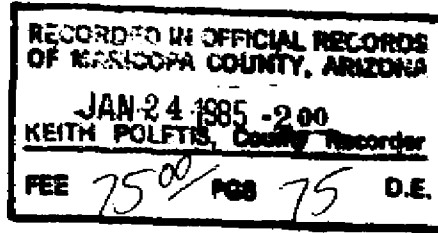


This instrument filed for record by TICOR TITLE INSURANCE COMPANY as an accommodation only. It has not been examined as to its execution or as to its effect upon the title.

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When recorded, return to:

Sunrise Limited Partnership
 c/o D. Randall Stokes, Esq.
 Brown & Bain, P.A.
 Post Office Box 400
 Phoenix, Arizona 85001



PROP RSTR (PR)

Declaration of Covenants, Conditions and Restrictions for Warner Ranch

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WARNER RANCH

This Declaration of Covenants, Conditions and Restrictions is made as of the 21st day of January, 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 Initial Property") and on Exhibit "B" hereto ("the Annexable Property"). Developer is the sole beneficiary of said trust. Developer and Declarant intend by this Declaration to impose upon the Initial Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Initial Property and of all owners of residential property within such parts, if any, of the Annexable Property as may hereafter be subjected to this Declaration, as provided herein. Developer and Declarant desire to provide a flexible (yet common) and reasonable procedure for the

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overall development of the Initial Property and such parts, if any, of the Annexable Property as may hereafter be subjected to this Declaration, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such property as is now or may hereafter be subjected to this Declaration, as provided herein.

NOW, THEREFORE, Developer and Declarant hereby declare that all of the property described on Exhibit "A" hereto (and such additional property, if any, as may hereafter be subjected to this Declaration in accordance with the provisions of Article VI hereof) shall be held, sold and conveyed subject to the following easements, restrictions, ^{Unofficial Document} 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

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,

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the Bylaws and the statutes and regulations of the State of Arizona.

Section 2. "Assignee of Developer" shall mean and refer to any assignee(s) of any or all of Developer's rights hereunder, as evidenced by an instrument assigning any or all of those rights recorded with the Recorder.

Section 3. "Association" shall mean and refer to Warner Ranch Association, an Arizona non-profit corporation, and its successors and assigns.

Section 4. "Board of Directors" or "Board" shall mean and refer to the group or body of persons elected in accordance with the provisions of the Unofficial Document 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," as defined in A.R.S. Section 10-1002(b), as in effect at the date hereof.

Section 5. "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 6. "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

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first Lot to a retail purchaser shall be the property described on Exhibit "C" attached hereto and incorporated herein by reference.

Section 7. "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.

Section 8. "Developer" shall mean and refer to Sunrise Limited Partnership, an Illinois limited partnership doing business in the State of Arizona as ^{Unofficial Document} S Limited Partnership, and to 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 9. "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 for notice of any proposed action that, pursuant to Article XII, Section 2 hereof or Article XII, Section 12 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 or unit number or street address of the Lot securing the First Mortgage held by said Eligible Mortgage Holder).

Section 10. "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 11. "Lot" shall mean and refer to (a) a lot into which any part of the Property is subdivided as set forth in a subdivision plat now or hereafter recorded with the Recorder against all or any part of the Property, or (b) a unit or "apartment" (as the latter term is used and defined in Sections 33-551 through 33-561 of Arizona Revised Statutes) within a condominium or horizontal property regime now or hereafter established with respect to Unofficial Document any part of the Property. For purposes of this Declaration, a Lot shall be deemed to come into existence on and as of the date the plat depicting and establishing such Lot is recorded with the Recorder. In no event shall the term "Lot" mean or refer to all or any part of the Common Area (or to all or any part of any common area or common elements established by a declaration of covenants, conditions and restrictions, declaration of horizontal property regime or other such instrument hereafter recorded pursuant to Article VI).

Section 12. "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 13. "Mortgage" 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.

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Section 14. "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 15. "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 16. "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 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 17. "Parcel Assessments". Parcel Assessments shall be used for the purposes of curing any failure or refusal of a Residential Association to maintain or cause to be maintained property owned by it or under its jurisdiction in accordance with the provisions of this Declaration, of the Articles or the Bylaws or of the rules and regulations of the Association. Parcel Assessments shall be levied equally against all Owners of Lots within the parcel to which such Parcel Assessments are determined by the Board to apply.

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

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Section 19. "Phase" shall mean and refer (a) in the case of the Initial Property, to any one of the portions of the Initial Property described and identified by a phase number or letter (or number and letter) on Exhibit "D" attached hereto and incorporated herein by reference, and (b) in the case of any part of the Annexable Property from time to time hereafter subjected to this Declaration pursuant to Article VI hereof, to any one of the portions thereof designated as a "Phase" in the instrument effecting such subjection which is recorded with the Recorder pursuant to Article VI hereof. In the event that the instrument effecting the subjection to this Declaration of any part of the Annexable Property does not divide such part into Phases, then such part shall be deemed to constitute a single Phase for purposes of Article VIII hereof. Unofficial Document The numbers or letters (or numbers and letters) assigned to Phases hereby or by a subsequent instrument subjecting to this Declaration any part(s) of the Annexable Property 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. "Property" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer (a) to such additional property, if any, as may hereafter be subjected to this Declaration in accordance with Article VI hereof and (b) to such additional property as is now or may hereafter be owned in fee simple by the Association.

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Section 21. "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 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 22. "Residential Association" shall mean any homeowners or similar association created with respect to property now or hereafter subj^{Unofficial Document} this Declaration containing (or to contain) units, homes, apartments or other structures for residential purposes, but shall not include the Association.

Section 23. "Residential Unit" shall mean any portion of the Property intended for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) single family detached dwellings, condominium units, apartment units, and patio or zero lot line homes, but shall in no event include all or any part of the Common Area.

Article II

Property Rights

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

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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.

Article III

Membership and Voting Rights

Section 1. ^{Unofficial Document} 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. 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,

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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. Notwithstanding the foregoing, so long as the Class "B" membership is in existence, Developer shall not be a Class "A" member nor shall Developer have any Class "A" votes, and Developer's membership and number of votes shall be determined in accordance with Subsections 1(b) and 2(b) of this Article III.

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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 "E" 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

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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 originally be entitled to one thousand seven hundred nineteen (1,719) votes; this number shall be decreased by one (1) vote for each Class "A" vote existing Unofficial Documently one time. 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 acquiring, for purposes of development and sale, any part of the property described on Exhibit "A" or Exhibit "B" 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, 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) January 1, 1991, or (ii) the time at which the total number of Class "A" votes outstanding exceeds the total number of Class "B" votes outstanding

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(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 not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated upon the Common Area, including any perimeter or boundary walls, maintenance, repair and replacement of landscaping and flora in or upon public rights-of-way within or immediately adjacent to the Property (except for public rights-of-way over or across the front yard of any Lot within the Property) and maintenance and repair of any drainage easements which are upon, or constitute a part of, the Common Area. The Association may, in the discretion of the Board, assume the maintenance responsibilities set out in any declaration subsequently recorded which creates any Residential Association upon all or any portion of the Property. In such event, all costs of such maintenance shall be assessed only against the Owners of Lots within the Residential Association to

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which the services are provided. The assumption of such maintenance responsibility may take place only by contract or if, in the opinion of the Board, the level and/or quality of maintenance then being provided by such Residential Association do not meet the community-wide standards sought to be maintained by the Association on and with respect to the Property. 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. The provision of services in accordance with this Article shall not be deemed to be discrimination in favor of or against any Owner or Residential Association.

Article V

Insurance and Fidelity Bonds; Casualty Losses

Section 1. Insurance to be Obtained by the Association.

(a) Hazard Insurance. 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

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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 (and upon the subjection of any portion, or all, of the Annexable Property to the effect of this Declaration if such subjection results in an addition to the Common Area of property upon which are situated improvements required to be insured hereunder).

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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 sixty (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

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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 insurance shall also contain ^{Unofficial Document} 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 and maintain at all times a comprehensive general liability policy insuring the Association, each member of the Board and each Owner, 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

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the ownership and/or use of the Common Area. The Board, with the assistance of the insurer(s) providing such coverage, shall review annually (and upon the subjection of any portion, or all, of the Annexable Property to the effect of this Declaration) the amounts of coverage afforded by said comprehensive general liability policy or policies, but 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).

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(c) Flood Insurance. In the event any part of the Common Area 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 owned from time to time by the Association (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

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all such insurable improvements (and insurable personal property owned by the Association) 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 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:

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(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;

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(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 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.

(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

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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 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 Unofficial Document 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 substantially 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). The Board shall not be liable for failure to

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obtain or maintain any of the insurance coverage required by this Section 1, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance coverage is available only at a demonstrably unreasonable cost.

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 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 (i) fixtures and personal property upon such Owner's Lot, and (ii) except as otherwise provided by any other declaration or other recorded instrument to which such Lot may be subject, the physical structure(s) upon or comprising such Owner's Lot.

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,

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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 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^{Unofficial Document} to the damaged or destroyed property as it existed prior to such damage or destruction).

(ii) Any major damage or destruction to all or any part of 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 owning not less than seventy-five percent (75%) of all Lots, not to so 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

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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 Unofficial Document 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 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

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insurance exceed the cost of repair, such excess shall be used to meet Common Expenses.

Article VI

Annexation of Additional Property

Developer and Declarant contemplate, as of the date hereof, that one or more portions (and perhaps all) of the Annexable Property may from time to time be added and annexed to the Property and subjected to the provisions of this Declaration and, therefore, while neither Developer nor Declarant shall have any obligation or duty to so add and annex all or any portion of the Annexable Property, or to subject all or any portion of the Annexable Property to the provisions of this Declaration, Developer and Declarant hereby reserve the right, privilege and option from time to time hereafter to add and annex to the Property and to subject to the provisions of this Declaration any part(s) or all of the Annexable Property, without the vote of the Members and without notice to or approval of any holder, insurer or guarantor of any Mortgage, provided, however, that the right, privilege and option reserved in this sentence shall expire and terminate January 1, 1993. Except for property contained within the Annexable Property, neither Declarant nor Developer intends to add or annex any additional residential property or common area to the Property, and additional residential property and common area not included within the Annexable Property may be annexed to the Property only (a) by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented

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in person or by valid proxy at a meeting of Members duly called for that purpose, and (b) with the approval of the applicable percentage of Eligible Mortgage Holders, as provided in Article XII, Section 2 hereof. Notwithstanding the foregoing, so long as the Class "E" membership is in existence no additional property (whether or not a part of the Annexable Property) may be annexed to the Property without the prior approval of the Federal Housing Administration and the Veterans Administration. Further, no property (whether or not a part of the Annexable 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 to the extent required by this Section, Declarant or Developer (as applicable), in the case of addition or annexation of all or any part of the Annexable Property, or the President and Secretary of the Association, in the case of any other addition or annexation, shall execute, acknowledge 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. Such instrument (or a separate instrument recorded against any portion of the Annexable Property annexed to the Property and executed by the owner of such portion) may subject the annexed portion to such additional covenants, conditions and restrictions (as well as to a condominium or horizontal

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property regime) as the owner thereof may deem appropriate or desirable (subject, however, to such approval rights as may be granted hereby to other parties in connection with such annexation and addition), provided, however, that any and all such additional covenants, conditions and restrictions (and any condominium or horizontal property regime) shall be subordinate and subject to the provisions of this Declaration.

Upon the effective date of any such addition or annexation, as provided above, (i) the property so added or annexed shall immediately be and become a part of the Property and subject to all of the provisions hereof, (ii) any Lot then or thereafter constituting a part of the added or annexed property, and the Owner of such Lot thereof, shall thereupon be subject to all of the provisions of this Declaration (including, but not limited to, the provisions of Articles II, III and VIII hereof), (iii) any part or parts of the property added or annexed which is or are designated or declared to be Common Area shall thereupon be subject to the provisions of this Declaration (including, but not limited to, the provisions of Articles II and IV hereof), and (iv) improvements then or thereafter situated upon the added or annexed property shall be subject to the provisions of this Declaration and shall be reasonably consistent, in terms of quality of construction, with the improvements situated upon the Property prior to such annexation.

Nothing herein shall constitute a representation, warranty or covenant that Declarant, Developer, any successor or

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assign of Declarant or Developer, or any other person will subject any additional property to the provisions of this Declaration, nor shall Declarant, Developer, any successor or assign of Declarant or Developer, or any other person be obligated so to do, and Declarant and Developer may, by written instrument executed by both Declarant and Developer and recorded with the Recorder, waive their right so to do, in whole or in part, at any time or from time to time.

Article VII

Rights and Obligations of the Association

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

Section 2. Educational, Recreational and Social Programs. The Association shall be responsible for providing such educational, recreational and social programs as the Board deems appropriate in its discretion.

Section 3. 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 XII, Section 4 hereof, and subject further to

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the provisions of Article XII, Section 2 and Article XII, Section 10 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 Members duly called for such purpose. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the real property described on Exhibit "A" or Exhibit "B" hereto, including, but not limited to, the property described on Exhibit "C" hereto, as may be conveyed or assigned to the Association by Developer (or an Assignee of Developer). As provided in Article I, Section 6 above, the real property described on Exhibit "C" hereto is intended to be Common Area and shall be transferred to the Association prior to conveyance of the first Lot to a retail purchaser.

Section 4. Rules and Regulations. The Association, through the Board, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violation of such rules and regulations may be imposed by the Board and may include suspension of the right to vote and the right to use the recreational facilities on the Common Area, and, where approved by a majority vote of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, may also include reasonable monetary fines. No suspension