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**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR PONDEROSA ESTATES TOWNHOUSES NO. 1**

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR PONDEROSA ESTATES TOWNHOUSES NO. 1 (this "Declaration of CC&Rs") is made this 25 day of August, 2004, by the owners (the "Owners") of the real property described as:

Lots 1-69 and Common Area "A" of PONDEROSA ESTATES TOWNHOUSES NO. 1, as shown on that certain plat recorded in the office of the Pima County Recorder in Book 30 of Maps and Plats at page 62; said property is a resubdivision of part of Lot 16 of Haynes Rillito Subdivision as recorded in Book 3, page 8 of Maps and Plats, Pima County, Arizona (Reference No. 12,365)

(the "Properties").

WITNESSETH:

WHEREAS, the developers of the Properties and the subsequent owners of lots within the Properties executed and recorded the following instruments which together shall be referred to herein as the "Superseded Declaration":

1. *Declaration of Covenants, Conditions and Restrictions* for Ponderosa Estates Townhouses No. 1, as recorded in the records of Pima County, Arizona ("Records") in Book 5949, Pages 824, *et seq.*

2. *Amendment to the Declaration of Covenants, Conditions and Restrictions* for Ponderosa Estates Townhouses No. 1, as recorded in the Records in Book 5988, Pages 1240, *et seq.*

3. *Amended Declaration of Covenants, Conditions and Restrictions* for Ponderosa Estates Townhouses No. 1, as recorded in the Records in Book 6031, Pages 242, *et seq.*

4. *Correction and Amendment Declaration of Covenants, Conditions and Restrictions* for Ponderosa Estates Townhouses No. 1, as recorded in the Records in Book 6415, Pages 218, *et seq.*

5. *Third Amendment to Declaration of Covenants, Conditions and Restrictions*, as recorded in the Records in Book 7024 at Pages 1215, *et seq.*

1 4. *Amendment to Third Amendment to Declaration of Covenants, Conditions and*
2 *Restrictions for Ponderosa Estates Townhouses No. 1, as recorded in the Records in Book 10861,*
3 *Pages 2798, et seq.*
4

5 **WHEREAS**, in accordance with the applicable requirements, Owners of at least two-
6 thirds (2/3) of the Lots, voting in person, by proxy, or by written ballot [with one vote per
7 Lot] have approved the amendment and restatement of all applicable covenants, conditions
8 and restrictions of record affecting the Properties, and intend that such amendment and
9 restatement shall supersede all prior covenants, conditions and restrictions of record.
10

11 **NOW THEREFORE**, the Owners hereby declare that the Properties are and shall
12 be held, conveyed, encumbered, leased, and used subject to the following covenants,
13 conditions, uses, restrictions, limitations, obligations, easements, equitable servitudes,
14 charges and liens (hereinafter collectively referred to as the "Restrictions"), all of which are
15 for the purpose of enhancing and protecting the value, desirability and attractiveness of
16 the Properties. The Restrictions set forth herein shall run with the Properties, shall be
17 binding upon all persons having or acquiring any interest therein, and shall inure to the
18 benefit of, be binding upon and enforceable by all Owners, the Association and their
19 successors in interest.
20

21 **ARTICLE I** 22 **DEFINITIONS**

23 The following words, phrases or terms used in this Declaration of CC&Rs shall have
24 the following meanings, unless the context otherwise specifies or requires:
25

26 **1.1 "Annual Assessments"** are those assessments which are levied by the
27 Association and used to promote the recreation, health, safety and welfare of the Members,
28 their families and guests, for the improvement of the Common Areas and for all other
29 purposes set forth in the Articles, Bylaws, this Declaration of CC&Rs and all applicable
30 laws.
31

32 **1.2 "Articles"** shall mean the Articles of Incorporation of the Association and any
33 amendments which have been filed in the office of the Arizona Corporation Commission.
34

35 **1.3 "Assessment Lien"** means a lien recorded at the direction of the Board of
36 Directors against any Lot for the non-payment of Assessments, or any other sums due to
37 the Association, including late fees, interest, fines, attorneys' fees and any other collection
38 costs.
39

40 **1.4 "Association"** shall mean and refer to PONDEROSA HOMEOWNERS
41 ASSOCIATION NO. 1, its successors and assigns.
42

43 **1.5 "Board"** shall mean the Board of Directors of the Association.
44

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

1.7 "Common Area" or "Common Areas" shall mean all real property owned by the Association.

1.8 "Declaration of CC&Rs" shall mean and refer to this instrument and any amendment thereto or restatement thereof.

1.9 "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot" (as hereinafter defined).

1.10 "Dwelling Unit" or "Unit" shall mean any improvements placed within the confines of any "Lot."

1.11 "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust, or other security instrument on any of the Properties, which is recorded in the office of the Recorder of Pima County, Arizona, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.12 "First Mortgagee" shall mean and refer to any person or entity named as a Mortgagee or Beneficiary under any first mortgage or any successors in interest of any such person or entity under such first mortgage.

1.13 "Governing Documents" refer to this Declaration of CC&Rs, the Articles of Incorporation, the Bylaws of the Association and any Rules and Regulations promulgated by the Board of Directors.

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

1.15 "Lot," unless otherwise indicated by the context herein, shall first mean and refer to any parcel of land upon which one Dwelling Unit is located, together with the Dwelling Unit and any other improvements thereon.

1.16 "Member" shall mean and refer to every person who holds membership in the Association pursuant to Section 2.1 hereof.

1.17 "Owner" shall mean and refer to (1) the record owner, whether one or more persons, 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, or (2) the purchaser of a Lot under a recorded contract for the sale of real property as set forth in Arizona Revised

1 Statutes Section 33-741 *et seq.* The foregoing does not include persons or entities who hold
2 an interest in any Lot merely as security for the performance of an obligation, or a lessee
3 or tenant of an Owner as defined above, or a purchaser or vendee under any executory
4 contract of sale which has not been fully consummated with a deed to the purchaser
5 recorded in the office of the County Recorder of Pima County, Arizona.
6

7 **1.18 "Person"** shall mean a natural individual, corporation or other entity with
8 the legal right to hold title to real property.
9

10 **1.19 "Plat"** shall mean the plats of the real estate that is subject to this Declaration
11 of CC&Rs recorded in the office of the County Recorder of Pima County, Arizona, any
12 amendment thereto or resubdivision thereof.
13

14 **1.20 "Properties"** shall mean and refer to Lots 1-69 and Common Area "A" of
15 PONDEROSA ESTATES TOWNHOUSES NO. 1, as shown on that certain plat recorded in
16 the office of the Pima County Recorder in Book 30 of Maps and Plats at page 62; said
17 property is a resubdivision of a portion of Lot 16 of Haynes Rillito Subdivision, as recorded
18 in Book 3 of Maps and Plats at Page 8, Pima County, Arizona (Reference No. 12,365).
19

20 **1.21 "Restrictions"** shall mean the covenants, conditions, restrictions, uses,
21 limitations, obligations, easements, equitable servitudes, charges and liens set forth in this
22 Declaration of CC&Rs.
23

24 **1.22 "Rules and Regulations"** shall mean any and all policies and procedures
25 adopted by the Board which govern the conduct and actions of owners, tenants, visitors
26 and guests on the Properties not otherwise covered in this Declaration of CC&Rs.
27

28 **1.23 "Single Family"** shall mean a group of one or more persons each related to
29 the other by blood, marriage, or legal adoption, or a group of not more than three (3)
30 unrelated persons who maintain a common household in a Dwelling Unit.
31

32 **1.24 "Streets"** shall mean all areas provided for motor vehicular traffic, whether
33 dedicated or not, within the Properties.
34

35 **1.25 "Vehicle"** shall mean automobiles, trucks, vans, campers, trailers, self-
36 contained motor homes, motorcycles, dune buggies, golf carts, bicycles, tricycles, trailers
37 of all types (motorized or not), and all other wheeled modes of transportation whether they
38 be self-propelled or not.
39

40 **1.26 "Visible from Neighboring Property"** shall mean, with respect to any given
41 object, that such object is or would be visible to a person six feet (6') tall, standing at ground
42 level on any part of such neighboring property.
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ARTICLE II
ASSOCIATION

2.1 Membership in the Association. Each Owner of a Lot, by virtue of being an Owner, shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to each Lot owned and shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership to a Lot, and then only to the transferee thereof. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Owner thereof. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

2.2 Voting Rights. Each Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners may determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned.

2.3 Suspension of Voting Rights. The Association may suspend the voting rights of any Member for any period during which any assessment against his or her Lot remains unpaid and delinquent, and for a period when the Board determines that member is in violation of this Declaration of CC&Rs, the By-Laws or the Rules of the Association.

2.4 Purpose of Association. The Association is a non-profit corporation which will serve as the governing body for all Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration of CC&Rs, the Articles, the By-Laws and the Rules.

2.5 Rights and Responsibilities of Association. The Association, through the Board of Directors, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall be responsible for the proper and efficient management and operation of the Common Area and any other areas for which it is responsible under the terms of this Declaration of CC&Rs or for which it has assumed responsibility, including:

2.5.1 operating, maintaining, repairing, rebuilding and insuring improvements on the Common Area;

2.5.2 maintaining and landscaping property owned or controlled by the Association, including streets, sidewalks, easements, mailboxes, and street identification signs and street lighting now installed or subsequently authorized by the Board.

2.5.3 paying real estate taxes, assessments, and other charges on the Common Area;

1 2.5.4 insuring all improvements which the Association is obligated to insure
2 against damage by casualty with such companies and in such limits as provided herein and
3 as the Board deems appropriate;
4

5 2.5.5 hiring, firing, supervising and paying employees and independent
6 contractors including, but not limited to, property managers, workmen, landscapers,
7 attorneys, accountants, architects and any other contractors to carry out the obligations set
8 forth herein;
9

10 2.5.6 maintaining such liability insurance as the Association deems
11 necessary to protect the Members and the Board of Directors of the Association from any
12 liability caused by occurrences or happenings on or about the Common Area;
13

14 2.5.7 purchasing all goods, supplies, labor and services reasonably
15 necessary for the performance of the obligations set forth herein;
16

17 2.5.8 establishing and maintaining such adequate cash reserves as the
18 Association may, in its sole and absolute discretion, deem reasonably necessary for the
19 periodic maintenance, repair and replacement of the improvements which it is responsible
20 to maintain;
21

22 2.5.9 providing for and payment of all utility services for the Common Area,
23 including trash collection and recycling services, if deemed appropriate by the Board;
24

25 2.5.10 granting licenses, easements and other agreements for the use of
26 Common Area;
27

28 2.5.11 maintaining any personal property owned by the Association;
29

30 2.5.12 entering into such agreements and taking such actions as are
31 reasonably necessary and convenient for the accomplishment of the obligations set forth
32 above and the operation and maintenance of the Properties as a first-class, residential
33 development; and
34

35 2.5.13 such other matters as are provided for in this Declaration of CC&Rs,
36 the Articles of Incorporation, the By-Laws and pertinent laws.
37

38 **2.6 Articles and By-Laws.** The manner in which the Association holds meetings
39 and attends to other corporate formalities shall be controlled by the provisions of the By-
40 Laws, the Articles and this Declaration of CC&Rs, which Declaration shall control in the
41 event of conflict.
42

43 **2.7 Rules and Regulations of the Association.** The Board is empowered to
44 adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate

(collectively, the "Rules"), which shall be binding upon all persons subject to this Declaration of CC&Rs and shall govern the use or occupancy of the Properties. The Rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area and the implementation of dispute resolution procedures for disputes between Owners or between any Owner and the Association. The Rules may be adopted, amended or repealed at any special or regular meeting of the Board upon a vote of two-thirds of all the Directors.

The Rules are deemed incorporated herein by this reference, and shall have the same force and effect as if they were set forth in and were part of this Declaration of CC&Rs, and shall be binding upon all persons having any interest in, or making any use of, any part of the Properties, whether or not copies of the Rules are actually received by such persons. References to the covenants and restrictions contained herein shall be deemed to refer also to the Rules (except to the extent the Rules are in conflict herewith). The Rules, as adopted, amended or repealed, shall be available for review, at the principal office of the Association, to each person reasonably entitled thereto. It shall be the responsibility of each person subject to the Rules to review and keep abreast of any changes in the provisions thereof. In the event of any conflict between any provision of the Rules and any provisions of this Declaration of CC&Rs, or the Articles or By-Laws, the provisions of the Rules shall be deemed to be superseded by the provisions of this Declaration of CC&Rs, the Articles or By-laws to the extent of any such conflict.

2.8 Managing Agent. All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management shall not exceed a term of one year, which 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 ninety (90) days' written notice; provided, however, that the Association may terminate the agreement for cause upon thirty (30) days' written notice.

2.9 Conflict Among Governing Documents. In the event of any dispute or disagreement between any Owners or any other persons subject to this Declaration of CC&Rs relating to the Properties, or any question of interpretation or application of the provisions of this Declaration of CC&Rs, the Articles, By-Laws or Rules, this Declaration of CC&Rs shall control.

2.10 Records and Accounting. The Association shall keep or cause to be kept, true and correct books and records of account, at the sole cost and expense of the Association, in accordance with generally-accepted accounting principles. Such books and records, together with current copies of this Declaration of CC&Rs, the Articles, By-Laws and Rules shall be available for inspection by all Owners and First Mortgagees of record at reasonable times during regular business hours.

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ARTICLE III
COVENANTS FOR ASSESSMENTS

3.1 **Creation of the Lien and Personal Obligation to Pay Assessments.** Each Owner, upon the recordation of a deed to any Lot, whether or not it shall be so stated in such deed, agrees and covenants to pay to the Association: (1) Annual Assessments or charges, (2) Special Assessments, and (3) Reimbursement Assessments. These assessments shall be established and collected as provided in this Article. All assessments levied against a Lot, together with interest from the date of delinquency until paid, late fees, costs and reasonable attorneys fees, shall be charged against the Lot and shall be a continuing lien upon the Lot.

Delinquent assessments, together with interest, late fees, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was levied, and shall bind his or her heirs, devisees, personal representatives and assigns. Except as otherwise provided herein, the personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

3.2 **Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used to promote the health, safety, and welfare of the Members and their guests; for the improvement and maintenance of the Common Areas; for the payment of all expenses and charges which are the responsibility of the Association; and for all other purposes set forth in the Association's governing documents. The Board of the Association may provide that assessments include a reserve fund for maintenance, repairs and replacement of those elements of the Common Area owned by the Association.

3.3 **Annual Assessment.**

3.3.1 **Annual Assessment.** The Board of Directors shall determine the amount of the annual assessment, based upon the operating budget of the Association, including appropriate reserves. If the annual assessment is the same as the prior year's or will increase in an amount ten percent (10%) or less over the prior year's, the approval of the Owners is not required. Otherwise, the approval of a majority of the Owners present at an Annual or Special Meeting of the Association (at which a quorum is present) or voting by mail-in ballot, will be required.

3.3.2 **Notification to Owners of Annual Assessments.** The Board shall provide notice to the Owners of the amount of the Annual Assessment with the annual budget, as provided in 3.3.3 below. The Board of Directors may determine that the Annual Assessment is payable in equal monthly installments or on any other periodic basis.

3.3.3 **Budgeting.** Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available

1 to each Member, a budget containing: (1) estimated revenue and expenses; (2) the amount
2 of total cash reserves of the Association currently available for replacement or repair of the
3 Common Area and other pertinent areas, and for contingencies; and (3) a general statement
4 setting forth the procedures used by the Board in the calculation and establishment of
5 reserves to defray the costs of repair, replacement or additions to major components of the
6 Common Area or other areas for which the Association has responsibility. The total
7 amount needed to fund the annual budget shall be charged equally against all Lots as
8 Annual Assessments, subject to any limitations set forth in the Governing Documents. The
9 Board shall prepare and approve the annual budget and distribute a copy thereof to each
10 Lot Owner, together with written notice of the amount of the Annual Assessment to be
11 levied against the Owner's Lot, not less than fifteen (15) days nor more than sixty (60) days
12 prior to the beginning of the fiscal year. The Board of Directors is expressly authorized to
13 adopt and amend budgets for the Association, and no ratification of any budget by the Unit
14 Owners shall be required.
15

16 3.3.4 Non-Waiver of Assessments. If before the expiration of any fiscal year
17 the Association fails to fix Annual Assessments for the next fiscal year, the Annual
18 Assessment established for the preceding year shall continue until a new Annual
19 Assessment is fixed.
20

21 3.4 Special Assessments. Special Assessments may be levied by the Board of
22 Directors, in addition to the Annual Assessment for (A) constructing capital improvements;
23 (B) correcting an inadequacy in the current operating account; (C) defraying, in whole or
24 in part, the cost of any construction, reconstruction, unexpected repair or replacement of
25 improvements in the Common Areas; or (D) paying for such other matters as the Board
26 may deem appropriate for the Properties. Special Assessments shall be approved by a vote
27 of a majority of the Members who are voting in person or by proxy at the Annual Meeting
28 or at a Special Meeting duly called for this purpose (at which a quorum is present).
29

30 3.5 Reimbursement Assessments. The Association shall levy a Reimbursement
31 Assessment against any Owner if that Owner, his family member, tenant, guest or invitee,
32 has failed to comply with the Association's Governing Documents, which failure has (A)
33 necessitated an expenditure of money by the Association to bring the Owner or his/her Lot
34 into compliance; (B) caused damage to the Common Areas; or (C) resulted in the
35 imposition of a fine or penalty. A Reimbursement Assessment shall not be levied by the
36 Association until notice and an opportunity for a hearing has been given to the Owner.
37 Reimbursement Assessments may be enforced in the same manner as Annual Assessments.
38

39 3.6 Uniform Rate of Assessment. Except as otherwise provided in this
40 Declaration of CC&Rs, all assessments must be fixed at a uniform rate for all Lots and may
41 be collected on any periodic basis, as the Board may determine.
42

Unless otherwise provided by the Board of Directors, the Annual Assessments provided for herein shall be paid in monthly installments, due on the first day of each month.

3.8 Effect of Non-Payment of Assessments; Remedies of the Association. If any assessment is not paid within fifteen (15) days of its due date, a late fee and interest may be charged, in an amount to be determined by the Board of Directors. If a check tendered for any assessment is returned as unpaid for any reason, a penalty shall be assessed, as determined by the Board of Directors. If an Owner is delinquent in paying any Annual Assessment installment, the entire balance of such Annual Assessment shall become immediately due and payable, at the option of the Board of Directors. In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of any Owner to pay the Assessments in any manner provided by law or in equity, or without any limitation to the foregoing, or by either or both of the following procedures:

3.8.1 Lawsuit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against any Owner who is personally obligated to pay delinquent assessments. Any judgment obtained in the Association's favor shall include the amount of the delinquent assessments, interest and late fees; any additional charges incurred by the Association; and any other amounts the court may award, including reasonable attorneys' fees and court costs. A proceeding to recover a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the Association's lien.

3.8.2 Enforcement of Lien. As provided in 3.1 above, all assessments, plus late fees, interest and costs connected therewith, shall be a continuing lien upon the Lot assessed. Such lien shall be deemed to have attached as of the date of recordation of this Declaration of CC&Rs, and shall be senior to all matters other than tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal or other governmental assessing unit, reservations in patents, and the lien of any First Mortgage.

3.8.2.1 Notice and Claim of Lien. At any time after occurrence of any default in the payment of any Assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment by the defaulting Owner. Said demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for demand but any number of defaults may be included within a single demand. The Association may, whether or not such a written

1 demand is first made, file and record a claim of lien on behalf of the Association against the
2 Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by
3 any officer or duly-authorized agent of the Association, recorded in the office of the County
4 Recorder of Pima County, and shall contain substantially the following information:

- 5
- 6 (a) The name of the delinquent Owner;
- 7 (b) The legal description of the Lot against which claim of lien is
8 made;
- 9 (c) The total amount claimed to be due and owing for the amount
10 of the delinquency, interest thereon, collection costs, and
11 reasonable attorney's fees (with any proper offset allowed);
- 12 (d) A statement that the claim of lien is made by the Association
13 pursuant to this Declaration of CC&Rs;
- 14 (e) A statement that a lien is claimed against said Lot in an
15 amount equal to the amount stated; and
- 16 (f) A statement that the claim of lien will also extend to all
17 assessments which becomes due but are not paid from the date
18 of the recording of the claim of lien to the date of payment of
19 all amounts set forth therein (including interest thereon,
20 reasonable attorney's fees, costs and collection), and that the
21 claim of lien will only be deemed satisfied and released when
22 the Owner is current in the payment of all such amounts.
- 23

24 3.8.2.2 Foreclosure of Lien. Any such lien may be foreclosed by
25 appropriate action in court or in the manner provided by law for the foreclosure of a realty
26 mortgage or trust deed, as set forth by the laws of the State of Arizona, as the same may
27 be changed or amended. The lien provided for herein shall be in favor of the Association
28 and shall be for the benefit of all other Owners. The Association shall have the power to bid
29 in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any
30 Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court
31 costs, title search fees, interest and all other costs and expenses shall be allowed to the
32 extent permitted by law. Each owner hereby expressly waives any objection to the
33 enforcement and foreclosure of this lien.

34

35 3.9 No Offset and No Exemption of Owner. No offset against any assessment
36 shall be permitted for any reason, including, without limitation, any claim that the
37 Association is not properly discharging its duties. No Owner is exempt from liability for
38 payment of assessments because he/she does not use or enjoy the Common Areas, or has
39 abandoned his/her Lot, or for any other reason, including (but not limited to) any
40 allegation that the Board of Directors is not performing its obligations under the
41 Association's Governing Documents. Payment of Association Assessments shall not be
42 contingent on the performance by the Association of any obligations under this Declaration
43 of CC&Rs or any other Governing Document.

44

1 **3.10 Subordination of the Lien to First Mortgages; Sale or Transfer of Lots.** The
2 lien for assessments provided for herein, including without limitation any fees, costs, late
3 charges, or interest which may be levied by the Association in connection with unpaid
4 assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any
5 Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof,
6 including deed in lieu of foreclosure, or cancellation or forfeiture of such executory land
7 sales contract, shall extinguish the lien of assessments or charges which became due prior
8 to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including
9 deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales
10 contract; provided, however, that any such delinquent assessments or charges, including
11 interest, late charges, costs, and reasonable attorneys' fees, which are extinguished as
12 provided herein, may be reallocated and assessed to all Lots as a common expense or may
13 be expressly assumed by a Successor Owner. No such sale, transfer, foreclosure, or any
14 proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or
15 forfeiture of such executory land sales contract, shall relieve any Owner of a Lot from
16 liability for any assessments or charges thereafter becoming due, nor from the lien thereof.
17 In the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such
18 First Mortgagee shall not be liable for unpaid assessments or other charges which accrued
19 prior to the acquisition of title to the Lot in question by such First Mortgagee.
20

21 **3.11 Mortgage Protection and Additional Assessment as Common Expense.**
22 Notwithstanding and prevailing over any other provisions of this Declaration of CC&Rs,
23 or the Association's Articles or By-Laws, or the Rules, the following provisions shall apply
24 to and benefit each First Mortgagee of a Lot:
25

26 3.11.1 First Mortgagees shall not be personally liable for the payment of any
27 assessment or charge, nor for the observance or performance of any covenant, restriction,
28 regulation, Rule, Article or By-Law, except for those matters which are enforceable by
29 injunctive or other equitable actions, not requiring the payment of money, nor shall a First
30 Mortgagee be liable for any violation of the Restrictions that occurred prior to such First
31 Mortgagee acquiring title.
32

33 3.11.2 During the pendency of any proceeding to foreclose the first mortgage,
34 including any period of redemption, the mortgagee (or receiver appointed in such action)
35 may, but is not required to, exercise any or all of the rights and privileges of the Owner of
36 the mortgaged Lot, including (but not limited to) the exclusion of the Owner's exercise of
37 such rights and privileges.
38

39 3.11.3 At such time as the first mortgagee becomes the record Owner of a
40 Lot, it shall be subject to all of the terms and conditions of this Declaration of CC&Rs,
41 including but not limited to, the obligation to pay for all assessments and charges accruing
42 thereafter, in the same manner as any Owner.
43

3.11.4 The first mortgagee, or any other party acquiring title to a mortgaged Lot through foreclosure suit or through any equivalent proceeding arising from said first mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of any of the provisions of this Declaration of CC&Rs or Bylaws which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.

3.11.5 First mortgagees are entitled to pay taxes or other charges which are in default and which may or have become a charge against any Common Areas owned by the Association, and such first mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas, and any first mortgagees making such payment may be owed immediate reimbursement from the Association.

3.11.6 Nothing in this Declaration of CC&Rs shall in any manner be deemed to give an Owner, or any other party, priority over any rights of a first mortgagee of a Lot pursuant to the terms of such first mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses or to a taking of any Lot or any part of the Common Areas owned by the Association. Each first mortgagee shall be entitled to timely written notice of such loss or taking.

3.12 Reserve Fund.

3.12.1 Requirement for Reserve Fund. The Association shall maintain a separate reserve account with the funds therein being used for the periodic maintenance, repair and replacement of the Common Area and other property, as required hereunder.

3.12.2 Funding the Reserves. To the greatest extent possible, this reserve fund shall be funded by a portion of the Annual Assessments of Owners rather than by Special Assessments; provided however, that this provision shall not be deemed to limit the power of the Association to levy any assessment or charge authorized by this Declaration of CC&Rs.

3.12.3 Management of Reserves. The reserves which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected or allocated. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners and, once paid, no Owner shall be entitled to any reimbursement of those funds. The Board is only responsible for providing for such reserves as the Board, in good faith, deems reasonable, and no Member of the Board is liable to any Owner or to the Association if the amount in the reserve account proves to be inadequate.

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ARTICLE IV
INSURANCE & CONDEMNATION

4.1 **Insurance Obtained by Association.** Except as otherwise provided in this Article IV, the Association is responsible and obligated to purchase and maintain at all times the following types of insurance:

4.1.1 **Property insurance on the Common Areas and Lots,** exclusive of personal property owned by the Lot Owners, their tenants, guests or invitees, issued under a standard form "All Risk of Direct Physical Loss Form" in an amount equal to the maximum insurable replacement value of the improvements on the Common Areas and Lots, as determined by the Board of Directors; 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 insurance policy.

4.1.2 **Broad Form Comprehensive General Liability Insurance,** for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas. Such policy shall include (i) a cross liability clause to cover liabilities of the Lot Owners as a group to a Lot Owner, (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles, and, if necessary, (iii) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

4.1.3 **Workmen's compensation insurance** to the extent necessary to meet the requirements of the laws of Arizona.

4.1.4 **Fidelity Bonds,** if deemed necessary by the Board of Directors, covering officers, directors, employees and other persons handling the Association's funds.

4.1.5 **Directors' and officers' liability insurance** covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

4.1.6 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Lot Owners.

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

4.1.7.1 There shall be no subrogation with respect to the Association, its agents, servants, and employees against Lot Owners and members of their household.

4.1.7.2 No act or omission by any Lot Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

4.1.7.3 The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Lot Owners or their mortgagees or beneficiaries under deeds of trust.

4.1.7.4 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Lot Owners.

4.1.7.5 The Association shall be the insured for use and benefit of the individual Lot Owners (designated by name if required by the insurer).

4.1.7.6 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

4.1.6.7 "Agreed Amount" and "Inflation Guard" endorsements.

4.2 Association's Insurance Primary. If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Lot Owner, the Association's policy shall provide primary coverage.

4.3 Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

4.4 Insurance Obtained by Lot Owners. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Lot Owner from obtaining insurance for his/her own benefit and at his/her own expense covering his/her Lot, his/her personal property and providing personal liability coverage. Such policy or policies shall provide that there is no contribution or offset between policies of the Association and policies an individual Owner may have in effect.

4.5 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article shall issue certificates or memoranda of insurance to the Association and, on written request, to any Lot Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until

1 thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed
2 to the Association, each Lot Owner, and each mortgagee or beneficiary under a Deed of
3 Trust to whom a certificate or memorandum of insurance has been issued at their
4 respective last known addresses.

5 6 **4.6 Destruction.**

7
8 **4.6.1 Duty of Association.** In the event of a partial or total destruction of
9 the improvements on a Lot or of the Common Area or improvements thereon, except as
10 otherwise provided herein, it shall be the duty of the Association to restore and repair the
11 same to its former condition as promptly as is practicable and in a workmanlike manner.
12 Any rebuilding or reconstruction shall substantially comply to the plans and specifications
13 used in connection with the original construction of the damaged or destroyed
14 improvements, and shall be in the locations as originally constructed. No change or
15 deviation in or from the plans and specifications shall be made without the prior consent
16 of the Board of Directors. With respect to destroyed Common Area, eighty percent (80%)
17 of the Lot Owners may vote not to rebuild, in which any insurance proceeds shall be
18 handled as excess proceeds (see Section 4.6.2).

19
20 **4.6.2 Funds for Restoration.** The proceeds of such insurance policies shall
21 be applied to the costs of restoration and repair, subject to the prior rights of mortgagees
22 whose interests may be protected by said policies. Any needed funds for said restoration
23 and repair that are over and above the amount of the available insurance proceeds shall be
24 obtained by a special assessment for reconstruction, with each Owner contributing a like
25 sum for each Lot owned. Such assessment shall not require the consent of any specified
26 proportion of the Members.

27
28 **4.6.3 Excess Proceeds.** In the event insurance proceeds exceed the cost of
29 rebuilding or reconstruction, such excess shall be retained by the Board of Directors and
30 deposited in the general operating funds of the Association.

31 32 **4.7 Condemnation.**

33
34 **4.7.1 Taking.** The term "taking," as used in this Section, shall mean either
35 (a) condemnation by eminent domain or (b) sale under threat of condemnation.

36
37 **4.7.2 Authority of the Board.** In the event of a threatened taking of all or
38 any portion of the Common Area, the Members hereby appoint the Board of the
39 Association and such persons as the Board or the Association may designate to represent
40 all of the Owners in connection with the taking. The Board shall act in its sole discretion
41 with respect to any awards being made in connection with the taking and shall be entitled
42 to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.
43

4.7.3 Partial Taking. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area as provided in Section 4.6.

4.7.4 Distribution of Proceeds. Any awards received on account of the taking shall be paid to the Association and to mortgagees of record, as their interests may appear. In the event of a total taking, the Board may retain any award in the general funds of the Association, and any distribution of the award shall be on a reasonable and equitable basis. Notwithstanding anything to the contrary in this Section, the distribution of any award or awards for a taking of all or any portion of the Common Area shall be subject to the prior rights of mortgagees.

ARTICLE V
OWNERSHIP AND USE OF THE COMMON AREA

5.1 Owner's Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the provisions hereof.

5.2 Delegation of Use. Any Owner may delegate his or her right of enjoyment in the Common Area to the members of his or her family, his or her tenants or lessees or contract purchasers who reside in the Dwelling Unit, subject to such Rules as the Association may, from time to time, establish. Such delegation shall not relieve said Owner of his or her obligations and responsibilities as a Member under the By-Laws, Rules and this Declaration of CC&Rs.

5.3 Owner's Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by a willful or grossly negligent act of an Owner or any of his or her guests, tenants, licensees, agents, or members of his or her family, such Owner shall be liable therefor to the extent of liability imposed by local law and such Owner does hereby irrevocably authorize the Association to repair the damaged property, and the Association shall so repair the damaged property in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association the amount actually expended for such repairs. Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon such Owner's Lot and shall continue to be a lien until fully paid. The lien shall be subordinate to any First Mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (but not to exceed the maximum rate permitted by Arizona law). The amount of principal and interest owed by the Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

5.4 Restriction on Conveyance of Common Areas and Facilities. The swimming pool, recreational areas, the streets, and other designate areas shall remain Common Area, and are to be owned by the Association. The Common Area and facilities owned by the Association may not, by act or omission, be abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior written approval of two-thirds (2/3) of the Members of the Association, except that the Association shall have the right at all times to grant easements over the Common Area for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: a) roads, streets, walls, pathways and driveways; b) temporary overhead or permanent underground lines, cables, wires, conduits or other devices for the transmission of electricity for lights, heating, power, telephone, cable TV and other purposes; and c) sewers, storm drains and pipes, drainage easements, water systems, water heating and gas lines or pipes.

ARTICLE VI EXTERIOR MAINTENANCE

6.1 Exterior Maintenance, Repair, Upkeep and Repainting of Lots.

6.1.1 Dwelling Units. Maintenance, repair, and upkeep of Dwelling Units (including, but not limited to, roofs and exterior walls), including all other improvements on a Lot, excluding the driveway, shall be the sole responsibility of each Owner, subject to the approval of the Board, where applicable.

6.1.2 Plumbing, Electrical and Sewer. Each Owner shall be responsible for maintenance, repair, replacement, etc. of all Dwelling Unit plumbing and electrical lines and equipment, as well as the connection lines from the Dwelling Unit to the main collection sewer line in the street and to the electric power transformer or other connection to the main power source.

6.1.3 Exterior Lighting. Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures and controls located on the Owner's Dwelling Unit. The Association shall be responsible to repair and maintain street lighting and traffic signs now installed or subsequently authorized by the Board.

6.1.4 Failure to Maintain. Maintenance, repair and upkeep of all improvements and landscaping on a Lot, which are the Owner's responsibility, shall be undertaken in a manner and with such frequency as shall keep each Owner's Lot in an attractive, well-kept and maintained condition in conformity with all other Lots. In the event any Owner fails to fulfill his or her obligation under this Section, the Association, after approval of two-thirds (2/3) vote of the Board of Directors and after reasonable notice to the Owner, shall have the right through its agents and employees, to enter upon a Lot, and to repair, maintain and restore the Lot. The cost of such maintenance, repair and

1 upkeep shall be added to and become part of the assessment to which such Lot is subject.
2 The Board shall have the right to determine whether or not a Lot is in need of maintenance,
3 repair and upkeep in order to conform to the standards of the general neighborhood of the
4 Properties, and the Board shall use a reasonably high standard to determine whether such
5 maintenance, repair and upkeep is required so that the Lots as a whole will reflect a high
6 pride of ownership.
7

8 6.1.5 Easement for Maintenance. Each Owner or his or her authorized
9 agent, in order to conduct any necessary maintenance, repair or repainting, shall have the
10 right of entry at reasonable times upon Lots adjacent to such Owner's Lot, provided
11 reasonable notice of such entry is first given by such Owner to the Owner of the involved
12 adjacent Lot. The Association shall have a right of entry and an easement upon each Lot
13 for the purpose of fulfilling its responsibilities hereunder.
14

15 **6.2 Maintenance of Common Area & Driveways.** Except as otherwise provided
16 herein, the Association shall be responsible for maintenance, repair, and upkeep of any
17 Common Area improvements including, but not limited to, landscaping, the pool areas,
18 non-public streets, curb line sidewalks, and Common Area sidewalks. The Association also
19 shall be responsible for maintenance and repair of driveways, unless any damage thereto
20 is caused by the negligence or neglect of the pertinent Lot Owner.
21

22 **ARTICLE VII** 23 **EASEMENTS AND COMMON WALLS** 24

25 **7.1 Easement for Encroachments.** Each Lot and the Common Areas shall be
26 subject to an easement for encroachments created by the original construction of the
27 improvements on any Lot, settling and overhangs, and for any party walls which are part
28 of the original construction. A valid easement for those encroachments and for the
29 maintenance of same, so long as any such encroachment stands or is rebuilt to stand, shall
30 and does exist.
31

32 **7.2 Utility & Mail Delivery Easements.** In addition to any specific easements
33 shown on the Plat, there is hereby created a blanket easement upon, across, over and under
34 the Common Area for ingress, egress, installation, replacing, repairing and maintaining all
35 utility and service lines and systems, including, but not limited to, water, sewer, gas,
36 telephone, electricity, television cable or communications lines and systems, etc. By virtue
37 of this easement, it shall be expressly permissible for the providing utility or service
38 company to install and maintain facilities and equipment on the Common Areas and to
39 affix and maintain wire, circuits and conduits on, in, and under the walls of Common
40 Areas. Notwithstanding anything to the contrary contained in this Section, no sewers,
41 electrical lines, water lines, or other utilities or service lines may be installed or relocated
42 on the Properties, except as initially designed and installed by the developer or thereafter
43 approved by the Board. All utility lines must be underground or otherwise obscured from
44 view. This easement shall in no way affect any other recorded easements on the Properties.

1 adjacent to, or over the dividing line between separate Dwelling Units, shall constitute a
2 common wall. Each Owner consents to the use and construction of such common walls and
3 acknowledges that portions of the Properties may contain common walls. With respect to
4 any such wall, each of the adjoining Dwelling Unit Owners shall assume the burden of and
5 be entitled to the benefits recited in this Section and to the extent not inconsistent herewith,
6 the general rules of law regarding common walls shall be applied thereto.
7

8 7.5.2 The Owners of contiguous Dwelling Units who have a common wall
9 shall have reciprocal easements for support and an equal right to use such wall provided
10 that such use by one Owner does not interfere with the use and enjoyment of same by the
11 other Owner.
12

13 7.5.3 Unless other provisions of this Section are applicable, the costs of
14 reasonable repair and maintenance of a common wall shall be shared equally by the
15 Owners who make use of the common wall in proportion to such use.
16

17 7.5.4 In the event any common wall is damaged or destroyed through the
18 act of one adjoining Owner, or any of his or her guests or agents or members of his or her
19 family so as to deprive the other Owner of the full use and enjoyment of such wall, then
20 the first of such Owners, if required under local law, shall forthwith proceed to rebuild and
21 repair the same to as good condition as formerly without cost to the other Owner.
22

23 7.5.5 In the event any common wall is damaged or destroyed by some cause
24 other than the act of one of the adjoining Owners, his or her agents, guests or family
25 (including ordinary wear and tear and deterioration from lapse of time), then in such event,
26 both such adjoining Owners shall, if required under local law, proceed forthwith to rebuild
27 or repair the same to as good condition as formerly at their joint and equal expense.
28

29 7.5.6 Notwithstanding anything to the contrary herein contained, there shall
30 be no impairment of the structural integrity of any common wall without prior consent of
31 the Board. In addition to meeting the other requirements of these Restrictions and of any
32 building code or similar regulations or ordinances, any Owner proposing to modify, make
33 additions to or rebuild his or her Dwelling Unit in any manner which requires the
34 extension or other alteration of any common wall shall first obtain the written consent of
35 the Board which shall consider, in its discretion, the adjoining Owner's preference
36 concerning the proposed modification, extension or alteration of the common wall.
37

38 7.5.7 Unless otherwise agreed in writing by the disputants, any dispute
39 arising concerning a Party Wall or common carport post, shall be submitted to the Board
40 of Directors under rules set forth by the Board. The decision shall be by a majority of the
41 entire Board, which decision shall be binding on the disputants.
42
43
44

ARTICLE VIII
ARCHITECTURAL CONTROL

8.1 Review of Proposed Exterior Changes. No structural alteration, addition or change (including color) to the exterior of a Dwelling Unit or an existing structure, nor any construction of an improvement (including but not limited to any building, fence, wall, driveway or other surfaced area), shall be made, placed or constructed upon any Lot or the Properties (except by the Association upon the Common Area); no change in the final grade of any Lot shall be made; and no landscaping shall be installed or changed (except in within areas entirely enclosed by patio walls or dwelling units), unless complete plans and specifications (including a construction schedule) showing the nature, design, kind, quality, shape, height, materials, color scheme and location of any such alteration, addition, improvement, structure, attachment, or landscaping, shall have first been submitted to and approved in writing by the Board of Directors. The Board may appoint an Architectural Review Committee (ARC) to review all submissions and make recommendations as to approval, disapproval or modification thereof. The Board shall exercise its best judgment to the end that all Dwelling Units, attachments, improvements, construction, landscaping and alterations to structures on lands located within the Properties (collectively referred to herein as "Architectural Improvements") conform to and harmonize with the existing surroundings and structures. Decisions of the Board in this regard shall be binding and conclusive.

8.2 Procedures. The Board of Directors shall approve or disapprove, in writing, all plans within thirty (30) days after submission and issuance by the Association of a receipt therefor. In the event the Board of Directors fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval shall be deemed denied, except that the party submitting the plans may resubmit the plans and if no response is given for a period of thirty (30) days after a written request by certified mail for a decision, approval shall be deemed given. The Board of Directors may establish rules amplifying or supplementing the foregoing procedures. The Board of Directors may from time to time, without notice, establish, add to, delete or amend separate standards, rules and procedures, which shall not be contrary to or inconsistent with these Restrictions, providing for or otherwise relating to the submission, processing, review and approval of plans and specifications for Architectural Improvements or various portions or stages thereof. The Board of Directors shall not be bound by previous standards or interpretations of its standards; and any consent or approval of a prior set of plans and specifications shall not preclude disapproval of a subsequent identical or similar set of plans and specifications.

8.3 Vote. A majority vote of the Board of Directors, at a meeting at which a quorum is present, is required to approve a proposed change or improvement.

8.4 Liability. Although the Board of Directors shall have the right to reject plans and specifications for reasons which may include their failure to comply with zoning or

building ordinances or other governmental regulations or restrictions, or on the basis that such plans and specifications are defective or not prepared in accordance with sound engineering practices, the approval of plans and specifications shall not constitute a representation, warranty or guarantee that such plans and specifications comply with proper engineering or design principles, with zoning or building ordinances or with other governmental regulations or restrictions. By approving plans and specifications, neither the Board of Directors nor the members thereof assumes any liability or responsibility therefor, or for any defect in the structure constructed from such plans and specifications.

Neither the Board of Directors nor the members thereof shall be liable in damages or otherwise to any person submitting requests or plans for approval, or to any Owner of land subject to these covenants, by reason of any action, mistake in judgment, negligence, failure to act, approval, disapproval or failure to approve or disapprove with respect to any matter within their jurisdiction hereunder. Any Owner submitting plans to the Board of Directors, and any Owner, by acquiring title of any Lot, waives his or her claim for damages or other relief arising under the architectural review process established hereunder or by the Board of Directors.

8.5 Variance. The Board of Directors may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the Restrictions contained in this Article or Article IX hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Properties and shall not militate against the general intent and purpose hereof.

8.6 Nonconforming Architectural Improvements. In the event that the Architectural Improvements do not, upon the proposed date set forth in the construction schedule, conform to the plans submitted to and approved by the Board of Directors, the Board shall give written notice to the Owner of the property upon which such Architectural Improvements have been made. Such notice shall specify the nature of the nonconformity of the Architectural Improvements and shall grant the Owner a hearing before the Board of Directors in accordance with the By-Laws.

If an Owner has not, within sixty (60) days of the mailing or delivery of the written notice, corrected the nonconformity of the Architectural Improvement, then the Board of Directors shall have the right and an easement to direct the Association's agents, employees or contractors to enter upon said Owner's property for the purpose of making any or all of such improvements, alterations or repairs as are necessary to bring the Owner's Architectural Improvements into conformity with the plans submitted to and approved by the Board of Directors.

All costs incurred by the Association in the course of the Board of Director's efforts to bring the nonconforming Architectural Improvements into conformity with the

1 approved plans as provided above, including costs of labor, materials and all associated
2 administrative costs reasonably incurred by the Association in connection therewith, shall
3 be added to and become part of the assessment to which such Owner's Lot is subject and
4 shall become a lien on such Owner's Lot and the improvements thereon, and shall be
5 enforceable and collected as provided for herein.
6

7 **8.7 Color and Building Materials.** Without limiting the foregoing, no color
8 changes nor any changes in the original building structure, composition or products shall
9 be permitted without approval of the Board of Directors.
10

11 **8.8 Guidelines.** The Board of Directors may adopt, and may from time to time
12 amend, supplement and repeal, Guidelines pertaining to landscaping, color and building
13 materials, and any other regulations that may interpret, implement, and supplement this
14 Declaration of CC&Rs. The Guidelines shall set forth procedures for the review of
15 modifications to improvements, construction, and installation of improvements on any Lot,
16 and the standards for development within the Property. The Guidelines shall have the
17 same force and effect as the Association Rules.
18

19 **8.9 Landscaping.** The Architectural Review Committee shall determine if the
20 landscaping or lack of landscaping on any Lot needs to be modified to maintain harmony
21 with the standard set in the community. The Committee shall notify the pertinent Lot
22 Owner of any needed modification. Any non-compliance by a Lot Owner to the directive
23 of the Architectural Review Committee shall be subject to the enforcement provisions of
24 Article XIII below.
25

26 **8.10 Inspection.** Any authorized officer, director, employee or agent of the
27 Association, may at any reasonable time and without being deemed guilty of trespass,
28 enter on any Lot, after reasonable notice to the Owner of such Lot, in order to inspect the
29 improvements constructed or being constructed on such Lot to ascertain that such
30 improvements have been, or are being built in compliance with the Guidelines, plans and
31 specifications approved in accordance with this Article and this Declaration of CC&Rs.
32

33 **ARTICLE IX**

34 **USES AND RESTRICTIONS**

35

36 All the Properties shall be held, used and enjoyed, subject to the following
37 limitations and restrictions (in addition to all other provisions hereof):
38

39 **9.1 Animals.**

40

41 **9.1.1 Number & Type of Pets.** Each Owner or resident may keep a
42 reasonable number of generally-recognized household pets on the Lot so long as they are
43 not kept, bred or maintained for any commercial purpose.
44

1 9.1.2 Control of Pets Required. All animals must be kept under leash or
2 controlled at all times so that they will not interfere with any Owner's use and enjoyment
3 of the Common Areas, and will not interfere with access to the Common Areas.
4

5 9.1.3 Clean-up Required. The Owner of a Lot where any pet is kept shall
6 be required to remove immediately, and dispose of hygienically, any animal waste
7 produced by the pet and left on his/her or any other Owner's Lot or on any part of the
8 Common Areas.
9

10 9.1.4 Restrictions & Nuisance. No pets are allowed in the pool and
11 recreation areas. No animal shall be allowed to become a nuisance. The Board may
12 determine, in its sole and absolute discretion, whether, for the purposes of this Section, a
13 particular animal is a generally-recognized house or yard pet or a nuisance, or whether the
14 number of animals is reasonable. The Board may require the removal from the Properties
15 of any pet determined not to be a generally-recognized house or yard pet, or determined
16 to be a nuisance. The Board may adopt Rules concerning the number and types of pets
17 which may be kept by the Owners.
18

19 9.2 Antennas and Exterior Devices. Subject to the Telecommunications Act of
20 1996 and any other applicable law, no exterior antennas or other devices for the
21 transmission or reception of communication, television or radio signals, including satellite
22 dishes, which are not in keeping with similar devices already present within the Properties,
23 shall be erected or maintained without prior written authorization of the Board of
24 Directors. No other exterior devices or additions, including (but not limited to) solar units,
25 heating and cooling units and evaporative coolers, other than initially installed, shall be
26 constructed on the exterior of a Lot (including the roof) without the prior written
27 authorization of the Architectural Review Committee. The installation of any antenna,
28 satellite dish or exterior device shall be made so as to minimize, to the greatest extent
29 possible, the visual impact of the installation.
30

31 9.3 Business Activities. All Lots shall be used for single-family residential
32 purposes only, and no other structures except residential units shall be placed or
33 maintained thereon. However, the following applies with respect to business activities
34 within the Properties:
35

36 9.3.1 Criteria for Home Business. No trade or business may be conducted
37 in or from any Dwelling Unit, except that an Owner or occupant residing in any Dwelling
38 Unit may conduct business activities within the Lot so long as (a) the existence or operation
39 of the business activity is not apparent or detectable by sight, sound or smell from outside
40 the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the
41 Properties; (c) the business activity does not involve any person conducting such business
42 who does not reside in the Dwelling Unit or door-to-door solicitation of residents of the
43 Properties; (d) the existence or operation of the business does not increase that Lot's use
44 of Common Area facilities over the standard for a single family dwelling; (e) the existence

1 or operation of the business does not require customers or delivery trucks to visit the
2 Dwelling Unit; and (f) the business activity does not constitute a nuisance, or a hazardous
3 or offensive use, or cause the owners to violate any other provisions of this Declaration of
4 CC&Rs, or threaten the security or safety of other residents of the Properties, as may be
5 determined in the sole discretion of the Board.

6
7 9.3.2 Pertinent Definitions. The terms "business" and "trade," as used in this
8 provision, shall be construed to have their ordinary, generally-accepted meanings, and
9 shall include, without limitation, any occupation, work or activity undertaken on an
10 ongoing basis which involves the provision of goods or services to persons other than the
11 provider's family and for which the provider receives a fee, compensation or other form
12 of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b)
13 such activity is intended to or does generate a profit; or (c) a license is required therefor.
14 Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business
15 within the meaning of this Section.

16
17 9.3.3 Yard Sales or Garage Sales. In each calendar year and with the prior
18 written approval of the Board, an Owner or tenant may conduct no more than two two-day
19 yard or garage sales, and one three-day estate sale in connection with the sale of a Dwelling
20 Unit.

21
22 9.4 Clotheslines. No clotheslines shall be erected or maintained upon the
23 Properties which are visible by any other Owner, nor shall any portion of the Common
24 Areas be used for drying personal articles belonging to the Owners, guests, tenants or
25 invitees.

26
27 9.5 Leases.

28
29 9.5.1 Obligations of Tenants. All provisions of the Governing Documents
30 which govern the conduct of Owners and which provide for sanctions against Owners shall
31 also apply to all occupants of any Dwelling Unit. The Owner shall provide the tenant with
32 copies of the Governing Documents. In the event the Owner fails to do so, the Association
33 shall provide copies to the tenant and charge the Owner the cost of doing so.

34
35 9.5.2 Requirements for Leases. All leases and subleases shall be in writing
36 and shall specifically provide:

37
38 9.5.2.1 The lease is subject in all respects to the provisions of the
39 Governing Documents.

40
41 9.5.2.2 The failure of the Lessee to comply with the terms and
42 conditions of the Governing Documents constitutes a material default of the lease, and the
43 Owner shall be entitled to reenter and retake possession of the premises pursuant to the
44 provisions of the Arizona Landlord Tenant Act, A.R.S. Section 33-1301 et seq.

1 9.5.2.3 That all leases shall be for a minimum of thirty (30) days.

2
3 9.5.3 Notification to Association. Within fifteen (15) days of lease inception,
4 an Owner leasing his/her Unit, shall give the Association, in writing, the name of the
5 Lessee of the Unit and such other information as the Association may reasonably require.
6

7 9.5.4 Enforcement of Leasing Restrictions. All leases which do not contain
8 the provisions set forth in 9.5.2, shall be deemed null and void at the option of the
9 Association. An Owner shall provide a copy of an operative lease within ten (10) days of
10 the Association's written request therefor.
11

12 9.6 Noise. No Owner shall engage in any activity or permit any activity to occur
13 on the Properties which shall result in unusual, loud or obtrusive noises or sounds.
14

15 9.7 Resubdivision. Neither a Lot nor any portion of the Common Areas shall
16 be re-subdivided except for the purpose of combining the re-subdivided portions with
17 another adjoining Lot, provided that no additional Lot is created, nor density increased
18 thereby. Any resubdivision shall comply with state law and any applicable ordinances or
19 local law.
20

21 9.8 Rubbish, Garbage and Wood Storage. No Lot shall be used in whole or part
22 for the storage of construction materials, rubbish, garbage or for the storage of anything
23 which will cause the Lot to appear in an unclean or untidy condition or that will otherwise
24 be obnoxious. No obnoxious or offensive activity shall be conducted on any Lot, nor shall
25 anything be done, placed or stored thereon which may become an annoyance or nuisance
26 to the neighborhood or occasion any noise, or odor which will or might disturb the peace,
27 quiet, comfort or serenity of the occupants of surrounding properties. All equipment for
28 the storage or disposal of garbage or other waste shall be kept in a clean and sanitary
29 condition. No storage of any material is permitted outside the walls of a Lot.
30

31 9.9 Sales of Lots. Each Owner shall promptly notify the Board of Directors of
32 any sale or transfer of his/her Lot and shall provide the Board with the name and address
33 of the grantee or transferee and any other information as may be reasonably required by
34 the Association. The Board may charge a reasonable transfer fee to compensate the
35 Association for changing its records and providing the new Owner with copies of all
36 Association documents.
37

38 9.10 Security. The Association may, from time to time, provide measures of
39 security on the Properties; however, the Association is not a provider of security and shall
40 have no duty to provide any security on the Properties. The obligation to provide security
41 lies solely with each Unit Owner individually. The Association shall not be held liable for
42 any loss or damage by reason of failure to provide adequate security or as a result of the
43 ineffectiveness of security measures undertaken.
44

9.11 Signs. No sign of any kind shall be on a Lot, unless the sign has been approved by the Board, except:

9.11.1 Signs or other postings which may be required by legal proceedings;

9.11.2 One (1) sign advertising the Owner's Lot for sale or lease, provided such sign does not exceed five (5) square feet in size, is placed either within the front window of the Lot or in any other place approved by the Board. Such sign must be removed within two (2) weeks after the offer of sale or lease of the Lot has been accepted and all contingencies have been removed;

9.11.3 Temporary signs indicating an "Open House" for Lots offered for sale may be placed at appropriate locations in the area to properly direct interested parties to the subject property, but only during those hours in which such property is open for inspection.

9.12 Unightly Objects or Articles. No unsightly articles or objects shall be permitted which are visible from adjoining Lots or from the street or public way. The Board shall have the sole discretion in determining if any activity by an Owner, his/her family, invitees or lessees is in violation of this Section.

9.13 Vehicle Parking and/or Storage.

9.13.1. Parking in Designated Areas Only. (a) All residents shall park motorized or non-motorized vehicles completely in the carport or garage of a Lot. (B) On-street parking shall be designated by the Board in Rules and Regulations. (c) Temporary parking for short-term visitors and guests is available in the designated area on Incas Way. Garages are not be used for living space.

9.13.2 Parking Requirement. No vehicles shall block any Lot or inhibit access to or from any Lot, or be parked in any manner which restricts the flow of traffic.

9.13.3 Recreational Vehicles. Parking or storage of recreational vehicles (including, but not limited to, trailers, campers, motorhomes, mobile homes, van conversions and boats) is prohibited on all portions of the Properties, except within the confines of a carport or garage, or with the permission of the Association.

Notwithstanding the foregoing provision, a recreational vehicle may be parked in any Common Area parking spot designated by the Board, for a period not to exceed twenty-four (24) hours in any seven (7) day period, for the purpose of loading or unloading the vehicle, or for the purpose of providing temporary parking for a transient guest of an Owner who may be traveling in or towing the recreational vehicle. The use of and/or occupancy anywhere on the Properties of a trailer, mobile home, motorhome,

1 camper or recreational vehicle as living quarters (on either a temporary or permanent
2 basis) is expressly prohibited.

3
4 9.13.4 Prohibition Against Stored or Inoperable Vehicles. No inoperable,
5 unlicensed, junked or wrecked vehicles shall be parked on any portion of the Properties,
6 nor shall any repair work be done to any vehicle, unless concealed from view in a garage.
7 No vehicles shall be located on the Properties in any state of repair or disassembly, nor may
8 any vehicle be stored on any part of the Common Area.

9
10 9.13.5 Commercial Vehicles. No commercial, construction or like vehicles
11 (including, but not limited to, pickup-type vehicles in excess of three-quarter (3/4) ton
12 capacity, and vehicles bearing commercial signs, advertising or other business insignia, and
13 any commercially licensed vehicle) shall be parked or stored in the Properties other than
14 inside of a fully enclosed garage or carport, except with the permission of the Board of
15 Directors.

16
17 9.13.6 Speed Enforcement, Parking Regulation and Permits. The Board of
18 Directors may establish a system relating to and requiring issuance of parking permits for
19 temporary or other parking, and the Board may establish such other parking regulations
20 as it deems necessary. A speed limit of fifteen (15) miles per hour is imposed on all vehicles
21 within the Properties.

22
23 9.13.7 Enforcement of Parking Restrictions. In the event any Owner, guest
24 or lessee violates this Section regarding vehicle parking and storage, the Association may
25 take any action which is necessary to obtain compliance of this Section, including the
26 removal of vehicles in violation hereof, the cost of which shall become the responsibility
27 of the owner of the vehicle.

28
29 9.13.8 Penalties for Non-Compliance with Parking Restrictions. After notice
30 and hearing, the Association may impose a fine for each violation of those covenants
31 regarding vehicle parking and storage.

32 33 **ARTICLE X** 34 **ENFORCEMENT**

35
36 10.1 Right of Association to Enforce. The Association, through its Board of
37 Directors, or any Member, has the right to enforce, by any proceeding at law or in equity,
38 all restrictions, conditions, covenants, reservations, liens or charges, now or hereafter
39 imposed by the provisions of this Declaration of CC&Rs. This shall include enforcement
40 of Guidelines and Rules and Regulations promulgated by the Association to carry out its
41 purposes and duties under this Declaration of CC&Rs. The prevailing party in any Court
42 action shall be awarded reasonable attorneys' fees and costs.
43

10.1.1 Waiver. No delay or omission on the part of the Association in exercising its right to enforcement of this Declaration of CC&Rs hereunder shall be construed as a waiver of any breach of any of the restrictions and covenants contained herein or acquiescence in any breach hereof and no right of action shall accrue against the Board of Directors, the Association or any member for their neglect or refusal to exercise such right of enforcement.

10.1.2 Protection of Mortgagee. No breach of the foregoing provisions, conditions, restrictions or covenants shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants shall be enforceable against any portion of the Properties acquired by any person through foreclosure for any breach occurring after such acquisition.

10.2 Fines and Penalties. If any Owner, his/her family, or any licensee, invitee, tenant or lessee violates the Governing Documents, the Board may levy a fine upon the Owner of the Dwelling Unit for each violation and/or may suspend the right of such person to use the Common Areas, under such conditions as the Board may specify. However, for each day a violation continues after written notice to cease has been mailed, it shall be considered a separate violation and subject to the imposition of the fine. The Board shall establish a procedure by which it imposes such fines, including the right to a hearing if requested by the Owner. Any fines which remain unpaid for a period of ten (10) days after notice to pay, shall become a lien on the Owner's Lot. Any fine which is not timely paid will be collected in the same manner as delinquent assessments, including the imposition of late fees and interest.

10.3 Enforcement Procedures. Before a fine or penalty is levied, the following enforcement procedure will be followed:

10.3.1 Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (1) the alleged violation; (2) the action required to abate the violation and, (3) if the violation is a continuing one, a time period of not less than ten (10) days, unless the violation constitutes a safety or health hazard, or if the violation is not a continuing one, a statement that any further violation of the same rule may result in the imposition of sanctions after notice and hearing, .

10.3.2 Continuing Violations. For the purposes of this Section, each day a violation continues after notice to cease has been given by the Board to the Owner shall constitute a separate violation.

10.3.3 Notice. Within one (1) month of such notice, if the violations continue past the period allowed in the notice for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. Service may be made personally or by first

class mail to the violator's address of record. The notice shall contain: (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of notice; (c) an invitation to attend the hearing and produce any statement, evidence and witnesses on his or her behalf; and (d) the proposed sanctions to be imposed, which may include the imposition of a fine of not more than One Hundred and Fifty and no/100 Dollars (\$150.00) for any one violation. Any fine or penalty imposed hereunder shall be collectible like an assessment, pursuant to Article V of this Declaration of CC&Rs.

10.3.4 Hearing. The hearing shall be held in executive session of the Board of Directors, pursuant to the aforesaid Notice, thereby affording the Member a reasonable opportunity to be heard. Protocol of the hearing will be set by the Board of Directors. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered into the minutes by the officer or director who delivered such notice. If the Member does not appear at the hearing, the Board will presume the validity of the Notice of Violation and levy a fine or penalty.

10.4 Notice of Violation. In the event that any Owner, his/her guests, tenants or family members are in violation of any of the provisions of the Governing Documents, the Association, after providing notice and an opportunity to cure the violation, has the right to record a "Notice of Violation" with the Pima County Recorder's Office, stating the name of the Owner, the Lot and the nature of the violation, and the Association's intent not to waive any of its rights of enforcement. The Notice shall remain of record until the violation is cured.

10.5 No Obligation to Enforce. The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that because of considerations pertaining to the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Governing Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Governing Documents in the future.

10.6 Cumulative Rights and Remedies. All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy.

10.7 Violation of Law. Each and every provision of this Declaration of CC&Rs, as amended from time to time, is subject to any and all applicable federal, state and local

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1 governmental rules and regulations, ordinances and subdivision regulations. Any
2 violation of any federal, state, municipal or local law, ordinance or regulation pertaining
3 to the ownership, occupation or use of any property within the subdivision is declared to
4 be a violation of the Governing Documents and subject to any and all enforcement
5 procedures set forth in such Governing Documents.
6

7 **ARTICLE XI**
8 **GENERAL PROVISIONS**
9

10 **11.1 Amendment.** This Declaration of CC&Rs may be amended at any time with
11 the approval of fifty-one percent (51%) of the voting power of the Association at any
12 regular or special meeting called for that purpose. This Declaration of CC&Rs may also be
13 amended by a written ballot. Any amendment to this Declaration of CC&Rs shall be
14 evidenced by a written document signed by the President and Secretary of the Association,
15 attesting that the Owners consented to such amendment. The Amendment shall become
16 effective when filed with the Pima County Recorder's Office.
17

18 **11.2 Annexation.** Additional residential property and Common Area may be
19 annexed to the Properties with the consent of two-thirds (2/3) of the voting power of the
20 Association.
21

22 **11.3 Binding Effect.** By acceptance of a deed or acquiring any ownership interest
23 in any Lot, each person or entity, for himself or itself, his/her heirs, personal
24 representatives, successors, transferees and assigns, bind himself/herself and his/her heirs,
25 personal representatives, successors, transferees and assigns to all of the provisions,
26 restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this
27 Declaration of CC&Rs and any amendments thereto. In addition, each such person doing
28 so acknowledges that this Declaration of CC&Rs sets forth a general scheme of the
29 Properties and evidences his/her intent that all restrictions, conditions, covenants, and
30 rules and regulations contained herein or promulgated hereafter by the Association shall
31 run with the land and be binding upon all subsequent and future Owners, grantees,
32 purchasers, assignees and transferees thereof. Furthermore, each such person fully
33 understands and acknowledges that this Declaration of CC&Rs shall be mutually
34 beneficial, prohibitive and enforceable by the various subsequent and future Owners.
35

36 **11.4 Captions and Headings.** The captions and headings of sections and articles
37 of this Declaration of CC&Rs are inserted for convenience of reference only and in no way
38 define, describe or limit the scope or intent thereof or any of the Provisions hereof. All
39 pronouns utilized herein shall be deemed to apply to all genders and numbers as the
40 context requires to make them properly applicable to the Parties and any and all third
41 parties.
42

43 **11.5 Indemnification.** The Association shall indemnify to the fullest extent
44 allowed by law, every officer, director, and committee member, against any and all

expenses, including attorneys' fees, reasonably incurred by or imposed upon, any officer, director, or committee member, in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or committee member. This provision shall not be deemed to include travel expenses to attend Association meetings or legal proceedings, and shall only include reasonable actual expenses. Neither officers, directors nor committee members shall be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors, or committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance, to also include committee members, to fund this obligation.

11.6 Interpretation. Except for judicial construction, the Association has the exclusive right to construe and interpret the provisions of this Declaration of CC&Rs. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions of the Governing Documents shall be final, conclusive and binding on all Owners.

11.7 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any others which shall remain in full force and effect.

11.8 Term. The provisions of this Declaration of CC&Rs shall run with the land and continue and remain in full force and effect at all times and against all persons.

IN WITNESS WHEREOF, the undersigned certify that at least two-thirds (2/3) of the Lot Owners have voted to approve this Amended and Restated Declaration of CC&Rs.

PONDEROSA ESTATES TOWNHOUSES NO. 1 ASSOCIATION

By Peter D. De
President

ATTEST:

Beverly Pickering
Secretary

STATE OF ARIZONA)
) ss:
County of Pima)

The foregoing instrument was acknowledged before me this 30th day
of AUGUST, 2004, by PATRICIA DEE
President, and by BEVERLY PICKERING, Secretary, of PONDEROSA
HOMEOWNERS ASSOCIATION NO. 1, an Arizona non-profit corporation, on behalf
of the corporation.

Dona J. Malazian
Notary Public

