible From Neighboring Property must be of eight inch brown Superlite masonry block.

(D) Lights. No exterior lights or light fixtures shall be installed or maintained on any Lot without the prior written approval of the Architectural Committee.

(E) Air Conditioning and Heating Units. No Residential Unit shall be constructed without an integral central air conditioning system. Compressors and fans for central air conditioning systems which are located outside the exterior of a Residential Unit shall be adequately walled, fenced or landscaped to prevent unreasonable noise and exposure. Air conditioning units extending from windows are not permitted. No air conditioning compressors, fans or other equipment and no heating systems or equipment shall be constructed or installed on any roof.

(F) Pools and Pool Equipment. No pools shall be constructed or installed above ground. All pools, pool pumps, heaters and other equipment shall be screened so as not to be Visible From Neighboring Property.

4.29. Construction of Residential Units.

(A) Each Owner who purchase a Lot from the Declarant shall obtain approval from the Architectural Committee for the construction of a Residential Unit on his Lot and shall complete construction of the foundation of the Residential Unit within one (1) year following the closing of the purchase of the Lot by such Owner from the Declarant. If an Owner fails to comply with the provisions of this Subsection, Declarant shall have the option to purchase the Lot from the Owner for the same purchase price paid by the Owner to the Declarant. The option shall be exercised by the Declarant delivering to the Owner escrow instructions signed by the Declarant providing for the purchase of the Lot by the Declarant from the Owner. The escrow instructions shall provide for a purchase price equal to the purchase price paid by the Owner to the Declarant and shall contain such other terms and provisions as the Declarant, in its sole discretion, may deem necessary. Within five (5) days after receipt of such escrow instructions, Owner shall execute the escrow instructions and return them to the Declarant.

(B) Construction of a Residential Unit on a Lot shall be completed within six (6) months following completion of the construction of the foundation of the Residential Unit. For purposes of this Subsection, the Residential Unit shall be complete at such time as a certificate of occupancy or similar permit has been issued for the Residential Unit by the applicable governmental authority. If an Owner fails to complete construction of a Residential Unit on the Lot within the time required by this Subsection, the Owner shall pay to Declarant, on demand, the sum of \$100.00 per day for each day from the date on which the Residential Unit was required to have been completed under the terms of this Subsection and the date on which the Residential Unit is actually completed.

ARTICLE 5

BASMENTS

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

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

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

5.4. Association's Easement For Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and those portions of the Lots that the Association is obligated to maintain pursuant to Section 6.2 of this Declaration and for performing all of the Association's other rights, duties and obligations under the Project Documents.

5.5. Declarant's Reserved Basement. The Declarant shall have the right and an easement over, under and through the Project for the purpose of constructing, installing, replacing, relocating, maintaining, repairing and using signs, model homes, sales and leasing offices, construction offices and business offices which, in the sole opinion of the Declarant, may be required, convenient or incidental to the construction, sale, use or lease by Declarant of Lots in the Project. No other provision of this Declaration shall be construed to limit, restrict or prohibit the Declarant's exercise of its right and easement under this Section.

ARTICLE 6

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MAINTENANCE

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

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

(B) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway and parking area;

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

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

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

6.2. Maintenance By Association of Lots. The Association shall maintain, repair and replace all portions of the Lots which are designated on the Plat as equestrian trails. In the event the need for maintenance, repair or replacement of any portion of the Lots which are being maintained by the Association pursuant to this Section is caused by the willful or negligent act of an Owner, his family, guests, invitees or animals for whom he is legally responsible under Arizona law, the Association shall cause the maintenance or repair to be performed and the cost of such maintenance or repair shall be levied against such Owner, and his Lot, by the Association and may be collected in the manner provided for elsewhere in this Declaration for the collection of Assessments.

6.3. Maintenance of Lots by Owners. those portions of the Lots which the Association is obligated to maintain pursuant to Section 6.2 of this Declaration, each Owner shall be solely responsible for the maintenance, repair and replacement of his Lot, and the Residential Unit and all Improvements located thereon. All vacant Lots upon which no Residential Unit has been constructed shall at all times be kept free of litter, weeds, rubbish and debris. No Owner shall perform any maintenance or repair work which would alter the exterior appearance of his Residential Unit without the prior written approval of the Architectural Committee.

6.4. Installation of Landscaping Improvements. Within one hundred twenty (120) days after the date on which the appropriate governmental entity or agency issues a Certificate of Occupancy or similar permit for a Residential Unit on a Lot, the Owner of the Lot shall install grass, trees, plants and other landscaping improvements (together with a sprinkler system sufficient to adequately water the grass, trees, plants and other landscaping improvements) in that portion of his Lot which is between the street and exterior wall of his Residential Unit (the wall which separates the interior of the Residential Unit from the outside yard, patios and entry ways) or any wall separating the side or back yard of the Lot from the front yard of the Lot. The grass, plants, trees and other landscaping improvements shall be installed in accordance with plans approved in writing by the Architectural Committee in accordance with Section 4.19 of this Declaration and the Architectural Committee Rules and shall comply with all applicable laws, ordinances, rules and regulations of any governmental entity or agency having jurisdiction over the Project.

6.5. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand, to the Association and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

6.6. Nonperformance by Owners. If any Owner fails to maintain any portion of his Lot, and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by the Owner of the Lot, upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot and the Association may enforce collection

of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

6.7. Payment of Utility Charges. Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a common expense of the Association and shall be included in the budget of the Association.

ARTICLE 7

INSURANCE

7.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

(ii) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00. 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 Area, 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 and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(iv) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

(v) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(a) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(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 be a condition to recovery on the policy;

(c) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

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

(e) The Association shall be named as the Insured;

(f) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

(vi) If there is a steam boiler in connection with the Common Area, boiler explosion insurance evidenced by the standard form of boiler machinery insurance policy and providing coverage in the minimum amount of \$50,000.00 per accident per location;

(vii) If the Property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended;

(viii) "Agreed Amount" and "Inflation Guard" endorsements.

7.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

7.3. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

7.4. Insurance Obtained by Owners. Each Owner shall be responsible for obtaining property insurance for his own benefit and at his own expense covering his Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.

7.5. Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 7.6 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area. With respect to any loss to any Lot, or the Improvements located thereon, which is covered by property insurance obtained by the Association, the loss shall be adjusted with the Owner of said Lot and the proceeds shall be payable to said Owner and any holders of liens on said Lot as their interest may appear.

7.6. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

ARTICLE 8

GENERAL PROVISIONS

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

8.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

8.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

8.4. Amendment.

(A) So long as the Declarant owns any Lot, the Declarant may amend this Declaration or the Plat without the consent of any other Owner being required. When the Declarant no longer owns any Lot, this Declaration or the Plat may be amended by the written approval or the affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Lots.

(B) The Board, with the written consent of the Declarant so long as the Declarant owns any Lot, may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner (other than the Declarant) 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 is requested by the Declarant.

(C) Any amendment approved by the Owners or by the Board shall be signed by the President or Vice President of the Association and shall certify that the amendment has been approved as required by this Section. Any amendment made by

the Declarant shall be signed by the Declarant. Any amendment to the Declaration shall be recorded with the County Recorder of Maricopa County, Arizona.

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

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

8.7. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

8.8. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Declarant, the Association or the Architectural Committee at 1424 S. Stapley, Mesa, Arizona 85204; if to an Owner, to the address of his Lot or to any other address last furnished by the Owner to the Association; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

8.9. Binding Effect. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby

evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

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

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

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

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

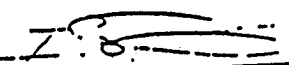
8.14. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.

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

8.16. Declarant's Right To Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year first above written.

TRADE WINDS DEVELOPMENT &
CONSTRUCTION, INC., an
Arizona corporation

By: 

Its: Vice President

Gilbert Heights Owners Association
3400 N. Arizona Ave. # 114
Chandler, AZ 85224

Proposed By-Law Amendment

It is proposed that Article III, Board of Directors, Section 3.1 of the By-Laws be amended to read as follows:

“TERM OF OFFICE. The initial members of the Board shall hold office as follows: three (3) shall serve for one (1) year and two (2) shall serve for two (2) years. The Directors shall serve staggered terms as follows: The two directors receiving the most votes shall serve a two-year term and the remaining Directors shall serve a one-year term. Thereafter, all Directors shall be elected to a two-year term to replace the outgoing Directors. At the Annual Meeting of the Membership, the Board members' successors are elected and qualified. The eligible Members, in person or by proxy, may cast as many votes as they are entitled to exercise under the provisions of the Declaration. All elections and appointments of Directors under these By-Laws shall be for such terms as will preserve the staggering of terms as provided herein. There shall be no limit to the number of terms to which a member of the Board may be re-elected.”

Amendment approved at a meeting held October 18, 1995.

When recorded pleased
please return to:
Blue Valley Mortgage, Inc.
7600 N. 16th St., Suite 145
Phoenix, AZ 85020

JAB

MOD RSTR (DF)

RECORDED IN OFFICIAL RECORDS
OF MARICOPA COUNTY, ARIZONA
MAY 23 1988-11 88
KEITH POLETIS, County Recorder
FEE 9 - PGS 2 KD

88 246370

FIRST AMENDMENT TO DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR GILBERT HEIGHTS

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions and Restrictions for Gilbert Heights is made on the 15th day of MAY, 1988, by Blue Valley Mortgage, Inc., an Arizona corporation, the successor to the Declarant and the owner of more than sixty-seven percent (67%) of the lots within Gilbert Heights, and hereby amends, as set forth below, the Declaration of Covenants Conditions and Restrictions for Gilbert Heights, as recorded on the 7th day of MAY, 1986, at Instrument No. 86 244292, Official Records of Maricopa County, Arizona, by virtue of the authority granted in Article 8, Section 0.4 (c) of said Declaration.

I. Article 4, Section 4.29 is hereby amended as follows:

a. The first sentence of Subsection (A) shall be deleted and substituted in its place is the following:

Each Owner who purchases a Lot from the Declarant shall obtain approval from the Architectural Committee for the construction of a Residential Unit on his Lot and shall within three (3) years following the closing of the purchase of the Lot by such Owner from the Declarant.

b. The first sentence of Subsection (D) shall be deleted and substituted in its place is the following:

Construction of a Residential Unit on a Lot shall be completed within one (1) year following completion of the construction of the foundation of the Residential Unit.

c. Subsection (C) shall be added as follows:

(C) Notwithstanding the foregoing, those Owners of Lots who purchased a Lot from the Declarant prior to the date of this First Amendment shall have three (3) years from the date this First Amendment is recorded to obtain approval from the Architectural

Committee for construction of a ^{88 246370} Residential Unit on his Lot.

II. All other provisions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned officer, on behalf of Blue Valley Mortgage, Inc., as Successor Declarant, has caused his name to be signed on the date set forth below.

DATED this 13TH day of MAY, 1988.

BLUE VALLEY MORTGAGE, INC.,
an Arizona corporation

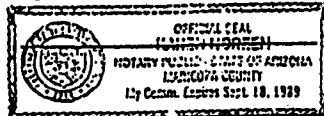
By George E. Jackson
Its J. P.

STATE OF ARIZONA)
) ss.
County of Maricopa)

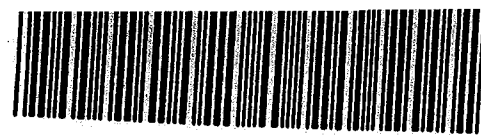
THE FOREGOING was acknowledged before me this 13th day
of May, 1988, by George E. Jackson
as Senior V.P. of BLUE VALLEY MORTGAGE, INC.

Karen Green
Notary Public

My Commission Expires:



when received MAIL 10:
Law Offices of
Charles E. Maxwell, P.C.
1350 E. Southern Avenue, Suite 2
Mesa, Arizona 85204



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

97-0236797 04/11/97 01:34

MESAR 1 OF 1

**FIFTH AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
GILBERT HEIGHTS**

This Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Gilbert Heights dated May 9, 1986, and recorded May 9, 1986, at Document No. 86-244292 (hereinafter "Declaration"), First Amendment to Declaration of Covenants, Conditions and Restrictions for Gilbert Heights dated May 13, 1988, and recorded May 23, 1988, at Document No. 88-246370 (hereinafter "First Amendment"), Amendment to Declaration of Covenants, Conditions and Restrictions for Gilbert Heights, a Subdivision Located in Maricopa County, Arizona, Book 296 of Maps, Page 25 dated January 10, 1989, and recorded January 20, 1989, at Document No. 89-027733 (hereinafter "Second Amendment"), Third Amendment to Declaration of Covenants, Conditions and Restrictions for Gilbert Heights dated March 28, 1991, and recorded April 9, 1991, at Document No. 91-149104 (hereinafter "Third Amendment"), and Third Amendment to Declaration of Covenants, Conditions and Restrictions for Gilbert Heights dated October 29, 1991, and recorded October 30, 1991, at Document No. 91-0507922 (hereinafter "Fourth Amendment"), is hereby adopted. (Unless the content indicates otherwise, the Declaration and all subsequent amendments referenced above will hereafter be collectively referred to as the "Declaration".) This Fifth Amendment was adopted by the written approval or the affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Lots within Gilbert Heights pursuant to the amendment requirements of Article 8, Section 8.4 of the Declaration, and pursuant to the recommendations of the Honorable Donald Skousen, Judge of the South Mesa Justice Court.

I. Article 4, Section 4.21 is deleted in its entirety and amended as follows:

"4.21. Construction of Fences. Within thirty (30) days following the date on which the appropriate governmental agency issues a Certificate of Occupancy or similar permit for a Residential Unit on a Lot or no later than July 1, 1997, whichever is earlier, the Owner of the Lot shall cause to be erected a solid block wall fence along the boundaries of the Lot to enclose the portion of the Lot behind the rear wall of the Residential Unit. The block wall fence shall be connected to the Residential Unit on both sides. In the event the Residential Unit has not yet been constructed or construction is not yet complete, the Owner of the Lot will still be required to ensure construction of the required

exterior boundary block wall fence within the time period set forth herein, in addition to any other rights or remedies the Association may have for failure to comply with the construction requirements of the Declaration, including fines and penalties. The block wall fence shall be at least six (6) feet in height. The front fence shall be constructed so that its design and style match the front elevation of the Residential Unit to the Lot line, and all remaining back walls are to be eight (8) inch brown Superlite masonry block. No solid wall or fence over three (3) feet high shall be constructed or maintained nearer to the front street line of a Lot than a distance of ten (10) feet. The maintenance, repair and replacement of fences or walls which are party walls between Lots or between Lots and Common Area shall be governed by the provisions of Section 4.20 of the Declaration. All other fences and walls shall be maintained, repaired and replaced by the Owner of the Lot on which the wall is situated. Whenever a block wall fence is constructed upon a Lot within the Project, immediately adjacent to the boundary line separating that Lot from another Lot, then the builder of that fence, or the Owner of the Lot upon which the fence is built shall be entitled to reimbursement for one-half (1/2) of the cost of the fence attributable to the length of that fence immediately adjacent to the property line between the two Lots. Reimbursement shall be paid by the adjoining Lot Owner upon completion by the adjoining Lot Owner of the Residential Unit upon his Lot or by July 1, 1997, whichever is earlier. Reimbursement shall be based upon and shall not exceed one-half (1/2) of the actual cost of the portions of the fence adjacent to the adjoining Lot."

II. Article 4, Section 4.29 of the Declaration and First Amendment are hereby deleted in their entirety and amended as follows:

"4.29. Construction of Residential Units.

(A) Each Owner of a Lot shall obtain approval from the Architectural Committee for the construction of a Residential Unit on his Lot and shall be required to commence construction within three (3) years following the transfer of title to the Lot to such Owner or on or before August 1, 1995, whichever is earlier. If an Owner fails to comply with the provisions of this Subsection, the Association shall have the option to purchase the Lot from the Owner for the same purchase price paid by the Owner. The option shall be exercised by the Association by delivering to the Owner a demand therefor, coupled with a request for a copy of the completed sale documents establishing the sale price. Within five (5) days after receipt of said demand, the Owner shall deliver such information to the Association and execute necessary documentation to open escrow. The exercise of this option shall not limit the Association's ability to enforce violation of this provision by any other right or remedy provided by law, including the imposition of fines in the sum of \$100.00 per day for each day the Lot Owner is in violation of this Section.

(B) Construction of a Residential Unit on a Lot shall be completed within one (1) year following approval from the Architectural Committee for construction of a Residential Unit and completion of the construction of the foundation of the Residential Unit, but in no event may construction of a Residential Unit on a Lot be completed any later than August 1, 1996. For purposes of this Subsection, the Residential Unit shall be deemed complete at such time as a Certificate of Occupancy or similar permit has been issued for the Residential Unit by the applicable governmental authority. If an Owner fails to complete construction of a Residential Unit on the Lot within the time required by this Subsection, the Owner shall pay to the Association, on demand, the sum of \$100.00 per day as a penalty for each day from the date on which the Residential Unit was required to have been completed under the terms of this Subsection and the date on which the Residential Unit is actually deemed completed.

III. Article 6, Section 6.4 of the Declaration is deleted in its entirety and amended as follows:

"6.4 Installation of Landscaping Improvements: Within one hundred twenty (120) days after the date on which the appropriate governmental entity or agency issues a Certificate of Occupancy or similar permit for a Residential Unit on a Lot or no later than December 1, 1996, whichever is earlier, the Owner of the Lot shall install grass, trees, plants and other landscaping improvements (together with a sprinkler system sufficient to adequately water the grass, trees, plants and other landscaping improvements) in that portion of his Lot which is between the street and exterior wall of his Residential Unit (the wall which separates the interior of the Residential Unit from the outside yard, patios and entry ways) or any wall separating the side or back yard of a Lot from the front yard of the Lot. The grass, plants, trees and other landscaping improvements shall be installed in accordance with the plans approved in writing by the Architectural Committee in accordance with Section 4.19 of the Declaration and the Architectural Committee Rules and shall comply with all applicable laws, ordinances, rules and regulations of any governmental entity or agency having jurisdiction over the project. If an Owner fails to complete the required landscaping within the time required by this Subsection, the Owner shall pay to the Association, on demand, the sum of \$100.00 per day for each day from the date on which the landscaping was required to have been completed under the terms of this Subsection and the date on which the landscaping is actually completed."

IV. All other provisions of the Declaration are unaffected by these Amendments.

IN WITNESS WHEREOF, the undersigned President of the Gilbert Heights Owners Association, a non-profit Arizona corporation, hereby certifies that the foregoing amendments have been approved and adopted as required by Article VIII, Section 8.4 of the Declaration, and that all requirements of said Amendment Section will be satisfied upon recordation of this Fifth Amendment.

GILBERT HEIGHTS OWNERS ASSOCIATION,
an Arizona non-profit corporation

By *Joseph R. Hampton*
President

STATE OF ARIZONA)
 :SS
County of Maricopa)

On this 11 day of April, 1997, before me, the undersigned Notary, personally appeared the President of the Gilbert Heights Owners Association, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he signed the same for the purposes therein contained.

Amy Lynn Berry
Notary Public

My Commission Expires:

5/4/2000

