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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS AND GRANT OF EASEMENTS  
FOR  
WILMOT FARMS

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS AND GRANT OF EASEMENTS  
FOR  
WILMOT FARMS

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This Declaration of Covenants, Conditions and Restrictions and Grant of Easements is made as of the 18th day of April, 1997, by Wilmot Farms, Inc., an Arizona corporation, and Fidelity National Title Agency, Inc., an Arizona corporation, as trustee of its Trust No. 10812, with reference to the following:

A. As of the date hereof, Trustee is the owner of fee title to the Property, and Declarant is the sole beneficiary of the trust pursuant to which Trustee holds such title.

B. The undersigned intend by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Property. The undersigned desire to provide a flexible and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

NOW, THEREFORE, the undersigned hereby declare that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property now and hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said real property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

ARTICLE 1  
DEFINITIONS

Except as otherwise expressly provided in this Declaration, the following terms shall, for purposes of this Declaration, have the meanings set forth below:

1.1 "Annual Assessments" shall mean those Assessments designated as such in this Declaration and computed and levied as provided in **Section 7.5**.

1.2 "Articles" shall mean the articles of incorporation of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Bylaws and the statutes and regulations of the State of Arizona.

1.3 "Assessments" shall mean the Annual Assessments and the Special Assessments (as well as any other amounts declared by this Declaration to be a part of the Assessments or declared by this Declaration to be secured by the lien created under Section 7.3).

1.4 "Association" shall mean Wilmot Farms Homeowners Association, an Arizona nonprofit corporation, and its successors and assigns.

1.5 "Association Rules" shall mean the reasonable rules and regulations adopted by the Association pursuant to Section 6.3.

1.6 "Board" shall mean the board of directors of the Association elected in accordance with the provisions of the Articles, the Bylaws and the statutes and regulations of the State of Arizona.

1.7 "Bylaws" shall mean the bylaws of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Articles and the statutes and regulations of the State of Arizona.

1.8 "Common Expenses" shall mean the expenses of operating the Association (including any reasonable reserves), of exercise by the Association of its rights hereunder and of fulfillment by the Association of its duties and obligations imposed hereby, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration or pursuant to the Articles or the Bylaws.

1.9 "Declarant" shall mean Wilmot Farms, Inc., an Arizona corporation, and its successors and assigns, subject to the further provisions of this Section. Declarant may assign all or any portion of its rights as Declarant hereunder to any person, provided that any assignment of the rights and duties of Declarant shall be evidenced by a duly executed and acknowledged Recorded instrument executed by the assigning Declarant which expressly makes such assignment. The mere conveyance by Declarant to another Person of fee title to (or other interest in) one or more Lots shall not, by itself, make such other Person a Declarant under this Declaration.

1.10 "Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.11 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions and Grant of Easements, as the same may be amended from time to time.

1.12 "Dwelling Unit" shall mean any building (including modular, manufactured, and site-built homes) or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.13 "First Mortgage" shall mean a Mortgage Recorded against a Lot which has priority over all other Mortgages Recorded against that Lot.

1.14 "Front Yard" shall mean that area on a Lot which is visible from ground level view from the street(s) running immediately in front of or along the side of the Dwelling Unit or other structure on such Lot.

1.15 "Lot" shall mean and refer to any lot as set forth in a subdivision plat now or hereafter Recorded with respect to all or any part of the Property. For purposes of this Declaration, a Lot shall be deemed to come into existence on and as of the date the plat depicting and establishing such Lot is Recorded.

1.16 "Maximum Annual Assessment" shall mean the amount determined for each fiscal year of the Association in accordance with **Section 7.7**.

1.17 "Member" shall mean any Person entitled to membership in the Association, as provided in this Declaration.

1.18 "Membership" means a membership in the Association.

1.19 "Mortgage" shall mean a deed of trust, as well as a mortgage, which, in either case, is Recorded against a Lot.

1.20 "Mortgagee" shall mean a beneficiary under a deed of trust, as well as a mortgagee under a mortgage, which, in either case, is Recorded against a Lot.

1.21 "Occupant" shall mean any Person other than an Owner who occupies or is in possession of a Lot, whether as a lessee under a lease or otherwise.

1.22 "Owner" shall mean the Person or Persons who individually or collectively own fee title to a Lot (as evidenced by a Recorded instrument), provided that: (a) the Declarant (and not the fee title holder) shall be deemed to be the "Owner" of each Lot with respect to which fee title is held by Declarant, a Declarant Affiliate or Trustee; (b) in the event that, and for so long as, the Declarant or a Declarant Affiliate has, pursuant to a written agreement, an existing right or option to acquire any one or more Lots (other than by exercise of a right of first refusal or right of first offer), the Declarant shall also be deemed to be the "Owner" of each Lot with respect to which the Declarant or a Declarant Affiliate has such right or option; and (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot. Where reference is made in this Declaration to a Lot "owned

by" a Person, such phrase shall be deemed to refer to a Lot of which that Person is the Owner, as determined pursuant to this Section.

1.23 "Period of Declarant Control" means the period commencing on the date of the Recording of this Declaration and ending on the earlier of: (a) one hundred twenty (120) days after the total number of Class A votes outstanding exceeds the total number of Class B votes outstanding; (b) December 31, 2004; or (c) the date the Declarant Records a written instrument expressly terminating the Period of Declarant Control.

1.24 "Person" means a natural person, corporation, partnership, trust, trustee or other legal entity.

1.25 "Perimeter Improvements" means those items for which the Association is responsible as described in Section 3.1.

1.26 "Plat" shall mean that certain Final Plat for Wilmot Farms, Lots 1 thru 121, recorded July 9, 1997 at Book 49 of Maps and Plats, Page 74, official records of Pima County, Arizona, as the same may be amended from time to time.

1.27 "Property" shall mean Lots 1 thru 121, as shown on the Plat, as such property may be further subdivided from time to time, and shall further refer to such additional property, if any, as is now or may hereafter be owned in fee simple by the Association, but shall not include real property, if any, which is deleted and removed from the Property pursuant to Section 5.1.

1.28 "Record," "Recording," "Recorded" and "Recordation" shall mean placing or having placed an instrument of public record in the official records of Pima County, Arizona, or of such other governmental authority, office or official with which or whom the applicable laws of the State of Arizona prescribe that documents affecting title to real property in the area including the Property are to be placed of public record.

1.29 "Retail Purchaser" shall mean any purchaser of a Lot except Declarant, a Declarant Affiliate or Trustee.

1.30 "Single Family" shall mean a group of persons related by blood, marriage or legal adoption, or a group of not more than three (3) unrelated persons maintaining a common household.

1.31 "Special Assessments" shall mean those Assessments levied in accordance with Section 7.9.

1.32 "Trustee" shall mean Fidelity National Title Agency, Inc., an Arizona corporation, as trustee of its Trust No. 10812, and its successors and assigns.

ARTICLE 2  
MEMBERSHIP AND VOTING RIGHTS

2.1 Membership and Right to Vote. Every Owner of a Lot, including Declarant, shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable (except as otherwise provided in this Declaration as to the Class B Membership). In the event any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member, but the membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall either: (a) make such designation, in which event such designation shall be binding for all purposes; or (b) declare that until all Persons who together hold such membership jointly make such written designation, the vote(s) attributable to such membership under this Declaration shall not be cast or counted on any questions before the Members; provided, however, that if any one of such Persons casts a vote representing a certain Lot without prior written objection to the Board from any other Person sharing ownership of such Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing.

2.2 Votes in the Association.

2.2.1 Each Owner (other than the Declarant during the Period of Declarant Control) shall be entitled to one vote and one Membership for each Lot owned by that Owner.

2.2.2 Until the expiration or termination of the Period of Declarant Control, the Declarant shall be entitled to the number of votes equal to three times the total number of Lots owned by the Declarant. After the expiration or termination of the Period of Declarant Control, the Declarant shall have one vote and one Membership for each Lot owned by the Declarant.

2.2.3 Until the expiration or termination of the Period of Declarant Control: (a) the Association shall be deemed to have two classes of Members, Class A and Class B; (b) the Declarant shall be the Class B Member, and all votes held by the Declarant shall be Class B votes; (c) all Owners other than Declarant shall be Class A Members, and all votes held by such Owners shall be Class A votes. Following expiration or termination of the Period of Declarant Control, the Association shall be deemed to have a single class of Members and votes (which shall be designated "Class A" for purposes of this Declaration, the Articles and the Bylaws). Notwithstanding the foregoing, however, except as otherwise expressly provided in this Declaration, the Articles or the Bylaws, any

issue put to a vote at a duly called meeting of Members at which a quorum is present shall be decided by a simple majority of all votes represented in person or by valid proxy at such meeting, regardless whether such votes are otherwise deemed to be Class A votes or Class B votes.

2.3 Right to Vote. No change in the ownership of a Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The vote for each Member must be cast as a single unit. Split or fractional votes shall not be allowed. Any Owner of a Lot which is leased or which is subject to a valid, outstanding and Recorded executory agreement of sale may, in the lease, agreement of sale or other written instrument, assign the voting right appurtenant to the Lot to the lessee thereof or to the purchaser thereof under such agreement of sale, as applicable, provided that a copy of the written assignment of such voting rights is furnished to the Secretary of the Association prior to any meeting at which such lessee or purchaser seeks to exercise such voting right.

2.4 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules and any other rules and regulations adopted pursuant to any of the foregoing.

2.5 Transfer of Membership. Except as otherwise provided in this Declaration, the rights, duties and obligations of any Class A Member other than Declarant cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Member's Lot and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure or other legal process authorized under Arizona law, shall operate to transfer the membership appurtenant thereto to the new Owner and any attempt to make any other form of transfer shall be void.

### ARTICLE 3 MAINTENANCE

3.1 Association's General Responsibilities. The Association shall control, maintain, keep in good repair, and replace as necessary certain areas of the Property, as more expressly provided in this Section 3.1, and the costs of same shall be Common Expenses of the Association. The Association's responsibilities shall include, but not be limited to, maintenance, repair and replacement of landscaping materials, plants, irrigation and lighting systems, and perimeter or boundary walls, if any, surrounding the exterior boundaries of the Property and Property identification signs, if any, located along the exterior boundaries of the Property or located in or upon public rights-of-way immediately adjacent to the exterior boundaries of the Property (if the Association obtains, at its discretion, the legal right to maintain, repair and replace such items in the public right-of-way). The Association is hereby granted the easement on, over, across and through each

Lot to permit it to carry out any such maintenance, repair and replacement under this Section 3.1; and

3.2 Maintenance of Owner's Structures. Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of all Dwelling Units or other structures existing or constructed upon such Owner's portion of the Property and, in particular, each Owner shall cause the exterior of said Dwelling Units or other structures to be maintained in good condition and repair and in an attractive state consistent with general community standards within the Property. In the event that the Board shall determine, after providing reasonable notice and an opportunity to be heard, that any Owner is in breach of such Owner's obligations under the preceding sentence, the Board shall promptly give such Owner written notice of such determination, including a reasonably detailed list or description of the repairs, maintenance or other work required to cure such Owner's breach, and in the event the Owner shall not have cured such breach within thirty (30) days after the date of said written notice, the Association may, in the discretion of the Board, cause the repairs, maintenance or other work to be performed so as to cure such Owner's breach, and the costs of doing so, together with interest from the date of expenditure at the rate set forth in Section 9.6, shall be the personal obligation of such Owner and shall constitute a lien on such Owner's Lot, which lien shall have the priority and may be enforced in the manner described in Section 7.3. The Association shall also have standing and authority to request that a court of competent jurisdiction compel such Owner to cure such breach, and to the extent not inconsistent with an order of such court, the Association may pursue either or both of the courses of action described in this sentence. The Association is hereby granted an easement on, over, across and through each Lot to permit it to carry out its duties and obligations under this Article 3.

3.3 Publicly-Dedicated Areas. Except as permitted in Subsection 3.1, and except as may otherwise be required by applicable law, the Association shall have no responsibility to maintain any areas within or outside the boundaries of the Property (including, but not limited to, public streets) which are dedicated to or the responsibility of a county or other governmental entity.

3.4 No Discrimination. The provision of services in accordance with this Article shall not be deemed to be discrimination in favor of or against any Owner.

#### ARTICLE 4 INSURANCE AND FIDELITY BONDS; CASUALTY LOSSES

4.1 Insurance to be Obtained by the Association.

4.1.1 Hazard Insurance. The Board, acting on behalf of the Association, shall obtain and maintain at all times insurance for all insurable

Perimeter Improvements (and equipment and personal property owned by the Association for use in the care and maintenance of such Perimeter Improvements) against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Arizona), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage).

4.1.2 Liability Insurance. The Board, acting on behalf of the Association, shall obtain and maintain at all times a commercial general liability policy insuring the Association, each member of the Board, each Member of the Association, the Declarant and, if the Declarant is a trustee under a trust, the beneficiary of such trust, against any liability to the public or to any Owner or Occupant (and such Owner's or Occupant's invitees, agents, employees, tenants, guests, servants and household members) for death, bodily injury and property damage arising out of or incident to the performance by the Association of its maintenance and other obligations hereunder. In no event shall said policy or policies provide coverage less than One Million Dollars (\$1,000,000.00) for death, bodily injury and property damage for any single occurrence. The Board, acting on behalf of the Association, shall also obtain and maintain at all times, by endorsement to the above-referenced commercial general liability policy or otherwise, a liability policy for hired and non-owned automobiles insuring the same Persons insured by the commercial general liability policy and with limits not less than the limits for such commercial general liability policy.

4.1.3 General Provisions Governing Insurance. The insurance required to be obtained under Subsections 4.1.1 and 4.1.2 shall be written with one or more companies authorized to provide such insurance in the State of Arizona. Exclusive authority to adjust losses under policies in force on property owned or insured by the Association shall be vested in the Board.

4.1.4 Fidelity Bonds. The Board, acting on behalf of the Association, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Association and all others who handle, or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association. Any independent management agent which handles funds for the Association shall also obtain (and pay for) such fidelity bond coverage with respect to its own activities (and those of its directors, officers and employees, whether or not such directors, officers or employees receive compensation for services rendered). Such fidelity bonds: (a) shall name the Association as obligee;

(b) shall be issued by one or more companies authorized to issue such bonds in the State of Arizona; and (c) shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Association or such agent at any time while such bond is in force. Each such fidelity bond shall provide that the issuer thereof shall provide not less than ten (10) days written notice to the Association before such bond may be cancelled or substantially modified for any reason.

4.1.5 Workers' Compensation Insurance. The Board, acting on behalf of the Association, shall obtain and maintain workers' compensation insurance if and to the extent necessary to meet the requirements of applicable law.

4.1.6 Cost of Insurance. All premiums for the insurance or bonds required to be obtained by the Board by this Section 4.1 shall be Common Expenses (except that, as provided in Subsection 4.1.4, the cost of the fidelity bond required to be furnished by any independent management agent shall be paid by such agent). The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Section 4.1, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance coverage is available only at an unreasonable cost.

4.2 Insurance to be Obtained by the Owners.

4.2.1 Public Liability Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, public liability insurance as such Owner may desire against loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of such Owner's property.

4.2.2 Hazard and Contents Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, fire, liability, theft and any other insurance covering: (a) any Dwelling Unit and any other structure on such Owner's property; and (b) any and all fixtures and personal property upon such Owner's property or in such Dwelling Unit or other structure(s).

4.3 Casualty Losses.

4.3.1 Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the property required to be insured by the Association under Section 4.1, the Board or its duly authorized agent shall: (i) proceed with the filing and adjustment of all claims arising under such insurance;

(ii) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property; and (iii) upon receipt of the proceeds of such insurance and except as is otherwise provided in this **Subsection 4.3.1**, use such proceeds to repair or reconstruct the damaged or destroyed property. The terms "repair" and "reconstruction" (or variants thereof), as used in this **Article 4** shall mean repairing or restoring the property in question to substantially the same condition as that in which it existed prior to the fire or other casualty (or, where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed property as it existed prior to such damage or destruction).

(b) If any improvement that is required to be insured by the Association under **Section 4.1** suffers physical damage or destruction that impairs the value of that improvement by an amount equal to 25% or more of the replacement value of that improvement, the improvement shall be repaired or reconstructed unless: (i) at a special meeting of the Members of the Association duly noticed and convened within ninety (90) days after the occurrence of such damage or destruction, the Members determine, by a vote of Persons holding at least seventy-five percent (75%) of all votes of Members represented in person or by valid proxy, not to so repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made or become reasonably available. The Board shall determine whether any minor damage or destruction to any improvement that is required to be insured by the Association under **Section 4.1** should be repaired or reconstructed.

(c) In the event that it is determined in the manner described above that the damage or destruction of any improvement that is required to be insured by the Association under **Section 4.1** shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event such property shall be maintained by the Association in a neat and attractive condition.

**4.3.2 Excess or Deficiency of Proceeds.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to pay the cost thereof, the Board shall, without the necessity of a vote of the Members, levy assessments against the Owners of Lots, which assessments shall be allocated as described in **Section 7.5**. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Any assessments levied pursuant to this **Subsection 4.3.2** shall be deemed to be a part of the Assessments and shall be secured by the lien created by **Section 7.3**. If the funds available from insurance exceed the cost of repair, such excess shall be used to meet Common

Expenses or, in the discretion of the Board, placed in a reserve account for contingencies or capital improvements.

4.3.3 Repair or Reconstruction of Dwelling Units or Other Structures. In the event of the destruction of a Dwelling Unit or other structure on a Lot, or of damage to such Dwelling Unit or other structure which, in the reasonable judgment of the Board, materially affects the exterior appearance thereof, the Board shall have the right, at its option, exercisable by written notice to the Owner of the property upon which such Dwelling Unit or other structure is situated, to require such Owner to repair or reconstruct (or cause to be repaired or reconstructed), at such Owner's expense, such Dwelling Unit or other structure within such reasonable period of time as shall be specified by the Board in such notice. The Board may exercise such right and establish such time period notwithstanding such Owner's failure to maintain hazard or casualty insurance upon such Owner's property or any Dwelling Unit or other structures thereon and notwithstanding any unavailability or delay in receipt of proceeds of any insurance policy or policies, although the Board may take such matters into account in establishing or extending the time period within which such repair or reconstruction must be completed. Any such repair or reconstruction work shall be performed in compliance with all applicable provisions thereof, and the Owner shall take such steps as are reasonably necessary to prevent damage to surrounding property and injury to persons as may result from or arise in connection with the destroyed or damaged Dwelling Unit or other structure or the repair or reconstruction activities with respect thereto.

## ARTICLE 5 DE-ANNEXATION

5.1 De-Annexation. Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time so long as Declarant owns any portion of the Property, at its sole option and without the consent of any other Person (except as provided in this Article 5), to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, provided, however, that: (a) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal such portion is owned by Declarant (or by a Declarant Affiliate or by a trustee of a trust of which Declarant or a Declarant Affiliate is the beneficiary) or, in the case of a deletion and removal of a portion of the Property at the request of the owner(s) of such portion, Declarant executes and Records an instrument approving such deletion and removal; (b) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal no Dwelling Units have been constructed thereon; and (c) a portion of the Property may not be so deleted and removed if such deletion and removal would deprive Owners and Occupants of other parts of the Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Property (unless Declarant at the same time provides for reasonably adequate replacement easements or rights-of-way). Declarant may exercise its rights under this Article 5 in each case

by executing and causing to be Recorded an instrument which identifies the portion of the Property to be so deleted and removed and which is executed by each owner of such portion (if other than Declarant), and the deletion and removal of such portion of the Property shall be effective upon the later of: (i) the date such instrument is Recorded; or (ii) the effective date specified in such instrument, if any, whereupon, except as otherwise expressly provided in this Article 5, the portion of the Property so deleted and removed shall thereafter for all purposes no longer be deemed a part of the Property or subject to this Declaration, and the owner(s) thereof (or of interests therein) shall not be deemed to be Owners or Members or have any other rights or obligations hereunder. No such deletion and removal of a portion of the Property shall act to release such portion from the lien for Assessments or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such Assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal, and no Assessments or other charges shall thereafter accrue hereunder with respect to the portion of the Property so deleted and removed.

## ARTICLE 6 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

6.1 Perimeter Improvements. The Association shall be responsible for the maintenance, repair, and replacement of the Perimeter Improvements.

6.2 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the Property as may be conveyed or assigned to the Association by Declarant.

6.3 Rules and Regulations. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Property. Upon adoption, the Association rules shall have the same force and effect as if they were set forth herein. Sanctions for violation of the Association Rules or of this Declaration may be imposed by the Board and may include suspension of the right to vote and may also include reasonable monetary fines (so long as such fines are nondiscriminatory and are in accordance with a general schedule of fines adopted or amended by the Board prior to the date of the particular violation for which a fine is to be imposed). No suspension of an Owner's right to vote due to a violation of the Association Rules may be for a period longer than sixty (60) days (except where such Owner or Occupant fails or refuses to cease or correct an on-going violation or commits the same or another violation, in which event such suspension may be extended for

additional periods not to exceed sixty (60) days each until such violation ceases or is corrected).

6.4 Availability of Books, Records and Other Documents. The Association shall maintain complete and current copies of this Declaration, the Articles, the Bylaws and the Association Rules (as well as any amendments to the foregoing) and of the books, records and financial statements of the Association, and, upon the prior written request to the Association by any Owner, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner.

6.5 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

6.6 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager, which compensation shall be a Common Expense.

## ARTICLE 7 ASSESSMENTS

7.1 Creation of Assessment Right. In order to provide funds to enable the Association to meet its financial and other obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Annual Assessments and Special Assessments shall be for Common Expenses and shall be allocated equally among all Lots, except that, notwithstanding any other provisions of this Declaration to the contrary, Declarant shall not be obligated to pay Annual Assessments or Special Assessments for Lots owned by Declarant (or by a Declarant Affiliate or by the trustee of any trust of which Declarant or a Declarant Affiliate is the beneficiary) unless such Lots are leased, rented, or otherwise occupied as a Dwelling Unit (excluding use as a model home).

7.2 Covenants with Respect to Assessments. Each Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Lot, is deemed to covenant and agree to pay the Assessments levied pursuant to this Declaration with respect to such Owner's Lot, together with interest from the date due at a rate equal to the greater of: (a) ten percent (10%) per annum; or (b) the annual prime rate of interest then being charged by Norwest Bank Arizona, N.A. (or its successor), plus four percent (4%), and together with such costs and

reasonable attorneys' fees as may be incurred by the Association in seeking to collect such Assessments. Each of the Assessments with respect to a Lot, together with interest, costs and reasonable attorneys' fees as provided in this Section 7.2, shall also be the personal obligation of the Person who or which was the Owner of such Lot at the time such Assessment arose with respect to such Lot, provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of his, her or its obligation to pay any of the Assessments by abandoning or not using his, her or its Lot, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, as evidenced by a Recorded instrument, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner of a Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

7.3 Lien for Assessments; Foreclosure. There is hereby created and established a lien against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner or Occupant thereof (together with any present or future charges, fees, fines, penalties or other amounts levied against such Lot or the Owner or Occupant thereof pursuant to this Declaration or the Articles, the Bylaws or the Association Rules). Such liens are and shall be prior and superior to all other liens affecting the property in question, except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale and transfer of any property pursuant to a judicial or nonjudicial foreclosure of any First Mortgage made in good faith and for value, or any proceeding in lieu thereof, shall extinguish the above-described liens as to payments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such property from liability for any payments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any property at any sale to foreclose the Association's lien on the property, and to acquire and hold, lease, mortgage and convey the same. During the period any Lot is owned by the Association, no right to vote shall be exercised with respect to said Lot and no Assessments (whether Annual Assessments or Special Assessments) shall be assessed or levied on or with respect to said Lot. The Association may maintain a suit to recover a money judgment for unpaid Assessments, rent, interest and attorneys' fees and/or charges, fines, penalties, other amounts levied against property or the Owner thereof, together with interest and attorney's fees, without foreclosing or waiving the lien securing same. Recording

of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

7.4 Dates Assessments Commence. Assessments shall be payable in respect of a Lot from the date upon which title to said Lot shall first be conveyed to a Retail Purchaser, and such Assessments shall be payable regardless of whether a Dwelling Unit or other structure shall be situated upon such Lot on such date. As to any Lot conveyed to a Retail Purchaser, Assessments as to such Lot shall be prorated as of the close of escrow with respect to such Lot (or, if no escrow is utilized, as of the date of Recordation of the deed conveying such Lot to such Retail Purchaser). The numbers on the Plat assigned to the Lots are for reference only, and Declarant shall retain full discretion as to the order and timing of its development and sales of Lots within property owned by Declarant.

7.5 Computation of Assessments; Annual Budget. The Board shall prepare and adopt an estimated annual budget for each fiscal year of the Association, which annual budget shall serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations of Section 7.7 hereof). Such budget shall take into account the estimated Common Expenses and cash requirements of the Association for the year. The annual budget shall also provide for a reserve for contingencies for the year (and for subsequent fiscal years) and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board, taking into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause to be delivered or mailed to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for the fiscal year in question. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Subject to the provisions of this Section 7.5 and of Sections 7.7 and 7.9, neither the annual budget (nor any amended budget) adopted by the Board, nor any Assessment levied pursuant thereto, shall be required to be ratified or approved by the Owners. If, at any time during a fiscal year of the Association the Board deems it necessary to amend the budget for such year, the Board may do so and may levy an additional Annual Assessment for such year (subject to the limitations imposed by Section 7.7) or may call a meeting of the Members to request that the Members approve a Special Assessment pursuant to Section 7.9. Within sixty (60) days after adoption of the amended budget (if the Board elects to levy an additional Annual Assessment), the Board shall cause a copy of the amended

budget and a statement of the additional Annual Assessments to be levied against the Lots to be delivered or mailed to each Owner; if, instead, the Board elects to call a meeting of Members to seek approval of a Special Assessment, the Board shall cause a copy of the amended budget proposed by the Board to be delivered or mailed to each Owner with the notice of such meeting, and if a Special Assessment is duly approved by the Members at such meeting, shall cause a statement of the Special Assessment to be levied against each Lot to be promptly mailed or delivered to each Owner.

7.6 Due Dates. Annual Assessments for each fiscal year shall be due and payable in equal periodic installments, payable not more frequently than monthly nor less frequently than semiannually, as determined for such fiscal year by the Board, with each such installment to be due and payable on or before the first day of the applicable period during that fiscal year. Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board. In addition to any other powers of collection or enforcement granted hereunder, in the event any Assessments (or installments thereof) with respect to a Lot are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date on which all Assessments with respect to such Lot are due and payable. For purposes of this Declaration, Assessments shall be deemed "paid" when actually received by the Association or by its manager or agent designated by the Association to collect the same (provided, however, that if any Assessments were paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

7.7 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the Maximum Annual Assessment, as determined in accordance with this Section 7.7. For the fiscal year ending December 31, 1997, the Maximum Annual Assessment shall be Four Hundred Eighty Dollars (\$480.00) for each Lot. Thereafter, unless a greater increase is approved by the affirmative vote of at least two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the first month of the applicable fiscal year over the first month of the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, in the index most similar in composition to such index; or (b) ten percent (10%). Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by the Declaration

to be maintained by the Association; or (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, in either case (i) or (ii) notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is at a rate greater than otherwise permitted under the preceding sentence. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in the full amount of the Maximum Annual Assessment for such fiscal year, and the election by the Board not to levy Annual Assessments in the full amount of the Maximum Annual Assessments for any fiscal year shall not prevent the Board from levying Annual Assessments in subsequent fiscal years in the full amount of the Maximum Annual Assessment for such subsequent fiscal year (as determined in accordance with this Section 7.7). In the event that, for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the Maximum Annual Assessment for such fiscal year, the Board may, in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during said fiscal year so long as the total of the Annual Assessments levied during said fiscal year does not exceed the Maximum Annual Assessment for such fiscal year.

7.8 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision hereof or of the Articles, Bylaws or Association Rules, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by Section 7.9 hereof; or (b) approving any increase in the Maximum Annual Assessment greater than that permitted by application of the formula as set forth in Section 7.7, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Annual Assessment, a quorum shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

7.9 Special Assessments. In addition to the Annual Assessments, the Association may levy Special Assessments from time to time, provided, however, that any Special Assessment shall be effective only with the approval of at least seventy-five percent (75%) of the votes of Members represented in person or by valid proxy at a meeting of Members duly called and convened to consider such Special Assessment. Subject to Sections 7.1 and 7.4, Special Assessments shall be allocated equally among all Lots.

7.10 Certificates. The Association shall, upon the written request of any Owner, and upon payment of such reasonable charge as may be determined by

the Board, furnish to the requesting party a certificate, executed by an officer of the Association, stating the date to which Assessments with respect to such Owner's Lot have been paid and the amount, if any, of any Assessments which have been levied with respect to said Lot but which remain unpaid as of the date of such certificate. Said certificate shall be binding upon the Association as to the matters set forth therein as of the date thereof.

7.11 Surplus Monies. Unless otherwise expressly determined by the Board, any surplus monies of the Association shall be held by the Association and placed in one or more reserve accounts as determined by the Board, and shall not be paid to the Owners or credited against the Owners' respective liabilities for Assessments.

7.12 Declarant's Obligation for Deficiencies. Notwithstanding any other provision of this Declaration to the contrary, no Assessments shall be levied against Lots owned by the Declarant (or by a Declarant Affiliate or by the trustee of any trust of which Declarant or a Declarant Affiliate is the beneficiary), except to the limited extent provided in Section 7.1. During the Period of Declarant Control, the Declarant shall subsidize the Association for the amount by which (i) the cost of operating and administering the Association exceeds (ii) the total amount of Assessments levied against Lots owned by Owners other than the Declarant. The subsidy required of Declarant under this Section 7.12 may be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed. Declarant shall make payments or contributions in respect of its subsidy obligations under this Section 7.12 at such times as the Board may reasonably request from time to time (but shall not be required to make such payments or contributions more often than monthly); at the end of each fiscal year of the Association, either: (1) Declarant shall pay or contribute to the Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Declarant during such fiscal year, to satisfy in full Declarant's subsidy obligations under this Section 7.12 for such fiscal year; or (2) the Association shall pay to Declarant or credit against Declarant's subsidy obligation for the immediately following fiscal year, as Declarant may elect, the amount, if any, by which the total of all payments or contributions paid or made by Declarant during such fiscal year exceeded the total subsidy obligation of Declarant for such fiscal year under this Section 7.12.

7.13 Expenses Resulting from Misconduct. Notwithstanding any other provision of this Article 7, if any expense of the Association is caused by the misconduct of any Owner (or of any Occupant, tenant, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law), the Association may assess that expense exclusively against such Owner and such Owner's property, which amount (together with any and all costs and expenses,

including but not limited to attorneys' fees incurred by the Association in recovering the same) shall be secured by the lien created pursuant to Section 7.3.

ARTICLE 8  
USE RESTRICTIONS AND OTHER COVENANTS,  
CONDITIONS AND EASEMENTS

8.1 Residential and Recreational Purpose. Except as provided in this Section 8.1, no portion of the Property shall be used for other than Single Family residential purposes. Single Family residences shall be limited to modular, manufactured, and site-built homes. All manufactured homes must be of model year 1990 or newer and shall be fully perimeter skirted with masonry block on a concrete footer within sixty (60) days of placement on a Lot. No manufactured home that is not being used for Single Family residential purposes or that is used for storage shall be permitted on any Lot. No Lot shall be used, directly or indirectly, for any business or other similar purpose, except for (i) those business uses allowed in accordance with applicable zoning ordinance and which constitute a secondary use of the Lot and are compatible with a residential neighborhood, and (ii) use by Declarant (or a Declarant Affiliate or assignee of Declarant) or by a builder who has been specifically authorized in writing by Declarant, for a period not to exceed ten (10) years after the date this Declaration is Recorded, in connection with construction and sales activities with respect to the Property (including, but not limited to, maintenance and operation of model homes, sales offices and signs advertising the Property or portions thereof).

8.2 Garages and Driveways. All garages situated on a Lot shall be used for parking vehicles and storage only, and shall not be used for living or commercial activities.

8.3 Signs. No billboards or signs of any type or character shall be erected or permitted on any Lot, except for signs used by Declarant (or a Declarant Affiliate or assignee of Declarant) or a builder who has been specifically authorized in writing by Declarant, to advertise the Property or model homes (or to identify builders, contractors or lenders) during the construction and sales period. Nothing herein shall be deemed to prohibit attachment to the exterior of a Dwelling Unit of a professionally made single name and address plate, not exceeding two (2) square feet in area, identifying the occupant and the address of such Dwelling Unit or the placing upon the exterior of any Dwelling Unit (or upon the Lot containing the Dwelling Unit) of a single "For Sale" or "For Lease" sign, not exceeding four (4) square feet in area, provided that such name and address plates shall be subject to the rules and regulations of the Association. Further, nothing herein shall be deemed to prohibit installation and maintenance of directional signs, subdivision identification signs, street signs or similar signs as may be approved by Declarant or by the Association.

8.4 Solar Collecting Panels or Devices. Solar collecting panels and devices may be placed, constructed or maintained upon any Lot (including upon the

roof of any Dwelling Unit or other structure), so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be visible from ground level view from any other portion of the Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment so as to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a person six feet tall standing at ground level on any other portion of the Property.

8.5 Antennas, Poles, Towers and Dishes. No television, radio, shortwave, microwave, satellite, flag or other antenna, pole, or tower on any Lot shall exceed by more than four feet the roof line of the tallest Dwelling Unit or other structure on the Lot nor shall the same be placed or constructed within a Front Yard. Satellite dishes shall not exceed 36 inches in diameter. Notwithstanding the foregoing, the Association may adopt a rule or regulation permitting the installation and maintenance of a flagpole upon portions of the Property, provided that the location and size of such flagpole (and the number and size of any flag(s) mounted thereon) may be regulated by the Association and may, if so provided in such rule or regulation, be made subject to the prior approval thereof by the Association. Poles to which basketball backboards, goals and related equipment are affixed shall be governed by Section 8.6.

8.6 Basketball Goals or Similar Structures. No basketball goal or similar structure or device (whether mounted on a pole, wall or roof) shall be placed or constructed upon or within a Front Yard.

8.7 Tanks. No tank of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on the Property. Nothing herein shall be deemed to prohibit use or storage upon the Property of propane or similar fuel tanks with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace.

8.8 Vehicles.

8.8.1 No private passenger automobiles or pickup trucks shall be parked upon the Property or any roadway adjacent thereto except within a garage, in a private driveway appurtenant to a Dwelling Unit, or within areas designated for such purpose and approved by the Association.

8.8.2 Other vehicles (including, but not limited to, motor homes, boats, recreational vehicles, trailers, trucks exceeding one ton in designated capacity, campers, permanent tents or similar vehicles or equipment) shall be kept, placed or maintained at least 50 feet from any street shown on the Plat except if within a fully enclosed garage appurtenant to a Dwelling Unit.

8.8.3 No vehicle (including, but not limited to, those enumerated in Subsections 8.8.1 and 8.8.2) shall be constructed, reconstructed or repaired

upon or within a Front Yard or any roadway adjacent thereto. Vehicle construction, reconstruction or repair for a period in excess of seven (7) days must occur within a fully enclosed garage or in an area fully screened and concealed from view from all of the portions of the Property.

8.8.4 No motor vehicles of any kind which are not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit).

8.8.5 The provisions of this Section 8.8 shall not apply to vehicles of Declarant or of builders specifically authorized in writing by Declarant or their employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property.

8.9 Underground Facilities. No cesspool, septic tank or well may be dug or installed without the prior written approval of the Association.

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

8.11 Sanitation. Garbage and refuse facilities, containers and the like shall be attractively screened or placed in such manner as to conceal them from the view of neighboring Lots, Dwelling Units, property, roads or streets (except during reasonable periods to allow for collection by the appropriate sanitation service) and as to make such containers and the like safe from spillage by wind or animals. All equipment for the storage or disposal of garbage or other waste shall be kept in a clean and sanitary condition. All rubbish, trash and garbage shall be kept only in containers meeting applicable governmental sanitation requirements (and any applicable reasonable rules and regulations of the Association), shall be regularly removed from the Property and shall not be allowed to accumulate thereon.

8.12 Walls, Fences, Interferences and Obstructions. All walls and fences shall be of split rail, pool fencing, brick, pipe, redwood slats, masonry block, or similarly attractive materials and, except as otherwise approved by the Association, shall be painted or colored to match the exterior of the Dwelling Unit or other structure(s) enclosed by or upon the same Lot as such wall or fence. No wall or fence shall exceed six and one-half (6 1/2) feet in height, provided that no wall or fence within fifty (50) feet of any street shown on the Plat or located in a Front Yard shall exceed four (4) feet in height (provided that the Association shall have the authority to establish and enforce even more restrictive limitations on the height, locations and appearance of fences and walls, either in individual cases or as a general restriction on portions or all of the Property, where necessary or appropriate, in the reasonable judgment of the Association, to comply with applicable zoning, building or public safety ordinances). All walls and fences shall be constructed in such manner as to prevent sagging, bends, and breaks and shall

be properly permitted and meet professional installation standards. The foregoing shall not apply to boundary walls or fences (if any) constructed by Declarant or the Association along property lines bounding public rights-of-way, provided, however, that such boundary walls or fences shall be constructed so as to comply with applicable zoning and other laws and ordinances. No fence shall be permitted to interfere with existing recorded restrictions, drainageways or easements. Notwithstanding the foregoing to the contrary, chainlink fences, wire fences that are net, woven, barbed, or twisted may be used for the penning or corralling of animals, but such pens or corrals shall not be located closer than seventy-five (75) feet to any street shown on the Plat.

8.13 Nuisance. No rubbish or debris of any kind shall be placed or permitted to accumulate for any unreasonable length of time on any portion of the Property, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly or offensive or detrimental to any other portion of the Property in the vicinity thereof. No noxious, destructive or offensive activity, or any activity constituting an unreasonable source of annoyance, shall be conducted on any portion of the Property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary intercom systems or security devices used exclusively for security purposes, shall be located, used or placed on any Lot. The Board in its discretion shall have the right to determine the existence of any such activity or item. The Association shall have the standing and authority to institute legal proceedings to abate such activity or to secure the removal of such item. Furthermore, the Board shall have the right to remove any such activity or item at the expense of the Owner responsible for the nuisance (or at the expense of the Owner whose tenant, occupant or guest is responsible for such activity or item). Each Owner and Occupant shall refrain from any act on or use of his, her or its Lot which could reasonably cause embarrassment, discomfort or annoyance to other Owners or Occupants and the Board shall have the power to make and enforce reasonable rules and regulations in furtherance of this provision.

8.14 Drainage Alteration; Easements. No vegetation may be planted or permitted to remain on areas subject to drainage easements, as shown on Recorded plats, in such manner as to interfere with drainage or which shall be deemed by the Association to be a detriment to utilities located under or near such vegetation. Notwithstanding anything in this Declaration to the contrary, including, without limitation, the terms of Section 8.12, fences or walls to be constructed within areas depicted as floodplain or erosion hazards setback on the Plat shall not be constructed of block or brick, or by other construction technique which would impede the flow of flood waters.

8.15 Clothes-Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained within twenty-five (25) feet of any Lot line or within a Front Yard.

8.16 Pets. Livestock, horses, chickens and other farm animals are permitted on the Property, subject to rules and regulations adopted by the Board. Notwithstanding the foregoing, no animals may be kept upon the Property which, in the opinion of the Board, result in any annoyance or are obnoxious to Owners or Occupants of other Lots. The housing, corralling and penning of any animals on the Property shall conform to all applicable laws. Animal waste shall be removed by the Owner or Occupant of any Lot not less frequently than weekly and disposed of lawfully. Except for household pets, no animal may be tied, penned, housed or corralled closer than seventy-five (75) feet to the front Lot line or closer than twenty-five (25) feet to any other Lot line.

8.17 Leasing; Obligations of Tenants and Other Occupants.

8.17.1 All leases of any portion of the Property shall be in writing and shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws and the Association Rules (except that such tenant shall not have any voting rights appurtenant to the Lot occupied by such tenant except pursuant to an express written assignment complying with Section 2.4). Each Owner shall cause his, her or its tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents.

8.17.2 In the event that a tenant or other Occupant violates any provision of this Declaration, the Articles, the Bylaws or the Association Rules, the Association shall have the power to bring an action or suit against such tenant or other Occupant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. The Association's costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest as provided in Section 9.6, shall be reimbursed by the tenant or other Occupant to the Association (or, in the absence of reimbursement by the tenant or other Occupant, or at the election of the Board, by the Owner of the portion of the Property occupied by such tenant or other Occupant) and constitute a lien on the applicable portion of the Property which shall have the priority, and may be enforced in the manner, described in Section 7.3.

8.17.3 Subject to any limitations or requirements imposed by applicable law, the Board shall also have the power where approved by Members holding a majority of votes represented in person or by valid proxy at a meeting of Members duly called for such purpose, to impose reasonable monetary fines upon the tenant or the Owner, or both for any violation by the tenant or Occupant of any duty imposed under this Declaration, the Articles, the Bylaws or the Association Rules.

8.17.4 No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. Upon leasing his, her or its Lot, an Owner shall promptly notify the Association of the commencement and termination dates of the lease and the names of each tenant or other Person who will occupy the Lot during the term of the lease.

8.17.5 The provisions of this Section 8.17 shall not apply to Declarant's use of Lots owned by (or leased to) Declarant as model homes or offices or for marketing purposes pursuant to Section 8.1.

8.18 Landscaping and Maintenance. Except as provided for in Section 3.1, each Owner shall maintain the landscaping on such Owner's property and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit and other structures in accordance with standards prescribed by the Board and otherwise in a manner and to a level not less than the standards of quality established by the Board with respect to the quality, quantity and frequency of watering, mowing, weeding, trimming, fertilizing, painting and the like. In the event any Owner fails to perform the obligations provided herein, the Association may, at the discretion of the Board, perform those obligations at the expense of such Owner, which expense, together with attorneys' fees and interest as provided in Section 9.6, shall be secured by the lien on such Owner's property established by Section 7.3. The provisions of this Section 8.19 shall not apply to any property owned by Declarant.

8.19 Miscellaneous. The Board, in its good faith discretion, is hereby authorized to grant such waivers of the restrictions contained in this Article 8 as it shall deem appropriate in the circumstances, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration. In addition, all portions of the Property shall continue at all times to be subject to any and all applicable zoning laws and ordinances, provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

## ARTICLE 9 GENERAL PROVISIONS

9.1 Term. Subject to the provisions of Section 9.2, the covenants, conditions and restrictions of this Declaration: (a) shall run with and bind the Property as real covenants and equitable servitudes; (b) shall inure to the benefit of and shall be enforceable by the Association or by any Owner, their respective legal representatives, heirs, successors and assigns at law and in equity; and (c) shall remain in full force and effect until January 1, 2046, at which time said conditions, covenants and restrictions, unless revoked at any time as provided in

Section 9.2, shall automatically be extended for successive periods of twenty-five (25) years each, until revoked or amended in the manner provided in Section 9.2.

9.2 Amendment of Declaration. Except as otherwise provided herein (and subject to the provisions of Section 9.8), this Declaration may be amended or revoked, in whole or in part, at any time and from time to time, during the initial term and any extension thereof, but only by the affirmative vote (in person or by proxy) or written consent of Members holding at least sixty-seven percent (67%) of the votes then entitled to be cast in each class of Members. Amendments or revocations to this Declaration need not uniformly affect all portions of the Property. No amendment or revocation of this Declaration shall be effective unless and until such amendment or revocation is Recorded. Further, so long as the Declarant or any Declarant Affiliate owns any Lot or other portion of the Property, no amendment to this Declaration shall be effective unless approved in writing by the Declarant (or unless the Declarant expressly waives in writing in its right to approve such amendments).

9.3 Indemnification. The Association shall indemnify each and every officer and director of the Association (including, for purposes of this Section, former officers and directors of the Association) against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an officer or director of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors 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 indirectly to the extent that such officers or directors may also be Members of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless from and 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 or director, or former officer or director of the Association, may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any director or officer (or former director or officer) of the Association who may be entitled to indemnification hereunder to enable such Person to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Person by reason of his or her being, or having been, an officer or director of the Association. In the event it is ultimately determined that a current or former officer or director to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 9.3 or otherwise under the Articles, Bylaws or applicable law, such current or former officer or director shall promptly upon demand repay to the Association the total of such funds advanced by the

Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

9.4 Severability; Interpretation; Exhibits; Gender. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. The provisions hereof shall be construed and interpreted with reference to the laws of the State of Arizona. References in this Declaration to Articles, Sections and Subsections shall be deemed to be references to the specified Articles, Sections and Subsection of this Declaration (unless otherwise specifically stated), whether or not phrases such as "of this Declaration," "hereof" or "herein" are used in connection with such references. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof. Where the context hereof so requires, any personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all genders, and the singular shall include the plural and vice versa. Titles of Articles and Sections are for convenience only and shall not affect the interpretation hereof.

9.5 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

9.6 Enforcement. The Association and/or any Owner shall have the standing and power to enforce the provisions of this Declaration, the Articles, the Bylaws and the Association Rules at both law and in equity, including without limitation, actions for damages and suits for injunctive relief, and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at a rate equal to the greater of: (a) ten percent (10%) per annum; or (b) the annual prime rate of interest then being charged by Norwest Bank Arizona, N.A. (or its successor) plus four percent (4%) shall constitute a lien on all portions of the Property owned by the Owner or Owners against whom the action is taken (or against whose Occupants the action is taken), which lien shall have the priority and may be enforced in the manner described in **Section 7.3**. The prevailing party in an action or suit to enforce the provisions of this Declaration, the Articles, the Bylaws and/or the Association Rules shall be entitled to an award by the court of its reasonable attorneys' fees, costs and the interest described above in addition to any other relief granted. Failure by the Association or any Owner to take any such enforcement action shall in no event be deemed a waiver of the right to do so thereafter.

9.7 Property Held in Trust. Any and all portions of the Property which are now or hereafter held in a subdivision trust, so called "Illinois land trust," or similar trust or trusts (or similar means of holding title to property), the

beneficiary of which trust(s) is Declarant or Declarant Affiliate, shall be deemed for all purposes under this Declaration to be owned by Declarant or such Declarant Affiliate, as applicable, and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by Declarant or any such Declarant Affiliate, as applicable. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by Declarant or a Declarant Affiliate to any such trust (or the trustee thereof) or to Declarant by any such trust (or the trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

9.8 Amendments Requested by Governmental Agency.

Notwithstanding any other provision of this Declaration, the Articles or the Bylaws, Declarant shall have the right to amend all or any part of this Declaration, the Articles or the Bylaws to such extent and with such language as may be requested by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other governmental or quasi-governmental agency which issues, guarantees, insures or purchases Mortgages (or securities or other debt instruments backed or secured by Mortgages), or otherwise governs transactions involving Mortgages or instruments evidencing same, or otherwise governs development of the Property, as a condition to such agency's approval of this Declaration or the Property. Any such amendment to this Declaration shall be effected by Declarant's Recording an instrument executed by Declarant and appropriately acknowledged, specifying the governmental or quasi-governmental agency requesting such amendment and setting forth the appropriate amendatory language. Recording of such amendment shall constitute conclusive proof of such governmental or quasi-governmental agency's request for such amendment. Such amendment shall be effective, without the consent or approval of any other Person, on and as of the date the same is Recorded, and shall thereupon and thereafter be binding upon any and all Owners or other Persons having any interest in all or any part of the Property. Any such amendment to the Articles shall be effected by Declarant's filing articles of amendment to the Articles in accordance with applicable law, and such filing shall constitute conclusive proof of the applicable agency's request for such amendment, and shall be effective, without the consent or approval of any other Person, upon such filing. Any such amendment to the Bylaws shall be effected by Declarant's executing and filing in the Association's corporate records the amendment to the Bylaws with a certificate executed by Declarant specifying the governmental or quasi-governmental agency requesting the amendment, and the filing of such amendment and certificate in the Association's corporate records shall constitute conclusive proof of such agency's request for such amendment, and such amendment shall be effective, without the consent or approval of any other Person, as of the effective date specified in the amendment or certificate. Except as expressly provided in this Section, neither Declarant nor any other Person(s) shall have the right to amend this Declaration, the Articles or the Bylaws except in accordance with and pursuant to the other provisions and requirements of this Declaration, the Articles and the Bylaws.

9.9 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

9.10 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws or the Association Rules. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the portion of the Property against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the portion of the Property in question, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the portion of the Property against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

9.11 Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Wilmot Farms can or will be carried out, or that any real property now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant or that such restrictive covenant will not be subsequently eliminated or modified through an amendment to this Declaration. Any Owner acquiring a portion of the Property in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to that portion of the Property agrees to hold Declarant harmless therefrom.

9.12 Declarant's Rights. Subject to Section 1.9, any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided, further, that no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly Recorded. Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry, and to permit builders specifically authorized in writing by Declarant to maintain and carry, upon portions of the Property such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots owned by Declarant as models, sales offices and other purposes related to Declarant's sales activities on the Property. So long as Declarant continues to have rights under this Section, no Person shall Record any subdivision plat or map, any declaration of covenants, conditions and restrictions, any declaration of condominium or any similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted Recordation without compliance herewith shall result in such subdivision plat or map, declaration of covenants, conditions and restrictions, declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by Recorded consent signed by Declarant. This Section may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Section shall terminate upon the earlier of: (a) the date when neither Declarant nor any Declarant Affiliate is the Owner of any Lot; or (b) the date which is ten (10) years after the date this Declaration is Recorded.

9.13 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon Declarant or any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as Declarant, any Declarant Affiliate or a trustee for the benefit of Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of Declarant.

9.14 Counterparts. This Declaration may be signed in one or more identical counterparts.

## ARTICLE 10 FHA/VA PROVISIONS

10.1 Approvals During Period of Declarant Control. Notwithstanding any other provision of this Declaration or of any of the other Documents to the

contrary, during the period: (a) commencing with the earlier of: (i) the date FHA or VA first approves the Property for single family residential loan insurance or guarantee programs offered by FHA or VA; or (ii) the date FHA or VA first insures or guarantees a loan on any Lot within the Property; and (b) ending with the expiration or termination of the Period of Declarant Control:

10.1.1 property shall not be annexed to the Property without the prior approval of either FHA or VA (except to the extent such annexation involves only minor adjustments to boundaries of the Property);

10.1.2 no amendment to this Declaration or to the Articles or Bylaws shall be effective without the prior approval of either FHA or VA (except to make clerical or technical corrections); and

10.1.3 the Association shall not be dissolved, or merged or consolidated with any other entity, without the prior approval of FHA or VA.

10.2 Obtaining Approvals. As to any action required by this Article 10 to be approved by FHA or VA before becoming effective or before being taken, such action shall be submitted to FHA or VA for approval, and if the agency whose approval is requested does not disapprove the same, by written notice to the Association, the Declarant or other Person requesting such approval, within thirty (30) days after delivery to such agency of the request for approval, the action in question shall be deemed approved by such agency.

10.3 Approval Not Required. Notwithstanding anything in this Article 10 to the contrary: (a) if at the time in question FHA has neither approved the Property for any single family residential loan insurance or guarantee program offered by FHA, nor insured or guaranteed a loan secured by a Lot, no consent or approval by FHA as to any matter shall be required under this Article 10; and (b) if at the time in question VA has neither approved the Property for any single family residential loan insurance or guarantee program offered by VA, nor insured or guaranteed a loan secured by a Lot, no consent or approval by VA as to any matter shall be required under this Article 10.

10.4 Definitions. For purposes of this Article 10, the term "FHA" means the Federal Housing Administration (or its successor federal agency), and the term "VA" means the Veterans Administration (or its successor federal agency).



STATE OF California  
County of San Diego ) ss.

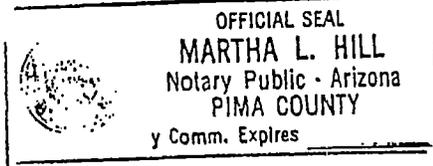
The foregoing instrument was acknowledged before me this 11 day of March, 1997 by HANNO LAZ, the President of WILMOT FARMS, INC., an Arizona corporation, on behalf of the corporation.



Hannah Ugne-Metti  
Notary Public

STATE OF ARIZONA )  
County of Pima ) ss.

The foregoing instrument was acknowledged before me this 18th day of April, 1997, by Kevin French the Sr. Trust Officer of FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation, on behalf of the corporation in its capacity as trustee of its Trust No. 10812, and not personally.



Martha L Hill  
Notary Public

My Commission Expires:  
8-27-97