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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
D'ARCY RANCH

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
D'ARCY RANCH

This Declaration of Covenants, Conditions and Restrictions for D'Arcy Ranch (the "Declaration") is made and entered into as of the 30th day of April, 1993, by D'Arcy Ranch Limited Partnership, a Washington limited partnership ("Developer").

RECITALS

A. Developer is the owner of that parcel of real property situated in Maricopa County, Arizona, more particularly described in Exhibit "A" hereto (the "Parcel").

B. Developer desires to create a planned residential community which will include common facilities for the benefit of the community.

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 are included within the term "Property" as defined in Section 1.26 hereof), to the covenants, conditions and restrictions herein set forth.

D. Developer desires to establish for its own benefit and for the mutual benefit of all future owners and occupants of the Property, and every part thereof, certain easements and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof.

E. 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 rights, easements, privileges, covenants and restrictions hereinafter set forth, 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 each owner thereof, and all of which are declared to be in furtherance of a plan to promote and protect the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

DECLARATIONS

NOW, THEREFORE, Developer, for the purposes above set forth, declares as follows:

1. Definitions.

Defined terms used in this Declaration have the first letter of each word in the term capitalized. Unless the context otherwise requires, defined terms shall have the following meanings:

1.1 "Articles" means the Articles of Incorporation for the Association, and any properly adopted amendments and supplements to them.

1.2 "Association" means D'Arcy Ranch Owners Association, an Arizona nonprofit corporation, its successors and assigns.

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

1.4 "Bylaws" means the Bylaws of the Association and any properly adopted amendments and supplements to them.

1.5 "Common Areas" means that portion of the Property owned by the Association, together with the improvements and facilities constructed thereon, which is not part of any Lot as shown on the Plat and which has not been dedicated to the public as a public street or otherwise.

1.6 "Constituent Documents" means this Declaration, the Articles of Incorporation and Bylaws of the Association, any rules and regulations of the Association, and all such other similar documents as pertain to the Project, together with any properly adopted amendments to any of them.

1.7 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for D'Arcy Ranch, as amended from time to time.

1.8 "Designated Builder" means any person or entity designated by Developer in writing engaged in the business of constructing and selling residences in the Property to the public and entitled to enjoy the privileges and benefits provided for in this Declaration.

1.9 "Developer" means the above-recited Developer or any person to whom Developer's rights hereunder are hereafter assigned in whole or in part by recorded instrument.

1.10 "Eligible Holder" means any First Mortgagee or Institutional Guarantor that requests notice of certain matters in accordance with Section 18.18 hereof.

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

1.12 "First Mortgagee" means the holder of the note secured by the 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.

1.13 "Fractional Interest" means that fraction, the numerator of which is one and the denominator of which is the total number of Lots then in the Project.

1.14 "Institutional Guarantor" means the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Federal National Mortgage Association ("FNMA"), 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.

1.15 "Lot" means each portion of the Property separately designated and described as a lot on the Plat, together with the improvements thereon.

1.16 "Majority of Owners" means the Owners holding more than 50% of the total weighted voting strength (irrespective of the total number of Owners); and, any specified fraction or percentage of Owners means the Owners holding that fraction or percentage of the total weighted voting strength (irrespective of the total number of Owners).

1.17 "Mortgage" means any recorded, filed or otherwise perfected instrument pertaining to a Lot (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, deeds of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

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

1.19 "Mortgagor" means the party executing a Mortgage as obligor.

1.20 "Occupant" means a person or persons, other than an Owner, in rightful possession of a Lot.



1.21 "Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Lot or Tract, whether or not subject to any Mortgage, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to a Lot or Tract is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., fee simple title shall be deemed to be in the trustor.

1.22 "Parcel" means the parcel of real estate hereinabove described, which is initially subjected to this Declaration.

1.23 "Person" means an individual, corporation, partnership, trustee or other legal entity.

1.24 "Plat" means the plat or plats of subdivision of the Property, recorded in the official records of Maricopa County, Arizona, and all amendments, supplements and correction thereto. Although any recorded plat may include real property in addition to the Parcel, the platting of such additional real property shall not in any way be deemed to subject the additional property to this Declaration or to obligate Developer to annex the additional property to the Project or to develop it in any particular manner.

1.25 "Private Yard" means that portion of a Lot other than the residential structure, which is enclosed or shielded from view by walls, fences, hedges or the like so that it is not generally Visible from Neighboring Property.

1.26 "Property" and "Project" are synonymous, and shall include the Lots, the Tracts, the Common Areas, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.27 "Public Yard" means that portion of a Lot other than the residential structure, which is generally Visible from Neighboring Property, whether or not it is located in front of, beside, or behind the residential structure.

1.28 "Record" or "recording" refers to the act of recording a document in the office of the County Recorder of Maricopa County, Arizona.

1.29 "Servicer" means the person or entity servicing a First Mortgage (including the First Mortgagee, if applicable), its successors and assigns, pursuant to the regulations of any interested Institutional Guarantor.

1.30 "Tract" means each contiguous area of real property within the Parcel (other than a Lot, the Common Area or any other property within the boundaries of a recorded subdivision) which is owned by the same Person.

1.31 "Visible from Neighboring Property" means capable of being clearly seen without artificial sight aids by an individual six feet tall standing at ground level on any Lot or on any public street in or abutting the Property.

2. Binding Covenants; Rights and Obligations.

Developer hereby submits and subjects the Property to the rights, easements, privileges, covenants and restrictions set forth in this Declaration, and hereby declares that all of the Property, including the Lots, the Tracts and Common Areas, shall be owned, leased, sold, conveyed and encumbered or otherwise held or disposed of subject to the terms, conditions and provisions of this Declaration. Each grantee of Developer, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each Person at any time hereafter owning or acquiring any interest in any part of the Property, accepts the interest subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. 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, binding upon any Person having any interest or estate in the land at any time, and inuring to the benefit of the grantee, purchaser or Person as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument whereby each such Person acquires an interest in the Property.

3. Property Rights and Rights of Enjoyment in the Common Areas.

3.1 Right of Enjoyment.

Subject to the provisions of Section 3.3, every Owner shall have a right and easement of enjoyment in and to the Common Areas. The easement shall be appurtenant to, and shall pass with the title to, every Lot or Tract. Except as to the Association's right to grant easements for utilities and similar and related purposes, as herein provided, 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 all First Mortgagees.

3.2 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 Area as 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.

### 3.3 Limitations.

The rights and easements of enjoyment created in this Declaration shall be subject to the following:

(a) The right of the Association, in accordance with this Declaration and the Articles and Bylaws of the Association, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage the properties of the Association; provided, however, that the consent of two-thirds of each class of Members shall be required prior to mortgaging or pledging any portion of the Common Areas;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure in the event of default upon any mortgage covering them;

(c) The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment and voting rights of any Owner or other Person for any period during which any assessment remains unpaid, and for any period not to exceed 30 days for any infraction of the Association's rules and regulations; provided, however, that no such suspension shall prevent reasonable access to a Lot or Tract across Common Areas; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility company 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 membership has been recorded, agreeing to the dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every owner at least 90 days in advance of any action being taken.

### 3.4 Delegation of Rights.

Any Owner of a Lot may delegate his rights of enjoyment in the Common Areas to the members of his family who reside upon the Property or to any Occupant of his Lot. The Owner shall notify the Association in writing of the name of any Person

to whom such rights of enjoyment are delegated if they are not immediate family living on the Owner's Lot and the relationship of the Owner to the authorized Person. The rights and privileges of any such Person are subject to suspension as provided in this Declaration or the Bylaws of the Association to the same extent as those of the delegating Owner, and are subject to such further regulation as the Association may provide in its Bylaws.

#### 4. Membership and Voting Rights in the Association.

##### 4.1 Association.

The Association has been, or will be, formed to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Areas, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles and the Bylaws. 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 this Declaration, the Articles and the Bylaws.

##### 4.2 Membership.

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 or Tract to which it appertains (and then only to the purchaser of the Lot or Tract) or by intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to the Lot or Tract (and then only to the Person to whom fee simple title is transferred). Notwithstanding the foregoing, if an Owner grants an irrevocable proxy or otherwise pledges or alienates his voting right regarding special matters to a Mortgagee as additional security, only the vote of the Mortgagee will be recognized in regard to the designated special matters if a copy of the proxy or other instrument pledging or alienating the Owner's vote has been filed with the Board. If more than one such instrument has been filed, the Board shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves. 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 or Tract fails or refuses to transfer the membership registered in his name to the purchaser of his Lot or Tract, 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.

4.3 Classes of Membership; Voting Rights of Classes.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners but, so long as any Class B memberships are outstanding, shall not include Developer. Each Class A member who is the Owner of one or more Lots shall be entitled to one vote for each Lot owned on each matter to be decided. Class A members shall not have any votes for any Tract owned by such member. When more than one Person holds an interest in any Lot, all such Persons shall collectively hold the voting rights for the Lot. The voting for such a Lot shall be exercised as they determine among themselves, but in no event shall the vote be split or more than one vote be cast with respect to any Class A Lot. If such Persons are unable to agree how their single vote is to be cast, their vote shall not be counted.

Class B. The Class B member shall be Developer. Until the entire Parcel has been subdivided, the Developer shall have 260 memberships in the Association. After the entire Parcel has been subdivided, the Developer shall have one membership for each Lot owned by the Developer. The Developer shall be entitled to three votes for each such 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) 120 days following the first date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or

(b) Five years following conveyance of the first Lot by Developer.

If any lender to whom Developer has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security succeeds to the interests of Developer by virtue of the assignment, the Class B memberships shall not be terminated, and the lender shall hold the Class B memberships on the same terms as they were held by Developer.

#### 4.4 Association Board of Directors.

The Board of the Association shall initially be comprised of the individuals specified in the Association's Articles of Incorporation. The terms of office of the members of the Board shall be staggered as provided in the Articles and Bylaws. Each Board member shall serve until his successor is elected and qualified at the next annual meeting of the Association at which vacancies in his group of members is filled or upon his resignation or removal from office, as the case may be. Developer shall appoint the members of the Board until the first annual meeting of the Association after the date that Class B memberships are converted to Class A memberships. Except for the Initial Board and Board members elected or appointed by Developer, each director shall be an Owner or the spouse of an Owner (or, if an Owner is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of the Owner). If a director ceases to meet these such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant. Vacancies on the Board caused by any reason shall be filled by a vote of the majority of the remaining Board members though less than a quorum, or by the remaining Board member if there is only one, and each person so elected shall be a Board member until his successor is duly elected and qualifies. A Board member may be removed from office as provided in the Articles or Bylaws. Except for directors elected or appointed by Developer, directors shall be elected in the manner and at the times set forth in the Articles or Bylaws.

#### 4.5 Board's Determination Binding.

In the event of any dispute or disagreement between any Owners or other Persons relating to the Project, or any question of interpretation or application of the provisions of this Declaration, the Articles, Bylaws or rules and regulations of the Association, the determination by the Board shall be final and binding on each and all of such Owners or other Persons (subject to any contrary determination by a court of competent jurisdiction).

#### 4.6 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, members and other interested Persons not inconsistent with law, this Declaration or the regulations of any interested Institutional Guarantor.

#### 4.7 Indemnification.

The Association shall indemnify any and all of its directors and officers, and former directors and officers, against

expenses incurred by them, including legal fees, or judgments or penalties rendered or levied against any such person or entity in a legal action brought against any such person or entity for acts or omissions alleged to have been committed by any such person or entity while acting within the scope of his or its authority as a director or officer of the Association, or exercising the powers of the Board, provided that the Board shall determine in good faith that such person or entity did not act, fail to act, or refuse to act with gross negligence or with wrongful, fraudulent or criminal intent in regard to the matter involved in the action. Notwithstanding anything to the contrary expressed herein, the Board shall have the right to refuse indemnification as to expenses in any instance in which the person or entity to whom indemnification would otherwise have been applicable shall have incurred expenses without approval by the Board which are excessive and unreasonable in the circumstances and are so determined by the Board, and as to expenses, judgments, or penalties in any instance in which such person or entity shall have refused unreasonably to permit the Association, at its own expense and through counsel of its own choosing, to defend him or it in the action or to compromise and settle the action. The Association shall also indemnify the employees and direct agents of the Association in the same manner and with the same limitations as provided above with respect to directors and officers. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such directors, officers or agents may be entitled.

#### 4.8 Easements.

In addition to the blanket easements granted in Section 5 below, the Board is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other public or private utility purposes as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot or Tract resulting from such a grant shall be repaired by the Association at its expense.

#### 4.9 Accounting.

The Board, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, together with recent financial statements (which are audited or unaudited, as determined by the Board). The Board shall make such books and record available for the inspection of all Owners, First Mortgagees and Institutional Guarantors, upon request, during normal business hours or other reasonable times. Required books and records shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise. The Board may impose a

reasonable charge for copies of any such books or records requested by any Owner, First Mortgagee or Institutional Guarantor.

#### 4.10 Constituent Documents.

The Board, at all times, shall keep, or cause to be kept, current copies of the Constituent Documents, together with any amendments thereto, and shall make such documents available for the inspection of all Owners, First Mortgagees and Institutional Guarantors, upon request, during normal business hours or other reasonable times. The Board may impose reasonable charges for copies of any Constituent Documents requested by any Owner, First Mortgagee or Institutional Guarantor.

#### 4.11 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.

### 5. Blanket Easements and Use of Common Areas.

#### 5.1 Creation of Easement.

There is hereby created a blanket easement upon, across, over and under the Common Areas for ingress and egress, installing, constructing, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, gas, telephone, electricity, 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 the providing governmental agency or utility company to erect and maintain necessary facilities and equipment on the Common Areas. Notwithstanding anything to the contrary contained in this Section 5, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated on the Common Areas except as initially created and approved by Developer or thereafter created or approved by the Board. This provision shall in no way affect any other recorded easements on the Property.

#### 5.2 General Use Rights.

Except for the use limitations provided in Section 9, each Owner shall have the non-exclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and use, occupancy and enjoyment of, the respective Lot



or Tract owned by the Owner. The right to use the Common Areas shall extend to each Owner and Occupant and the agents, servants, tenants, family members and invitees of each Owner. The right to use and possess the Common Areas shall be subject to and governed by the provisions of this Declaration, the Articles, Bylaws, and rules and regulations of the Association and such reasonable limitations and restriction as may, from time to time, be contained therein.

### 5.3 Wall Easement.

There is hereby created an easement upon, over and across each Lot and Tract within the Property which is adjacent to the perimeter boundaries of the Project for reasonable ingress, egress, installation, replacement, maintenance and repair of a Project perimeter wall located on the easement. The easement created by this Section 5.3 shall be in favor of Developer and Designated Builders and appurtenant to the portions of the Project owned by them at any time, as well as in favor of the Association and those Owners whose Lots or Tracts are subject to the easement.

### 6. 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. Any agreement for professional management, or any other contract providing for services of Developer or any other party, shall not provide for compensation to the managing agent or other contracting party in excess of those amounts standard within the community in which the Project is located, nor exceed a term of one year, but the term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon 60 days' written notice; provided, however, that the Association may also terminate the agreement for cause upon 30 days' written notice. Any decision by the Association to terminate professional management after it has begun and assume self-management of the Project shall not be effective until approved in writing by three-fourths of the Owners and of the First Mortgage Mortgagees (based upon one vote for each Mortgage owned).

### 7. Common Expenses.

#### 7.1 Assessments for Common Expenses.

Except as otherwise specifically provided herein, each Owner of a Lot, including Developer and each Designated Builder so long as it is an Owner of a Lot, shall pay his proportionate share of the expenses of the administration, maintenance and operation of the Common Areas and of any other expenses incurred in conformance with this Declaration, the Articles, Bylaws

and rules and regulations of the Association (which expenses are herein sometimes referred to as "Common Expenses"), including specifically, but not by way of limitation, insurance, maintenance and repair of the Common Areas (and any and all replacements and additions thereto), water, electricity and other utilities provided to the Project, and establishment and maintenance of such reasonable reserves for contingencies, replacements and other proper purposes as the Board may from time to time elect to establish and maintain in its sole discretion. Common Expenses may, if so determined by the Board, include such amounts as are determined by the Board for the establishment and maintenance of such a reserve fund. Reserve funds may also be funded and derived by means of a special assessment levied in accordance with Section 7.8. The proportionate share of the Common Expenses for each Owner of a Lot shall be in the same ratio as his Fractional Interest. Notwithstanding anything foregoing to the contrary, so long as any Class B memberships in the Association are outstanding, Developer may elect to pay for Lots owned by Developer an amount equal to one-quarter of the amount otherwise payable hereunder as such Lots' share of the Common Expenses in the absence of this proviso. Developer may make the election provided for in the preceding sentence for any budget year by giving the Association written notice prior to the commencement of the budget year; provided, however, that Developer may make such an election for the first budget year of the Association by giving notice prior to sale and conveyance of the first Lot by Developer or the commencement of the budget year, whichever is later. An election for reduced assessments made by Developer as provided herein shall remain in effect until it is rescinded by written notice to the Association or Class B memberships in the Association cease to be outstanding, in which event the reduced assessments shall terminate and full assessments shall be payable as of the commencement of the next following budget year. In the event that Developer makes the election for reduced assessments provided for herein, Developer shall be obligated to pay, in addition to assessments, any 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 of Lots (including Developer at the reduced rate). 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.

## 7.2 Commencement.

Assessments for Common Expenses provided herein shall commence for all Owners of Lots, including Developer and any Designated Builders, upon the sale and delivery of the first Lot with a completed residence on it by Developer or a Designated Builder. Any sale and simultaneous leaseback of a model residence for use in marketing shall not constitute a sale of the residence

for purposes of the preceding sentence so long as the model continues to be used for marketing rather than residential purposes.

### 7.3 Payment and Liens.

Except as otherwise provided herein, payment of Common Expenses shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Board in accordance with Section 7.6 hereof. Such payments and special assessments hereunder, together with interest at the annual rate of 18% (or such lesser rate as the Board may select from time to time but in no event in excess of the maximum lawful rate or the maximum rate allowed under applicable requirements of Institutional Guarantors) on sums due but unpaid, costs (including, but not limited to, collection costs), reasonable attorneys' fees, such reasonable late charges as the Board may impose by rule or regulation, and such reasonable fines, penalties and/or charges as the Board may impose by rule or regulation for infractions of the Declaration or the Association rules or regulations, shall constitute the personal obligation of the Person who was the Owner at the time the payment fell due. The personal obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by him. If any Owner fails or refuses to make any payment of Common Expenses when due, the amount thereof, together with interest, costs, reasonable attorneys' fees and any late charges, shall constitute a lien from the date the amount was due on the Owner's Lot and on any rents or proceeds therefrom. The lien shall be subordinate to the lien of a First Mortgage on the Lot, except for the amount of the unpaid Common Expenses which accrues from and after the date on which the First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto). If any lien for unpaid assessments prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which the First Mortgagee came into possession of or acquired title to the Lot, the First Mortgagee shall not be liable for accrued unpaid assessments and, upon written request to the Board by the First Mortgagee, the lien shall be released in writing by the Association to the extent of any such prior assessments.

### 7.4 Certificate of Payment.

Any Person acquiring an interest in Lot shall be entitled to a statement from the Association setting forth the amount of unpaid assessments, if any. No Person shall be liable for, nor shall any lien attach to a Lot in excess of, the amount set forth in such a statement, except for assessments which occur or become due after the date thereof and any interest, costs, reasonable attorneys' fees and late charges related to the

assessments. The Association may charge a reasonable fee for the preparation of any such statement.

7.5 Foreclosure of Lien.

The lien provided for in this Section may be foreclosed by the Association in any manner provided or permitted for the judicial foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 7 relating to the lien provided for herein (including, but not limited to, the subordination provisions) shall apply with equal force in each other instance provided for in this Declaration 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 7.

7.6 Budget.

Not later than 60 days prior to the beginning of each fiscal year of the Association, the Board shall prepare, or cause to be prepared, a pro forma annual budget for the Association for the upcoming fiscal year. The budget shall take into account all Common Expenses, and, to the extent that assessments from the prior year(s) have been more or less than the expenditures and provision for reserves of such prior year(s), the surplus or deficit. If, during the course of any fiscal year, or portion thereof, it appears that the assessments determined in accordance with the estimated annual budget are insufficient to cover the actual Common Expenses, or are in excess of the amount necessary to cover the actual amount necessary for payment of Common Expenses, then the Board may prepare a supplemental budget and increase or decrease the assessment as may be necessary, subject, however, to the limitations set forth in Section 7.7.

7.7 Maximum Assessments.

Prior to January 1 of the year following the first conveyance of a Lot with a completed residence on it by Developer or a Designated Builder to an Owner, the maximum amount which any Owner shall be required to pay as his proportionate share of the Common Expenses may not exceed \$240.00 per year. Notwithstanding the provisions of Section 7.6, prior to January 1 of the year immediately following conveyance of the first Lot with a completed residence on it by Developer or a Designated Builder to an Owner, 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. From and after this January 1, the maximum amount which each Owner may be required to pay as his proportionate share of the Common Expenses may be increased each year by the Board to an amount not in excess of the sum of: (i) the amount of the assess-

ment due and payable by an Owner as his proportionate share of Common Expenses for the preceding year, plus the greater of (ii) an amount equal to 10% of the assessment due and payable by the Owner for the preceding year, or (iii) an amount equal to the percentage change in the Consumer Price Index - United States City Average for Urban Wage Earners and Clerical Workers - All Items (1967 = 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 assessment due and payable by the Owner for the preceding year. Notwithstanding the foregoing, 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 7.7.

#### 7.8 Special Assessments.

If the Board determines that the estimated total amount of funds collected from regular assessments for a given fiscal year is or will be inadequate to meet Common Expenses for any reason (including, but not limited to, costs of construction, unexpected repairs, additions or replacements of improvements in Common Areas, increases in taxes, or increases in the costs of insurance or any other obligation of the Association), the Board may, with the consent of two-thirds of each class of Members of the Association, levy a special assessment against all Owners to the extent necessary to make up the deficiency. The amount of the required special assessment shall be determined by the Board, in its sole discretion. The special assessment shall be levied against the Owners of Lots in the same proportion as their Fractional Interests. The special assessment shall be payable at such time or in installments from time to time, as the Board may determine. The special assessments provided for herein shall be secured by the lien provided in this Section 7 of the Declaration. Special assessments approved by the Members as provided in this Section 7.8 shall not be subject to the limitations of Section 7.7 of the Declaration.

7.9 No Assessment Against Owners of Tracts. No annual or special assessment shall be levied against the Owners of Tracts.

#### 8. Mortgages.

Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his Lot or Tract. 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 or Tract.

9. Exclusive Use Rights.

By action of the Board, minor portions of the Common Areas adjoining a Lot may be reserved for the exclusive control, possession and use of the Owner of the Lot. If such an area serves as access to and from two Lots, the Owners of the two Lots shall have joint control, possession and use of the area as reasonably serves both Lots. The exclusive use rights created herein are subject to the blanket utility easement, maintenance and architectural control provisions contained in this 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 creation of such exclusive control and use of each such area. Each Owner, by accepting title to a Lot, shall be deemed to have further ratified the easements and rights to exclusive use created by this Section 9.

10. Insurance.

Insurance shall be carried by the Association on the Common Areas and the activities of the Association and shall be governed by the following provisions:

10.1 Authority to Purchase.

The Association, by and through the Board, shall purchase and maintain certain insurance upon the Common Areas and the activities of the Association including, but not limited to, the insurance described in Section 10.2. Provision shall be made for the issuance of certificates of endorsement to any First Mortgagee if requested by it. Such policies and endorsements thereon, or copies thereof, shall be deposited with the Association. The Board shall deliver a copy of certificates of insurance evidencing the Association's coverage or, by and through its agent, advise the Owners of the coverage of the policies, to permit the Owners to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured by the Association. The Board may impose a reasonable charge for copies of insurance certificates or policies requested by any Owner. Without limiting the generality of the foregoing, it shall be each Owner's responsibility to provide for himself insurance on the contents of any dwelling or other structure constructed on his Lot or Tract, his additions and improvements thereto, decorating therein and furnishings and personal property therein, his personal property stored elsewhere on the Property, his personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the Common Expenses as above provided, and such other insurance which is not carried by the Association as the Owner desires. No Owner shall maintain any insurance on his Lot or Tract which would limit or reduce the insurance proceeds payable under the casualty

insurance maintained by the Association in the event of damage to the improvements or fixtures in the Property.

10.2 Coverage.

The Association shall maintain and pay for policies of insurance as follows:

(1) Policies of a multi-peril type covering the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use including, but not limited to, sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, and windstorm and water damage, in an amount not less than 100% of the insurable value (based upon replacement cost as determined at least once every two years by a qualified insurance appraiser selected by the Board), and, if available, agreed amount, inflation guard and construction code endorsements.

(2) A comprehensive policy of public liability insurance covering all of the Common Areas and public ways in the Project in a minimum amount of at least \$1,000,000.00 per occurrence for personal injury, deaths and/or property damage. This insurance policy shall contain 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 and its agents or other Owners. The scope of coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use including, but not limited to, liability of the Association related to employment contracts of the Association, water damage liability, liability for non-owned and hired automobiles, and liability for property of others.

(3) If there is ever a steam boiler in operation in connection with the Project, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing, as minimum coverage, \$100,000.00 per accident per location.

(4) If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in an amount not less than 100% of the insurable value, based upon replacement cost, or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. Such a flood insurance policy shall be in the form of

the standard policy issued by the National Flood Insurance Association.

(5) The Association must obtain 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 person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(6) A worker's compensation policy, if necessary to meet the requirements of law.

(7) Such other insurance as the Board shall determine from time to time to be desirable.

(8) 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.

### 10.3 Provisions Required.

The insurance policies purchased by the Association shall, to the extent reasonably possible, contain the following provisions:

(1) The coverage afforded by policies shall not be brought into contribution or proration with any insurance which may be purchased by Owners or First Mortgagees.

(2) The conduct of any one or more Owners shall not constitute grounds for avoiding liability on any policies.

(3) There shall be no subrogation with respect to the Association, its agents or employees, Owners and members of their household and their families and employees, and each Mortgagee of all or any part of the Property or of any Lot, or the policy(ies) should name such people as additional insureds; and, each policy must contain a waiver of any