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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
PECAN GROVE VILLAGE II

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

THIS DECLARATION is made on the 27th day of April, 1990, by HOMES BY POLYGON 2000, a California general partnership (the "Declarant").

WITNESSETH:

A. Declarant is the beneficial owner of certain real property located in Phoenix, Maricopa County, Arizona, which is more particularly described as follows:

Lots 1 through 130, and Tracts A, B and C of PECAN GROVE VILLAGE II, a subdivision per plat recorded in Book 336 of Maps, page 17, Records of Maricopa County, Arizona.

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B. Declarant desires to impose certain covenants, conditions and restrictions upon the real property described above (together with any additional property annexed hereunder) in order to establish a general scheme for the development, sale, use and enjoyment of the real property for the purpose of enhancing and protecting the value, desirability and quality of life within said real property.

NOW, THEREFORE, the Declarant hereby declares that all of the above described lots and tracts be held, sold and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with said real property, touch and concern the 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.

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**ARTICLE 1
DEFINITIONS**

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

1.2 "Architectural Committee Rules" means the rules, if any, 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, special and other 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 Village 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 Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

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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 shall include Tracts A, B and C, of PECAN GROVE VILLAGE II, a subdivision according to the plat recorded with the County Recorder of Maricopa County, Arizona, in Book 336 of Maps, Page 17 and the Side Yard Easements as defined in Article 5.

1.10 "Declarant" means HOMES BY POLYGON 2000, a California general partnership, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.

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1.11 "Declaration" mean 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 10.1 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 10.1 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 any parcel of real property designated as a Lot on the Plat and which is covered by or irrevocably annexed under this Declaration.

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

1.19 "Never Occupied Lot" is any Lot which is not a Once Occupied Lot.

1.20 "Once Occupied Lot" is any Lot with a dwelling thereon:

(i) which is or has been occupied by someone residing thereon, or

(ii) which has been conveyed by the Declarant to a Purchaser or regarding which a contract for sale to a Purchaser has been recorded in the office of the Maricopa County Recorder.

1.21 "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)

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a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a land contract, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include: (a) 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; or (b) vendor/grantor/seller under any contract described in the preceding sentence. 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.

1.22 "Plat" means the plat of survey of PECAN GROVE VILLAGE which plat has been recorded with the County Recorder of Maricopa County, Arizona, in Book 336 of Maps, page 17, and all amendments thereto or replacements thereof permitted hereunder.

1.23 "Project Documents" means this Declaration and the Articles, Bylaws, Association ^{Bylaws} Unofficial Document and any Architectural Committee Rules.

1.24 "Property" or "Project" means the real property described on page one of this Declaration and all real property subsequently annexed by the Declarant pursuant to Article 9 of this Declaration together with all buildings and other improvements located thereon, and all easements, rights and appurtenances belonging thereto.

1.25 "Purchaser" means any person other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot except Purchaser shall not include: (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.

1.26 "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.

1.27 "Single Family Residential Use" means the occupation

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

1.28 "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.

**ARTICLE 2
THE ASSOCIATION; RIGHTS AND DUTIES,
MEMBERSHIP AND VOTING RIGHTS**

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

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

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

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

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

2.6 Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or upon transfer of the ownership of a Lot 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 of Lots, with the exception of the Declarant, until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earlier to occur of the following events:

(a) One hundred and twenty days after the date on which 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.

In addition to the foregoing and notwithstanding anything contained herein to the contrary, so long as any Class B memberships remain outstanding Declarant shall have the right acting alone to appoint, remove, replace from time to time any or all of the directors of the Association.

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

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respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a Particular Lot, none of said votes shall be counted and said votes shall be deemed void.

2.9 Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the 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 respectively 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 Unofficial Document automatically suspended and shall remain suspended until all payments, including accrued interest and attorneys fees, are brought current. In addition, the Board may suspend an Owner's right to vote for a period not to exceed 60 days for any infractions of the Project Documents.

2.11 Disposition of Common Areas. The Association shall not mortgage or convey any Common Areas without the affirmative vote of two-thirds of the Class A Members.

2.12 Cancellation of Agreements. No agreement for professional management of the Association or the Project or contract providing for services of the Declarant, or other developer, sponsor or builder of the Project shall exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice. In addition, the Association shall have the right exercisable within 45 days after the expiration of the Class B membership to terminate without penalty, any management contract, employment contract or lease the Association enters into prior to the expiration of the Class B membership.

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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 (i) the upkeep, maintenance and improvement of the Common Area; (ii) promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property; and (iii) 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 ^{Unofficial Document} 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 the annual assessment shall not exceed the maximum annual assessment for the fiscal year as computed pursuant to Subsection (b) of this Section. 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 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 Six Hundred and Sixty Dollars (\$660.00) for each Lot, which is equivalent to Fifty-Five Dollars (\$55.00) per month per Lot.

(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 no more than the greater of (a) ten percent (10%) or (b) 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 = 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 for a year by an amount greater than the maximum increase allowed pursuant to (i) and (ii) 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

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Association purpose, provided that any such special assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

3.5 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 10 of 75 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. 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 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 Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all assessable Once Occupied Lots and at a uniform rate for all assessable Never Occupied Lots. The rate for each Never Occupied Lot shall be equal to the greater of (i) the shortfall, if any, in the Association's budget (calculated on the assumption that the Association has received all Assessments otherwise payable hereunder) divided by the number of Never Occupied Lots or (ii) twenty-five percent of the rate for Once Occupied Lots. The status of a Lot as Never Occupied or Once Occupied shall be determined as of the date an assessment is due. This provision shall not preclude the Association from making a separate or additional charge to an Owner for the costs to the Association of special services or benefits rendered to, conferred upon or obtained by or for that Owner or his Lot at the Owner's request.

3.8 Additional Assessments. In addition to all other assessments described herein, the Association shall have, in addition to any other right, power or remedy the Association may have, the power to impose an assessment against any Owner failing to timely pay assessments required by this Declaration or wil-

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fully and intentionally violating the other requirements of this Declaration or the Association Rules. The amount of such assessment shall not exceed Twenty-five Dollars (\$25.00) for the first violation of any provision of this Declaration or Association Rule, or Fifty Dollars (\$50.00) for any subsequent violation of the same provision. Further, the Association shall have the power to assess against any Owner's Lot the cost of any specific maintenance, replacement or repair of any portion of the Common Area resulting from the intentional or negligent act or omission of an Owner, a member of his family, or his tenants, guests, licensees or invitees. The assessments described in this paragraph shall be enforceable in any manner provided for the enforcement of any other assessments hereunder.

3.9 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 lesser of (a) the maximum written contract rate of interest allowed by law or (b) the higher of the rate of twelve percent (12%) per annum or the prevailing FHA/VA interest rate for new home loans. 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 recording 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 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 Unofficial Document ling interest, lien recording fees and reasonable attorneys' fees; and (4) the name and address of the Association.

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 other

sums due to the Association in any manner allowed by law or equity 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, (b) bringing an action to foreclose its lien against the Lot in the manner Provided by law for the foreclosure of a realty mortgage, or (c) otherwise enforcing at law or equity the Association's rights hereunder. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

3.10 Priority of Assessment Lien. The lien of the Association for delinquent Assessments provided for in this Declaration shall have priority as of the date the Notice of Claim of Lien is recorded.

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

3.12 Maintenance of Reserve Fund. Out of the annual assessments, the Association shall establish and maintain a reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area. Such reserve fund is to be maintained in a separate account and drawn upon for such purposes.

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3.13 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.

3.14 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 a Lot a sum equal to one-sixth (1/6th) of the annual assessment for his Lot. Such amount shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

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**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 except that an indoor home occupation may be conducted upon a Lot so long as the dwelling continues to be occupied as the principal residence of the person conducting the home occupation and the home occupation (i) is conducted entirely indoors, (ii) is not discernable from the outside of the dwelling, (iii) complies with all laws and ordinances, and (iv) does not generate significant additional traffic within the Property.

4.2 Animals. No animals, birds, fowl, poultry, or livestock, other than not more than two (2) generally recognized house or yard pets having a total combined weight of not more than seventy (70) pounds, 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. The Board shall have authority to determine in any event whether an animal is a "generally recognized house or yard pet." 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. Dogs and other pets residing on or visiting a Lot shall be permitted to relieve themselves only upon the Lot where the Pet resides or is visiting. It shall be the responsibility of the Owner of the Lot where the pet resides or is visiting to remove immediately any pets' droppings on Common Areas or otherwise Visible From Neighboring Property. 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 Owner's 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 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, including, but without limitation, Citizen's Band or Ham Radio signals shall be erected, used or maintained outdoors on any Lot without the prior written approval of the Architectural Committee. Any satellite dish must be ground mounted and not 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

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unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure, landscaping or other Improvement shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage channels in such easement areas or which may obstruct or retard the flow of water through drainage channels in such easement areas. Such public utility easement areas, and all improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless such easement area is to be maintained by the utility company or a county, municipality or other public authority.

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

4.6 Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street so as to be Visible From Neighboring Property or any street except for (i) pickup trucks of less than one (1) 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 pickup trucks and mini-motor homes are parked as provided in Section 4.8 of this Declaration and are used on a regular and recurring basis for basic transportation. The preceding sentence shall not prohibit the storage of vehicles described in the preceding sentence on such portions of the Common Areas as the Association may from time to time designate as recreational vehicle parking areas. Any such parking areas must be completely enclosed by a six-foot wall (in lieu of any other screening required hereunder) and used in accordance with rules established from time to time by the Association. The Association shall have the power to charge a fee for the use of any recreational vehicle storage area. Such fee shall not materially exceed storage fees charged by commercial storage facilities providing similar services. Such fees shall be paid into the Association's general fund and used for such purposes as the Board may determine from time to time. Recreational storage areas shall be used only by residents of the Property as permitted herein.

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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, 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. In addition, no vehicle shall be parked on streets or common areas for longer than a twenty-four (24) hour period, and no more than one vehicle shall be allowed to remain in a driveway overnight. Further, no vehicles shall be parked on any Common Areas except as permitted by the Association.

4.9 Nuisances. No nuisance (either public or private) 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 ^{Unofficial Document} ~~stair~~ 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 or 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 clotheslines or other outside facilities for laundering, 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 Common Area from ground level to a height of twelve (12) feet. The Common Area and all Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots and Common Area as constructed by the Declarant or as reconstructed or repaired in accordance with the original plans and specifications or as a result of repair, shifting, settlement or movement of any such structure.

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.

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 Unofficial Document transferred by any Owner other than the Declarant. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, Declarant specifically reserves the right from time to time to replat any portion of the Property, to increase or decrease the number or change the boundaries, size and location of any unsold Lots and to likewise modify the boundaries or designation hereunder (e.g., Lot versus Common Area) of any portion of the Property other than Lots not then owned by Declarant so long as the overall amount of Common Area within the Project is not significantly adversely and materially diminished thereby. The Association and each Owner or other person claiming an interest in the Property shall assist and cooperate with Declarant in any such change.

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 address identification sign with a total face area of eighty square inches or less;

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

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

Each Owner shall comply with all applicable City of Tempe sign regulations.

4.17 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection, maintenance use or operation 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 Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of 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 or placed 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 Unofficial Document without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date the Lot was conveyed by the Declarant to a Purchaser shall be made or done without the prior written approval of the Architectural Committee and any approvals or permits required by the City of Tempe. 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, from their appearance on the date the Lot was conveyed by the Declarant to the first Purchaser shall submit to the Architectural Committee a written request for approval specifying the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform in sufficient detail to reasonably allow the Architectural Committee to evaluate the proposed work. In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) 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

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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.

4.21 Common Walls. Walls constructed in connection with the original development of the Property shall thereafter be repaired, rebuilt and otherwise maintained in a good and attractive condition. No wall shall be removed without the Association's approval. All walls visible from neighboring property shall be painted a uniform color to match the color of walls maintained by the Association, unless otherwise permitted by the Association. All walls located entirely upon Common Areas shall be maintained by the Association. All walls located entirely upon a Lot (including peripheral rear lot line walls along the north and east boundaries of the Project and walls adjacent to Side Yard Easements) shall be maintained by the Owner of the Lot. All walls located on a boundary line between a Lot and a Common Area (other than Side Yard Easements) shall be maintained as provided below for walls constructed on a boundary line between two lots and the Association shall perform the responsibility of the Owner with respect to the ^{Unofficial Document} Common Area adjacent to such wall.

(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, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to promptly rebuild and repair the common wall without cost to the other Owner or Owners;

(c) In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, or such other persons whose acts are attributed to the Owner (including ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good a condition as formerly at their joint and equal expense;

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(d) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;

(e) In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners;

(f) In the event any common wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall.

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

4.23 Fuel Tanks. No fuel tanks of any kind (other than "gas cans" of five gallon or smaller capacity for lawnmowers, etc.) shall be erected, placed or maintained on the Property except for propane or similar fuel tanks permitted under the ordinances of the City of Tempe, Arizona.

4.24 Windows. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, Unofficial Document shall be installed or placed upon the outside or inside of any windows of any residence or other structure without the prior written approval of the Architectural Committee. No awning installed on a second story window as part of the original construction of a dwelling shall be removed and all Owners of dwellings upon which such awnings are installed shall repair, replace and maintain such awnings as may be necessary to preserve the same in a neat and attractive condition.

4.25 HVAC and Solar Panels. Except as initially installed by the Declarant, no heating, air conditioning, evaporative cooling or solar energy collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee.

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

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construction. Garage doors shall be left open only as needed for ingress and egress.

4.27 Landscaping on Lots. In the event the front and side yards of any Lot are not landscaped prior to the acquisition of such Lot by a homeowner from the Declarant, within six months from the close of the sale of such Lot, the Owner shall have fully landscaped said Lot in accordance with a landscape plan approved by the Architectural Committee and all zoning or similar requirements. Said landscaping shall be in harmony with other landscaped areas in the subdivision. Each Owner shall maintain his Lot free of weeds and in a neat and attractive condition. An Owner shall obtain any landscaping approvals from the City of Tempe which are required by applicable city ordinances. This paragraph shall not require an Owner to perform any landscaping requirements imposed by this Declaration on the Association. No later than six (6) months after close of escrow, each Owner shall, unless Declarant has already done so, plant at least one fifteen gallon tree and one twenty four inch box tree in the front yard of such Owner's Lot.

4.28 Leasing Restrictions. Any lease or rental agreement must be in writing and be subject to the requirements of the Project Documents. All leases must be for an entire residence and Lot and must have a minimum term of thirty days.

ARTICLE 5 EASEMENTS

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

5.2 Non-Access Easement. A perpetual one foot wide non-vehicular access easement is hereby created in favor of the City of Tempe along the rear boundary of each Lot in the southern portion of the Property having a rear boundary adjoining the Common Areas which front on Warner Road.

5.3 Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their families, guests, tenants and invitees for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Area; and for vehicular traffic over, through and across

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such portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

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

5.5 Association's Easement For Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and for performing all of the Association's other rights, duties and obligations under the Project Documents.

5.6 Access Easement for Pool Construction. If necessary for the purposes of back yard landscaping, pool construction, or the construction of other back yard recreational facilities, a Lot Owner shall have an access easement over a portion of the adjoining Lot's (if any) entryway area. The access easement shall be limited to a five foot strip of the adjoining Lot's side or front yard immediately adjacent to the Lot boundary nearest to the constructing Lot Owner's gate. ^{Unofficial Document} The access easement shall be temporary and all back yard landscaping and construction must be completed within ninety (90) days of the commencement of said landscaping or construction. The adjoining Lot Owner shall be given at least fifteen (15) days notice prior to the initial use of this temporary access easement. Following the completion of construction or landscaping, any Owner using the access easement provided for herein, shall promptly repair any damage occasioned by his use and shall restore the access easement area to its former condition.

5.7 Side Yard Easement in Favor of Association. There is hereby created in favor of the Association a perpetual non-exclusive landscaping easement (the "Side Yard Easements") over, under and across that portion of each corner Lot which is located within ten (10) feet of the street right of way adjacent to the side yard of such corner lot as shown on Exhibit "A." A corner lot is a lot having frontage on two intersecting streets. Upon construction of a residence and back yard wall on a corner Lot, that portion of the Side Yard Easement located closer to the front of the Lot than the front corner of the back yard wall closest to the side street boundary for that Lot together with that portion of the Side Yard Easement located as far or farther

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from the street than said back yard wall shall terminate and be extinguished as shown on Exhibit "A." No wall, fence or other structure shall be located in the Side Yard Easement except for utilities, street signs, sidewalks, curbs, gutters and landscaping. No later than the occupancy of the residence on the Lot upon which a Side Yard Easement is located, Declarant shall fully landscape the Side Yard Easement. Declarant is not required to install an irrigation system for such landscaping. Thereafter, the Owner of the Lot shall maintain the back yard wall and at said Owner's expense shall properly irrigate, plant, replant, trim, mow, and otherwise maintain said landscaping, including any landscaping in the street right of way between the Side Yard Easement and the back of curb of the street as actually constructed, in a healthy, lush, neat, and attractive condition according to standards promulgated by the Association so that all Side Yard Easement Areas in the project present an attractive uniform appearance. Each Side Yard Easement shall be deemed a part of the Common Area and the Association shall provide with respect to the Side Yard Easements insurance satisfying the requirements hereof for other Common Areas. Notwithstanding the Owners' obligations hereunder to maintain Side Yard Easements, the Association shall have the right at its sole discretion, for any reason or for no reason, and at any time and from time to time, to maintain any Side Yard Easement and the exercise of such right by the Association shall not relieve the Owner from any obligation with respect to the Side Yard Easement.

5.8 Declarant's Easement. An additional easement is hereby reserved by the Declarant ^{Unofficial Document} over the entire Property except for Once Occupied Lots for the purpose of constructing, maintaining, and/or repairing all dwelling units and other Improvements and otherwise developing any portion of the Property or the Annexable Property.

5.9 Easement Affecting Lot 2. No person claiming an interest in Lot 2 shall object to the creation by Declarant of an easement not exceeding five (5) feet in width along the eastern boundary of Lot 2 and a portion of the northern boundary of Lot 2 for utility purposes, and each person acquiring an interest in Lot 2 does, by virtue of such acquisition, irrevocably appoint Declarant as said person's attorney-in-fact coupled with an interest to act on said person's behalf in creating such easement.

ARTICLE 6 PROPERTY RIGHTS

6.1 Owners' Easement of Enjoyment. Every Owner, and each person residing with such Owner, shall have a right and non-exclusive easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot in perpetuity subject to the following provisions:

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(a) the right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and all facilities located thereon;

(b) the right of the Association to charge reasonable admission and other fees for the use of any clubhouse, recreational facility, or recreational vehicle parking area situated upon the Common Area;

(c) the right of the Association to suspend the rights of an Owner to use the recreational facilities located on the Common Area for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of the Project Documents;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer (except utility easements) shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members;

(e) the right of Declarant and its agents and representatives in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area ^{Unofficial Document} for maintenance of sales and leasing facilities, and display, exhibit, sales, construction and other development and sales purposes.

6.2 Lessees. If a Lot is leased or rented by the Owner thereof, the lessee and the members of his family residing with such lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

6.3 Guests and Invitees. The guests and invitees of any Member or other person entitled to use the Common Area pursuant to Section 6.1 above or of any lessee who is entitled to use the Common Area pursuant to Section 6.2 above may use the Common Area provided they are accompanied by a Member, lessee or other person entitled to use the Common Area pursuant to Section 6.1 or 6.2 above. The Board shall have the right to limit the number of guests and invitees who may use the Common Area at any one time and may restrict the use of the Common Area by guests and invitees to certain specified times.

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6.4 Limitations. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement of enjoyment.

**ARTICLE 7
MAINTENANCE**

7.1 Maintenance of Common Area by the Association. Except as otherwise provided herein, the Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

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

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

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

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

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

7.2 Maintenance of Lots by Owners. Each Owner shall be solely responsible for the maintenance, repair and replacement of his Lot, and the residence and all Improvements located thereon (including, but not limited to, the roofs of the residence and other structures situated on his Lot). Each Owner shall maintain his residence and Lot in good repair and an attractive condition. The yards and landscaping on all improved Lots shall be neatly and attractively maintained, and shall be cultivated and planted

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to maintain an appearance in harmony with other improved Lots. During prolonged absence, an Owner shall arrange for the continued care and upkeep of his Lot. An Owner shall do no work that will impair any easement nor shall any Owner do an act or allow any condition to exist which will adversely affect any other Lots and residences or other Owners. Any repainting or redecorating the exterior surfaces of a residence which alters the original appearance of the residence will require the prior approval of the Architectural Committee.

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

7.4 Nonperformance by Owners. If any Owner fails to maintain any portion of his Lot, and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by the Owner of the Lot, upon demand from the Association, and such amount Unofficial Document be a lien upon the Owner's Lot and the Association may enforce collection of such amounts in the same manner and to the same extent as Provided elsewhere in this Declaration for the collection and enforcement of Assessments.

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

ARTICLE 8 INSURANCE

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

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

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

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

(d) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, members of the Unofficial Document and Architectural Committee, or the Owners including without limitation director's and officer's insurance;

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

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

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

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

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

(v) The Association shall be named as the insured;

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

(f) If there is a steam boiler in connection with the Common Area, boiler explosion insurance evidenced by the standard form of boiler machinery insurance policy and providing coverage in the minimum amount of \$150,000.00 per accident per location;

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

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

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

8.3 Fidelity Bonds.

(a) The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, but without limitation, officers, directors and

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employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of fidelity bond maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the amount equal to fifty percent (50%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, or (iii) the sum equal to three months assessments on all Lots Plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

(i) The fidelity bonds shall name the Association as an obligee;

(ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

(iii) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association and each ^{Unofficial Document} First Mortgagee.

(b) The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Subsection (a) of this Section.

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

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

8.6 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall

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be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.7 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

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

**ARTICLE 9
RIGHTS OF FIRST MORTGAGEES**

9.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor;

(b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor of any other default in the Performance by the Owner of any obligation under the Project Documents, which delinquency remains uncured for the period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

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(d) Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Sections 10.2 or 10.3 of this Declaration.

9.2 Approval Required to Terminate Project. Any termination of the legal status of the Project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

9.3 Approval Required for Amendment to Declaration, Articles or Bylaws. The approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate only the following:

- (a) Subordination of assessment liens;
- (b) Insurance or fidelity bonds;
- (c) Responsibility for maintenance and repairs;
- (d) Contraction of the Project;
- (e) Reallocation of interests in the Common Areas or the rights to their use;
- (f) Convertability of Common Areas or of Common Areas into Lots;
- (g) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors.

Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material for purposes of this Paragraph 10.3 if it is for the purpose of correcting technical errors or for clarification only. Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws and thereafter fails to deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

9.4 First Mortgagee Not Liable for Prior Assessments. Any First Mortgagee or any other party acquiring title or coming into

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Possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other party. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

9.5 First Mortgagee's Right of Inspection of Records. Any First Mortgagee will, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.6 Limitation on Partition and Subdivision. No Lot not owned by Declarant shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

9.7 Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of the individual Lots have given their prior written approval, Unofficial Document Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;

(c) Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

ARTICLE 10 GENERAL PROVISIONS

10.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity,

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

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

10.3 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be terminated at any time by the written approval or the affirmative vote of Owners representing not less than seventy-five percent (75%) of the Lots. Any termination of this Declaration shall be evidenced by a Declaration of Termination signed by the President or Vice President of the Association and recorded with the County Recorder of Maricopa County, Arizona. The Project Documents may also be modified in the manner specified in Article 10.

10.4 Amendment.

(a) Except for amendments which may be executed by the Declarant pursuant to Subsection (b) of this Section or any other provision of this Declaration, the Declaration or the Plat may only be amended by the written approval or the affirmative vote of Owners of not less than seventy-five percent (75%) of the Lots ^{Unofficial Document} must be approved in writing by the attorney for the City of Tempe.

(b) The Declarant, without the consent of any Owner, First Mortgagee or other person being required, shall have the right to amend any or all of the Project Documents in order to correct any typographical or scrivener's errors or clarify any provision or to conform the Project Documents to the requirements or guidelines of (i) the Federal National Mortgage Association, (ii) the Federal Home Loan Mortgage Corporation, (iii) the Federal Housing Administration, (iv) the Veterans Administration, (v) any other similar secondary mortgage market organization, (vi) any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant or (vii) any lender directly or indirectly financing Declarant's acquisition, development or sale of the property. The Association and all Owners, First Mortgagees and other persons claiming an interest in the Property shall cooperate in such amendments and by acquiring

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an interest in the Property do irrevocably appoint Declarant their attorney-in-fact, coupled with an interest, to join in such amendments on their behalf.

(c) So long as the Declarant owns any Lot, any amendment which would delete or modify any right granted to the Declarant by this Declaration must be approved in writing by the Declarant.

(d) Any amendment approved pursuant to Subsection (a) above shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection (b) above shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County, Arizona.

(e) At such times as (i) Class B memberships are outstanding and (ii) there are outstanding loans secured by one or more Lots and insured by the Federal Housing Administration or the Veterans Administration, any annexation of additional property to the Property, any dedication of additional Common Area, any amendment to this Declaration or the Association's Articles or Bylaws and any consolidation, merger or dissolution of the Association shall require the consent of the Federal Housing Administration or the Veterans Administration (whichever is applicable). The requirements of this subsection (e) are in addition to any other requirements of this Declaration.

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(f) Declarant intends that the project shall comply with all requirements of the FHA, VA, Federal Home Loan Mortgage Corporation and Federal National Mortgage Association pertaining to the purchase by either of them of conventional home loans secured by Lots. Declarant and all Owners therefore agree that, in the event the project or Project Documents do not comply with FHA, VA, FNMA or FHLMC requirements, Declarant shall have the power, while the Class B membership exists, to enter into any agreement with FHA, VA, FNMA or FHLMC or their assignees reasonably required by FHA, VA, FNMA or FHLMC to allow the project to comply with said requirements.

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

10.6 Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration

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and subject to any or all of the enforcement procedures set forth herein.

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

10.8 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association or the Architectural Committee, in care of Graham Property Management Company, 1204 East Baseline Road, Suite 200, Tempe, Arizona 85283; if to Declarant, c/o Homes By Polygon 2000, 23161 Mill Creek Road, Suite 200, Laguna Hills, California 92653 if to an Owner, to the address of his Lot or to any other address last furnished by the Owner to the Association; provided, however, that any such address may be changed at any time by the Association by recording a written notice of change of address and by any other party by delivering a written notice of change of address to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

10.9 Binding Effect. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, ^{Unofficial Document} successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

10.10 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions

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of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

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

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

10.13 Interpretation. Any discrepancies, inconsistencies or conflicts among the provisions of the Project Documents shall be resolved by giving priority to the provisions of the Declaration, Articles, Bylaws, Association Rules and Architectural Committee Rules, in that order.

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

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

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

10.17 Time is of the Essence. Time is of the essence as to the payment of Assessments.

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

DECLARANT: HOMES BY POLYGON 2000, a California general partnership

By TROPEZ HOLDINGS, INC., a California corporation, its managing general partner

By Gary P. Schrader
Gary P. Schrader,
Its Ass't Secretary

STATE OF CALIFORNIA)
County of Orange) ss.

27 The foregoing instrument was acknowledged before me this N day of April, 1990, by Gary P. Schrader who acknowledged to be the Assistant Secretary of TROPEZ HOLDINGS, INC., a California corporation, the managing general partner of HOMES BY POLYGON 2000, a California general partnership, for and on behalf of the corporation and the general partnership.

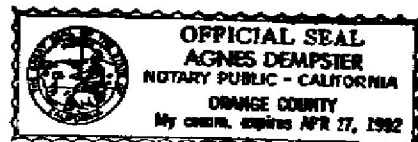
Agnes Dempster
Notary Public

Unofficial Document

My Commission Expires:

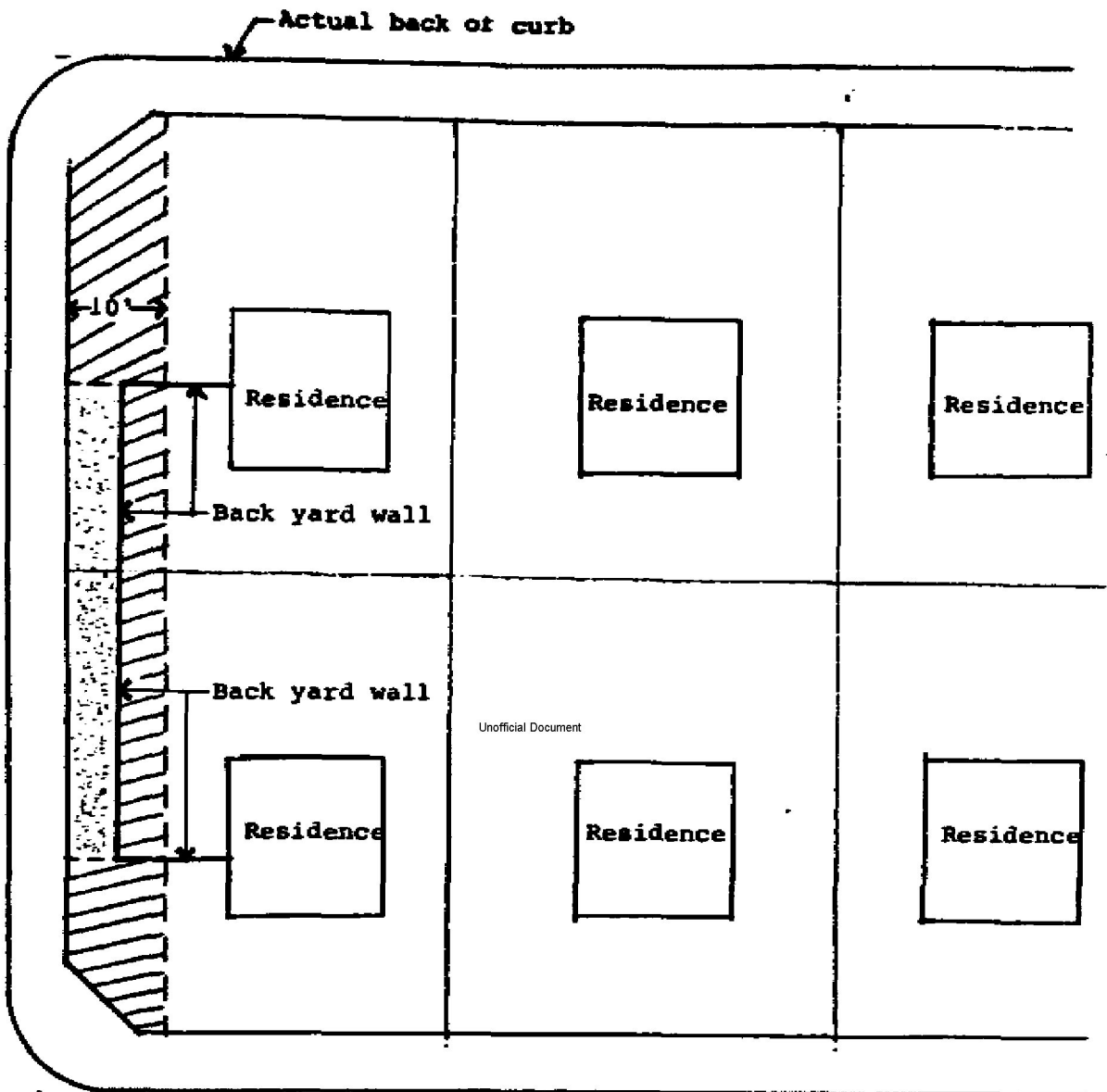
April 27 1992


APPROVED:



City Attorney
City of Tempe, Arizona

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 Shading indicates portion of Side Yard easement terminated and extinguished upon construction of residence and back yard wall.


 Indicates permanent portion of easement.

EXHIBIT "A"