

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA

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When recorded, return to:

Sunrise Limited Partnership
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Post Office Box 400
Phoenix, Arizona 85001

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Declaration of Covenants, Conditions and
Restrictions for Warner Ranch Manor

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WARNER RANCH MANOR

This Declaration of Covenants, Conditions and Restrictions is made as of the 20th day of September, 1985, by PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee of its Trust No. 20,722 (hereinafter referred to as "Declarant"), and SUNRISE LIMITED PARTNERSHIP, an Illinois limited partnership doing business in the State of Arizona as S Limited Partnership (hereinafter referred to as "Developer").

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W I T N E S S E T H :

Declarant, as Trustee of its Trust No. 20,722, is the owner of fee title to the real property described on Exhibit "A" hereto ("the Property"). Developer is the sole beneficiary of said trust. 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 provide 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 all of the property described on Exhibit "A" hereto shall be held, sold and conveyed subject to the following easements,

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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

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Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Bylaws and the statutes and regulations of the State of Arizona.

Section 2. "Association" shall mean and refer to Warner Ranch Manor Association, an Arizona non-profit corporation, and its successors and assigns.

Section 3. "Board of Directors" or "Board" shall mean and refer to the group or body of persons elected in accordance with the provisions of the Articles, the Bylaws and the statutes and regulations of the State of Arizona, in which group or body is vested the management of the affairs of the Association, and shall be equivalent in meaning to the term "board of directors,"

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as defined in A.R.S. Section 10-1002(b), as in effect at the date hereof.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Articles and the statutes and regulations of the State of Arizona.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) 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 retail purchaser shall be Tracts B, C and D, as established by and depicted on the Plat. It is not, however, intended that Tracts A, E, F and G (as established by and depicted on the Plat) are to be Common Area hereunder; rather, said Tracts A, E, F and G 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.

Section 6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration or pursuant to the Articles or the Bylaws.

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Section 7. "Developer" shall mean and refer to Sunrise Limited Partnership, an Illinois limited partnership doing business in the State of Arizona as S Limited Partnership, and any assignee of any of the rights and duties granted or reserved to the Developer herein, which assignment shall be evidenced by a duly executed and acknowledged instrument recorded with the Recorder. The term "Developer" shall in no event mean or refer to a retail Lot buyer.

Section 8. "Eligible Mortgage Holder" shall mean and refer to any holder (as evidenced by an instrument recorded with the Recorder) of a First Mortgage who or which shall have made written request to the Association ^{Unofficial Document} for notice of any proposed action that, pursuant to Article X, Section 2 hereof or Article X, Section 11 hereof, requires the consent of a specified percentage of Eligible Mortgage Holders (which written request must contain the name and address of said Eligible Mortgage Holder and the Lot number or street address of the Lot securing the First Mortgage held by said Eligible Mortgage Holder).

Section 9. "First Mortgage" shall mean and refer to a Mortgage secured by a Lot which has priority over any and all other Mortgages secured by such Lot.

Section 10. "Lot" shall mean and refer to a lot into which the Property is subdivided as set forth in that certain plat of Warner Ranch Manor recorded in Book 287 of Maps, page 32, in the office of the Maricopa County, Arizona Recorder. In no event shall the term "Lot" mean or refer to all or any part of the Common Area.

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Section 11. "Master Association" shall mean and refer to Warner Ranch Association, an Arizona non-profit corporation.

Section 12. "Master Declaration" shall mean and refer to 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.

Section 13. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein, provided, however, that there shall be only one Class "A" membership for each Lot, as further provided in Article III below.

Section 14. "Mortgage" Unofficial Document shall include a recorded deed of trust, as well as a recorded mortgage, which, in either case, is secured by a Lot or any other part of the Property.

Section 15. "Mortgagee" shall include a beneficiary or holder of a recorded deed of trust, as well as a mortgagee under a recorded mortgage, which, in either case, is secured by a Lot or any other part of the Property.

Section 16. "Mortgagor" shall include the trustor of a recorded deed of trust, as well as a mortgagor under a recorded mortgage, which, in either case, is secured by a Lot or any other part of the Property.

Section 17. "Owner" shall mean and refer to the owner (as evidenced by an instrument recorded with the Recorder), whether one or more persons or entities, of fee simple title to a Lot or, in the case of any valid and outstanding executory

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agreement of sale recorded with the Recorder with respect to a Lot, the seller under such agreement of sale. The term "Owner" shall exclude in all cases any party holding an interest merely as security for the performance of an obligation.

Section 18. "Person" means a natural person, corporation, partnership, trustee or other legal entity.

Section 19. "Phase" shall mean and refer to any one of the portions of the Property described and identified by a phase number or letter (or number and letter) on Exhibit "B" attached hereto and incorporated herein by reference. The numbers or letters (or numbers and letters) assigned to Phases hereby are and shall be for reference only and shall not control the order of development or sale of Lots within any Phase or from Phase to Phase. Developer shall retain full discretion as to the order and timing of the development and sales of Lots within any Phase or from Phase to Phase.

Section 20. "Plat" shall mean that certain plat of Warner Ranch Manor recorded in Book 287 of Maps, page 32, in the office of Maricopa County, Arizona Recorder.

Section 21. "Property" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer to such additional property, if any, as may hereafter be annexed thereto pursuant to Article VI hereof or as is now or may hereafter be owned in fee simple by the Association.

Section 22. "Recorder" shall mean and refer to the County Recorder for Maricopa County, Arizona, or such other governmental authority, office or official with which or whom

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the applicable laws of the State of Arizona prescribe that documents affecting title to real property in the area including the Property are to be recorded or filed for public record. Further, the term "recorded" shall include "filed" or "lodged" or any similar term indicating placing such an instrument of public record with the Recorder.

Section 23. "Residential Unit" shall mean any structure constructed on a Lot which is intended for use and occupancy as a residence by a single household.

Article II

Property Unofficial Document

Every Owner shall have a non-exclusive right and easement 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 reasonable 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 invitees subject to the provisions of this Declaration and to reasonable regulation by the Board and otherwise in accordance with such procedures as the Board may adopt.

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Article III

Membership and Voting Rights

Section 1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B," as follows:

(a) Class "A". There shall be one Class "A" membership in the Association for each Lot. Each such membership shall be held by the Owner (from time to time) of such Lot and shall be appurtenant to and may not be separated from ownership of such Lot. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. Further, so long as the Class "B" membership described in subsection (b) below shall be in existence, neither Developer nor any assignee of Developer's Class "B" membership rights shall be deemed to have a Class "A" membership (or votes appurtenant to a Class "A" membership). No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event any Lot is owned by two or more persons or entities, whether by joint tenancy, tenancy in common, community property or otherwise, the membership as to such Lot shall be joint, provided, however, that such owners shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall make such designation and such designation shall be binding for all purposes. In no event shall more than one (1) Class "A" membership exist for each Lot.

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(b) Class "B". Class "B" members shall be Developer and any assignee of all or any part of Developer's Class "B" membership rights.

Section 2. Voting. The voting rights of the Class "A" and Class "B" members are as follows:

(a) 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 Section 1 hereof. 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 exercised by the person designated to exercise the power to cast such vote, as provided in Section 1 of this Article III. Any attempt to cast a vote appurtenant to a Lot in a manner inconsistent with the aforescribed designation shall result in the suspension of the power to cast such vote until such time as such vote is cast in accordance with such designation. Any Owner of a Lot which is leased or which is subject to a valid, outstanding and recorded executory agreement of sale may, in the lease, agreement of sale or other written instrument, assign the voting right appurtenant to the Lot to the lessee of the Lot or to the purchaser of the Lot under such agreement of sale, as applicable, provided that a copy of such instrument is furnished to the Secretary of the Association prior to any meeting.

(b) Class "B". The Class "B" member or members shall be entitled to three (3) votes for each Lot with respect to which

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such member holds the interest required for membership by Section 1 hereof. Developer shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class "B" membership rights (as well as all or any other rights appurtenant thereto) to one or more persons or entities acquiring, for purposes of development and sale, any part of the property described on Exhibit "A" hereto. Further, Developer shall have the right, at any time and from time to time, to designate an individual or individuals to exercise Developer's voting rights (whether appurtenant to Class "A" or Class "B" membership), provided, however, that such designation shall not act as an assignment by Developer of its membership or voting rights hereunder. Upon the earlier to occur of (i) June 1, 1989, or (ii) the time at which the total number of Class "A" votes outstanding (as determined above) equals (or exceeds) the total number of Class "B" votes outstanding (as determined above), 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 1(a) and 2(a), above.

Article IV

Maintenance

The Association shall maintain and keep in good repair the Common Area, the cost of such maintenance to be a Common Expense of the Association. This maintenance shall include, but

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not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of (a) all landscaping and other flora, structures and improvements situated upon the Common Area, including, but not limited to, any perimeter or boundary walls, (b) private streets (if any), and (c) landscaping and flora in or upon public rights-of-way within or immediately adjacent to the Property, and maintenance and repair of any drainage easements which are upon, or constitute a part of, the Common Area, except that landscaping, flora and boundary or perimeter walls upon or in public rights-of-way for Warner Ranch Drive and for Sarah Lane abutting the Property Unofficial Document ny part thereof shall be the responsibility of the Master Association pursuant to Article IV of the Master Declaration. In addition, the Association shall be responsible for maintaining and keeping in good repair on each and every Lot, as a Common Expense of the Association, the landscaping and flora situated in or upon the "front yard" of each and every Lot. For purposes hereof, the "front yard" of a Lot shall mean and refer to such portion of that Lot as is adjacent to or abutting public or private roadways or adjacent to or abutting any part of the Common Area, except where such portion of that Lot is screened from view from such roadways or Common Area by a wall or other structure. Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of the Residential Unit and any other structure existing or constructed upon such Owner's Lot, and, in particular, each Owner

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shall cause the exterior of said Residential Unit or other structure to be maintained in good condition and repair and in an attractive state consistent with general community standards within the Property. In the event that the Association shall determine by the affirmative vote of a majority of Members represented in person or by valid proxy at a meeting called for such purpose that any Owner is in breach of such Owner's obligation to cause the exterior of the Residential Unit or other structure on such Owner's Lot to be maintained in good condition and repair and in an attractive state consistent with general community standards within the Property, Unofficial Document 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, maintenance 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 Article X, Section 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 Article VIII, Section 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. The provision of services in

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accordance with this Article shall not be deemed to be discrimination in favor of or against any Owner. Except as expressly provided in this Section, 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.

Article V

Insurance and Fidelity Bonds; Casualty Losses

Section 1. Insurance to be Obtained by the Association.

(a) Hazard Insurance. Unofficial Document 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.

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The policy or policies providing such insurance 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 Unofficial Document (60) day period within which the Board may cure same (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 any occupant of a Lot (or their agents) when such act or omission is not within the control of the Association.

The policy or policies providing such insurance shall also contain (if available at no additional cost or at such additional cost as is not demonstrably unreasonable) the following endorsements (or their equivalents): (i) "agreed amount" and "inflation protection" endorsements; (ii) "increased cost of construction" endorsement; (iii) "contingent liability from operation of building laws or codes" endorsement; and (iv) "demolition cost" endorsement. The policy or policies providing such

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insurance shall also contain a steam boiler and machinery endorsement providing coverage in an amount not less than the lesser of \$2,000,000 or the insurable value of the building(s) housing such boiler and machinery.

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

(b) Liability Insurance. The Board, acting on behalf of the Association, shall obtain Unofficial Document intain at all times a comprehensive general liability policy insuring the Association, each member of the Board and each Owner (and, so long as Developer, or any person or entity with whom Developer contracts directly for the performance of all or a substantial portion of Developer's obligations hereunder, retains an interest in the Property or any Lot, insuring Developer and such person or entity, if identified by Developer to the Association, provided that any added premium cost or other expense resulting from naming Developer or such person or entity as insureds shall be borne by Developer or such other person or entity), against any liability to the public or to any Owner (and such Owner's invitees, agents, employees and household members) arising out of or incident to the ownership and/or use of the Common Area. The Board, with the assistance of the insurer(s) providing such coverage, shall review annually the amounts of coverage afforded by said comprehensive general liability policy or policies, but

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in no event shall said policy or policies provide coverage less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage for any single occurrence. The policy or policies providing such insurance shall, by specific endorsement 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 Owner(s) (or of Developer or any other person or entity named as an insured or additional insured thereunder).

(c) Flood Insurance. In the event any part of the Property is in a "special flood hazard area," as defined by the Federal Emergency Management Agency (or its successors), the Board, acting on behalf of the Association, shall obtain (and maintain at all times during which any part of the Common Area is in such a "special flood hazard area") a "master" or "blanket" policy of flood insurance covering all insurable improvements on the Common Area and covering any personal property situated from time to time within such improvements (to the extent such personal property is normally covered by the standard flood insurance policy available from time to time in the State of Arizona). Said insurance shall be in an amount not less than the lesser of (i) 100% of the current replacement cost, from time to time, of all such insurable improvements (and such insurable personal property) located in the "special flood hazard area," or (ii) the maximum coverage available for such insurable improvements and insurable personal property under the National Flood Insurance Program. Unless a higher maximum deductible amount is

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required by applicable law, the policy providing such insurance shall provide for a deductible not to exceed the lesser of \$5,000 or one percent (1%) of the face amount of such policy.

(d) General Provisions Governing Insurance. The insurance required to be obtained under Subsections 1(a), 1(b) and 1(c) of this Article V shall be written in the name of the Association as trustee for each of the Owners and for each holder of a Mortgage secured by a Lot (as their respective interests may appear) and shall be governed by the provisions hereinafter set forth:

(i) All policies shall be written with one or more companies authorized to provide such insurance in the State of Arizona;

(ii) Exclusive authority to adjust losses under policies in force on property owned by the Association shall be vested in the Board;

(iii) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual owners, occupants or their Mortgagees, and the insurance carried by the Association shall be primary;

(iv) Subject to the requirement of item (ii) of the first paragraph of Subsection 1(a) above, the Board shall be required to make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Board or the Owners and

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their respective tenants, servants, agents and guests (if securing same will impose on the Association no additional cost or only such reasonable cost as the Board may determine, in its discretion);

(v) Each policy providing such insurance coverage shall require the applicable insurer to give not less than ten (10) days written notice to the Association, and to each holder of a First Mortgage which shall have given such insurer written notice of such holder's interest in the Property (which notice must include the name and address of such holder), of any cancellation or material modification of such policy.

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

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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' general 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 provide not less than ten (10) days written notice to the Association and to each Eligible Mortgage Holder before such bond may be cancelled or Unofficial Document tially modified for any reason.

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

(g) Cost of Insurance. All premiums for the insurance or bonds required to be obtained by the Board by this Section 1 shall be Common Expenses (except that, as provided in Subsection 1(e) above, the cost of the fidelity bond required to be furnished by any independent management agent shall be paid by such agent, and, as provided in Subsection 1(b) above, any added cost of naming Developer, or any person or entity with whom or which Developer contracts directly for the performance of all or a substantial portion of Developer's obligations hereunder, shall be borne by Developer or such other person or entity). The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Section 1, or for any

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loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance coverage is available only at a demonstrably unreasonable cost.

(h) Subsequent Changes in Insurance Requirements. It is the intention of this Article V (and, in particular, of this Section 1), to impose upon the Association the obligation to obtain and maintain in full force and effect at least those types and amounts of insurance as are required, at the time this Declaration is recorded, by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and Federal Housing Administration. However, notwithstanding any provision of this Declaration to the contrary, should any or all of said agencies subsequently amend or modify their respective requirements regarding the insurance coverage required to be maintained by the Association, the Board, acting on behalf of the Association, shall, promptly upon receiving notice of such amendment or modification from any such agency, from any Owner or Eligible Mortgage Holder or from Developer, obtain such additional, modified or amended policy or policies of insurance as may be necessary to conform to such amended or modified requirements. Should such requirements of any such agency conflict with the requirements of any other such agency or with applicable provisions of law, the Board, acting on behalf of the Association, shall diligently work with such agency or agencies to resolve such conflict and shall thereafter

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obtain and maintain such additional, modified or amended policy or policies of insurance as may be necessary to conform with the requirements of such agencies, taking into account the resolution of said conflict. In the event the Board, after exercise of such diligence, is unable to resolve such conflict, the Board, acting on behalf of the Association, shall exercise its good faith business judgment and obtain and maintain in full force and effect such insurance coverage as the Board, in the exercise of such judgment, deems to conform as closely as possible with the applicable requirements of all such agencies and of law, taking into account such conflict.

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Section 2. Insurance to be Obtained by the Owners.

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

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

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Section 3. Casualty Losses.

(a) Damage and Destruction.

(i) Immediately after any damage or destruction by fire or other casualty to all or any part of the property required to be insured by the Association under Section 1 above, the Board or its duly authorized agent shall (a) proceed with the filing and adjustment of all claims arising under such insurance, (b) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property, and (c) upon receipt of the proceeds of such insurance and except as is otherwise provided herein, use ^{Unofficial Document} such proceeds to repair or reconstruct the damaged or destroyed property. Repair or reconstruction, as used in this Article V, means repairing or restoring the property in question to substantially the same condition as that in which it existed prior to the fire or other casualty (or, where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed property as it existed prior to such damage or destruction).

(ii) Any major damage or destruction to the property required to be insured by the Association under Section 1 above shall be repaired or reconstructed unless (a) at a special meeting of the Members of the Association duly noticed 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

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repair or reconstruct, and (b) Eligible Mortgage Holders representing at least fifty-one percent (51%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders concur in such determination not to so repair or reconstruct, and (c) the office of the City Attorney for the City of Tempe, Arizona, concurs in such determination not to so repair or reconstruct (or waives in writing its right to concur in or disapprove such determination). If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made or become available; provided, however, that such extension shall not exceed sixty (60) days. The Board shall determine whether any minor damage or destruction to the Common Area should be repaired or reconstructed.

(iii) In the event that it is determined in the manner described above that the damage or destruction of any part of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event such property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area.

(b) Excess or Deficiency of Proceeds. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient

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to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy an equal assessment against the Owner of each Lot. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be used to meet Common Expenses.

Article VI

Annexation of Additional Property

Developer does not intend to add or annex any additional residential property or common area to the Property. Additional residential property and common area may be annexed to the Property only by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for that purpose and only with the approval of the applicable percentage of Eligible Mortgage Holders, as provided in Article X, Section 2 hereof, provided, however, that so long as the Class "B" membership is in existence no additional property may be annexed to the Property without the prior approval of the Federal Housing Administration and the Veterans Administration. Further, no property may be added or annexed to the Property without the express written consent of each owner of all or any part of the property proposed to be added or annexed. Upon approval of any addition or annexation of property to the Property as required hereby,

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the President and Secretary of the Association shall execute and acknowledge, on behalf of the Association, and record with the Recorder an instrument effecting and evidencing such addition or annexation (which instrument shall also be duly executed and acknowledged by each owner of all or any part of the property being added or annexed), and such addition or annexation shall be deemed effective only upon such recordation.

Article VII

Rights and Obligations of the Association

Section 1. The Common Area. Unofficial Document The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property, except that, subject to the provisions of Article X, Section 4 hereof, and subject further to the provisions of Article X, Section 2 and Article X, Section 11 hereof, no dedication, sale or transfer of all or any part of the Common Area shall be made or effective unless approved by not less than two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of