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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MORNING STAR RANCH

SANTA CRUZ COUNTY, ARIZONA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
MORNING STAR RANCH
SANTA CRUZ COUNTY, ARIZONA

This Declaration of Covenants, Conditions and Restrictions (the "Community Declaration") is made and entered into as of the 7th day of February, 1997, by Morning Star Ranch Development, L.L.C., an Arizona limited liability company ("Declarant"). Defined terms appear throughout this Community Declaration with the initial letter of each word in the term capitalized.

RECITALS

A. This Community Declaration provides for the establishment of a residential development to be known as Morning Star Ranch.

B. Morning Star Ranch consists of the 117 Lots shown on the Plat and legally described on Exhibit "A" attached hereto (collectively, the "Ranch"). Declarant is the Owner of Lots 1 through 116 of the Ranch, which it acquired from The Meadows at San Cayetano Valley, Inc., an Arizona corporation ("The Meadows"). The Meadows is the Owner of Lot 117. Declarant also owns Tract "A" shown on the Plat, but said Tract "A" is not included in the Ranch or otherwise subject to the terms hereof.

C. Declarant desires that the Property be developed as a residential development. To that end, Declarant deems it desirable to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property.

D. Declarant desires and intends that the Owners, Mortgagees, Occupants and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property.

E. The Meadows, by its consent hereto, agrees that all provisions of this Community Declaration shall be fully binding upon Lot 117, which shall be deemed to be part of the Property for all purposes as fully as if it had been owned by Declarant at the time of the Recording hereof.

NOW, THEREFORE, Declarant, for the purposes above set forth, declares that this shall constitute a community declaration. The Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth herein, all of which shall run with the land and be binding upon the Property and any and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Community Association and each Member of the Community Association.

1. DEFINITIONS.

Unless the context clearly requires otherwise, defined terms used in this Community Declaration shall have the following meanings:

1.1. "Adjustment Date" is defined in Section 4.3.4.

1.2. "Adjustment Index" is defined in Section 4.3.4

1.3. "Articles" means the Articles of Incorporation of the Community Association, as they may be amended from time to time, or of any successor thereto.

1.4. "Assessments" shall include the following:

1.4.1. "Regular Assessment" means the amount which is to be paid by each Owner as such Owner's Proportionate Share of the Common Expenses of the Community Association, as provided in Section 4.3.

1.4.2. "Adjusted Regular Assessment" is defined in Section 4.3.4.

1.4.3. "Special Assessment" means a charge against the Owner of a particular Lot, directly attributable to such Owner or Lot, to reimburse the Community Association for costs incurred in bringing the Owner or the Lot into compliance with the provisions of this Community Declaration and the Articles, Bylaws, Community Design Guidelines, and Community Association Rules, or any other charge designated as a Special Assessment in this Community Declaration, the Articles, Bylaws, Community Design Guidelines or Community Association Rules, together with attorneys' fees and other charges payable by such Owner pursuant to the provisions of this Community Declaration, as provided in Section 4.4.

1.4.4. "Reconstruction Assessment" means the amount which is to be paid by each Owner representing such Owner's Proportionate

Share of the cost to the Community Association for reconstruction of any portion of the Common Areas, as provided in Section 6.

1.4.5. "Capital Improvement Assessment" means the amount which is to be paid by each Owner representing such Owner's Proportionate Share of the cost to the Community Association for the installation or construction of any capital improvements on any of the Common Areas that the Community Association may from time to time authorize pursuant to the provisions of Section 4.5.

1.4.6. "Base Assessment" is defined in Section 4.3.4 (a).

1.4.7. "Beginning Index" is defined in Section 4.3.4(c).

1.5. "Board" means the Board of Directors of the Community Association.

1.6. "Bylaws" means the bylaws of the Community Association adopted in accordance with the Articles, as such Bylaws may be amended from time to time.

1.7. "Common Areas" means Community Common Areas.

1.8. "Common Expenses" means the actual and estimated costs incurred by the Community Association in maintaining, operating, and administering the Property, including, but not strictly limited to, the following:

(a) the costs of maintenance, management, operation, repair and replacement of the Common Areas, and all other areas on the Property which are maintained by the Community Association;

(b) the costs of maintenance, repair and replacement of landscaping and any additions thereto, and the costs of painting and minor repairs to be performed by the Community Association all as provided in Section 8.2 hereof;

(c) unpaid Assessments;

(d) the costs of management and administration of the Community Association, including, but not limited to, compensation paid by the Community Association to managers, accountants, attorneys and employees;

(e) the cost of utilities including, but not limited to, water, electricity, gas, sanitary sewer, and trash pick-up and disposal, which are provided to the Community Association or the Property and which are not individually metered or assessed by Lot, and the cost of landscaping maintenance and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Community Association (other

than such services, if any, that may be provided to individual Owners pursuant to separate contracts between the Owners and the Community Association);

(f) the costs of fire, casualty, liability, workmen's compensation, directors and officers, and any other insurance obtained by the Community Association;

(g) if deemed appropriate by the Community Association, reasonable reserves for contingencies, replacements and other proper purposes to meet or defray the costs and expenses of routine maintenance, repairs and replacement of those parts of the Property which must be maintained, repaired, or replaced by the Community Association on a periodic basis;

(h) the costs of bonding the members of the Board, the President, any ranch manager or other professional managing agent, or any other person handling the funds of the Community Association;

(i) taxes paid by the Community Association;

(j) amounts paid by the Community Association for discharge of any lien or encumbrance levied against any property or improvements of the Community Association;

(k) the costs incurred by committees established by the Board or the President;

(l) the salaries and related costs of all full-time or part-time employees, including a ranch manager or other professional managing agent, and operation of guard gates and/or key gates at entrances to the Property, and the costs of any other security systems or services installed, operated or contracted for by the Community Association; and

(m) other expenses incurred by the Community Association for any reason whatsoever in connection with the Common Areas (excepting reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other item or items designated by, or to be provided or performed by the Community Association pursuant to this Community Declaration, the Articles, Bylaws, Community Design Guidelines, Community Association Rules, or in furtherance of the purposes of the Community Association or in the discharge of any duties or powers of the Community Association.

1.9. Community Association means Morning Star Ranch Community Association, an Arizona nonprofit corporation, its successors and assigns.

1.10. "Community Association Rules" means the rules and regulations adopted by the Community Association pursuant to Section 2.8.

1.11. "Community Common Areas" means all interests in real property and the improvements or amenities thereon which may from time to time be owned, leased or enjoyed under an easement, license or similar permissive arrangement by the Community Association or otherwise held for the common use and enjoyment of the Owners by the Community Association.

1.12. "Community Declaration" means this instrument, as from time to time amended.

1.13. "Community Design Guidelines" means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted by the Community Design Review Committee pursuant to Section 10.2.

1.14. "Community Design Review Committee" means the committee provided for in Section 10 of this Community Declaration.

1.15. "Declarant" means Morning Star Ranch Development, L.L.C., an Arizona limited liability company, its successors and any Person to whom Declarant's rights hereunder are hereafter assigned by recorded instrument, or any Mortgagee of Declarant which acquires title to or succeeds to the interest of Declarant in all unsold Lots by reason of a foreclosure (or conveyance in lieu of foreclosure) under the Mortgage.

1.16. "Default Rate of Interest" means an annual rate of interest equal to the prime rate as published in the Wall Street Journal from time to time while interest is accruing hereunder, adjusted as and when said prime rate is adjusted, plus 4% per annum, but never less than 18%. Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said periods shall be the highest lawful rate. If the Wall Street Journal should cease publication or no longer publish its prime rate as described above, the Community Association may compute interest hereunder upon the announced prime rate of any bank doing business in Arizona. If banks should cease announcing prime rates, the Community Association may elect to use 18% as the Default Rate of Interest, or may specify (for purposes of the computation hereunder) the rate, in lieu of said prime rate, which the Community Association would reasonably have to pay to borrow money at the time.

1.17. "Index" is defined in Section 4.3.4.

1.18. "Insurance Trustee" is defined in Section 6.7.

1.19. "Lot" means one of the numbered lots shown on the Plat, together with any residential dwelling unit, garages, stables, structures and other improvements constructed thereon.

1.20. "Majority of Members" means the Members present either in person or by proxy and holding more than 50% of the total votes represented and entitled to be cast with respect to a given matter at a meeting of the Members at which a quorum (as determined pursuant to the Articles and Bylaws) is established; and any specified fraction or percentage of the Members means the Members present either in person or by proxy and holding that fraction or percentage of the total votes represented and entitled to be cast with respect to a given matter at such a meeting. A specified fraction or percentage "of all of the Members except Declarant" means that fraction or percentage of the total votes of all Members other than votes held by Declarant. Unless otherwise specified, any provision herein requiring the approval of the Members means the approval of a Majority of Members.

1.21. "Member" means every Person who holds a membership in the Community Association pursuant to Section 2.

1.22. "Mortgage" means any Recorded instrument given in good faith and for valuable consideration (which is not a fraudulent transfer under Arizona law) as security for the performance of an obligation, including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means the holder of a note or other obligation secured by a Mortgage, including the beneficiary under any deed of trust and the "Seller" of a Lot under a Recorded "Contract" (as those terms are defined in Arizona Revised Statutes Section 33-741).

1.23. "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.

1.24. "Owner" means the record owner, whether one or more Persons, of fee simple title to any Lot and also a "Purchaser" of a Lot under a Recorded "Contract" (as those terms are defined in Arizona Revised Statutes Section 33-741), but excluding those having an interest in a Lot merely as security for the performance of an obligation.

1.25. "Person" means an individual, corporation, limited liability company, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.

1.26. "Plat" means the record of survey of the Ranch as first recorded in the official records of Santa Cruz County, Arizona, on May 17, 1996, in Book 2 of Surveys at page 136, and as thereafter from time to time amended or supplemented.

1.27. "President" means the individual duly elected by the Board as president of the Community Association.

1.28. "Private Roads" is defined in Section 3.1.

1.29. "Project" means the development described in the recitals hereof, called "Morning Star Ranch."

1.30. "Property" means the Ranch and the Common Areas, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.31. "Proportionate Share" means, for each Lot, that fraction wherein the numerator is one and the denominator is the total number of Lots in the Ranch.

1.32. "Ranch" means that parcel of real property referred to in the recitals hereof and described in Exhibit "A" hereto.

1.33. "Record" or "Recording" means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Santa Cruz County, Arizona.

1.34. "Taking" means a taking as defined in Section 7.

1.35. "Transition Date" means the date determined as provided in Section 2.14.

2. COMMUNITY ASSOCIATION.

2.1. Purpose of Community Association. The Community Association has been or will be incorporated as a nonprofit corporation to serve as the governing body for all of the Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the making and collection of Assessments, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Community Declaration, the Articles, Bylaws, Community Design Guidelines, and Community Association Rules. The Community Association shall not be deemed to be conducting a business of any kind, and all funds received by the Community Association shall be held and applied by it for the

Owners and Members in accordance with the provisions of this Community Declaration, the Articles and the Bylaws.

2.2. Membership in Community Association.

2.2.1. There shall be one membership in the Community Association with one membership vote for each Lot. An Owner shall be entitled to one membership in the Community Association for each Lot he owns so long as he is the Owner of the Lot. If the Owner of a Lot is other than one individual, the Owner shall specify in writing to the Community Association the individual who is the Member of the Community Association for the Lot. In the absence of such written specification, Assessments shall nevertheless be charged against the Lot and Owner thereof, but there shall be no right to vote the membership. The Member must be an individual who is an Owner or, if the Owner is or includes a Person other than an individual, an individual who is a partner, if the Owner is or includes a partnership; or an officer of the corporation, if the Owner is or includes a corporation; or a member or manager of a limited liability company, if the Owner is or includes a limited liability company; or a trustee or beneficiary of the trust, if the Owner is or includes a trust; or an owner of the entity, if the Owner is or includes a Person other than an individual, a partnership, a corporation, a limited liability company or a trust. The Member, as so specified, shall be the only Person entitled to vote for the Owner of the Lot at Community Association meetings and elections. An Owner may change the individual who is the Member for his Lot, provided each such individual is eligible to be a Member hereunder, in such manner and with such frequency, and subject to such reasonable processing fees, as the Board from time to time may permit.

2.2.2. A membership in the Community Association shall not be transferred, pledged or alienated in any way except as expressly provided herein. A membership shall automatically be transferred to the new Owner (subject to the provisions of Section 2.2.1.) upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, gift, intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot.

2.3. Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his membership to a Mortgagee as additional security, only the vote of such Mortgagee will be recognized in regard to those matters specified in the proxy or pledge instrument if a copy of such proxy or other instrument pledging such vote has been filed with the Community Association prior to the vote. In the event that more than one such instrument has been filed prior to the vote, the Community Association shall recognize the rights of the first

Mortgagee to so file, regardless of the priority of the Mortgages themselves.

2.4. Declarant's Voting Rights and Assignment Thereof.

In addition to its rights under Section 2.5.2, Declarant shall be entitled to three votes for each Lot owned by Declarant. If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Community Declaration succeeds to Declarant's interests, such lender shall hold Declarant's voting rights on the same terms as they were held by Declarant pursuant hereto.

2.5. Board of Directors.

2.5.1. The affairs of the Community Association shall be conducted by the Board as herein provided and in accordance with the Articles and Bylaws. Except for directors appointed by Declarant, each director shall be a Member or the spouse of a Member. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant.

2.5.2. Declarant shall have the absolute power and right to appoint and remove the members of the Board until the Transition Date. After that date, the Members of the Community Association shall have the power and right to appoint and remove the members of the Board as provided in the Articles and Bylaws.

2.6. Board's Determination Binding. In the event of any dispute or disagreement between any Owners, Members, or any other Persons subject to this Community Declaration (except officers or directors of the Community Association while acting in their capacities as such), relating to the Property, or any question of interpretation or application of the provisions of this Community Declaration, the Articles, Bylaws, or Community Association Rules to the Property, the determination thereof by the Board shall be final and binding on each and all of such Owners, Members or Persons. The Board may, at its election, delegate the resolution of such dispute or disagreement to a committee appointed by the Board.

2.7. Additional Provisions in Articles and Bylaws. The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Community Association and the rights and powers of its directors, officers, employees, agents and Members not inconsistent with law or this Community Declaration. A current copy of the Articles and Bylaws shall at all times be kept on file at the principal office of the Community Association.

2.8. Community Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as

it deems reasonable and appropriate binding upon all Persons subject to this Community Declaration and governing the use and/or occupancy of the Common Areas and all other parts of the Property. These Community Association Rules may include the establishment of a system of fines and penalties enforceable by Special Assessments. The Community Association Rules shall govern matters in furtherance of the purpose of the Community Association including, but not limited to, the use of the Common Areas; provided, however, that the Community Association Rules may not discriminate among Owners and Members except as expressly provided or permitted herein, and shall not be inconsistent with this Community Declaration, the Articles, Bylaws and, Community Design Guidelines. A copy of the Community Association Rules, as they may from time to time be adopted or amended, or a notice setting forth the adoption, amendment or repeal of specific portions of the Community Association Rules shall be delivered to each Owner and Member in the same manner established in this Community Declaration for the delivery of notices. Upon completion of the notice requirements, the Community Association Rules shall have the same force and effect as if they were set forth in and were part of this Community Declaration and shall be binding on the Owners and Members, and all other Persons having any interest in, or making any use of, the Property, whether or not actually received by them. A current copy of the Community Association Rules shall be available at the principal office of the Community Association to each Owner, Member or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Community Association Rules and any provisions of this Community Declaration, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of this Community Declaration to the extent of any such conflict.

2.9. Indemnification. To the fullest extent permitted by law, every director and every officer of the Community Association and Declarant (to the extent a claim may be brought against Declarant by reason of its appointment, removal or control over members of the Board) shall be indemnified by the Community Association, and every other person serving as an employee or direct agent of the Community Association, or on behalf of the Community Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Community Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Community Association (or in the case of Declarant by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement thereof, whether or not he is a director, officer or member of any such committee or serving in such other specified capacity at the time such expenses are incurred, provided that the

Board shall determine, in good faith, that such officer, director, or other person, or Declarant, did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled at law or otherwise.

2.10. Non-Liability of Officials. To the fullest extent permitted by law, Declarant, any committees of the Community Association and every member thereof, and every director and officer of the Community Association, shall not be liable to any Member, Owner, Occupant, the Community Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, or such committees or persons reasonably believed to be within the scope of their respective duties.

2.11. Easements. In addition to the blanket easements granted in Section 3.1, the Community Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Community Association such permits, licenses, easements and rights-of-way for sanitary sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas and for the preservation of the health, safety, convenience and welfare of the Owners and Members, provided that any damage to a Lot resulting from such grant shall be repaired by the Community Association at its expense.

2.12. Records. The Community Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Member the books, records and financial statements of the Community Association together with current copies, as amended from time to time, of this Community Declaration and the Articles, Bylaws, Community Association Rules, and Community Design Guidelines. Notwithstanding the foregoing, the Community Association shall not be required to make its books and records for the period prior to the Transition Date available for inspection except as required by law. The Declarant shall not be under any obligation to make its own books and records available for inspection by any Owner, Member or other Person. The books and records of the Community Association may be audited or unaudited as the Board may from time to time determine.

2.13. Managing Agent. The Community Association may delegate performance of its duties to a managing agent, under a management agreement; provided, however, that no such delegation shall relieve the Community Association of its obligation to perform any such delegated duty.

2.14. Declarant's Control of Community Association; Transition Date. Notwithstanding anything in this Community Declaration to the contrary, Declarant shall maintain absolute control over the Community Association, including appointment of the members of the Board, until the Transition Date. The "Transition Date" is defined as the first to occur of (a) the date on which at least 90% of the Lots have been conveyed to purchasers unrelated to Declarant or (b) the date on which Declarant requires the Members to assume control of the Community Association as provided in the next sentence. Declarant voluntarily may (but shall not be required to) require the Members to assume control of the Community Association at any time.

3. EASEMENTS.

3.1. Blanket Easements. There is hereby created a blanket easement in favor of the Community Association, all utility companies, and all fire departments, ambulance services and similar entities upon, across, over and under all Private Roads (as defined below) on the Property for: ingress and egress; installing, constructing, replacing, repairing, maintaining, and operating all utilities, including, but not limited to, water, sanitary sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems; and for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the providing utility company to erect or place and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, and other equipment within the Private Roads, provided that the Community Association shall have the right to designate the exact location and the time and manner of installation thereof. The Community Association's rights under this blanket easement shall be considered part of the Common Areas and subject to use by Owners and other Persons as provided in Sections 3.2 and 3.3. The term "Private Roads" means: (a) the sixty foot ingress, egress and utility easements shown on the Plat; (b) any ingress and egress or utility easements shown on any amendments to the Plat; (c) any road bladed, graded and/or paved by Declarant in connection with development of the Project, whether or not shown on the Plat or an amendment thereto; (d) the ingress, egress and/or utility easements reserved by Declarant in deeds conveying title to Lots as provided in Section 3.8; and (e) easements granted to Declarant or the Community Association by the Owner of a Lot, unless the instrument granting such easement specifically refers to this Community Declaration and provides that

the easement granted is not to be treated as a Private Road. This provision shall in no way affect other recorded easements on the Property, if any.

3.2. Use of Common Areas. Except for the use limitations provided in Section 3.3 (which, by becoming an Owner, each Owner shall be deemed to have accepted), each Owner shall have the nonexclusive right to use the Common Areas in common with all other Owners as required for the purposes of ingress and egress to (and use, occupancy and enjoyment of) the Owner's Lot and between any Lot owned by such Owner and Common Areas or other portions of the Project available for the use of said Owner. Such right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Community Association Rules, extend to each Owner, Member, Occupant and the agents, servants, tenants, family members and invitees of each Owner. This right to use the Common Areas shall be perpetual and appurtenant to each respective Lot, subject to and governed by the provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines, Community Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

3.3. Exclusive Use Rights. Certain portions of the Common Areas may be reserved by the Board for the exclusive control, possession and use of the Owner of a Lot. If such an area serves as access to and from two or more Lots, the Owners of those Lots shall have joint control, possession and use of such portion of said area as reasonably serves all such Lots. Easements are hereby created in favor of and running with each Lot having such an area for the exclusive control and use of each such area. The use rights authorized herein are subject to the blanket utility easement and maintenance provisions contained in this Community Declaration and to such reasonable rules and regulations with respect to possession, control, use and maintenance as the Community Association may from time to time promulgate. Each Owner, by accepting title to a Lot, shall be deemed to have further ratified the easements and rights to exclusive use created by this Section 3.3.

3.4. Declarant Easement. There is hereby created an affirmative, nonexclusive easement in favor of Declarant, and appurtenant to the portions of the Property owned by Declarant, for ingress and egress over all Common Areas including, but not limited to, Private Roads, and for the right to go over, under and across, and to enter and remain upon all Common Areas for all purposes reasonably related to Declarant's rights and obligations hereunder and to the development, operation, maintenance, advertisement and sale or rental of any portions of the Property owned by Declarant.

3.5. Community Association Easement. There is hereby created an affirmative, nonexclusive easement in favor of the

Community Association for ingress and egress over all of the Property (except any portion covered by residential dwelling units or other Lot improvements) for the purpose of enabling the Community Association and its contractors, employees, representatives and agents to perform any duties of the Community Association.

3.6. Wall Easement. One or more Lots may contain walls to be constructed by Declarant or the Community Association along or in the vicinity of the Private Roads that form an aesthetic, architectural or structural element. In such event, there shall exist an easement upon the Lot in favor of Declarant and the Community Association for the construction, maintenance, repair and replacement of each such wall. Notwithstanding anything herein to the contrary, the maintenance, repair and replacement of each such wall shall be governed by the provisions of Sections 8.2 and 8.3 hereof.

3.7. Recreation Easement. There is hereby created an easement designated as the "Recreation Easement" over that portion of the Property designated as trails on a master trail plan to be initially prepared by the Developer, and as such plan may thereafter be amended by the Community Association. The Recreation Easement shall run in favor of all Owners, Members, Occupants and their guests and invitees, for pedestrian, equestrian and non-motorized bicycle use. The activities permitted within the Recreation Easement shall be limited to viewing, exercise, relaxation, or similar low-impact uses, and shall not include overnight camping, organized sports or burning of fires.

3.8. Reserved Easements. At such time as a Lot is sold, Declarant shall in the deed thereto reserve thereon such easements as Declarant deems necessary for ingress to, egress from, and the provision of utilities to said Lot and any other Lots which are not adequately served, in Declarant's judgment, by any other Private Roads. Any such reserved easements shall be deemed to run in favor of the Community Association, whether or not it is mentioned in the deed, and to be a Private Road as defined in Section 3.1. Once a Lot has been sold, the Owner's consent shall be necessary to alter any such reserved easement or to create any new easement on such Lot.

4. ASSESSMENTS.

4.1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay to the Community Association: Regular Assessments, Special Assessments, Capital Improvement Assessments, and Reconstruction Assessments, if applicable, such Assessments to be established and collected from

time to time as provided in this Community Declaration. The Assessments, together with interest thereon, late charges, fines, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon the Lot of the Owner against whom the Assessments are made from the date payment of the Assessments is due. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to which the Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by such successor. The obligation of each person constituting the Owner of the Lot, if more than one, for the payment of Assessment shall be joint and several.

4.2. Purpose of Assessments. The Assessments levied by the Community Association shall be used to promote the recreation, health, safety and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Community Association and all other Common Expenses, and otherwise to further the interests of the Community Association.

4.3. Regular Assessments.

4.3.1. Except as otherwise specifically provided herein (including, but not limited to, Section 4.3.4), each Owner shall pay as his Regular Assessment the Owner's Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Community Association.

4.3.2. Not later than 60 days prior to the beginning of each fiscal year of the Community Association after the year in which Assessments are first payable hereunder, the Community Association shall make available for review by each Owner and Member at the Community Association's office during reasonable times a pro-forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. Subject to the provisions of Section 4.3.4, the Community Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner thereof. Each Owner shall thereafter pay to the Community Association his Regular Assessment in quarterly installments. Each such installment shall be due and payable on the first day of each calendar quarter. Notwithstanding anything foregoing to the contrary, the Community Association shall not be required to prepare, or distribute to Members, any operating statement or budget for any period prior to December 31, 1998.

4.3.3. Subject to the limitations set forth in parts (a) through (e) of Section 4.3.4, if the Community Association determines at any time during a fiscal year that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Community Association's budget for that year (except as provided in Section 4.4 hereof), the President shall then immediately determine the approximate amount of such inadequacy and, with the consent of the Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of the quarterly installments of the Regular Assessment to be paid by each Member for the balance of the year, and the date or dates when due. If the increase in the Regular Assessment, pursuant to this Section 4.3.3 exceeds ten percent, the increase must be ratified by the vote of two-thirds of the Members other than Declarant. If such vote is not obtained, the increase shall be limited to ten percent. If the estimated total Regular Assessments for the current year proves to be excessive in light of the actual Common Expenses, the Community Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

4.3.4. Notwithstanding anything in this Section 4.3 to the contrary, the provisions of this Section 4.3.4 shall apply and be controlling through the year 2018.

(a) Regular Assessments for each fiscal year of the Association shall be payable in equal quarterly installments. The installments of Regular Assessments payable for 1997 by each Lot shall be \$375.00 per quarter (said quarterly installment herein called the "Base Assessment"). Thereafter, through 2018, the Regular Assessment shall automatically be increased annually for each fiscal year of the Association (as hereinbelow provided) to reflect any increase in the Index (as hereinafter defined). The fiscal year of the Association shall be the calendar year, unless otherwise specified in the Articles or Bylaws.

(b) Commencing with the year 1998, the annual Regular Assessment (the amount of which Regular Assessment shall remain payable in equal quarterly installments for each calendar quarter of the fiscal year) for each Lot shall be equal to the Owner's Adjusted Regular Assessment (as hereinafter defined), determined on the most recent Adjustment Date (as hereinafter defined) prior to commencement of the fiscal year.

(c) The Adjusted Regular Assessment shall be determined in any given year by reference to the Consumer Price Index, as published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). The "Beginning Index" shall be the Index published most recently prior to September 30, 1996. The "Adjustment Index" shall be the Index published most recently prior to the Adjustment Date. The "Adjustment Date" shall be the 30th day of September of each year during the period beginning with the year 1997 and ending with the year 2017.

(d) The "Adjusted Regular Assessment" for a Lot shall equal four times the product of the Base Assessment multiplied by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no case, however, shall the Adjusted Regular Assessment for any Lot be less than the Regular Assessment for the same Lot for the previous year. If the Index is revised or discontinued at any time, the Beginning Index shall be converted to a comparable figure under such revised index or any other similar index selected by the Association in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, or any other publisher thereof, and such revised index or similar index shall thereafter be used in computing the Adjusted Regular Assessments; provided, that if such index conversion is unchangeable, Declarant shall in its sole and absolute discretion select any such other similar index to be used thereafter. If the Adjusted Regular Assessment for any year, contained in parts (c) and (d) of this Section 4.3.4., exceeds by more than ten percent the Regular Assessment for the prior year, the increase must be ratified by the vote of two-thirds of the Members. If such vote is not obtained, the increase shall be limited to ten percent of the Regular Assessment for the prior year.

(e) Commencing with the year 2019, Regular Assessments shall be determined in the manner set forth in this Section 4.3, exclusive of the provisions of parts (a) through (d) of this Section 4.3.4.

4.4. Special Assessments. Special Assessments shall be levied by the Community Association against any Owner and his Lot to reimburse the Community Association for:

4.4.1. Costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Community Declaration, or the Articles, Bylaws, Community Design Guidelines, and Community Association Rules;

4.4.2. Any other charge designated as a Special Assessment in this Community Declaration, the Articles, Bylaws or Community Association Rules;

4.4.3. Fines levied or fixed by the Board as provided herein; and

4.4.4. Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Community Declaration, the Articles, Bylaws, Community Design Guidelines, and Community Association Rules.

In the event the Community Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

4.5. Capital Improvement Assessments.

4.5.1. In addition to the Regular Assessments, the Community Association may levy in any calendar year a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the Community Association in connection with, or the cost of, any construction or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, to the extent the same is not covered by the provisions concerning Reconstruction Assessments in Section 6. However, the Community Association shall not impose a Capital Improvement Assessment in an amount which in any one year exceeds the estimated annual Common Expenses for that year without the vote of a Majority of Members. No portion of reserves collected by the Community Association for the future maintenance and repair of the Common Areas shall be included in determining the foregoing limitation on any annual Capital Improvement Assessment.

4.5.2. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Community Association in a separate bank account to be held for such purposes. Such funds shall not be commingled with any other funds of the Community Association.

4.6. Uniform Assessment. Subject to the provisions of Sections 4.3.4 and 4.17, the Regular Assessment and any Capital Improvement Assessment or Reconstruction Assessment shall be uniform for all Lots in the Property.

4.7. Exempt Property. Any Lot dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

4.8. Date of Commencement of Regular Assessments.

Subject to the provisions of Section 4.3, Regular Assessments shall commence as to each Owner on the first day of the calendar quarter following the date on which the transfer of title to the Lot occurs.

4.9. Time and Manner of Payment; Late Charges and Interest. Subject to the provisions of Section 4.3, Assessments shall be due and payable by the Owners in such manner and at such times as the Community Association shall designate. If not paid within thirty days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of Assessment or such other charge as the Board may specify from time to time. Any Assessment not paid within thirty days of its due date shall also bear interest at the Default Rate of Interest from the due date until paid. The Community Association may not waive the late charge and/or interest in any particular instance except in the case of fees assessed in error. A delinquent Owner shall also be liable for attorneys' fees and other related costs incurred by the Community Association as a result of such delinquency whether or not any legal proceeding is commenced for collection of unpaid amounts, and if any suit, action or arbitration proceeding is brought to collect any such Assessment or charge, the costs of suit and reasonable attorneys' fees to be fixed by the court shall be added to the amount thereof and included in any judgement or award rendered thereon.

4.10. No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, including but not limited to, a claim that (a) the Community Association, the Board, the President or Declarant is not properly exercising its duties and powers as provided in this Community Declaration; (b) Regular Assessments for any period exceed Common Expenses; or (c) an Owner has made, and elects to make, no use of the Common Areas or his Lot.

4.11. Homestead Waiver. Each Owner and Member, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Community Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect or in effect from time to time hereafter.

4.12. Reserves. Any reserves included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Community Association in a separate bank account to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Community Association, except to the extent that the Community Association's regularly employed accountant deems it

desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to non-profit corporations or homeowners associations. The responsibility of the Board (whether while controlled by Declarant or Members) shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither Declarant, nor the Board nor any member thereof shall have any liability to any Owner or to the Community Association if any reserves prove to be inadequate.

4.13. Subordination of Lien. Any lien which arises against a Lot under this Section may be subordinate to the liens of any Mortgages as provided in Section 11.2.

4.14. Certificate of Payment. Any Person acquiring an interest in any Lot shall be entitled to a certificate from the Community Association setting forth the amount of due but unpaid Assessments relating to the Lot, if any, and the Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such subsequent Assessments.

4.15. Enforcement of Lien. The lien provided for in this Section 4 may be foreclosed by the Community Association in any manner provided or permitted for the foreclosure of realty mortgages in the State of Arizona. All of the provisions of this Section 4 relating to the enforcement of the lien provided for herein (including, but not limited to, the subordination provision referred to in Section 4.13 or the provisions of this Section 4.15) shall apply with equal force in each other instance provided for in this Community Declaration, the Community Design Guidelines or the Community Association Rules wherein it is stated that payment of a particular Assessment, charge or other such amount shall be secured by the lien provided for in this Section 4. Nothing herein shall be construed as requiring that the Community Association take any action hereunder in any particular instance, and the failure of the Community Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

4.16. Pledge of Assessment Rights as Security. The Community Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in this Community Declaration as security for any obligation of the Community Association. The Community Association's power to pledge its assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Community Association. Any such assignment may be presently effective but shall allow the

Assessments to continue to be paid to the Community Association and used by the Community Association as set forth in this Community Declaration, unless and until the Community Association defaults on the obligations secured by the assignment.

4.17. Exemption of Unsold Lots. Notwithstanding anything in this Section 4 or in Section 6 to the contrary, prior to the Transition Date, no Assessments shall be levied against Declarant upon, or payable with respect to any Lot owned by Declarant, or any affiliate of Declarant (i.e., a Person who controls, is controlled by, or is under common control with Declarant), or any member or shareholder (or such member's or shareholder's successors, heirs or devisees) of Declarant to whom the Lot has been distributed by Declarant (as distinguished from having been purchased by the shareholder or member), or by any trustee for any of the aforesaid Persons, until such Lot has been conveyed by Declarant (or said affiliate, member, shareholder or trustee) to an unrelated purchaser.

4.18. Declarant's Contributions. For so long as the provisions of Section 4.17 exempt Lots owned by Declarant from Assessments, Declarant shall supply the Community Association with funds, services or materials from time to time required to allow the Community Association to perform necessary or appropriate functions, to the extent the Assessments payable by the other Lot Owners are insufficient. Any such contribution of services or materials shall be valued for the purposes of this Section 4.18 at their fair market value. Notwithstanding anything in the foregoing to the contrary, in no event shall Declarant's contribution obligations pursuant to this Section 4.18 exceed the amount Declarant would have been obligated to pay in Assessments if the exemption provisions of Section 4.17 were not in effect.

5. INSURANCE.

5.1. Authority to Purchase. The Community Association shall purchase and maintain insurance including, but not limited to, the insurance described in Section 5.3. Such policies and any endorsements thereon, or copies thereof, shall be deposited with the Community Association. The Community Association shall advise Owners of the coverage provided by these policies in order to permit Owners to determine which particular items are included within the coverage so that Owners may insure themselves as they see fit if certain items are not insured (or are not insured adequately, in the opinion of the Owner) by the Community Association.

5.2. Owner's Responsibility. It shall be each Owner's responsibility to provide insurance for himself to cover: the contents and structure of any dwelling unit or other improvements

located on his own Lot, his additions thereto, and his personal property stored therein and elsewhere on the Property, his personal liability to the extent not covered by the public liability insurance obtained by the Community Association; and such other insurance which is not carried by the Community Association as the Owner desires. No Owner shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Community Association.

5.3. Coverage. The Community Association shall maintain and pay for policies of insurance as follows:

5.3.1. A multi-peril type policy covering the Community Association's interest in all of the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, but not limited to, perils normally covered by an "all-risk" policy, in an amount determined by the Community Association.

5.3.2. A policy of comprehensive public liability insurance covering the Property in an amount determined by the Community Association but not less than \$1,000,000.00 per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, but not limited to, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the Common Areas and the portions of the Lots to be maintained by the Community Association hereunder, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Community Association.

5.3.3. The Community Association shall, at its election, obtain fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Community Association. If funds of the Community Association are handled by a management agent, then fidelity bond coverage shall also be obtained for the officers, employees or agents thereof handling or responsible for Community Association funds. The fidelity bond or insurance shall be written to provide protection in an amount not less than the lesser of (a) one-half times the Community Association's estimated annual operating expenses and reserves, (b) a sum equal to three months' aggregate Regular Assessments plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the Community Association (and its management agent) at any one time.

In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers. Such coverage must name the Community Association as an obligee.

5.3.4. A workmen's compensation policy, if necessary to meet the requirements of law.

5.3.5. A policy of "directors and officers" liability insurance.

5.3.6. Such other insurance, in such amounts, as the Community Association shall determine from time to time to be desirable.

5.4. Non-Liability of Community Association and Others. Notwithstanding the duty of the Community Association to obtain insurance coverage as stated herein, the Community Association, Board members, the President, and Declarant shall not be liable to any Owner, Member, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Community Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

5.5. Premiums. Premiums upon insurance policies purchased by the Community Association shall be paid by the Community Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas, by an Owner, shall be assessed against that particular Owner as a Special Assessment.

5.6. Insurance Claims. The Community Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Community Association and to execute and deliver a release upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The President of the Community Association has full and complete power to act for the Community Association or, at his discretion, appoint an authorized representative or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Community Association.

5.7. Benefit. Except as otherwise provided herein, all insurance policies purchased by the Community Association shall be for the benefit of, and any proceeds of insurance received by the Community Association or any insurance trustee shall be held or

disposed of in trust for, the Community Association and the Owners, as their interests may appear.

6. DAMAGE AND DESTRUCTION OF COMMUNITY COMMON AREAS.

6.1. Duty of Community Association. In the event of partial or total destruction of the Community Common Areas, or any improvements thereon, it shall be the duty of the Community Association to restore and repair the same as promptly as practical pursuant to this Section 6. The proceeds of any casualty insurance maintained pursuant to this Community Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

6.2. Automatic Reconstruction. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Community Association, shall be at least 75% of the estimated cost of restoration and repair, a Reconstruction Assessment against each Owner for his Proportionate Share may be levied by the Community Association to provide the necessary funds for such reconstruction in excess of the amount of the funds available for such purpose. The Community Association shall thereupon cause the damaged or destroyed Community Common Areas to be restored to substantially the condition the Community Common Areas were in prior to the destruction or damage.

6.3. Vote of Members. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Community Association, shall be less than 75% of the estimated cost of restoration and repair, the Community Common Areas shall be replaced or restored unless such replacement or restoration is disapproved by the vote of two-thirds of the Members, at a special meeting held for such purpose. If the Members do not disapprove the proposed replacement or restoration, the Community Association shall levy a Reconstruction Assessment against each Owner for his Proportionate Share and cause the damaged or destroyed Community Common Areas to be restored as closely as practical to their former condition prior to the destruction or damage. If the Members disapprove of the repair or restoration of the damaged or destroyed improvements on the Community Common Areas as provided above, the Community Common Areas so damaged or destroyed shall be cleared and landscaped for community park use or other community use determined by the Community Association and the costs thereof shall be paid with the insurance proceeds.

6.4. Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Community

Association pursuant to this Section, the Community Association, in its sole discretion, may retain such sums in the general funds of the Community Association or may distribute all or a portion of such excess to the Owners for their Proportionate Shares, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Community Association. The rights of an Owner or the Mortgagee of a Lot as to such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

6.5. Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Section 6 and shall be deposited by the Community Association in a separate bank account to be held for such purposes. These funds shall not be commingled with any other funds of the Community Association. Any Reconstruction Assessment shall be secured by the lien provided for in Section 4.

6.6. Contract for Reconstruction. In the event the Community Association undertakes the repair and restoration of the Community Common Areas, the Community Association shall contract with a licensed contractor or contractors who may be required to post a suitable performance or completion bond. The contract with such contractor or contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Community Association.

6.7. Insurance Proceeds Trust. Upon receipt by the Community Association of any insurance proceeds, the Community Association may cause the insurance proceeds to be paid directly to a bank, savings and loan Association, or trust company located in Arizona as designated by the Community Association as trustee (the "Insurance Trustee"). Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Community Declaration and which shall be entered into between the Insurance Trustee and the Community Association. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Arizona.

7. EMINENT DOMAIN.

7.1. Definition of Taking. The term "taking" as used in this Section 7 shall mean condemnation by eminent domain or sale

under threat of condemnation of all or any portion of the Community Common Areas.

7.2. Representation in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Community Common Areas, the Owners hereby appoint the Community Association, through such persons as the Board may delegate, to represent all of the Owners in connection therewith. The Community Association shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

7.3. Award for Community Common Areas. Any awards received by the Community Association on account of the taking of Community Common Areas may, at the sole discretion of the Board, be retained in the general funds of the Community Association or distributed to the Owners as their interest may appear. The rights of an Owner and the Mortgagee of his Lot as to any distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

8. MAINTENANCE, REPAIRS AND REPLACEMENTS.

8.1. Owner's Responsibility. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Lot. The Owner is responsible for the maintenance and replacement of the landscape on the Lot.

If the dwelling unit or any other structure located on a Lot is partially or totally destroyed, the Owner of the Lot shall repair and rebuild the same promptly. If the Owner rebuilds the dwelling unit or structure substantially as it was prior to destruction or damage, the Owner need not receive the approval of the Community Design Review Committee pursuant to Section 10.4

8.1.1. Notification of Non-Conformance. If for any reason the Board rules that the Owner is not maintaining his Lot in an acceptable manner, the Board shall notify the Owner in writing. The Owner shall be required to make such improvements within 30 days of notification. If the Owner fails to comply with the written notification, the Board may authorize the needed improvement and levy a Special Assessment, against the Owner in order to pay for such improvements.

8.1.2. Wells and Septic Tanks. Wells and septic tanks shall be the sole responsibility of the Owner. The Owner shall maintain wells and maintain and pump septic tanks to conform with Santa Cruz County Health Department standards and any applicable provisions of the Community Design Guidelines and Community Association Rules.

8.2. Maintenance by Community Association. Except as otherwise provided herein to the contrary and subject to the Bylaws, Community Design Guidelines and Community Association Rules, the Community Association shall provide as part of the Common Expenses maintenance, repairs and replacement of the Community Common Areas. If, due to the act or neglect of an Owner, or the invitee, guest or other authorized visitor of an Owner, or an Occupant of an Owner's Lot, damage is caused to the Community Common Areas or to a Lot or Lots owned by others, or maintenance, repairs or replacements are required which would otherwise be a Common Expense, then such Owner shall pay for the damage and for such maintenance, repairs and replacements determined to be necessary or appropriate by the Community Association, to the extent that they are not covered by the Community Association's insurance. Any such obligation shall be a Special Assessment secured by the lien provided for in Section 4.

8.3. Right of Access. An authorized representative of the Community Association, and all contractors, repairmen or other agents employed or engaged by the Community Association, shall be entitled to reasonable access to each of the Lots as may be required or appropriate for maintenance, repairs or replacements of or to the Community Common Areas or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas, or to perform any of the Community Association's duties or responsibilities hereunder.

9. USE AND OCCUPANCY RESTRICTIONS.

9.1. Residential Use. Each Lot may be used only for residential purposes and none other. No business or commercial building may be erected on any Lot and no business or commercial enterprise or other nonresidential use may be conducted on any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the terms of this Community Declaration and the Community Design Guidelines. Nothing herein contained shall be deemed to apply to the Special Amenity Lots (as defined in Section 9.22) or to limit Declarant's rights as set forth in Section 13.

9.2. Violation of Law or Insurance. No Owner or Member shall permit anything to be done or kept in his Lot or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

9.3. Signs/Mailboxes. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Community Association, except: (a) such signs as may be used by Declarant in connection with the

development and sale or leasing of Lots in the Project; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; and (c) such signs as may be required for traffic control and regulation of Common Areas. No "For Sale" or "For Rent" sign may be posted on any Lot; provided, however, an Owner may, in accordance with applicable provisions of the Community Association Rules, be permitted to post one "For Sale" or "For Rent" notice in a form approved by the Board in a location specified for that purpose by the Board, which may be in a Common Area rather than on the Lot. The Board also may require mailboxes for all Lots to be placed in groups of two or more collectively at one or more locations on the Common Areas rather than placed individually on Lots.

9.4. Animals. A reasonable number of commonly accepted household pets, horses, and other domestic farm animals may be kept on a Lot in accordance with the Community Association Rules. No fowl or poisonous reptiles of any kind may be kept on any Lot or in or upon any Common Area. Except as may otherwise be provided in the Community Association Rules, no animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any pet or horse be allowed to run free away from its Owner's Lot without a leash or rider, or conduct itself so as to create an unreasonable annoyance. All such household pets and horses must be registered with the Community Association and shall have proof of any required immunizations presented with said registration.

9.5. Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners, Occupants or authorized Persons to the use and enjoyment of the Common Areas, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner shall comply with the terms of this Community Declaration, the Community Design Guidelines, the Community Association Rules, and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property. No firearms or fireworks of any type may be discharged on or from any Lot or the Common Areas. Normal construction activities and parking in connection with the building of permitted improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Community Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Board. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Board, which may also require screening of the storage areas. The Board shall have the right to determine, in its sole

discretion, the existence of an unreasonable annoyance or nuisance under this Community Declaration or the Community Association Rules.

9.6. Boats and Motor Vehicles. Except as specifically permitted by the Community Association Rules: (a) no boats, trailers, busses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except within an approved garage or carport and as permitted under (c) and (d) below; (b) no vehicle shall be repaired, serviced or rebuilt on any portion of a Lot outside its Building Envelope (as defined in the Community Design Guidelines) or upon the Common Areas, and any such activity must be completed as soon as reasonably practicable; (c) nothing shall be parked overnight on the Private Roads or other Common Areas except in such parking areas as may be designated by the Community Association; and (d) parking shall be allowed on Private Roads for temporary parking of construction vehicles. The Community Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

9.7. Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot in any manner which will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot, except as may be expressly permitted by the Community Design Guidelines or Community Association Rules.

9.8. Antennas. No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any Lot except as may be permitted by the Community Design Guidelines or the Community Association Rules.

9.9. Window Covers. Interior curtains, drapes, shutters or blinds may be installed as window covers. No aluminum foil, reflective material, newspaper or other materials not customarily made for use as window covers may be installed or placed upon the inside or outside of any dwelling unit or other structure. Exterior awnings, canopies, shutters and similar items may not be installed without prior written approval of the Community Design Review Committee as to color and style.

9.10. Garbage. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot or the Common Areas. No incinerators shall be kept or maintained in any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

9.11. Mining. No portion of the Property shall be used in any manner to explore for or remove any oil or other hydrocarbons or minerals of any kind or earth substance of any kind. Domestic water wells are exempt from this provision.

9.12. Safe Condition. Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot at all times in safe, sound and sanitary condition and shall repair and correct all unsafe conditions, so that reasonable enjoyment by other Owners of their respective Lots and the Common Areas is not inhibited.

9.13. Fires. Other than barbecues, in properly constructed barbecue pits or grills, and fire pits in compliance with the Community Design Guidelines and Community Association Rules, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Area or for other Owners.

9.14. Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind. All such facilities shall be provided within the buildings to be constructed on each Lot or otherwise concealed from view from all other Lots and the Common Areas.

9.15. No Further Subdivision. No Lot shall be divided or subdivided. An Owner may own more than one Lot which, if contiguous, may be combined into a single homesite with the consent of the Community Design Review Committee; provided, however that any such combination of Lots shall not reduce or alter the voting rights obtained by ownership of each Lot, nor shall it reduce or alter the amount which would have been assessed against the Owner of such Lots pursuant to the terms hereof in the absence of such combination. The Assessments shall be a lien, as provided in Section 4, upon the entire combination of Lots held by the Owner.

9.16. No Obstruction to Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land within any area designated on the Plat, or other binding document, as a "drainage easement", except that, with the prior consent of the County and the Community Association, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

9.17. Entrance Gates. Declarant may cause an entrance gate to be erected on Common Areas (including any easements on Lots for walls pursuant to Section 3.6) at any entrance to the Property. Any such gates shall be deemed to be part of the Common Areas once erected, and shall thereafter be maintained by the Community

Association. In such event, the Community Association shall thereafter determine from time to time who may have access through any entrance gate to the Property, subject to the easements created herein. Declarant reserves the unrestricted right of entry and use of Private Roads on the Property for itself and for its employees, agents, invitees, licensees, contractors and guests. The Community Association may make reasonable rules restricting the right of entry for Members, Owners, and Occupants or for prospective purchasers of Lots invited by an Owner. Any entrance gate may be manned or unmanned, may be abandoned, and its hours of manned operation changed from time to time, at the discretion of the Community Association.

9.18. Rental of Lots. An Owner who leases or otherwise grants any Person occupancy rights to his Lot shall be responsible for assuring compliance by the Occupant with all of the provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines and Community Association Rules, all as amended and supplemented from time to time, and shall be jointly and severally responsible with the Occupant for any violations by the Occupant thereof.

9.19. Prohibited Vehicles. Golf carts, dirt bikes, off-road type vehicles and other similar vehicles are prohibited on the Common Areas, except as may be expressly authorized from time to time by Community Association Rules, and may not be operated on a Lot so as to unreasonably annoy the Owners and Occupants of other Lots.

9.20. Enforcement. The Community Association or its authorized agents may enter upon any Lot on which a violation of this Community Declaration, the Articles, Bylaws, Community Design Guidelines or Community Association Rules exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to the Bylaws or Community Association Rules, shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Section 4 hereof. All remedies described in Section 14 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant or other Person of any provision of this Section 9.

9.21. Modification. The Board may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Lots by reasonable rules and regulations of general application adopted by the Board from time to time which shall be incorporated into the Community Association Rules.

9.22. Special Amenity Lots. Declarant shall have the power to designate any five of the Lots (the "Special Amenity

Lots") to be used for the construction of "Special Amenities" (as hereinafter defined). A Special Amenity Lot may be designated as such at any time prior to the Termination Date by Declarant's Recording a notice of such designation referring to this Section 9.22 and describing the Special Amenities to be constructed thereon. Declarant may Record a notice cancelling such designation at any time prior to construction of the Special Amenities on such Lot, and thereafter designate another Lot in lieu thereof or change the permitted Special Amenities for such Lot by Recording a new notice. The Owner of a Special Amenity Lot shall be entitled to construct and maintain the described Special Amenities, and his employees and invitees shall be permitted to use the Private Roads for access to the Special Amenity Lot. Owners and Occupants of other Lots shall not be permitted to use the Special Amenities without complying with the requirements imposed by the Owner of the Special Amenity Lot, including payment of any membership or other fees. The term "Special Amenities" shall include such buildings and related improvements as are necessary or appropriate for the provision of activities and services which are compatible with the nature of the Project and of a type which Owners would be likely to use for themselves or their guests, including but not limited to a guest lodge, athletic and equestrian facilities, and a stable for boarding horses. Special Amenity Lots shall be subject to this Community Declaration and to the Community Design Guidelines and Community Association Rules, except to the extent they are inconsistent or incompatible with the Special Amenities permitted thereon. Once a Lot has been designated as a Special Amenity Lot, no amendment to this Community Declaration or to the Articles, Bylaws, Community Design Guidelines or Community Association Rules shall eliminate or otherwise materially interfere with the construction, maintenance and use of the Special Amenities permitted thereon, unless the Owner of such Lot expressly consents to the amendment in a Recorded instrument.

9.23 Natural and Archaeological Resources. No Owner may commence clearing or grading operations on a Lot until such time as the area to be disturbed has been reviewed to insure that such activities will not damage or destroy any plants protected by law, including the Pima Pineapple Cactus, or any archaeological resources such as potsherds and historic structures. Areas containing any such features must be avoided.

10. ARCHITECTURAL AND LANDSCAPE CONTROL.

10.1. Appointment of Community Design Review Committee. The Community Association shall have a Community Design Review Committee consisting of not less than three nor more than five individuals, as specified from time to time by resolution of the Board. Declarant shall initially appoint the members of the Community Design Review Committee. Declarant shall retain the

right to appoint, remove and replace all members of the Community Design Review Committee until the Transition Date. Thereafter, members of the Community Design Review Committee shall be appointed, removed and replaced by the Board and may consist in whole or part of Board members. Persons appointed to the Community Design Review Committee, other than those persons appointed by Declarant, must be Members or satisfy such other requirements as may be set forth in the Community Design Guidelines. Declarant voluntarily may (but shall not be required to) permit the Members other than Declarant to appoint one or more members of the Community Design Review Committee at any time.

10.2. Community Design Guidelines. The Community Design Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines which the Community Design Review Committee may, from time to time, amend, repeal or augment. The Community Design Guidelines are hereby incorporated herein and shall be binding on all Owners, Members or other Persons as if expressly set forth herein. A copy of the current Community Design Guidelines shall at all times be a part of the Community Association's records. Any request for an approval from the Community Design Review Committee must be in writing before action is taken on the matter by the Community Design Review Committee. The Community Design Guidelines may include provisions:

10.2.1. To impose time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Community Design Guidelines.

10.2.2. To designate a "building envelope" within a Lot, thereby establishing the maximum developable area of the Lot.

10.2.3. To ensure conformity of completed improvements to plans and specifications approved by the Community Design Review Committee; provided, however, as to purchasers and encumbrancers in good faith and for value, unless notice of noncompletion or non-conformance identifying the violating Lot and specifying the reason for the notice, executed by the Community Design Review Committee, shall be Recorded and given to the Owner of such Lot within one year of the expiration of the time limitation described in Section 10.2.1 above, or, if later, within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Community Design Review Committee and in compliance with the Community Design Guidelines and this Community Declaration but only with respect to purchasers and encumbrancers in good faith and for value.

10.2.4. To impose such other limitations and restrictions as the Board or Community Design Review Committee in its reasonable discretion shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, but not limited to, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement.

10.3. General Provisions.

10.3.1. The Community Design Review Committee may assess reasonable fees in connection with its review of plans and specifications.

10.3.2. The Community Design Review Committee may delegate its plan review responsibilities, except such final review and approval as may be required by the Community Design Guidelines, to one or more of its members or architectural consultants retained by the Community Design Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Community Design Review Committee.

10.3.3. The address of the Community Design Review Committee shall be the address established for notice to the Community Association, unless otherwise specified in the Community Design Guidelines. The Committee's address shall be the place for the submittal of plans and specifications and the place where the current Community Design Guidelines shall be kept.

10.3.4. The establishment of the Community Design Review Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Community Declaration, the Bylaws or Community Association Rules.

10.3.5. The Community Design Review Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Community Design Guidelines within such period as may be specified in the Community Design Guidelines.

10.4. Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property by any Owner, nor shall there be any addition to or change by any Owner to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof,

including, but not limited to, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Community Design Review Committee in accordance with the Community Design Guidelines as to harmony of external design and location in relation to surrounding structures and topography.

10.5. Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Community Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications the Community Design Review Committee, the members thereof, the Community Association, the Members, the President, the Board and Declarant assume no liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. The Community Design Review Committee, the members thereof, the Community Association, the President, the Board, and Declarant shall not be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development, or manner of development, of any Lot within the Property, or (d) the execution and filing of an estoppel certificate pursuant to the Community Design Guidelines, whether or not the facts therein are correct; provided, however, that such action, with the actual knowledge possessed by the person or persons so acting, was taken in subjective good faith. Approval of plans and specification by the Community Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

10.6. Inspection and Recording of Approval. Any member or authorized consultant of the Community Design Review Committee, and any authorized officer, director, employee or agent of the Community Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with the Community Design Guidelines and this Community Declaration. The Community Design Review Committee shall cause such an inspection to be undertaken within 30 days of a request therefor from any Owner as to his Lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this Section 10 and the Community

Design Guidelines, the Community Design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this Section 10 and the Community Design Guidelines as to the improvements described in such recorded notice, but as to such improvements only.

10.7. Reconstruction of Common Areas. The reconstruction by the Community Association or Declarant after destruction by casualty or otherwise of any Common Areas or other portions of the Property for which the Community Association has responsibility, shall not require compliance with the provisions of this Section 10 or the Community Design Guidelines.

10.8. Additional Powers of the Board. The Board may promulgate as a part of the Community Association Rules such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Community Declaration or the Community Design Guidelines. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE BOARD MAY FIX A FINE OF UP TO \$10,000 FOR AN OWNER'S FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE COMMUNITY DESIGN REVIEW COMMITTEE.

11. RIGHTS OF MORTGAGEES.

11.1. General Provisions. Notwithstanding and prevailing over any other provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines or Community Association Rules, the following provisions shall apply to and benefit each holder of a Mortgage upon a Lot.

11.2. Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded Mortgage on the Lot, acquired in good faith and for value, except to the extent said lien secures the amount of any unpaid Assessment (together with any interest, costs, reasonable attorneys' fees and late charges related thereto) which accrues from and after the date on which the Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first. Any lien for unpaid Assessments which become payable after recordation of the Mortgage and prior to the date on which the Mortgagee comes into possession of or acquires titles to the Lot shall be extinguished, to the extent it secures said unpaid Assessments, by the process by which such Mortgagee acquires title to the Lot, and neither such Mortgagee nor a third party purchaser from such Mortgagee or at a foreclosure sale pursuant to the Mortgage shall be liable for such unpaid Assessments, and, upon written request to the Community Association by such Mortgagee or

purchaser, the lien shall be released in writing by the Community Association to the extent it secured such unpaid Assessments. Nevertheless, in the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Community Association for the full amount of all Assessments that were due prior to purchase. Any such unpaid Assessment shall also continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Community Association, and the Community Association may use reasonable efforts to collect the same from said Owner even after he is no longer the Owner of the Lot. Any unpaid Assessments which are extinguished pursuant to this Section 11.2 may be reallocated by the Community Association among all other Owners as a Common Expense. Except as provided in this Section 11.2 and except for taxes and other public charges which are made prior and superior by applicable law, the lien provided for in Section 4 hereof shall be prior and superior to any and all charges, liens and encumbrances which hereafter in any manner may arise or be imposed on any Lot.

11.3. No Personal Liability. A Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Community Association, or any provision of the Articles or Bylaws, or the Community Design Guidelines, or any management agreements, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, and except as otherwise specifically provided in this Section 11.

11.4. Enforcement After Foreclosure Sale. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against a purchaser who has acquired title through foreclosure of a Mortgage (or through any equivalent proceedings), and the successors in interest to said purchaser, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

11.5. Exercise of Owner's Rights. During the pendency of judicial or non-judicial any proceedings to foreclose a Mortgage (including any period of redemption), the Mortgagee, or a receiver appointed in any judicial proceeding, may, but need not, exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a member of the Community Association in the place and stead of the defaulting Owner.

11.6. Subject to Declaration. At the time a Mortgagee comes into possession of or becomes record Owner of a Lot, whichever first occurs, the Mortgagee shall be subject to all of the terms and conditions of this Community Declaration including,

but not limited to, the obligation to pay all Assessments and charges accruing thereafter, in the same manner as any other Owner.

12. EXEMPTION OF DECLARANT FROM RESTRICTIONS.

Except as expressly provided in this Community Declaration to the contrary, none of the restrictions contained in this Community Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents and contractors, or parties designated by them in connection with the construction, completion, sale or leasing of the Lots (including any improvements thereon), Common Areas or the Property.

13. REMEDIES.

13.1. General Remedies. In the event of a default by an Owner, or by the Member representing an Owner which is not an individual, or by an Occupant or other Person for whose default an Owner is responsible, under the provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines or Community Association Rules, the Community Association, its successors or assigns, its agents, and Declarant shall have each and all of the rights and remedies which may be provided for in this Community Declaration, the Articles, Bylaws, Community Design Guidelines and Community Association Rules, and which may be available at law or equity, and may prosecute any action or other proceedings against both the defaulting or responsible Owner, and any Member, Occupant or other Person who is in default for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or for damages or specific performance, or for judgement for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest accrued thereon, and to sell the same as hereinafter provided in Section 4.15, or for any combination of remedies or for any other relief, all without notice, except as specifically provided herein or otherwise required by law, and without regard to the value of the Lot or the solvency of its Owner. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs, including, but not limited to, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting or responsible Owner in a final judgement. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of

acquiring such possession, and it shall be a condition of any such sale, and the judgement shall so provide, that the purchaser shall take the interest in the property sold subject to this Community Declaration.

13.2. Expenses of Enforcement. All expenses of the Community Association and Declarant, and any other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Section 13, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the defaulting or responsible Owner and shall be a Special Assessment against the Owner, and the Community Association shall have a lien as provided in Section 4 therefor. In the event of default by any Owner, Member, Occupant or other Person, the Community Association and Declarant, and the manager or managing agent of the Community Association, if so authorized by the President, shall have the authority to correct the default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against the defaulting Owner as a Special Assessment, which shall constitute a lien against the defaulting or responsible Owner's Lot as provided in Section 4. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Community Association and Declarant.

13.3. Legal Action. In addition to any other remedies available under this Section 13, if any Owner (either by his conduct or by the conduct of the Member representing an Owner which is not an individual or any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Community Declaration, or the Articles, Bylaws, Community Design Guidelines or Community Association Rules, as then in effect, then the Community Association, Declarant, and any affected or aggrieved Owner, shall have the power to file an action against the defaulting Owner, Member or such other Person for a judgement or injunction against the Owner or Member or such other Person requiring the defaulting Owner, Member or other Person to comply with the provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines and Community Association Rules, and granting other appropriate relief, including money damages.

13.4. Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitude provided for in this Community Declaration, and any right of reentry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot the lien of which is superior to liens created hereunder as

provided in Section 11, but, except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitude shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

13.5. Limitation on Declarant's Liability.

Notwithstanding anything to the contrary herein, it is expressly agreed that Declarant (including, but not limited to, any assignee of the interest of Declarant hereunder) and any director, officer, member, manager, shareholder or partner of Declarant (and of any such assignee), shall have no personal liability to the Community Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Community Declaration or the Community Association except, in the case of Declarant (or its assignee) to the extent of its interest in the Property, and, in the event of a judgement, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

14. AMENDMENT.

14.1. Amendment to Declaration. Amendments to this Community Declaration shall be made by an instrument in writing entitled "Amendment to Community Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Community Declaration, any proposed amendment may be adopted by the vote of two-thirds of the members of the Board. If a majority, but less than two-thirds, of the members of the Board vote in favor of the proposed amendment, then it shall be submitted to and may be adopted at a meeting of the Members at which a quorum is established upon the approval thereof by the vote of two-thirds of the Members present either in person or by proxy at the meeting, or without any meeting if all Members have been duly notified and if two-thirds of all of the Members consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Community Association and be acknowledged by him as such. Amendments once properly adopted shall be effective upon Recording of the Amendment to Community Declaration, or at such later date as may be specified in the Amendment. If for any reason the Community Association no longer exists and no successor entity has been created, amendments may be adopted by an Amendment to Community Declaration executed and acknowledged by two-thirds of all of the Members.

14.2. Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Community Declaration

properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Community Declaration or the Plat, unless otherwise specifically provided in the Section being amended or the amendment itself.

14.3. Amendment of Plat. Except as otherwise provided herein, the Plat may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to the Plat adopted as provided for herein for the adoption of an Amendment to Community Declaration. Such an amendment to the Plat shall be effective, once properly adopted, when the Plat amendment is Recorded.

14.4. Required Approvals. Notwithstanding the provisions of Section 14.2:

(a) No amendment may materially and adversely affect the rights of: (1) any then existing Mortgagee as to the priority of the lien of its Mortgage; (2) any Owner to maintain any residential or other improvements on his Lot which either have been or are deemed to have been constructed in accordance with the then existing Community Declaration and Community Design Guidelines; (3) or any Owner of a Special Amenity Lot to construct, maintain and utilize his Lot for the Special Amenities permitted thereon, unless any such Mortgagee or Owner gives its express written consent to such amendment.

(b) Until the Transition Date, this Community Declaration may not be amended by the Members or Owners pursuant to Section 14.1 without the written consent of Declarant, which may be withheld for any reason in the sole and absolute discretion of Declarant.

15. GENERAL PROVISIONS.

15.1. Notice. Notice provided for in this Community Declaration, the Bylaws, the Community Design Guidelines or the Community Association Rules, shall be in writing and shall be addressed to the Community Association at the address specified in the Bylaws. The Community Association may designate a different address or addresses for notice by giving written notice of such change of address to all Owners. All notices to Owners shall be to the last address shown on the records of the Community Association. Notices addressed as described above shall be deemed delivered when mailed by United States mail, or when delivered in person.

15.2. Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Community Declaration, are for convenience only and are not

intended to modify or affect the meaning of any of the substantive provisions hereof. Any exhibit referred to herein is incorporated as though fully set forth where such reference is made. The provisions of this Community Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

15.3. Severability. If any provision of this Community Declaration, the Articles, Bylaws or Community Association Rules, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Community Declaration, the Articles, Bylaws, and Community Association Rules, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Community Declaration, the Articles, Bylaws, and Community Association Rules shall be construed as if such invalid part were never included therein.

15.4. Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Community Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 21 years after the death of the survivor of the now living descendants of United States Senators Jon Kyl and John McCain.

15.5. Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Member shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.

15.6. Power of Attorney. Whenever the Community Association is granted rights, privileges or duties in this Community Declaration, the President shall have the authority to act for the Community Association, unless such right and power is herein expressly reserved to the Board. Further, unless otherwise specifically restricted by the provisions of this Community Declaration, wherever the Community Association is empowered to take any action or do any act, including but not limited to action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner, the Owners and each of them hereby constitute and appoint the Community Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by the acceptance of

a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

16. RIGHTS AND OBLIGATIONS.

Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, or each person acquiring a membership in the Community Association, and the heirs, personal representatives, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Community Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of any such person in like manner as though the provisions of this Community Declaration were received and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

IN WITNESS WHEREOF, Declarant has caused this Community Declaration to be duly executed.

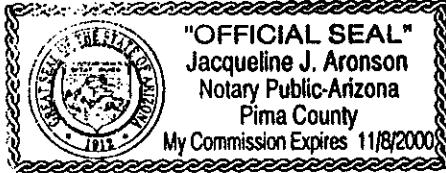
MORNING STAR RANCH DEVELOPMENT, L.L.C.,
an Arizona limited liability company

By: 

Its Manager

STATE OF ARIZONA)
) ss:
County of SANTA CRUZ)

The foregoing instrument was acknowledged before me this 8
day of February, 1997, by Philip M. McLaughlin, as Manager of
Morning Star Ranch Development, L.L.C., an Arizona limited
liability company, on behalf of the company.



Jacqueline J. Aronson
Notary Public

My Commission Expires:

Nov. 8, 2000

CONSENT

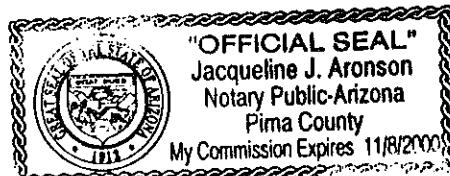
The Meadows at San Cayetano Valley, Inc., an Arizona corporation, as Owner of Lot 117 of Morning Star Ranch, hereby consents to the foregoing Community Declaration, as more specifically provided in Recital E, above.

THE MEADOWS AT SAN CAYETANO
VALLEY, INC.,
an Arizona corporation

By Philip M. McLaughlin
Its President

STATE OF ARIZONA)
)
) ss:
COUNTY OF SANTA CRUZ)

The foregoing instrument was acknowledged before me this 8th day of February, 1997, by Philip M. McLaughlin, as President of The Meadows at San Cayetano Valley, Inc., an Arizona corporation, on behalf of the corporation.



Jacqueline J. Aronson
Notary Public

My Commission Expires:

Nov. 8, 2000

DOCK 716 PAGE 1040

Lots 1 thru 117 of MORNING STAR RANCH, according to the Survey recorded May 17, 1996 in Book 2 of Surveys at page 136 in the Official Records of Santa Cruz County, Arizona

Exhibit "A"