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DECLARATION OF COVENANTS, CONDITIONS

AND RESTRICTIONS

FOR

PECAN GROVE ESTATES II

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
PECAN GROVE ESTATES II**

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR PECAN GROVE ESTATES II**

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THIS DECLARATION is made on the 17th day of November, 1986, by Warner Road Joint Venture, an Arizona joint venture (the "Declarant").

**WITNESSETH:**

**WHEREAS**, the Declarant is the owner of the real property located in Maricopa County, Arizona, which is described on Exhibit A attached hereto;

**WHEREAS**, Declarant desires to impose certain covenants, conditions and restrictions upon the real property described on Exhibit A attached hereto in order to establish a general scheme for the development, sale, use and enjoyment of the real property described on Exhibit A attached hereto for the purpose of enhancing and protecting the value, desirability and quality of life within the real property described on Exhibit A attached hereto.

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

## ARTICLE I

## DEFINITIONS

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

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

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

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

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

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

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

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

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

Tracts A, B, C, D and E, PECAN GROVE  
ESTATES II, a subdivision according to the  
plat recorded with the County Recorder of  
Maricopa County, Arizona, in Book 297 of  
Maps, Page 14.

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1.10. "Declarant" means Warner Road Joint Venture, an Arizona joint venture, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.

1.11. "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as it may from time to time be amended.

1.12. "Eligible Insurer Or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

1.13. "Eligible Mortgage Holder" means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

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

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

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

1.17. "Lot" means Unofficial Document any parcel of real property designated as a Lot on the Plat.

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

1.19. "Owner" means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the



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remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the trustor under the deed of trust shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.20. "Plat" means the plat of survey of Pecan Grove Estates II which plat has been recorded with the County Recorder of Maricopa County, Arizona, in Book 297 of Maps, page 14, and all amendments thereto.

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

1.22. "Property" or "Project" means the real property described on Exhibit A attached to this Declaration together with all buildings and other improvements located thereon, and all easements, rights and appurtenances belonging thereto.

Unofficial Document

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

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

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

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1.26. "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Unofficial Document

## ARTICLE 2

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**THE ASSOCIATION; RIGHTS AND DUTIES,  
MEMBERSHIP AND VOTING RIGHTS**

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

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

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

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

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

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

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

**Class A.** Class A members shall be all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned.

**Class B.** The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When seventy-five percent (75%) of the Lots have been conveyed to Purchasers; or

(b) Five (5) years after the conveyance of the first Lot to a Purchaser; or

(c) When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

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

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**2.9. Corporate Ownership.** In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner or chief executive officer of such corporation, partnership or association shall have the power to vote the membership.

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

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## ARTICLE 3

## COVENANT FOR MAINTENANCE ASSESSMENTS

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

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

**3.3. Annual Assessment.**

(a) In order to provide for the operation and management of the Association and to provide funds for the Association to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each fiscal year of the Association commencing with the year in which the first Lot is conveyed to a Purchaser, shall assess against each Lot an annual assessment. The amount of the annual assessment shall be in the sole discretion of the Board except that (i) the annual assessment shall not exceed the maximum annual assessment for the fiscal year as computed pursuant to Subsection (b) of this Section, (ii) the annual assessment must be fixed at a uniform rate for each Lot and (iii) the Declarant shall be obligated to pay only twenty-five percent (25%) of the annual assessment attributable to Lots owned by the Declarant until a Residential Unit on such Lot has been occupied for Single Family Residential use. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual assessment is attributable, the assessment

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shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for each rate. So long as there is a Class B membership in the Association, the Declarant shall pay to the Association any amounts which, in addition to the annual assessments levied by the Association, may be required by the Association in order for the Association to fully perform its duties and obligations under the Project Documents, including the obligation to maintain adequate reserve accounts. The Board shall give notice of the annual assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment. If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board except that no increase in the annual assessment for any fiscal year which would result in the annual assessment exceeding <sup>Unofficial Document</sup> ~~the~~ maximum annual assessment for such fiscal year shall become effective until approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

(b) The annual assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be Two Hundred Forty Dollars (\$240.00).

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the membership, increase the maximum annual assessment during each fiscal year of the Association by the greater of an amount equal to 5% of the maximum annual assessment for the immediately preceding fiscal year or by an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1967 =

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100), or in the event said index ceases to be published, by any successor index recommended as a substitute therefor by the United States government.

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment may be increased by an amount greater than the maximum increase allowed pursuant to (a) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

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

**3.5. Notice and Quorum for Any Action Authorized Under Sections 3.3(a) or 3.4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3.3(a) or 3.4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**3.6. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments shall commence as to each Lot on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual assessment be paid in installments and in such



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event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

**3.7. Effect of Nonpayment of Assessments; Remedies of the Association.** Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum or the prevailing FHA/VA interest rate for new home loans, whichever is higher. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent Owner as shown on the records of the Association, (2) the legal description or street address of the Lot against which the claim of lien is made, (3) the amount claimed as of the date of the recording of the notice including interest, lien recording fees and reasonable attorneys' fees, (4) the name and address of the Association. The Association's lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens which are specifically described in Section 3.8 of this <sup>Unofficial Document</sup> Declaration.

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

The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any

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other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving any lien securing any such delinquent Assessments or (b) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

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

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

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

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

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

## ARTICLE 4

## PERMITTED USES AND RESTRICTIONS

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

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

4.3. Antennas. No antenna, satellite television dish antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, Unofficial Document, but without limitation, Citizen's Band or Ham Radio signals shall be erected, used or maintained outdoors on any Lot without the prior written approval of the Architectural Committee. Any satellite television dish, antenna or satellite receiver approved by the Architectural Committee must be mounted on the ground and must not be Visible From Neighboring Property.

4.4. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure, landscaping or other Improvement shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the

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installation and maintenance of utilities or which may change the direction or flow of drainage channels in such easement areas or which may obstruct or retard the flow of water through drainage channels in such easement areas. Such public utility easement areas, and all improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless such easement area is to be maintained by the utility company or a county, municipality or other public authority.

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

4.6. Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street so as to be Visible From Neighboring Property or any street except for (i) pickup trucks of less than 3/4 ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level or (ii) mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in Section 4.8 of this Declaration and are used on a regular and recurring basis for basic transportation.

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4.7. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street, and no inoperable vehicle may be stored or parked on any Lot or street, so as to be Visible From Neighboring Property or to be visible from any street; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee.

4.8. Parking. All vehicles of Owners and of their lessees, employees, guests and invitees shall be kept in garages, carports or residential driveways of the Owners wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot; provided, however, this Section shall not be construed to permit the parking in the above-described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle.

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

4.10. Repair of Buildings. No building, landscaping or other Improvement upon any Lot shall be permitted to fall into disrepair, and each such building, landscaping or other Improvement shall at all times be kept in good condition and repair by the Owner thereof.

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

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

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

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

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**4.15. Restriction on Further Subdivision.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant.

**4.16. Signs.** No signs whatsoever (including, but without limitation, commercial, political, "for sale," "for rent" and similar signs) shall be erected or maintained on any Lot except:

(a) One residential identification sign with a total face area of eighty square inches or less;

(b) Such signs as may be required by legal proceedings;

(c) One "for sale" or "for rent" sign with a total face area of five square feet or less; and

(d) Upon satisfaction of any applicable rules, regulations, ordinances or laws concerning signs.

**4.17. Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the construction, development, identification, or sale of Lots or other property within the Project.

**4.18. Mineral Exp<sup>Unofficial Document</sup>.** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals or any kind, gravel, earth, or any earth substance of any kind and no derrick or other equipment designed or intended for any such activity shall be erected, placed, constructed or maintained on any Lot.

**4.19. Diseases and Insects.** No Owner shall permit any thing or condition to exist upon any property which could induce, breed or harbor infectious plant diseases or noxious insects.

**4.20. Improvements and Alterations.** All Improvements constructed on Lots within the Project shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date the

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Lot was conveyed by the Declarant to a Purchaser shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for any addition, alteration, repair, change or other work which alters the exterior appearance of his Lot, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Architectural Committee of any addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar addition, alteration, repair, change or other work subsequently submitted for approval. Upon receipt of approval from the Architectural Committee for any addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee. In addition to obtaining the approval of the Architectural Committee, an Owner must obtain all ordinary and necessary permits and approvals from the City of Tempe.

**4.21. Common Walls.** The rights and duties of Owners of Lots with respect to common walls shall be as follows:

(a) The Owners of contiguous Lots who have a common wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner;

(b) In the event that any common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the common wall without cost to the other Owner or Owners;