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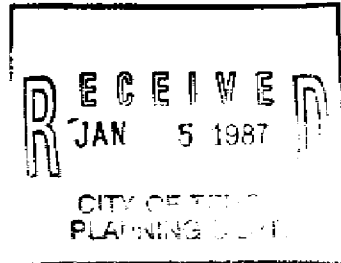
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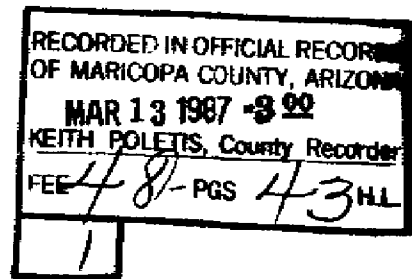
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When recorded, return to:

Sunrise Limited Partnership
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 Phoenix, Arizona 85003-1899



DECLARATION OF COVENANTS, CONDITIONS
 AND RESTRICTIONS
 FOR
 WARNER RANCH MANOR UNIT II



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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
WARNER RANCH MANOR UNIT II

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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
WARNER RANCH MANOR UNIT II

This Declaration of Covenants, Conditions and Restrictions is made as of the 23rd day of January, 1987, by FIRST SERVICE TITLE AGENCY, INC., an Arizona corporation, as the "Declarant," and SUNRISE LIMITED PARTNERSHIP, an Illinois limited partnership doing business in the State of Arizona as S Limited Partnership, as "Developer," with reference to the following:

A. Declarant, as trustee of its Trust No. 1080, is the owner of fee title to the Property, and Developer is the sole beneficiary of said trust.

B. By virtue of the Declaration of Annexation, the Property is subject to the Master Declaration.

C. Developer and Declarant intend by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Property. Developer and Declarant desire to ^{Unofficial Document} a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

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

ARTICLE I

DEFINITIONS

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

1.1 "Articles" shall mean the articles of incorporation of the Association, as the same may be amended from time

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1 to time in accordance with the provisions thereof and with the
2 applicable provisions of this Declaration, the Bylaws and the
statutes and regulations of the State of Arizona.

3 1.2 "Annual Assessments" shall mean those Assessments
4 computed and levied as provided in Section 8.2 of this
Declaration.

5 1.3 "Assessments" shall mean the Annual Assessments
6 and the Special Assessments.

7 1.4 "Association" shall mean Warner Ranch Manor Unit
8 II Association, an Arizona non-profit corporation, and its
9 successors and assigns.

10 1.5 "Board" shall mean the group or body of persons
11 elected in accordance with the provisions of the Articles, the
12 Bylaws and the statutes and regulations of the State of
13 Arizona, in which group or body is vested the management of the
14 affairs of the Association, and shall be equivalent in meaning
15 to the term "board of directors," as defined in A.R.S. Section
16 10-1002(6), as in effect at the date hereof.

17 1.6 "Bylaws" shall mean the Bylaws of the
18 Association, as the same may be amended from time to time in
19 accordance with the provisions thereof and with the applicable
20 provisions of this Declaration, the Articles and the statutes
21 and regulations of the State of Arizona.

22 1.7 "Common Area" shall mean all real property
23 (including the improvements thereto) owned by the Association
24 for the common use and enjoyment of the Owners. The Common
25 Area to be owned by the Association at the time of the convey-
26 ance of the first Lot to a retail purchaser shall be Tracts A,
B, D and E, inclusive, as established by and depicted on the
Plat. It is not, however, intended that Tracts C and F (as
established by and depicted on the Plat) are to be Common Area;
rather, said Tracts C and F will be transferred and conveyed,
not later than the time of the conveyance of the first Lot to a
retail purchaser, to the Master Association, which shall hold
title thereto and be responsible for the maintenance thereof as
"common area" of the Master Association pursuant to the Master
Declaration.

1 1.8 "Common Expenses" shall mean the actual and esti-
2 mated expenses of operating the Association, including any rea-
3 sonable reserves, all as may be found to be necessary and
4 appropriate by the Board pursuant to this Declaration or pur-
5 suant to the Articles or the Bylaws.

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1 1.9 "Declarant" shall mean First Service Title
2 Agency, Inc., an Arizona corporation, serving in its capacity
3 as trustee of its Trust No. 1080, and its successors and
4 assigns.

5 1.10 "Declaration" shall mean this Declaration of
6 Covenants, Conditions and Restrictions, as the same may be
7 amended from time to time.

8 1.11 "Declaration of Annexation" shall mean that cer-
9 tain Declaration of Annexation Recorded on 3-6-87, 1987,
10 at Recorder's No. 87- 134805, whereby the Property was
11 subjected to the Master Declaration.

12 1.12 "Developer" shall mean Sunrise Limited
13 Partnership, an Illinois limited partnership doing business in
14 the State of Arizona as S Limited Partnership, and any assignee
15 of the rights and duties granted or reserved to the Developer
16 herein, which assignment shall be evidenced by a duly executed
17 and acknowledged Recorded instrument. The term "Developer"
18 shall in no event mean or refer to a retail Lot buyer.

19 1.13 "Eligible Mortgage Holder" shall mean any holder
20 (as evidenced by a Recorded instrument) of a First Mortgage who
21 or which shall have made ^{Unofficial Document} written request to the Association for
22 notice of any proposed action that, pursuant to Section 10.2 or
23 Section 10.11, requires the consent of a specified percentage
24 of Eligible Mortgage Holders (which written request must con-
25 tain the name and address of the Eligible Mortgage Holder and
26 the Lot number or street address of the Lot against which the
First Mortgage held by said Eligible Mortgage Holder is
Recorded).

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

 1.15 "Lot" shall mean and refer to a lot into which
the Property is subdivided as set forth in the Plat. In no
event shall the term "Lot" mean or refer to all or any part of
the Common Area.

 1.16 "Master Association" shall mean Warner Ranch
Association, an Arizona non-profit corporation, and its
successors and assigns.

 1.17 "Master Declaration" shall mean that certain
Declaration of Covenants, Conditions and Restrictions for
Warner Ranch recorded on January 24, 1985, at Recorder's No. 85
033713 in the office of the Maricopa County, Arizona Recorder,
as the same may be amended from time to time.

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1 1.18 "Maximum Annual Assessment" shall mean the
2 amount determined for each fiscal year of the Association in
accordance with Subsection 8.1.5 of this Declaration.

3 1.19 "Member" shall mean any Person entitled to
4 membership in the Association, as provided herein, provided,
however, that there shall be only one Class "A" membership for
5 each Lot, as further provided in Article III below.

6 1.20 "Mortgage" shall mean a deed of trust, as well
as a mortgage, which, in either case, is Recorded against a Lot
7 or any other part of the Property.

8 1.21 "Mortgagee" shall mean a beneficiary or holder
of a deed of trust, as well as a mortgagee under a mortgage,
9 which, in either case, is Recorded against a Lot or any other
part of the Property.

10 1.22 "Occupant" shall mean any Person other than an
Owner who occupies or is in possession of a Lot, whether as a
11 lessee under a lease or otherwise.

12 1.23 "Owner" shall mean the Person or Persons who
13 individually or collectively: (a) own fee title to a Lot (as
evidenced by a Recorded Unofficial Document Instrument); or (b) hold the seller's
14 or vendor's interest under a contract for conveyance, contract
for deed, agreement for sale or similar contract through which
15 a seller has conveyed to a purchaser equitable title in prop-
erty and under which the seller is obligated to convey to the
16 purchaser the remainder of the seller's title in the property,
whether legal or equitable, on payment in full of all sums due
under the contract. The term "Owner" shall not include:
17 (i) any Person who holds an interest in a Lot merely as secu-
rity for the performance of an obligation; or (ii) a lessee,
18 tenant or other Occupant of a Unit. Declarant shall be the
"Owner" of each Unit with respect to which Declarant holds the
19 interest required by this Section 1.23 and, in addition, shall
be deemed to be the "Owner" of each Lot to which title is held
20 by a trustee (other than the trustee of a deed of trust) for
the benefit of Declarant. Notwithstanding Subsection 1.23(a),
21 in the case of a Lot, the fee title to which is vested in a
trustee under a deed of trust pursuant to Chapter 6.1 of Title
22 33 of the Arizona Revised Statutes, the "Owner" of that Lot
shall be deemed to be the owner of the trustor's interest under
23 the deed of trust.

24 1.24 "Person" (whether or not such term is
capitalized herein) means a natural person, corporation,
25 partnership, trustee or other legal entity.
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1 1.25 "Phase" shall mean any one of the portions of
 2 the Property described and identified by a phase number or
 3 letter (or number and letter) on Exhibit "B" attached hereto
 4 and incorporated herein by reference. The numbers or letters
 5 (or numbers and letters) assigned to Phases hereby are and
 6 shall be for reference only and shall not control the order of
 7 development or sale of Lots within any Phase or from Phase to
 8 Phase. Developer shall retain full discretion as to the order
 9 and timing of the development and sales of Lots within any
 10 Phase or from Phase to Phase.

11 1.26 "Plat" shall mean that certain plat of Warner
 12 Ranch Manor Unit II recorded in Book 308 of Maps, page 21, in
 13 the office of Maricopa County, Arizona Recorder, as and if
 14 amended.

15 1.27 "Property" shall mean the real property
 16 described in Exhibit "A" attached hereto and shall further
 17 refer to such additional property, if any, as may hereafter be
 18 annexed thereto pursuant to Article VI hereof or as is now or
 19 may hereafter be owned in fee simple by the Association.

20 1.28 "Record", "Recording", "Recorded" and
 21 "Recordation" shall mean placing or having placed an instrument
 22 of public record in the official records of Maricopa County,
 23 Arizona, or of such other governmental authority, office or
 24 official with which or whom the applicable laws of the State of
 25 Arizona prescribe that documents affecting title to real prop-
 26 erty in the area including the Property are to be placed of
 public record.

1.29 "Residential Unit" shall mean any structure
 constructed on a Lot which is intended for use and occupancy as
 a residence by a single household.

1.30 "Special Assessments" shall mean those
 Assessments levied in accordance with Section 8.3 hereof.

ARTICLE II

PROPERTY RIGHTS

Every Owner shall have a non-exclusive right and ease-
 ment of enjoyment in, to and over the Common Area, subject to
 any restrictions or limitations contained herein or in any
 instrument conveying to the Association or subjecting to this
 Declaration such property, and subject further to the reason-
 able rules and regulations of the Association. Any Owner may
 assign his, her or its right of enjoyment to (and share the
 same with) the members of his or her household and assign the
 same to and share the same with his, her or its tenants and

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1 invitees subject to the provisions of this Declaration and to
2 reasonable regulation by the Board and otherwise in accordance
with such procedures as the Board may adopt.

3 **ARTICLE III**

4 **MEMBERSHIP AND VOTING RIGHTS**

5 3.1 **Membership.** The Association shall have two (2)
6 classes of membership, Class "A" and Class "B," as follows:

7 3.1.1 **Class "A".** There shall be one Class "A"
8 membership in the Association for each Lot. Each such
9 membership shall be held by the Owner (from time to time) of
10 such Lot and shall be appurtenant to and may not be separated
11 from ownership of such Lot. The foregoing is not intended to
12 include Persons who hold an interest merely as security for the
13 performance of an obligation, and the giving of a security
14 interest shall not terminate an Owner's membership. No Owner,
15 whether one or more Persons, shall have more than one
16 membership per Lot owned. In the event any Lot is owned by two
17 or more Persons, whether by joint tenancy, tenancy in common,
18 community property or otherwise, the membership as to such Lot
19 shall be joint, provided, however, that such Persons shall
20 jointly designate to the Association in writing one of their
21 number who shall have the Unofficial Document to vote said membership, and,
22 in the absence of such designation and until such designation
23 is made, the Board shall make such designation and such design-
24 nation shall be binding for all purposes. In no event shall
25 more than one (1) Class "A" membership exist for each Lot.
26 Notwithstanding the foregoing, so long as the Class "B"
membership is in existence, no Class "B" Member shall at the
same time be a Class "A" Member nor shall a Class "B" Member
have any Class "A" votes, and the membership and number of
votes of the Class "B" Member(s) shall be determined in accor-
dance with Subsections 3.1.2 and 3.2.2.

3.1.2 **Class "B".** Class "B" Members shall be
Developer and any assignee of all or any part of Developer's
Class "B" membership rights.

3.2 **Voting** The voting rights of the Class "A" and
Class "B" Members are as follows:

3.2.1 **Class "A".** Each Class "A" Member shall be
entitled on all issues to one (1) vote for each Lot with
respect to which such Member holds the interest required for
membership by Subsection 3.1.1 above. When more than one
Person holds such interest in any Lot, there shall be only one
(1) vote with respect to such Lot, which vote shall be exer-
cised by the Person designated to exercise the power to cast

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1 such vote, as provided in Subsection 3.1.1. Any attempt to
 2 cast a vote appurtenant to a Lot in a manner inconsistent with
 3 that designation shall result in the suspension of the power to
 4 cast such vote until such time as such vote is cast in accor-
 5 dance with that designation. Any Owner of a Lot which is
 6 leased or which is subject to a valid, outstanding and recorded
 7 executory agreement of sale may, in the lease, agreement of
 8 sale or other written instrument, assign the voting right
 9 appurtenant to the Lot to the lessee of the Lot or to the pur-
 10 chaser of the Lot under such agreement of sale, as applicable,
 11 provided that a copy of such instrument is furnished to the
 12 Secretary of the Association prior to any meeting.

13 **3.2.2 Class "B".** The Class "B" Member or Members
 14 shall be entitled to three (3) votes for each Lot owned by such
 15 Class "B" Member or Members. Developer shall have the right,
 16 at any time and from time to time, to assign all or any part of
 17 its voting rights appurtenant to its Class "B" membership
 18 rights (as well as all or any other rights appurtenant thereto)
 19 to one or more persons or entities acquiring, for purposes of
 20 development and sale, any part of the Property. Further,
 21 Developer shall have the right, at any time and from time to
 22 time, to designate an individual or individuals to exercise
 23 Developer's voting rights (whether appurtenant to Class "A" or
 24 Class "B" membership), provided, however, that such designation
 25 shall not act as an assignment^{Unofficial Document} by Developer of its membership
 26 or voting rights hereunder. Upon the earlier to occur of:
 (i) January 1, 1991; or (ii) the time at which the total number
 of Class "A" votes outstanding (as determined pursuant to
 Subsection 3.2.1) equals (or exceeds) the total number of Class
 "B" votes outstanding (as determined pursuant to the preceding
 provisions of this Subsection 3.2.2), the Class "B" membership
 shall terminate and be deemed converted to a Class "A"
 membership, whereupon the membership and voting rights of
 Developer (and any assignee of Developer's Class "B" membership
 rights) shall be determined in accordance with Subsections
 3.1.1 and 3.2.1.

ARTICLE IV

MAINTENANCE

22 **4.1 Association's General Responsibilities.** The
 23 Association shall maintain and keep in good repair the Common
 24 Area (and certain other areas, as more expressly provided in
 25 this Section 4.1), the costs of such maintenance to be Common
 26 Expenses of the Association (subject to any insurance then in
 effect). This maintenance shall include, but not be limited to:

4.1.1 maintenance, repair and replacement of all
 landscaping and other flora, structures and improvements

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1 situated upon the Common Area, including any perimeter or
2 boundary walls;

3 4.1.2 maintenance, repair and replacement of
4 landscaping and flora in or upon public rights-of-way within or
immediately adjacent to the Property (except as provided
below);

5 4.1.3 maintenance, repair and replacement of
6 landscaping and signs within areas designated on the Plat as
"landscape easements," "landscape and wall easements" or "land-
scape and sign easements" (or similar designations);

7 4.1.4 maintenance, repair and replacement of the
8 side facing a street or portion of the Common Area of any
9 boundary or perimeter wall situated within areas designated on
the Plat as "wall easements" (or similar designations); and

10 4.1.5 maintenance and repair of any drainage
easements upon or across the Common Area.

11 Notwithstanding the foregoing: (a) landscaping and flora upon
12 or in public rights-of-way for Warner Road, Warner Ranch Drive,
Sarah Lane and Forest Avenue, or in areas of the Property adja-
13 cent to said public rights-of-way designated on the Plat as
being "landscape easements," "landscape and wall easements" or
14 similar designations, shall be the responsibility of the Master
Association pursuant to the Master Declaration; and
15 (b) maintenance of the side facing any public right-of-way of
any boundary or perimeter walls situated upon the Property
16 along Warner Road, Warner Ranch Drive, Sarah Lane or Forest
Avenue shall be the responsibility of the Association (unless
17 such maintenance responsibility is assigned to, or expressly
assumed by, the Master Association in or pursuant to the Master
18 Declaration), while the maintenance of the side of such bound-
ary or perimeter walls (and of boundary or perimeter walls
19 between Common Area and an Owner's Lot) facing an Owner's Lot
shall be the responsibility of such Owner.

20 4.2 Front Yard Landscaping. In addition, the
21 Association shall be responsible for maintaining and keeping in
good repair on each and every Lot, as a Common Expense of the
22 Association, the landscaping and flora situated in or upon the
"front yard" of each and every Lot. For purposes hereof, the
23 "front yard" of a Lot shall mean and refer to such portion of
that Lot as is adjacent to or abutting public or private
24 roadways or adjacent to or abutting any part of the Common
Area, except where such portion of that Lot is screened from
25 view from such roadways or Common Area by a wall or other
structure.
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1 **4.3 Maintenance of Owner's Structures.** Each Owner
2 shall be responsible for the maintenance, cleaning, painting,
3 repair and general care of the Residential Unit and any other
4 structure existing or constructed upon such Owner's Lot, and,
5 in particular, each Owner shall cause the exterior of said
6 Residential Unit or other structure to be maintained in good
7 condition and repair and in an attractive state consistent with
8 general community standards within the Property. In the event
9 that the Association shall determine, by the affirmative vote
10 of a majority of the votes of each class of Members represented
11 in person or by valid proxy at a meeting called for such pur-
12 pose, that any Owner is in breach of such Owner's obligation to
13 cause the exterior of the Residential Unit or other structure
14 on such Owner's Lot to be maintained in good condition and
15 repair and in an attractive state consistent with general com-
16 munity standards within the Property, the Association shall
promptly give such Owner written notice of such determination,
including a reasonably detailed list or description of the
repairs, maintenance or other work required to cure such
Owner's breach, and in the event the Owner shall not have cured
such breach within thirty (30) days after the date of said
written notice, the Association shall cause the repairs, main-
tenance or other work to be performed so as to cure such
Owner's breach, and the Association's costs in doing so,
together with interest from the date of expenditure at the rate
set forth in Section 10.8 of this Declaration, shall constitute
a lien on such Owner's Lot, which lien shall have the priority
and may be enforced in the manner described in Section 8.4 of
this Declaration. The Association shall have an easement on,
over, across and through each Lot to permit it to carry out its
duties and obligations under this Article IV.

17 **4.4 Publicly-Dedicated Areas.** Except as expressly
18 provided in this Article IV (and, in particular, in
19 Subsection 4.1.2), and except as may otherwise be required by
20 applicable law, the Association shall have no responsibility to
maintain any areas within the Property (including, but not
limited to, public streets) which are dedicated to or the
responsibility of a municipality or other governmental entity.

21 **4.5 No Discrimination.** The provision of services in
22 accordance with this Article shall not be deemed to be discrim-
ination in favor of or against any Owner.

23 **4.6 Conformance with Landscape Plans.** All landscap-
24 ing shall conform to the landscape plans for the Property, as
25 approved by the City of Tempe, where applicable.
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ARTICLE VINSURANCE AND FIDELITY BONDS; CASUALTY LOSSES5.1 Insurance to be Obtained by the Association.5.1.1 Hazard Insurance.

a. The Board, acting on behalf of the Association, shall obtain and maintain at all times insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Arizona), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage, but including fixtures and building service equipment and personal property and supplies owned by the Association), with such amount to be redetermined annually by the Board with the assistance of the insurer or insurers providing such coverage.

b. The policy or policies providing the insurance required by this Subsection 5.1.1 shall provide that: (i) any insurance trust agreement will be recognized; (ii) the insurer shall waive any right of subrogation against the Owners, the Board or the Association, and their respective agents, employees, guests and household members; (iii) such insurance shall not be cancelled, invalidated or suspended by reason of any acts or omissions of any Owner (or of such Owner's invitees, agents, employees or household members), or of any member, officer or employee of the Board without a prior written demand to the Board that any such act or omission be cured and without providing a sixty (60) day period within which the Board may cure such act or omission (or cause the same to be cured); (iv) such insurance coverage shall be primary, and shall in no event be brought into contribution with any insurance maintained by individual Owners or their Mortgagees; and (v) the coverage afforded by such policy or policies shall not be prejudiced by any act or omission of any Owner or Occupant (or their agents) when such act or omission is not within the control of the Association.

c. The policy or policies providing the insurance required by this Subsection 5.1.1 shall also contain (if

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1 available at no additional cost or at such additional cost as
 2 is not demonstrably unreasonable) the following endorsements
 3 (or their equivalents): (i) "agreed amount" and "inflation
 4 protection" endorsements; (ii) "increased cost of construction"
 5 endorsement; (iii) "contingent liability from operation of
 6 building laws or codes" endorsement; and (iv) "demolition cost"
 7 endorsement.

8 d. The policy or policies providing the insur-
 9 ance required by this Subsection 5.1.1 shall also contain a
 10 steam boiler and machinery endorsement providing coverage in an
 11 amount not less than the lesser of \$2,000,000 or the insurable
 12 value of the building(s) housing such boiler and machinery, if
 13 any.

14 e. Unless a higher maximum deductible amount is
 15 required by applicable law, each policy providing the insurance
 16 coverage required by this Subsection 5.1.1 shall provide for a
 17 deductible not to exceed the lesser of \$10,000 or one percent
 18 (1%) of the face amount of such policy.

19 5.1.2 Liability Insurance. The Board, acting on
 20 behalf of the Association, shall obtain and maintain at all
 21 times a comprehensive general liability policy insuring the
 22 Association, each member of the Board and each Owner (and, so
 23 long as Developer, or any Person with whom Developer contracts
 24 directly for the performance of all or a substantial portion of
 25 Developer's rights and obligations hereunder, or for the con-
 26 struction of substantial improvements on the Property, retains
 an interest in the Property or any Lot, insuring Developer and
 such Person, if identified by Developer to the Association,
 provided that any added premium cost or other expense resulting
 from naming Developer or such Person as insureds shall be borne
 by Developer or such other Person), against any liability to
 the public or to any Owner or Occupant (and such Owner's or
 Occupant's invitees, agents, employees and household members)
 for death, bodily injury and property damage arising out of or
 incident to the ownership or use of the Common Area or arising
 out of or incident to the performance by the Association of its
 maintenance and other obligations hereunder. The Board, with
 the assistance of the insurer(s) providing such coverage, shall
 review annually the amounts of coverage afforded by said com-
 prehensive general liability policy or policies and adjust such
 amounts of coverage as the Board deems appropriate, but in no
 event shall said policy or policies provide coverage less than
 One Million Dollars (\$1,000,000.00) for death, bodily injury
 and property damage for any single occurrence. The policy or
 policies providing such insurance shall, by specific endorse-
 ment or otherwise, preclude denial by the insurer(s) providing
 such insurance of a claim under such policy or policies because
 of negligent acts or omissions of the Association or any

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1 Owner(s) (or of Developer or any other Person named as an
2 insured or additional insured thereunder).

3 5.1.3 Flood Insurance. In the event any part of
4 the Common Area is in a "special flood hazard area," as defined
5 by the Federal Emergency Management Agency (or its successors),
6 the Board, acting on behalf of the Association, shall obtain
7 (and maintain at all times during which any part of the Common
8 Area is in such a "special flood hazard area") a "master" or
9 "blanket" policy of flood insurance covering all insurable
10 improvements on the Common Area and covering any personal prop-
11 erty situated from time to time within such improvements (to
12 the extent such personal property is normally covered by the
13 standard flood insurance policy available from time to time in
14 the State of Arizona). Said insurance shall be in an amount
15 not less than the lesser of: (a) 100% of the current replace-
16 ment cost, from time to time, of all such insurable improve-
17 ments (and such insurable personal property) located in the
18 "special flood hazard area"; or (b) the maximum coverage avail-
19 able for such insurable improvements and insurable personal
20 property under the National Flood Insurance Program. Unless a
21 higher maximum deductible amount is required by applicable law,
22 the policy providing such insurance shall provide for a deduct-
23 ible not to exceed the lesser of \$5,000 or one percent (1%) of
24 the face amount of such policy.

14 5.1.4 General^{Unofficial Document} Provisions Governing Insurance.
15 The insurance required to be obtained under Subsections 5.1.1,
16 5.1.2 and 5.1.3 shall be written in the name of the Association
17 as trustee for each of the Owners and for each Mortgagee (as
18 their respective interests may appear) and shall be governed by
19 the provisions hereinafter set forth:

17 a. All policies shall be written with one or
18 more companies authorized to provide such insurance in the
19 State of Arizona;

19 b. Exclusive authority to adjust losses under
20 policies in force on property owned or insured by the
21 Association shall be vested in the Board;

21 c. In no event shall the insurance coverage
22 obtained and maintained by the Board hereunder be brought into
23 contribution with insurance purchased by individual Owners,
24 Occupants or their Mortgagees, and the insurance carried by the
25 Association shall be primary;

23 d. Subject to the requirement of item (ii) of
24 Subsection 5.1.1(b) above, the Board shall be required to make
25 every reasonable effort to secure insurance policies that will
26 provide for a waiver of subrogation by the insurer as to any

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1 claims against the Board or the Owners and their respective
 2 tenants, servants, agents and guests (if securing same will
 3 impose on the Association no additional cost or only such rea-
 4 sonable cost as the Board may approve, in its discretion);

5 e. Each policy providing insurance coverage
 6 required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall require
 7 the applicable insurer to give not less than ten (10) days
 8 written notice to the Association, and to each Mortgagee which
 9 shall have given such insurer written notice of such
 10 Mortgagee's interest in a Lot (which notice must include the
 11 name and address of such Mortgagee), of any cancellation,
 12 refusal to renew or material modification of such policy.

13 5.1.5 Fidelity Bonds. The Board, acting on
 14 behalf of the Association, shall obtain and maintain at all
 15 times adequate fidelity bond coverage to protect against dis-
 16 honest acts on the part of officers, directors and employees of
 17 the Association and all others who handle, or are responsible
 18 for handling, funds held or administered by the Association,
 19 whether or not such officers, directors, employees or others
 20 receive compensation for services they render to or on behalf
 21 of the Association. Any independent management agent which
 22 handles funds for the Association shall also obtain (and pay
 23 for) such fidelity bond coverage with respect to its own
 24 activities (and those of its directors, officers and employees,
 25 whether or not such directors, officers or employees receive
 26 compensation for services rendered). Such fidelity bonds:
 (a) shall name the Association as obligee; (b) shall be issued
 by one or more companies authorized to issue such bonds in the
 State of Arizona; and (c) shall be in an amount sufficient to
 cover the maximum total of funds reasonably expected by the
 Board to be in the custody of the Association or such agent at
 any time while such bond is in force, but in no event shall the
 amount of such fidelity bond coverage be less than the sum of
 three (3) months' Annual Assessments on all Lots, plus the
 total of funds held in the Association's reserves. Each such
 fidelity bond shall provide that the issuer thereof shall pro-
 vide not less than ten (10) days written notice to the
 Association and to each Eligible Mortgage Holder before such
 bond may be cancelled or substantially modified for any reason.

22 5.1.6 Workers' Compensation Insurance. The
 23 Board, acting on behalf of the Association, shall obtain and
 24 maintain workers' compensation insurance if and to the extent
 25 necessary to meet the requirements of applicable law.

24 5.1.7 Cost of Insurance. All premiums for the
 25 insurance or bonds required to be obtained by the Board by this
 26 Section 5.1 shall be Common Expenses (except that, as provided
 in Subsection 5.1.5 above, the cost of the fidelity bond

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1 required to be furnished by any independent management agent
 2 shall be paid by such agent, and, as provided in
 3 Subsection 5.1.2 above, any added cost of naming Developer, or
 4 any Person with whom or which Developer contracts directly for
 5 the performance of all or a substantial portion of Developer's
 6 obligations hereunder, or for the construction of improvements
 7 on the Property, shall be borne by Developer or such other
 8 Person). The Board shall not be liable for failure to obtain
 9 or maintain any of the insurance coverage required by this
 10 Section 5.1, or for any loss or damage resulting from such
 11 failure, if such failure is due to the unavailability of such
 12 insurance coverage from reputable companies authorized to pro-
 13 vide such insurance in the State of Arizona, or if such insur-
 14 ance coverage is available only at an unreasonable cost.

15 5.1.8 Subsequent Changes in Insurance
 16 Requirements. It is the intention of this Article V (and, in
 17 particular, of this Section 5.1), to impose upon the
 18 Association the obligation to obtain and maintain in full force
 19 and effect at least those types and amounts of insurance as are
 20 required, at the time this Declaration is recorded, by the
 21 Federal National Mortgage Association, Federal Home Loan
 22 Mortgage Corporation, Veterans Administration and Federal
 23 Housing Administration. However, notwithstanding any provision
 24 of this Declaration to the contrary, should any or all of said
 25 agencies subsequently amend or modify their respective require-
 26 ments regarding the insurance coverage required to be main-
 27 tained by the Association, the Board, acting on behalf of the
 28 Association, shall, promptly upon receiving notice of such
 29 amendment or modification from any such agency, from any Owner
 30 or Eligible Mortgage Holder or from Developer, obtain such
 31 additional, modified or amended policy or policies of insurance
 32 as may be necessary to conform to such amended or modified
 33 requirements. Should such requirements of any such agency con-
 34 flict with the requirements of any other such agency or with
 35 applicable provisions of law, the Board, acting on behalf of
 36 the Association, shall diligently work with such agency or
 37 agencies to resolve such conflict and shall thereafter obtain
 38 and maintain such additional, modified or amended policy or
 39 policies of insurance as may be necessary to conform with the
 40 requirements of such agencies, taking into account the resolu-
 41 tion of said conflict. In the event the Board, after exercise
 42 of such diligence, is unable to resolve such conflict, the
 43 Board, acting on behalf of the Association, shall exercise its
 44 good faith business judgment and obtain and maintain in full
 45 force and effect such insurance coverage as the Board, in the
 46 exercise of such judgment, deems to conform as closely as pos-
 47 sible with the applicable requirements of all such agencies,
 48 and of law, taking into account such conflict.

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1 5.2 Insurance to be Obtained by the Owners.

2 5.2.1 Public Liability Insurance. It shall be
3 the individual responsibility of each Owner to provide, as such
4 Owner sees fit and at such Owner's sole expense, such compre-
5 hensive public liability insurance as such Owner may desire
6 against loss or liability for damages and any expense of
7 defending against any claim for damages which might result from
8 the ownership, use or occupancy of such Owner's Lot.

6 5.2.2 Hazard and Contents Insurance. It shall be
7 the individual responsibility of each Owner to provide, as such
8 Owner sees fit and at such Owner's sole expense, such fire,
9 liability, theft and any other insurance as such Owner may
10 desire covering the Residential Unit and any other structure on
11 such Owner's Lot, as well as any and all fixtures and personal
12 property upon such Lot or in such Residential Unit or other
13 structure(s).

10 5.3 Casualty Losses.

11 5.3.1 Damage and Destruction.

12 a. Immediately after any damage or destruction
13 by fire or other casualty ^{Unofficial Document} or any part of the property
14 required to be insured by the Association under Section 5.1
15 above, the Board or its duly authorized agent shall:
16 (i) proceed with the filing and adjustment of all claims aris-
17 ing under such insurance; (ii) obtain reliable and detailed
18 estimates of the cost of repair or reconstruction of the dam-
19 aged or destroyed property; and (iii) upon receipt of the pro-
20 ceeds of such insurance and except as is otherwise provided in
21 this Subsection 5.3.1, use such proceeds to repair or
22 reconstruct the damaged or destroyed property. Repair or
23 reconstruction, as used in this Article V, means repairing or
24 restoring the property in question to substantially the same
25 condition as that in which it existed prior to the fire or
26 other casualty (or, where applicable, replacing the damaged or
27 destroyed property with property substantially similar to the
28 damaged or destroyed property as it existed prior to such dam-
29 age or destruction).

22 b. Any major damage or destruction to the prop-
23 erty required to be insured by the Association under Section
24 5.1 above shall be repaired or reconstructed unless: (i) at a
25 special meeting of the Members of the Association duly noticed
26 and convened within sixty (60) days after the occurrence of
such damage or destruction, the Members determine, by a vote of
Owners owing not less than seventy-five percent (75%) of all
Lots, not to so repair or reconstruct; and (ii) Eligible
Mortgage Holders representing at least fifty-one percent (51%)