

**SECOND AMENDED AND RESTATED
DECLARATION OF ESTABLISHMENT
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR
SAN IGNACIO VISTAS**

Dated:	January 24, 2006	Recorded in Docket 12729 Page 1878
Amended:	February 15, 2007	Recorded in Docket 13004 Page 4899
Amended:	February 24, 2010	Recorded in Docket 13759 Page 3347
Amended:	February 24, 2016	Recorded 3/4/16 Sequence 20160640682

- Amended in 1998 – Replaced original text in Section 18 in Article XIII with the text shown in this document.
- Amended in 1999 – Replaced original text in Section 2 of Article XII with the text shown in this document. Also replaced original text in Section 14 of Article XIII with the text as shown in this document.
- Amended and restated in 2006.
- Amended February 15, 2007 by instrument recorded in Docket 12729, Page 1878 as follows: Article 1, added Section 1:21 and 1:22, and renumbering Sections 1.23 thru 1.27. Article X, added Section 10.4
- Amended February 24, 2010 by instrument recorded in Docket 13759, Page 3347 as follows: Revised the following: Section 11.2, Section 11.5, Section 11.10 (A), Section 12.5, Section 12.9, Section 12.14, Section 12.17, Section 13.1, Section 13.4, Section 13.6, Section 13.8 and Section 13.9
- Amended February 24, 2016 by instrument recorded 3/4/16 Sequence 20160640682 as follows: Revising, renumbering and adding the following new Sections in Article 1. (Section 1.12, 1.18 1.25 and 1.26) Revising Article V, Section 5.1 and revising Article VIII, Section 8.1, 8.2 and 8.3

TABLE OF CONTENTS

TABLE OF CONTENTS.....	iii
ARTICLE I CERTAIN DEFINITIONS.....	1
Section 1.1: <u>“Architectural Committee”</u>	2
Section 1.2: <u>“Architectural Rules”</u>	2
Section 1.3: <u>“Assessment Lien”</u>	2
Section 1.4: <u>“Assessments”</u>	2
Section 1.5: <u>“Association”</u>	2
Section 1.6: <u>“Board”</u>	2
Section 1.7: <u>“Bylaws”</u>	2
Section 1.8: <u>“Common Areas”</u>	2
Section 1.9: <u>“Declarant”</u>	2
Section 1.10: <u>“Declaration”</u>	2
Section 1.11: <u>“Dwelling Unit”</u>	2
Section 1.13: <u>“Governing Documents”</u>	3
Section 1.14: <u>“Improvement”</u>	3
Section 1.15: <u>“Lot”</u>	3
Section 1.16: <u>“Member”</u>	3
Section 1.17: <u>“Mortgage”</u>	3
Section 1.19: <u>“Owner”</u>	3
Section 1.20: <u>“Person”</u>	3
Section 1.21: <u>“Plat”</u>	3
Section 1.22: <u>“Properties”</u>	4
Section 1.28: <u>“Single Family Residence”</u>	4
Section 1.29: <u>“Structure”</u>	4
Section 1.30: <u>“Total Voting Power”</u>	5
Section 1.31: <u>“Visible From Neighboring Property”</u>	5
ARTICLE II SCOPE OF DECLARATION.....	5
ARTICLE III COMMON AREAS.....	5
Section 3.1: <u>Ownership</u>	5
Section 3.2: <u>Conveyance of Owner’s Rights</u>	5
Section 3.3: <u>Conveyance of Easements and Rights-of-Way</u>	5
Section 3.4: <u>Entrance Features</u>	6
ARTICLE IV EASEMENTS, LICENSES AND ENCROACHMENTS.....	6
Section 4.1: <u>Easement for Encroachments</u>	6
Section 4.2: <u>Easement for Enjoyment</u>	6
Section 4.3: <u>Drainage Easement</u>	6
Section 4.4: <u>Easements for Security and Cable Television Systems</u>	6
Section 4.5: <u>Permissible Encroachments</u>	7
Section 4.6: <u>Easement for Maintenance</u>	7
Section 4.7: <u>Rear Yard and Front Yard Easements</u>	7
ARTICLE V THE ASSOCIATION.....	8
Section 5.1: <u>Responsibilities of the Association</u>	8
Section 5.2: <u>Views</u>	9
Section 5.3: <u>Maintenance of Right of Way</u>	9
Section 5.4: <u>Governing Documents</u>	9
Section 5.5: <u>Continuous Access</u>	10
ARTICLE VI MEMBERSHIP.....	10
ARTICLE VII VOTING RIGHTS.....	10
Section 7.1: <u>Allocation of Votes</u>	10
Section 7.2: <u>Suspension of Voting Rights</u>	10
ARTICLE VIII ASSESSMENTS.....	10
Section 8.1: <u>Power to Levy Assessments</u>	10

Section 8.2:	<u>Annual Assessments</u>	10
Section 8.3:	<u>Special Assessments</u>	10
Section 8.4:	<u>Reimbursement Assessments</u>	11
Section 8.5:	<u>Uniform Rate of Assessments</u>	11
Section 8.6:	<u>Effect of Nonpayment of Assessments</u>	11
Section 8.7:	<u>Application of Payments of Assessments</u>	12
Section 8.8:	<u>No Waiver of Right to Foreclose</u>	12
Section 8.9:	<u>Owners Not Exempt</u>	12
Section 8.10:	<u>Membership in Green Valley Recreation, Inc.</u>	12
ARTICLE IX	INSURANCE OF COMMON AREAS	13
Section 9.1:	<u>Scope of Coverage</u>	13
Section 9.2:	<u>Repair and Replacement of Damaged Property</u>	13
Section 9.3:	<u>Payment of Deductible</u>	14
Section 9.4:	<u>Owner's Responsibilities</u>	14
ARTICLE X	OWNER'S RESPONSIBILITIES	14
Section 10.1:	<u>Scope of Responsibilities</u>	14
Section 10.2:	<u>Conformity to Use Restrictions</u>	14
Section 10.3:	<u>Sewers</u>	14
ARTICLE XI	ARCHITECTURAL COMMITTEE	15
Section 11.1:	<u>Composition of Committee</u>	15
Section 11.2:	<u>Review by Committee</u>	16
Section 11.3:	<u>Procedures for Approval</u>	16
Section 11.4:	<u>Alterations and Modifications</u>	16
Section 11.5:	<u>Minimum Criteria for Plans</u>	16
Section 11.6:	<u>Expiration of Approval</u>	17
Section 11.7:	<u>Fees</u>	17
Section 11.8:	<u>No Responsibility for Defects</u>	17
Section 11.9:	<u>Conflict of Interest</u>	17
Section 11.10:	<u>Right to Appeal</u>	18
ARTICLE XII	USE RESTRICTIONS	18
Section 12.1:	<u>Land Use and Building Type</u>	18
Section 12.2:	<u>Business Activities</u>	18
Section 12.3:	<u>Owner's Liability</u>	18
Section 12.4:	<u>Mobile Homes, Etc.</u>	18
Section 12.5:	<u>Rubbish</u>	19
Section 12.6:	<u>Dividing and Combining Lots</u>	19
Section 12.7:	<u>Noise</u>	19
Section 12.8:	<u>Shrubs, Trees, Grasses; Etc.</u>	19
Section 12.9:	<u>Vehicle Parking and Storage</u>	19
Section 12.10:	<u>Inoperable Vehicles and Commercial Vehicles</u>	20
Section 12.11:	<u>Drainage-Ways</u>	20
Section 12.12:	<u>Common Area Vegetation; Dumping</u>	20
Section 12.13:	<u>Antennas and Exterior Additions</u>	20
Section 12.14:	<u>Signs</u>	21
Section 12.15:	<u>Derricks, Tanks, Heating and Cooling</u>	21
Section 12.16:	<u>Clotheslines</u>	21
Section 12.17:	<u>Animals</u>	21
Section 12.18:	<u>Compliance with Governmental Requirements</u>	21
Section 12.19:	<u>Inspection</u>	21
Section 12.20:	<u>Continuous Access</u>	21
ARTICLE XIII	BUILDING AND OTHER ARCHITECTURAL RESTRICTIONS	22
Section 13.1:	<u>Fences, Walls and Hedges</u>	22
Section 13.2:	<u>Screening</u>	22
Section 13.3:	<u>Materials</u>	22

Section 13.4:	<u>Lights</u>	22
Section 13.5:	<u>Temporary Occupancy, Storage of Building Materials</u>	22
Section 13.6:	<u>Other Buildings</u>	22
Section 13.7:	<u>Relocation of Buildings</u>	22
Section 13.8:	<u>Landscaping Restrictions</u>	22
Section 13.9:	<u>Views</u>	23
ARTICLE XIV	PARTY WALLS	23
Section 14.1:	<u>General Rules of Law to Apply</u>	23
Section 14.2:	<u>Alterations to Party Walls</u>	23
Section 14.3:	<u>Sharing of Repair and Maintenance</u>	23
Section 14.4:	<u>Destruction by Fire or Other Casualty</u>	23
Section 14.5:	<u>Damage to Walls</u>	24
Section 14.6:	<u>Right to Contribution Runs With Land</u>	24
Section 14.7:	<u>Arbitration</u>	24
Section 14.8:	<u>Private Agreements</u>	24
ARTICLE XV	GENERAL PROVISIONS	24
Section 15.1:	<u>Enforcement</u>	24
Section 15.2:	<u>Attorney Fees</u>	25
Section 15.3:	<u>Lien of Mortgages</u>	25
Section 15.4:	<u>Trustee's Sale and Foreclosure</u>	25
Section 15.5:	<u>Severability</u>	25
Section 15.6:	<u>Amendment</u>	25
Section 15.7:	<u>Indemnification</u>	26
Section 15.8:	<u>No Liability</u>	26
Section 15.9:	<u>Change of Circumstances</u>	26
Section 15.10:	<u>Action by Association</u>	26
Section 15.11:	<u>Other Committees</u>	26
Section 15.12:	<u>Age Restrictions</u>	27
Section 15.13:	<u>Binding Effect</u>	27
Section 15.14:	<u>Captions</u>	27
Section 15.15:	<u>Term</u>	28
Section 15.16:	<u>Conflicts in Governing Documents</u>	28
Section 15.17:	<u>Meaning of Pronouns; Singular and Plural Words</u>	28

**SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
SAN IGNACIO VISTAS**

Whereas, an Amended and Restated Declaration of Covenants, Conditions and Restrictions of San Ignacio Vistas was recorded on September 6, 1995 at Docket 10122 at Pages 1387, *et. seq.*, and was amended on January 27, 1999 at Docket 10971 at Page 52; and

Whereas, Section 16.5 of such declaration provides that it may be amended with the approval of the Owners of at least 51% of the Lots; and becomes effective when signed by the president and secretary of San Ignacio Vistas, Inc., attesting that such amendment was approved by the requisite percentage of Owners and is recorded in the office of the Pima County Recorder; and

Whereas, the Owners of at least 51% of the Lots desire to amend the Amended and Restated Declaration of Establishment of Covenants, Conditions and Restrictions of San Ignacio Vistas; and the Declarant has waived it's right to approve any amendments;

NOW, THEREFORE, all of the property described as Lots 1 through 228 and Common Areas A, B and C of San Ignacio Vistas, a subdivision of Pima County, Arizona, as shown on the plat recorded in Book 46 of Maps and Plats at Page 75, and as amended by the resubdivision plat entitled San Ignacio Vistas Resubdivision, Lots 101 through 113, and 224 through 228, recorded in Book 47 of Maps and Plats at Page 53 shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. These easements, covenants, restrictions and conditions run with title to any Lot within the Properties, bind all parties having or acquiring any right, title or interest in the Properties and inure to the benefit of each such Owner.

Except as hereinafter provided, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for San Ignacio Vistas, which was recorded in the office of the Pima County Recorder on September 6, 1995 at Docket 10122 at Pages 1387, *et. seq.* and any amendments thereto, including the First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for San Ignacio Vistas recorded on January 27, 1999 at Docket 10971 at Page 52, together with any amendments recorded prior to the recordation of this Declaration (collectively the "1995 Declaration") are superseded in their entirety by this Declaration and will no longer be in effect as of the date of recording of this Declaration. Notwithstanding the foregoing, Article IV as set forth in this Declaration is not intended to amend and does not amend or in any way affect Article IV of the 1995 Declaration or the easements granted in said Article IV or the Plat, as it is intended that such easements continue in full force and effect as they existed prior to the recordation of this Declaration. Article IV herein is set forth as a convenience and is merely intended to clarify the meaning of Article IV in the 1995 Declaration in light of present circumstances, including the fact that the development of the Properties has been completed and that neither Declarant nor Fairfield Green Valley, Inc. has any continuing interest in the Properties. Therefore, in the event of a conflict or inconsistency between the provisions of Article IV herein and the provisions of Article IV in the 1995 Declaration, the provisions of Article IV in the 1995 Declaration will govern; provided, however, that in the event of a conflict or inconsistency between the provisions of Article IV in the 1995 Declaration and any other provision of this Declaration, including Section 3.1, the provisions of this Declaration will govern.

**ARTICLE I
CERTAIN DEFINITIONS**

The following terms used in this Declaration have the meanings hereinafter set forth:

Section 1.1: “Architectural Committee”

means the committee established by the Board pursuant to Section 11.1 of this Declaration.

Section 1.2: “Architectural Rules”

means the design standards, restrictions, review process, submittal requirements and construction rules adopted by the Board and enforced by the Architectural Committee and the Board, as amended from time to time.

Section 1.3: “Assessment Lien”

means an automatic lien against any Lot arising out of the non-payment of the Assessments.

Section 1.4: “Assessments”

means the Annual, Special and Reimbursement Assessments, together with any other sums which may become due to the Association by an Owner and includes late fees, interest, fines and penalties, attorney fees, collection costs, and any other costs.

Section 1.5: “Association”

means San Ignacio Vistas, Inc., its successors and assigns.

Section 1.6: “Board”

means the board of directors of the Association.

Section 1.7: “Bylaws”

means the bylaws of the Association, together with any amendments thereto. The bylaws set forth the operating procedures of the Association.

Section 1.8: “Common Areas”

means the real property designated on the Plat as Common Area A (Private Roads), Common Area B (Open Spaces and Drainage-ways) and Common Area C (Open Spaces) and any improvements constructed thereon.

Section 1.9: “Declarant”

means Lawyers Title of Arizona, an Arizona corporation, as Trustee under Trust 6486-T, and its successors and assigns.

Section 1.10: “Declaration”

means this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of San Ignacio Vistas, as amended from time to time.

Section 1.11: “Dwelling Unit”

means the residence, including patio walls, constructed on a Lot.

Section 1.12: Financial Advisory Committee: (FAC)

means the committee established by the Board pursuant to Article IX, Section 4 of the By-laws of the Association.

Section 1.13: “Governing Documents”

means this Declaration, the Articles of Incorporation of the Association, the Bylaws, the Rules and the Architectural Rules.

Section 1.14: “Improvement”

means any change, alteration or addition to a Lot and includes, but is not limited to, the Dwelling Unit, outbuildings, patios, swimming pools, walls, paths, driveways, excavation, landscaping, fixtures, radio antennae, television antennae, satellite systems, fences, copings, awnings, sunshades, flagpoles, or any other Structure and the installation of any decorative item on the Lot or Dwelling Unit, including changing the color as originally installed or constructed.

Section 1.15: “Lot”

means the numbered plots of land shown on the Plat, including any Improvements.

Section 1.16: “Member”

means every Owner of a Lot.

Section 1.17: “Mortgage”

means any consensual encumbrance on a Lot, which is evidenced by an instrument recorded in Pima County, and includes mortgages, deeds of trust and contracts for sale. The term “Mortgage” includes a beneficiary under a Deed of Trust, and the term “First Mortgage” means the holder of any Mortgage or the beneficiary of any deed of trust under which the interest of any Owner in a Lot is encumbered and which has first and paramount priority over any other lien or encumbrance, except for liens for real estate taxes and other governmental assessments.

Section 1.18 “Operating Fund”

means an Unrestricted Fund established for accounting purposes to record and report income from designated Assessments and other sources used for day-to-day operating expenses.

Section 1.19: “Owner”

means the record holder, whether one or more Persons, of fee simple title to any Lot, including a buyer under a contract for the conveyance of real property pursuant to A.R.S. Section 33-741, but excluding Persons holding an interest merely as security for the performance of an obligation, and excluding buyers under sales agreements or deposit receipt and agreements.

Section 1.20: “Person”

means a natural person, corporation, limited liability company, partnership, limited partnership, trust, estate, any governmental entity and any other entity heretofore or hereafter created or authorized.

Section 1.21: “Plat”

means the plat for San Ignacio Vistas recorded in Book 46 of Maps and Plats at Page 75, as amended by the resubdivision plat entitled San Ignacio Vistas Resubdivision, Lots 101 through 113 and 224 through 228, recorded in Book 47 of Maps and Plats at Page 53 in the office of the County Recorder of Pima County, Arizona.

Section 1.22: “Properties”

means Lots 1 through 228 and Common Areas A, B and C of San Ignacio_Vistas, a subdivision of Pima County, Arizona, as shown on the Plat. Properties does not include Block 1 shown on the Plat.

Section 1.23: “Refuse Removal Service Provider”

means a private, public or quasi-public utility or other company which provides, or proposes to provide, trash removal services to Lots pursuant to a “Refuse Removal Service Agreement”.

Section 1.24: “Refuse Removal Service Agreement”

means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide trash removal services to Lots.

Section 1.25: “Replacement Reserve Plan” (RRP)

means a long-term capital budget planning tool which identifies the current status of the reserve fund and a stable and equitable funding plan to offset ongoing deterioration, resulting in sufficient funds when those anticipated major common area expenditures actually occur. The reserve study consists of four parts: 1) calculated costs of items such as crack seal, seal coat, curb seal, pulverize and repaving of streets, erosion mitigation, etc. 2) proposed timetable for actual expenditures 3) Annual Funding Contribution Plan and 4) timetable to determine expected life and fund requirements to build a full funded balance for each item.

Section 1.26: “Reserve Fund”

means a Restricted Fund established for accounting purposes to record and report income from designated Assessments and other sources used by the association to defray the future repair or replacement costs of those major components the association is obligated to maintain in the Common Areas identified in the Replacement Reserve Plan (specifically: roads, sidewalks, curbs, erosion mitigation, monuments, signage, railings, and stucco walls). Also known as reserves, reserve accounts or investments.

Section 1.27: “Rules”

means those policies and procedures, other than the Architectural Rules, adopted by the Board, that interpret or supplement the provisions of this Declaration or which govern the conduct of Owners.

Section 1.28: “Single Family Residence”

means a Dwelling Unit in which a Single Family resides. “Single Family” means one person living alone or a group of two or more persons each related to the other by blood, marriage or legal adoption or not more than two persons who are not related but maintain a common household.

Section 1.29: “Structure”

means anything constructed, erected or placed on a Lot which is located on the ground or is attached to something located on the ground and which is Visible From Neighboring Property.

Section 1.30: “Total Voting Power”

means the total number of votes entitled to be cast. Those Owners whose right to vote have been suspended pursuant to Section 7.2 are not included in calculating the Total Voting Power.

Section 1.31: “Visible From Neighboring Property”

means, with respect to any given object, that the object is or would be visible to any Person standing at ground level on another Lot or any portion of the Common Areas.

**ARTICLE II
SCOPE OF DECLARATION**

This Declaration is intended to regulate and control the use of the Properties for the benefit of all Owners pursuant to the general plan of development set forth on the Plat and in the Governing Documents.

**ARTICLE III
COMMON AREAS**

Section 3.1: Ownership

Ownership of the Common Areas is vested in the Association. Common Areas are intended for use as public utility easements, drainage-ways, streets, sidewalks, mail box pads and open areas, and are for the common use and enjoyment of the Owners. However, notwithstanding the foregoing, no Owner shall enter upon any of the natural portions of the Common Areas, except (1) pursuant to the terms of a written agreement between the Owner and the Association or (2) to the extent necessary to clean up after an Owner's pets, and then at such Owner's own risk

Notwithstanding the foregoing, the Association may dedicate, transfer and convey any private streets and adjacent easement areas to Pima County, upon obtaining the prior written consent of the Owners of two-thirds (2/3) of the Lots and upon obtaining the acceptance thereof by Pima County. In addition, the Association has the right to dedicate or convey the area shown on the Plat as Common Area C to the Arizona Department of Transportation (ADOT) in exchange for title to other property owned by ADOT which the Board, in its discretion, determines to be of greater benefit to the Association than Common Area C. In the event of such an exchange, the property so acquired will be held by the Association as Common Area, subject to all the provisions of this Declaration relating to Common Areas.

Section 3.2: Conveyance of Owner's Rights

Any sale, lease or sublease of a Lot by its Owner, or transfer of such Lot by operation of law, will serve to transfer, convey, lease or sublease to the same extent all of said Owner's right to the Common Areas.

Section 3.3: Conveyance of Easements and Rights-of-Way

Notwithstanding any other provision in this Declaration (but subject to any use restrictions imposed by Pima County, including restrictions on the disturbance of areas shown on the Plat as “Natural Areas”), the Association has the right to grant and convey to any Person, easements or rights-of-way in, on, over, or under Common Areas for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder roads, streets, walks, pathways, driveways, temporary overhead or permanent underground lines, cables, wires, conduits or other devices for the transmission of electricity for lighting, heating, power, telephone, cable T.V., security and other purposes, sewers, storm drains, and pipes, drainage easements, water

systems, water, heating and gas lines or pipes, any similar public or quasi-public improvements or facilities and for such other purposes as may be deemed proper by the Board.

Section 3.4: Entrance Features

No Owner may make any alteration or modification to improvements located at the entrance to the Properties on Camino Del Sol or Calle Tres, without first obtaining the prior written consent of the Association.

**ARTICLE IV
EASEMENTS, LICENSES AND ENCROACHMENTS**

Section 4.1: Easement for Encroachments

Each Lot and the Common Areas are and will continue to be subject to an easement for encroachments already created or that necessarily will be created by activities conducted and conditions existing upon the Properties, including construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as they stand, does and will continue to exist.

Section 4.2: Easement for Enjoyment

Subject to the limitations set forth in Section 3.1 and subject to any Rules, a blanket, nonexclusive easement does and will continue to exist upon, across, over and under all of the Common Areas for the use and enjoyment of all Owners and their tenants, guests, invitees and licensees, subject to reasonable regulations of the Association, and for ingress, egress, installation, replacement, operation, repair and maintenance of all utilities, including but not limited to, water, sewer, gas, telephone, electricity, television antennae system and any equipment or facilities for the installation of a cable communications system.

Section 4.3: Drainage Easement

A drainage easement does and will continue to exist upon, across, over and under each Lot for the benefit of all other Lots.

Section 4.4: Easements for Security and Cable Television Systems

Except as otherwise provided herein, a perpetual exclusive easement and right-of-way does and will continue to exist in favor of such Persons who are approved by the Association upon, across, over and under all Common Areas for the construction, maintenance, operation and repair of a cable television system or security system or both, and facilities appurtenant to either or both. However, no easement or right-of-way will exist that would be inconsistent with use restrictions imposed by Pima County, including restrictions on the disturbance of any areas shown on the Plat as "Natural Areas." Such approved Persons may excavate for, place, lay, construct, operate, use, maintain, repair, replace, reconstruct, enlarge, alter, improve, add to, relocate and remove at any time and from time to time, underground structures, equipment and materials, with required appurtenances, necessary for the operation of said cable television or security system. There exists and will continue to exist a right of ingress and egress from said easement by such route or routes in, upon, over and across the Properties or any portion or portions thereof as the Association or its assigns may determine, together with the right to clear and keep clear said easement and rights-of-way from any and all obstructions. Without limiting the generality of the foregoing, such entities will have the right to trim and cut trees, foliage, and roots upon and from within the above-described easement and rights-of-way whenever in its judgment the same becomes necessary for the convenient and safe exercise of the right herein granted.

All cable television system equipment or security system equipment installed by any Person will remain, regardless of the manner in which the same are affixed to land, the personal property of such installing Person, and shall not become or be deemed to be a part of the realty.

Nothing herein contained will obligate the Association or any other Person to provide a cable television system or security system in the Properties. In the event that such cable television system or security system is built, the type and quality of the system will be within the absolute discretion of the constructing Person.

Section 4.5: Permissible Encroachments

Each Owner hereby acknowledges and agrees that Dwelling Units which have been constructed on the Lots by Fairfield Green Valley, Inc. may encroach upon the Common Areas or other Lots in the Properties. Such encroachments caused incidentally by Fairfield Green Valley, Inc. are permissible and each Owner, by acceptance of the Deed to his Lot, consents thereto and agrees that title to the land lying within such incidental encroachments, regardless of the platted lot line of the Lot upon which the Dwelling Unit has been constructed, was conveyed to the Owner of the Lot upon which the majority of the encroaching Dwelling Unit is built.

Section 4.6: Easement for Maintenance

The Owner of each Lot has and will continue to have an easement across adjacent Lots if necessary to maintain and repair - Structures and Improvements.

Section 4.7: Rear Yard and Front Yard Easements

Easements do and will continue to exist along the side boundaries of Lots 1 through 8, 89 through 140 and 224 through 228, for pedestrian use, maintenance of adjacent walls and structures, landscaping, sidewalks, drainage, utilities and for the general use and enjoyment of the respective Owner benefited by the easements as set forth herein. The easements are shown on the Plat, and the provisions hereof more specifically define the intended use and limitations of such easements. In each case, the Owner of a Lot having the benefit of an easement over an adjacent Lot may be referred to as the "benefited" Owner.

Diagrams 1 through 6 attached hereto show the general manner in which homes were intended to be built on the Lots and the approximate location of the necessary easements. The drawings show the easement configurations for the various combinations of adjoining floor plans.

The Plat has reserved the easements, though the actual construction of the original Dwelling Units has determined the precise limits of the easements as provided herein. Easement areas shown on the Plat which were not in fact used for the benefit of an adjacent Lot or Common Area, as determined by the actual construction of the original Dwelling Unit are deemed abandoned.

As seen from Diagrams 1 through 6 and the Plat, Lots 1 through 9, 89 through 140 and 224 through 228 may have an exclusive easement onto an adjacent Lot (or Common Area) for additional rear side-yard area ("Rear Yard Easements") and Lots 1 through 8, 89 through 140 and 224 through 228 may be burdened by such an easement in favor of an adjacent Lot. As shown on Diagrams 1 through 5 and the Plat, Lots 89 through 140 and 224 through 228 may also have an easement on the opposite side of the Lot for additional front side-yard area and for ingress and egress, walkways and such other uses as are not inconsistent therewith ("Front Yard Easements"), and may be burdened by such an easement in favor of an adjacent Lot.

Lots at the end of a row of Lots or adjacent to a Common Area may have Front or Rear Yard Easements onto the Common Area, and portions of the Lots may be burdened by easements in favor of a Common Area. Any easement onto a Lot benefiting a Common Area must remain unimproved and will be deemed a part of the Common Area for the use and enjoyment of all Owners.

Each Owner benefited by a Front Yard Easement or a Rear Yard Easement is solely responsible for all landscaping and maintenance related thereto and must keep the easement area in a clean, neat and well-landscaped condition.

No walkways, patios or other Improvements may be built upon the Front Yard Easements or Rear Yard Easements unless approved in writing by the Architectural Committee. The easement areas are intended to be free of all Improvements. The Architectural Committee may approve of limited structures (e.g., barbecues, benches) only if such structures are permitted by Pima County, comply with building and use setbacks and all Owners acknowledge that applicable building setbacks may require that the easement areas and additional land measured from the Lot lines (rather than from the easement boundary line) remain free of structures.

Any Owner wishing to modify the color, composition of building materials, location or structure of his wall lying immediately adjacent to a Rear Yard Easement benefiting or burdening such Owner's Lot, must first obtain Architectural Committee approval. No Owner, whether benefited or burdened by a Rear Yard Easement, may attach any equipment or fixtures to said walls, other than plants or vines which do not destroy the integrity of the wall or cause the wall to be unsightly or threaten its strength, durability or lasting life, nor will such Owner water his yard or plants to the extent that the foundation of adjacent walls will be undermined.

Each Owner, by acceptance of a deed, acknowledges the provisions of these covenants and further acknowledges that due to the placement of Dwelling Units on particular Lots, the shape and terrain of certain Lots, the configuration of streets, and other factors, the precise dividing line between the Front Yard Easements and Rear Yard Easements shown on Diagrams 1 through 5, and the precise boundary of the Rear Yard Easements shown on Diagram 6, may have fluctuated several or more feet in either direction. Regardless of such fluctuation, the easements intended thereby apply and will continue to apply to the fullest extent, and the precise location of Rear Yard Easements and Front Yard Easements have been determined by the final construction of the Dwelling Unit and will not, at any time, be altered without the consent of each adjacent Owner. Any incidental deviation in the location of the Front Yard Easements and Rear Yard Easements from the general locations shown on the attached Diagrams which were caused in the course of construction of the original Dwelling Unit are and will be deemed valid, and the Owner of the Dwelling Unit has and will have a permanent and valid easement of encroachment.

ARTICLE V THE ASSOCIATION

Section 5.1: Responsibilities of the Association

The Association is responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, management, operation and liability of the Common Areas and all landscaped areas established for the common benefit of the Owners, including sidewalks and for the payment of property taxes on the Common Areas. The Association has the right, but not the obligation, to enter upon and maintain other areas on the Lots. The Association is, to the extent applicable, responsible for:

- A. the maintenance of the common streets, drainage easements, pedestrian easements, roads, slope easements and sidewalks located within the Common

- Areas and Properties, and entry way features and landscaping leading into the Properties;
- B. the maintenance of the landscaped portions of the Common Areas and other areas maintained by the Association, including all areas between Common Areas, if any, and the rear patio walls of each Dwelling Unit, and the Association has and will have an easement for such maintenance;
 - C. the operation, maintenance (including insurance) and, if necessary, the replacement, restoration or reconstruction of street signs, walls, fences, and other improvements constructed on the Common Areas;
 - D. the payment of real estate taxes, assessments and other charges on those portions of the Common Areas owned by the Association;
 - E. the insurance of all improvements which the Association is obligated to maintain against damage by casualty with such companies and with such limits as the Association deems appropriate;
 - F. the hiring, firing, supervision and paying of employees and independent contractors, including, but not limited to workers, landscapers, attorneys, accountants, architects, contractors and other personnel to carry out the obligations set forth herein;
 - G. the maintenance of such liability insurance as the Association deems necessary to protect the Members and the Board from liability for conditions existing and events occurring on or about the Common Areas, including, but not limited to, errors and omissions insurance for the Board, officers and volunteers of the Association;
 - H. the maintenance of worker's compensation insurance for the employees, if any, of the Association;
 - I. the purchase of all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;
 - J. the enforcement of the provisions of this Declaration, including, but not limited to, the Use Restrictions provided for herein;
 - K. the establishment and maintenance of such cash and investments as the Board deems necessary for the general day-to-day operations ("Operating Fund") and maintenance, repairs and replacement of Common Areas ("Reserve Fund").
 - L. the payment for all utility services for Common Areas; and
 - M. entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Common Areas and facilities located thereon.

Section 5.2: Views

All trees and other vegetation planted or existing on the Common Areas shall be kept trimmed by the Association to a height which will not materially interfere with views from neighboring building sites.

Section 5.3: Maintenance of Right of Way

The Association is responsible for all maintenance of landscaping and drainage facilities within a portion of the right-of-way of I-19, as required of the permittee under that certain Arizona Department of Transportation Permit No. 57922, dated September 16, 1994, which was assumed by the Association pursuant to that certain Assignment and Assumption Agreement dated April, 1995, by and between the Association and Fairfield Green Valley, Inc.

Section 5.4: Governing Documents

The manner in which the Association carries out its responsibilities is controlled by the provisions of the Governing Documents and all applicable statutes and ordinances.

Section 5.5: Continuous Access

At no time shall the Association block, or close, or cause or allow to be blocked or closed, for an extended period of time or for any reason other than the making of repairs or improvements thereto or lying beneath the same, any private street, road or way within the Properties.

**ARTICLE VI
MEMBERSHIP**

Each Owner is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Lot.

**ARTICLE VII
VOTING RIGHTS**

Section 7.1: Allocation of Votes

Except as provided in Section 7.2, there is one vote for each Lot owned. If a Lot is owned by more than one Person the co-Owners must agree among themselves upon the disposition of the vote allocated to that Lot, and if they cannot agree, the vote will be void.

Section 7.2: Suspension of Voting Rights

An Owner's right to vote, whether as a Member or an Owner, will be automatically suspended whenever the Owner becomes delinquent in the payment of any amount due the Association or when the Board has determined that the Owner is in violation of the Governing Documents and such suspension will be in effect so long as such delinquency or violation continues to exist.

**ARTICLE VIII
ASSESSMENTS**

Section 8.1: Power to Levy Assessments

The Association, through its Board, has the power to levy (1) annual assessments ("Annual Assessments"), (2) special assessments ("Special Assessments") and (3) reimbursement assessments ("Reimbursement Assessments"), determine the amount thereof and the dates upon which payment must be made and collect delinquent assessments by action at law or equity. Each Owner, by recordation of a deed to any Lot, whether or not it is stated in such deed, agrees to pay all Assessments to the Association.

The Assessments levied by the Association will be used exclusively for the benefit of the Owners, tenants, guests and invitees, for the improvement and maintenance of the Common Areas and for all purposes set forth in this Declaration, and for any purposes incidental thereto.

Except as otherwise provided by law, any and all Assessments levied against a Lot, together with interest from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney fees, litigation expenses and collection costs constitute an Assessment Lien. The Association's lien arises at the time the Assessment becomes due, and has priority over all liens and encumbrances except those recorded prior to the recordation of the Declaration of Covenants, Conditions and Restrictions recorded in Docket 9955 at Page 1527, a recorded First Mortgage on the Lot and liens for real estate taxes and other governmental assessments against the Lot.

Section 8.2: Annual Assessments

The Annual Assessment (commonly referred to as the Dues Assessment) is due on January 1st of each year. When preparing the invoice for Dues Assessment to Lot Owners, two

components will be clearly designated: 1) the amount to be used for the Operating Fund and 2) the amount to be transferred to the Reserve Fund. The amount designated to the Reserve Fund must be transferred to that Fund by March 31 of each year and shall be restricted for Reserve Fund expenditures only, and cannot be transferred back or otherwise used for Operating Fund purposes.

Reserve Fund assets may not be used to defray the day-to-day operating expenses. They may only be utilized for items covered in the "Replacement Reserve Plan" (RRP) adopted annually by the Board (specifically roads, sidewalks, curbs, erosion mitigation, monuments, signage, railings, and stucco walls).

The RRP will be reviewed annually by members of the "Financial Advisory Committee" (FAC) using procedures as outlined in the accounting procedures manual and revised as necessary to ensure the Association maintains a fully funded level to prevent the need for a Special Assessment or borrowing from external sources. The Board will engage a professional review of the RRP and a new or updated reserve study at least every 5 years. Neither the Board shall adopt or implement nor shall the FAC recommend an Association budget (or components thereof) that shall be materially inconsistent with such professionally-prepared or professionally-reviewed reserve study.

Any proposed expenditure exceeding \$25,000 for Common Areas which is not authorized in the RRP must be approved by the affirmative vote of a majority of the Total Voting Power as provided in Section 8.3 (Special Assessments) of the Declaration.

If an emergency expenditure brings the Reserve Fund balance below the level required by the RRP, the Board must replenish the shortfall with Annual Assessments over a period of not more than three years. Any Assessment to replenish the Reserve Fund is in addition to the required Reserve Fund contribution as spelled out in the annual funding contribution to the RRP.

Section 8.3: Special Assessments

In addition to the Annual Assessments, the Association may levy Special Assessments, subject to any statutory (1) for the purpose of defraying any other expense incurred or to be incurred as provided in this Declaration and (2) to cover any deficiency in the Operating Fund for the fiscal year.

Special Assessments must be approved with an affirmative vote of a majority of the Total Voting Power by written ballot as provided in the Bylaws.

Section 8.4: Reimbursement Assessments

The Association may levy a Reimbursement Assessment against any Owner (1) if a failure to comply with the Governing Documents requires an expenditure of money by the Association, including attorney fees, to bring the Owner or that Owner's Lot into compliance or is caused by the misconduct of any Owner, or (2) if the Board has imposed a fine or penalty against any Owner after notice of the violation and an opportunity for a hearing has been given to that Owner.

Section 8.5: Uniform Rate of Assessments

Annual Assessments and Special Assessments must be set at a uniform rate for all Lots.

Section 8.6: Effect of Nonpayment of Assessments; Remedies of Association

Any Assessment is delinquent if not paid within 15 days after the due date. Interest on all delinquent Assessments will accrue at a rate determined from time to time by the Board and must be applied uniformly against all delinquent Owners. In addition to the interest accruing on

the unpaid Assessments, the Board may impose a late fee on any payment which is not received within 15 days after its due date. The amount of such late fee will be equal to 10% of the amount due or \$15.00, whichever is greater.

The sale of a Lot encumbered by a lien for any delinquent Assessment does not relieve the Owner from the obligation to pay the Assessment which accrued during the time such Owner owned the Lot and all Owners will personally be jointly and severally liable for any such delinquent Assessment with any subsequent Owner.

The lien against any Lot may be foreclosed in the same manner as a Mortgage. The Association may, but is not required to, record a lien against the Lot, as recordation of this Declaration is perfection of any lien in favor of the Association.

Section 8.7: Application of Payments of Assessments.

Unless a Member directs otherwise, the Association must apply payments of Assessments in the following order:

The original principal amount of any unpaid Annual, Special or

- A. Reimbursement Assessment;
- B. Unpaid charges for late payment of any such Assessments;
- C. Reasonable collection fees;
- D. Attorneys' fees and costs incurred with respect to collection of such unpaid Assessments; and
- E. Other unpaid fees, charges and monetary penalties, interest and late charges.

Section 8.8: No Waiver of Right to Foreclose

Merely because the Association obtains a personal judgment against an Owner for delinquent Assessments does not waive the Association's lien or any action to foreclose that lien.

Section 8.9: Owners Not Exempt

No Owner may avoid compliance with the Governing Documents, including the obligation to pay Assessments, through abandonment of the Lot, timing of the notice of any Assessment, the failure of the Association or Board to perform its obligations under this Declaration or for any other reason.\

**Section 8.10: Membership in Green Valley Recreation, Inc.;
and Payment of Separate Additional Assessments**

Green Valley Recreation, Inc. is a non-profit corporation organized under the laws of the State of Arizona and has been formed for the purpose of maintaining and providing social and recreational facilities and services in Green Valley. On November 8, 1978, Green Valley Recreation, Inc. recorded that certain Master Deed Restriction at Docket 5900 at Page 894, Pima County records, establishing a method to incorporate land within its jurisdictional area.

The Properties are a part of that area, and each purchaser of a Lot within the Properties, by the payment of the purchase price and acceptance of a deed, agrees for himself, his heirs, successors and assigns, to be bound by the rules and regulations thereof, to pay all membership dues assessed by Green Valley Recreation, Inc., and to comply with all provisions of the Articles of Incorporation and Bylaws of Green Valley Recreation, Inc. The Properties and each Lot subsequently purchased are made subject to said Master Deed Restriction. There is hereby created a lien with power of sale, encumbering each Lot to secure payment of the aforesaid membership dues and assessments, provided that no action shall be brought to foreclose such lien or proceed under the power of sale prior to the expiration of 30 days after a notice and claim of lien is mailed to the Owner of such Lot and a copy of the lien is recorded in the office of the Recorder of Pima County, Arizona.

Each Owner acknowledges the benefit to the Properties afforded by the existence of Green Valley Recreation, Inc., and the facilities it offers for the enhancement of the general plan of development.

Any lien claimed or recorded in favor of Green Valley Recreation, Inc. or its successors and assigns shall at all times be subordinate to the lien for unpaid Assessments created by these covenants and shall also, to the same extent as set forth herein with regard to the lien for unpaid Assessments, be subordinate to the lien of any First Mortgage. The provisions hereof dealing with Green Valley Recreation, Inc., and its assessments constitute covenants running with the land in the same fashion as all other covenants, conditions and restrictions of this Declaration. This Section may not be amended without the consent of Green Valley Recreation, Inc.

ARTICLE IX INSURANCE OF COMMON AREAS

Section 9.1: Scope of Coverage

The Association will obtain policies of insurance and will maintain such insurance in force at all times:

- A. Liability insurance coverage for the Common Areas and all insurable facilities and improvements thereon to the extent such insurance is available at reasonable cost, in a minimum amount of \$1,000,000.00 insuring against liability for bodily injury and property damage resulting from the use of the Common Areas or the maintenance or operation thereof and any liability arising from a contract of employment between the Association and another Person;
- B. Fire and extended coverage, together with a standard "all risk" endorsement and, to the extent the same can be obtained, "agreed amount" and "inflation guard" endorsements, and any construction code endorsements required under law, which coverage will be in an amount determined by the Board, but in no event less than 100% of the current replacement value of Common Areas and facilities so that such insurance will adequately and properly insure all structures, equipment and improvements on the Common Areas;
- C. Fidelity insurance on those individuals who handle funds of the Association; and
- D. Directors and officers liability insurance.

The Association has the authority to negotiate with all insurance carriers and to adjust losses, make settlements and give releases to the insurance carriers. Each policy of insurance provided for under this Section will recite that the same may not be cancelled or benefits thereunder be altered without 10 days prior notice in writing to the Association.

Section 9.2: Repair and Replacement of Damaged Property and Destroyed Property

In the event of damage to or the destruction by fire or other casualty of an improvement in the Common Areas covered by the insurance policies obtained by the Board, the Board will, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed property to as good a condition as formerly existed; provided, however, if the proceeds of such insurance are insufficient to substantially restore or repair the damaged or destroyed facilities, the Board will call a meeting of the Members for the purpose of levying a Special Assessment as provided in Section 8.3 for the difference between the sum received as insurance proceeds and the reasonable cost of repair or replacement of the damaged or destroyed Common Area facilities. If the Members do not consent to the Assessment, no such Assessment will be made

and the Board may determine to only partially restore or replace the damaged or destroyed facilities or to make some other use of the affected Common Areas.

Section 9.3: Payment of Deductible

If any Owner is responsible for any damage to the Common Areas for which insurance is available, that Owner will be liable to the Association for the payment of any deductible as a Reimbursement Assessment in addition to any liability such Owner may have to the insurance company under the laws of subrogation.

Section 9.4: Owner's Responsibilities

Each Owner is required to obtain casualty insurance on his Dwelling Unit and liability insurance on his Lot in such kind and amounts as solely determined by the Owner. The Association will not be required to replace or restore real or personal property located upon any Lot, and the insurance of Lots and Improvements thereon against any and all hazards will be the sole responsibility of the Owners thereof. In the event of damage to a Dwelling Unit, the Owner must repair or rebuild the Dwelling Unit to the same standards and specifications of the original Dwelling Unit, unless otherwise permitted in writing by the Architectural Committee.

**ARTICLE X
OWNER'S RESPONSIBILITIES**

Section 10.1: Scope of Responsibilities

Each Owner is solely responsible for all costs and expenses relating to the maintenance, repair, upkeep, taxation and assessment of his Lot and all Improvements thereon, including but not limited to, the payment of utility costs, property taxes, roof maintenance and repair, maintenance and repair of building exteriors and the exterior portions of other Improvements. Each Owner must keep all Improvements in a well-maintained condition and must repaint all outside surfaces as necessary, as determined by the Association. Each Owner is solely responsible for maintaining that Owner's landscaping and must keep the landscaping and yard areas in a neat, clean and well-maintained condition and free of weeds and debris. All exterior repairs must be made in conformance with the original architectural design and style of the Improvement being repaired.

Section 10.2: Conformity to Use Restrictions

Each Owner is responsible for assuring that any construction, alteration, modification or addition of any Improvement conforms to the Use Restrictions of Article XII, the Building and Other Architectural Restrictions of Article XIII and the Governing Documents. If an Owner fails or refuses to remove or repair any nonconforming Improvement, the Association may, in its sole discretion, remove or repair it and the cost of removal or repair will be a Reimbursement Assessment.

Section 10.3: Sewers

The sewer system located under the roadways within the Properties is owned by Pima County, Arizona. The sewer lines connecting the Dwelling Units to the main public sewer line under the roadways are private, and each Owner is responsible for maintaining the sewer line that services such Owner's Lot.

Section 10.4 Refuse Removal

Each Owner is solely responsible for the removal of refuse on a timely basis. In order to obtain refuse removal, including recycling services, at rates and under terms and conditions that might not be otherwise generally available to the Owners individually and in a manner

that would minimize the wear and tear to the commonly owned streets and sidewalks of the Association, the Owners grant the Board the following authority:

- A. Board Authority.
The Board, acting on behalf of the Association, shall have the right, power and authority to enter into a Refuse Removal Service Agreement with a Refuse Removal Service Provider for refuse removal, including recycling services, for such duration, at such rates and on such other terms and conditions as the Board deems appropriate;

- B. Financial Responsibility.
All Owners are to be served pursuant to the Refuse Removal Service Agreement. The Refuse Removal Service Provider will separately bill each Owner in accordance with the terms of such Refuse Removal Service Agreement. Owners shall remit their payment directly to the Refuse Removal Service Provider. The Refuse Removal Service Provider may not pursue the Association and/or the Board for collection of any individual Owner's outstanding invoices;

- C. Contractual Liability.
In accordance with this Declaration, each Owner agrees to pay all amounts properly charged to him or her by the Refuse Removal Service Provider as a contractual liability of such Owner pursuant to such Refuse Removal Service Agreement;

- D. Discontinuance of Service.
The Refuse Removal Service Provider is entitled to invoice each Owner until such Owner has properly notified the Refuse Removal Service Provider to discontinue service to his or her Lot for a limited (vacation hold) or unlimited (opt out) period of time in accordance with the terms of such Refuse Removal Service Agreement;

- E. Exclusive Service.
No Owner is permitted to engage any other Refuse Removal Service Provider. However, the foregoing sentence does not preclude an Owner from engaging a third party for the incidental removal of debris from landscaping or other occasional improvements or services to his or her Lot or Dwelling Unit or removing his or her own debris or refuse to the landfill; and

- F. No Architectural Committee Jurisdiction.
The provisions of this Section 10.4 are not within the jurisdiction of the Architectural Committee and therefore the provisions of Article XI do not apply to this Section 10.4.

ARTICLE XI ARCHITECTURAL COMMITTEE

Section 11.1: Composition of Committee

The Board will appoint at least three Owners to an Architectural Committee that will act in accordance with this Article XI. Members of the Architectural Committee are not entitled to any compensation for services performed pursuant to this Article XI; provided however, that

members of the Architectural Committee will be reimbursed by the Association for all actual expenses reasonably incurred in the performance of their duties

Section 11.2: Review by Committee

All architectural matters within the Properties, as determined by the Board from time to time, including Owner's Responsibilities under Article X and the Building and other Architectural Restrictions set forth in Article XIII, and any Architectural Rules, are subject to the discretionary review of the Architectural Committee. The construction or addition of any Improvement, and all plans, specifications and plot plans are subject to the approval of the Architectural Committee. Certain alterations, repairs and replacements are also subject to the approval of the Architectural Committee while others may be initiated at the Owner's discretion in accordance with the published Rules of the Association.

Section 11.3: Procedures for Approval

Prior to the construction of any Improvement upon a Lot the Owner must obtain the written approval of the Architectural Committee which approval may be given in the sole discretion of the Architectural Committee. The Owner must submit to the Architectural Committee two complete sets of plans and specifications ("Plans") as provided in Section 11.5, for the proposed Improvement. Approval of the Plans will be evidenced by the written endorsement of the Architectural Committee on the Plans. One set of the endorsed Plans will be returned to the Owner prior to the beginning of any construction or alteration and one set of Plans will be retained by the Architectural Committee. No changes or deviations from the Plans, insofar as the exterior of the proposed Improvements are concerned, may be made without the written approval of the Architectural Committee. After construction or other alteration is completed, no further change, including any change in the exterior color, may be made without the written permission of the Architectural Committee.

**Section 11.4: Alterations and Modifications;
Discretion of Architectural Committee**

In reviewing Plans for any Improvement, the Architectural Committee will exercise its discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of the development. The Architectural Committee has the right to deny any proposed Improvement for purely aesthetic reasons if the Architectural Committee considers the proposed Improvement to be unattractive in relation to the overall scheme of development, or if the Committee considers the proposed Improvement to be a nuisance or a design which is not compatible with the other Lots, or if the Architectural Committee considers the proposed Improvement to be in contrast to or out of harmony with the style or colors of existing Improvements. The Architectural Committee also has the right to deny any proposed Improvement if the Architectural Committee determines that the proposed Improvement will materially interfere with another Owner's view. Prior to the approval or disapproval of any Plans, the Architectural Committee may, but is not obligated to, elicit the opinions of other Owners, including the neighbors of the Owner submitting the Plans for the proposed Improvement, as to the conformity and harmony of the proposed Plans with the overall scheme of development, and the effect that the proposed Improvement might have on the views of other Owners. After eliciting these opinions, the Architectural Committee may, but need not, take them into account in making a final decision to approve or disapprove the Plans.

Section 11.5: Minimum Criteria for Plans

All Plans must meet the following minimum criteria and such further criteria as the Board may from time to time promulgate:

- A. Plans for Improvements other than landscaping must include the following: a) a full description of the work to be performed, including the type of finish (stucco, brick, wood, etc.), exterior color and any other appropriate detail; b) an architectural drawing or equivalent with dimensions (height, width, length); c) location on the Lot; and d) name, address, and telephone number of the Owner.
- B. Except for removal of and like kind replacement of dead or dying vegetation, Plans for landscaping must include the following: a) a full description of the proposed landscaping changes; (b) the types of vegetation and locations of proposed additions; and (c) name, address, and telephone number of the Owner;
- C. The Plans must be in accordance with the provisions of the Governing Documents and may not involve material changes to the original Dwelling Unit, without specific written waiver of this subsection in the sole discretion of the Architectural Committee;
- D. The Plans must be in sufficient detail to permit the Architectural Committee to make its determination;
- E. The Plans must be complete and ready for submittal to obtain a building permit, if required, from Pima County or other governmental entity; and
- F. Plans must show that only first-class materials and workmanship will be used.

The Architectural Committee will review and must either approve or disapprove said Plans within 30 days from receipt. If no action is taken within 30 days, said Plans will be deemed disapproved by the Architectural Committee. The Owner may then take their application to the Board for an expedited hearing.

Section 11.6: Expiration of Approval

Commencement of any Improvement, the Plans for which have been approved, or deemed approved, by the Architectural Committee must occur within 6 months of the date of such approval, or the approval will expire and the Plans for such Improvement must be resubmitted to the Architectural Committee for its subsequent approval.

Section 11.7: Fees

The Association may charge a fee to each Owner applying for architectural approval. The fee is to reimburse the Association for any expenses actually incurred in the administration of the architectural request. If the Association determines that it is necessary to retain a consultant to assist it in the review of any Plans, it will notify the Owner of that requirement and the estimated cost thereof.

Section 11.8: No Responsibility for Defects

The Association, the Board and the Architectural Committee will not be responsible in any way for any defects in any Plans submitted in accordance with the foregoing, or for any structural defects in any Improvement erected according to such Plans.

Section 11.9: Conflict of Interest

If a member of the Architectural Committee desires to make any Improvement that requires Architectural Committee approval, that member must be excused from the review and discussion of the plans by the Architectural Committee and, if that would cause the Architectural Committee to consist of fewer than three members, a substitute member of the Architectural Committee must be appointed by the Board to the Architectural Committee to serve with the remaining members of the Committee, to approve or disapprove such Plans.

Section 11.10: Right to Appeal

- A. Any decision of the Architectural Committee to disapprove the Plans for any proposed Improvement may be appealed to the Board by the Owner whose proposed Improvement was disapproved, no later than 30 days after the date such Owner receives notice of the Architectural Committee's written decision. If no appeal to a decision of the Architectural Committee is made by the Owner within the time set forth above, the decision of the Architectural Committee will become final, binding and unappealable.
- B. The Board will promulgate written Rules setting forth the procedures for an appeal, which Rules may be amended from time to time.
- C. No construction may be commenced during the pendency of an appeal.

**ARTICLE XII
USE RESTRICTIONS**

Section 12.1: Land Use and Building Type

The Dwelling Unit will only be used as a Single Family Residence. No pre-fabricated or mobile homes may be placed on any Lot.

Section 12.2: Business Activities

No trade or business may be conducted on any Lot. However, a Person may conduct a home business on the Lot so long as (1) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (2) the business activity does not involve (i) any Person conducting such business who does not reside on the Lot or (ii) door-to-door solicitation of other Owners or their tenants and guests; (3) the existence or operation of the business does not increase that Lot's use of any part of the Common Areas over that which is standard for a Single Family Residence; (4) the existence or operation of the business does not require customers or delivery trucks to visit the Lot; and (5) the business activity does not constitute a nuisance or a hazardous or offensive use, or cause the Owner to violate any provision of the Governing Documents, or threaten the security or safety of others, as may be determined in the sole discretion of the Board. No room or rooms in any Dwelling Unit may be rented or leased, provided that nothing in this Section will prevent the renting or leasing of an entire Lot, together with its Improvements.

However, no Lot may be rented for hotel or transient purposes, which will be construed to mean for a period of less than 30 days.

Section 12.3: Owner's Liability

All provisions of the Governing Documents apply to each Owner, and to the tenants, guests and contractors of an Owner. Each Owner will be responsible for any violation of the provisions of the Governing Documents, whether by such Owner, or by his tenants, guests and contractors. It will be a material default in any lease if a tenant violates any provision of the Governing Documents, entitling the Association to require the Owner to remove such Persons from the Lot.

Section 12.4: Mobile Homes, Etc.

No mobile, manufactured or prefabricated home is permitted on any Lot or anywhere else in the Properties. No temporary house, house trailer, motor home, or other like vehicle, tent, garage, camper, boat or outbuilding of any kind is permitted on any part of the Properties for use as living quarters on either a temporary or permanent basis.

Section 12.5: Rubbish

No Lot may be used in whole or part for the storage of unsightly materials, as defined in the published Rules of the Association, or of anything that will cause the Lot to appear in an unclean or untidy condition. No obnoxious or offensive activity may be carried on upon any Lot, nor may anything be done, placed or stored on any Lot which is an annoyance or nuisance to the neighborhood or occasion any noise or odor that disturbs the peace, quiet, comfort or serenity of the occupants of surrounding Lots. All equipment for the storage or disposal of garbage or other waste must be kept in a clean and sanitary condition. No container may be Visible From Neighboring Property except when the garbage and recycling containers are set out for collection purposes, and then only for the times and places established for those purposes in the published Rules of the Association.

Section 12.6: Dividing and Combining Lots

No Lot may be divided into two or more Lots. Lots may be combined with portions of an adjoining Lot or Lots, provided that no additional Lot is created.

Section 12.7: Noise

No Owner may engage in any activity or permit any activity to occur on the Properties that results in unusual, loud or obtrusive sound.

Section 12.8: Shrubs, Trees, Grasses; Etc.

Shrubs, trees or any other items cannot be located on any Lot or Common Area which is a hazard to pedestrians or traffic.

Section 12.9: Vehicle Parking and Storage

All Owners and guests and invitees shall park any and all motorized or non-motorized vehicles in off-road parking spaces. Off-road parking spaces shall include the paved driveways in each Lot and designated guest parking spaces as set forth in the Plat but shall not include other Common Areas not so designated.

Notwithstanding the above provision, Owners and their guests and invitees may park vehicles on the street in front of a Lot (but not on the curb or sidewalk). Overnight parking on the streets is prohibited except for certain recreational and commercial vehicles and then only for the intervals established for those purposes in the published Rules of the Association.

Parking and/or storing of recreational vehicles (RVs), as defined in the published Rules of the Association is prohibited on all portions of the Properties except in the confines of a standard-sized garage or as follows: RVs may be parked on the parking area of an Owner's Lot provided they do not overhang the sidewalk or in a designated guest parking area provided they do not protrude into the street for a period not to exceed 72 hours, continuous or not, in any seven-day period and not to exceed 144 hours, continuous or not, in any thirty-day period.

RVs may be parked in the street in front of an Owner's Lot provided they do not obstruct access to a neighboring driveway for up to 48 hours, continuous or not, in any seven-day period for the purpose of loading or unloading personal belongings. Any parking in the street also counts against the time allotted for parking elsewhere in San Ignacio Vistas.

To enhance public safety, the RV shall be properly marked with reflectorized safety triangles, traffic cones or similar devices. Slide outs may be temporarily extended during daylight hours only and must have a noticeable safety flag attached where it can be easily seen.

If the Owner or their guests, who may be driving or pulling one of these RVs, is to park in the driveways, streets or designated guest parking areas in San Ignacio Vistas beyond the time frames specified in Section 12.9, the express written permission of the Association is required.

The use and/or occupancy of a vehicle or recreational vehicle, (including, but not limited to, a motorhome, van, camper, trailer, or boat) as living quarters on either a temporary or permanent basis is strictly prohibited on any portion of the Properties.

For purposes of this Section, the term "recreational vehicle" shall not include (1) pick-up trucks with no more than a 3/4 ton capacity with camper shells attached that are no more than seven feet in height as measured from ground level, or (2) mini-motor homes that are no more than seven feet in height and no more than eighteen feet in length, so long as said pick-up or mini-motor home is used on a regular and recurring basis for regular transportation and is parked in accordance with the provisions of this Section applicable to vehicles in general.

Signs advertising the Sale of an automobile or other vehicle cannot be placed on or near the parked vehicle except when the vehicle is parked in the Garage or Driveway of the Owner. Designated Guest Parking Areas are for short-term and overnight parking and may be further limited within the published Rules of the Association. Owners are responsible for the correct parking of their guests' vehicles.

This Section does not apply to commercial vehicles owned by any Person who is not (1) an Owner of a Lot or (2) a spouse, tenant or guest of an Owner.

Section 12.10: Inoperable Vehicles and Commercial Vehicles

No inoperable, junk or wrecked vehicle may be located on any Lot or Common Area. No commercial or construction vehicle may be located on any Lot or Common Area unless the Association grants permission to the Owner, in writing, and for a limited period of time. This prohibition does not apply to vans or pickup trucks without commercial insignia that are used as that Owner's Regular Means of Transportation.

Section 12.11: Drainage-Ways

No structure, planting or other material, except as installed by Declarant, may be placed or permitted to remain within any drainage-way which may change the direction of flow or which may obstruct or retard the flow of water.

Section 12.12: Common Area Vegetation; Dumping

Without the written approval of the Association, no Owner may remove, trim, water or disturb trees or other vegetation in any Common Area. Owners may not plant any seeds or vegetation in any Common Area. Owners may not discharge paint, chemicals, landscape materials, trimmings, clippings or other materials onto streets, sidewalks or other Common Areas.

Section 12.13: Antennas and Exterior Additions

No television, radio or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication may be erected, constructed, placed or permitted to remain on any Lot or upon any Improvements therein; provided, however, that this prohibition does not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time ("Act").

Within the parameters of the Act, the Association is empowered to adopt rules governing the types of antennae that are permissible, and to establish reasonable restrictions relating to location and safety of antennae. To the extent that reception of an acceptable signal would not

be impaired in any manner, an antenna that is permitted pursuant to the Governing Documents or under the Act may only be installed in a side or rear yard location, must not be Visible From Neighboring Property (when reasonably feasible) but should be integrated with the Dwelling Unit and surrounding landscaping to limit its visibility. Antennae must be installed in compliance with all applicable laws and regulations.

Section 12.14: Signs

Billboards or advertising signs of any character are not permitted on any Lot except as provided under state law or in the published Rules of the Association.

Section 12.15: Derricks, Tanks, Heating and Cooling

- A. No Structure designed for use in drilling for water, oil or natural gas may be erected, placed or permitted upon any part of the Properties, and no water, oil, natural gas, petroleum, asphaltum or hydrocarbon products or substances may be produced or extracted therefrom.
- B. No elevated tanks of any kind may be erected, placed or permitted upon any part of the Properties, and any tanks used in connection with any Dwelling Unit, including tanks for the storage of gas and fuel oil, gasoline or oil, must be buried or walled-in so that they are not visible from neighboring property.

Section 12.16: Clotheslines

Clotheslines must be of a retractable type and must not be visible from neighboring property.

Section 12.17: Animals

Only household pets are permitted. Household pets include, but are not limited to cats, dogs, small indoor birds and fish. Household pets do not include, without limitation, such animals as pigs, rabbits or snakes. No animal may be bred or raised for commercial purposes. Household pets must be kept within the Dwelling Unit or, when the Owner is present, within the Owner's walled yard. Pet owners shall be responsible for their pets and once off their property the pet must be kept on a leash or in an appropriate carrier. Pet owners are also responsible for the clean-up and proper disposal of pet waste deposited in all common areas, including the streets or sidewalks or on any Lot including that of the Owner. Any other restrictions on the keeping of household pets will be found in the published Rules of the Association.

Section 12.18: Compliance with Governmental Requirements

The Association and the Owners must comply with all applicable governmental statutes, ordinances and regulations.

Section 12.19: Inspection

After prior written notice to the Owner and during reasonable hours, any member of the Board, or any authorized representative of the Association, has the right to enter upon and inspect any Lot (not including the interior of any Dwelling Unit) for the purpose of ascertaining whether or not the provisions of the Governing Documents have been or are being complied with, and such Persons shall not be deemed guilty of trespass by reason of such entry.

Section 12.20: Continuous Access

No Owner at any time may block, close or cause or allow to be blocked or closed any street within the Properties without the approval of the Board.

**ARTICLE XIII
BUILDING AND OTHER ARCHITECTURAL RESTRICTIONS**

Section 13.1: Fences, Walls and Hedges

No fence, wall or hedge may exceed six feet in height. Any plant(s) used to form a hedge will be subject to the same setback requirements applied to a fence or wall. Bare concrete or masonry walls and chain link fences are prohibited. Any additional restrictions will be found in the published Rules of the Association.

Section 13.2: Screening

Mechanical and electrical equipment on a Lot must be reasonably concealed. Included within this restriction are air conditioning, evaporative coolers and pool pumps or heating equipment.

Section 13.3: Materials

Patio walls and other additions and modifications must be constructed of the same materials used in the construction of the Dwelling Unit, unless waived in writing by the Architectural Committee.

Section 13.4: Lights

All exterior lights must be located and maintained so as not to be directed toward or interfere with surrounding Lots or Common Areas, including streets, or be directed toward the sky. Only white or yellow lights are permitted except for holiday lights as provided in the published Rules of the Association.

Section 13.5: Temporary Occupancy, Storage of Building Materials

No Dwelling Unit may be occupied at anytime prior to its completion. During the actual construction or alteration of any Dwelling Unit on any Lot, necessary temporary buildings for storage of materials and equipment may be erected and maintained by the Person doing such work. The work of constructing, altering or remodeling any building on any part of the Properties must be prosecuted diligently from the commencement thereof until the completion thereof. No building or landscaping materials may be stored on the Common Areas, including sidewalks or streets.

Section 13.6: Other Buildings

No detached garage or other detached structure may be constructed on any Lot. This Section does not prevent the incorporation and construction of a garage as part of a Dwelling Unit.

Section 13.7: Relocation of Buildings

No building of any nature may be constructed or removed from within or without the Properties to any Lot within the Properties without the consent of the Architectural Committee, and in the event a building is placed on any Lot, the building must comply in all respects with each and every provision of this Declaration relating thereto.

Section 13.8: Landscaping Restrictions

Bermuda grass, except a variety recognized to be pollen free, may not be grown on any Lot. Trees and other vegetation must be maintained and pruned so as to have a neat, well-maintained appearance. Owners are responsible for damage to party walls, sidewalks and streets caused by their trees or other vegetation. Owners must arrange to have their yards maintained during their absence. The Architectural Committee may forbid the planting or propagation of certain plants, trees, shrubs and grasses or restrict the propagation of such

plants, trees, shrubs and grasses to native or indigenous, low-allergenic or other arid species. Restrictions on the planting or propagation of certain plants, trees, shrubs and grasses shall be contained in the published Rules of the Association.

Section 13.9: Views

All trees and other vegetation planted in the Lot shall be kept trimmed to a height which will not measurably interfere with views from neighboring building sites. Any restrictions on trees and vegetation including their height shall be contained in the published Rules of the Association. There will be no restrictions placed upon the height of the Saguaro Cactus. All trees and other vegetation of eighteen feet or less in height as measured from the ground, unless otherwise restricted under Section 13.8, shall be permitted. Trees and other vegetation that might exceed eighteen feet in height including palm trees are permitted provided the trees and vegetation that exceed eighteen feet in height do not number more than three on any one Lot, are properly trimmed and the combined width, when trimmed, does not exceed fifteen feet at any point above eighteen feet in height.

**ARTICLE XIV
PARTY WALLS**

Section 14.1: General Rules of Law to Apply

Each wall, whether a patio yard wall or bearing wall of a Dwelling Unit, which is built as part of the original construction of such Dwelling Unit and which is placed on or immediately adjacent to the dividing line between Lots, or on or immediately adjacent to a Rear Yard Easement or Front Yard Easement (including rear patio walls, but not including walls along rear property lines) constitutes a party wall, and, to the extent not inconsistent with the provisions of this Article XIV, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions will apply. Each Owner acknowledges that some portions or all of the Properties may have been developed with Improvements having common lot lines and party walls. In many instances, this will be the case for both rear yards and common Dwelling Unit walls. Each Owner, consents to the placement of the walls of the Dwelling Unit on or immediately adjacent to the dividing lines between Lots or along the boundaries of the Rear Yard Easements and Front Yard Easements as set forth herein.

Section 14.2: Alterations to Party Walls

No Owner may alter a party wall without the written approval of the Architectural Committee. No Owner may take any action which may destroy the integrity of a party wall or cause an unsightly appearance or threaten its strength, durability or lasting life. Without limitation, no Owner may place any plants or shrubs close to a party wall if watering the plants will threaten the foundation of the party wall or cause the foundation to be undermined.

Section 14.3: Sharing of Repair and Maintenance

The cost of ordinary repair and maintenance of a party wall must be shared equally by the Owners of the Lots which are divided by the wall.

Section 14.4: Destruction by Fire or Other Casualty

If a party wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it and is hereby granted a permanent access easement across adjoining Lot(s) for such restoration. The Owners of the Lots which are divided by the wall must share equally in the cost of such restoration.

Section 14.5: Damage to Walls

Notwithstanding any other provision of this Article XIV, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements, or causes damage to a wall by watering or through the planting or maintenance of vegetation, or otherwise, will bear the whole cost of repairing all damage resulting therefrom.

Section 14.6: Right to Contribution Runs With Land

The right of any Owner to contribution from any other Owner sharing a party wall under this Article XIV is appurtenant to and runs with the land.

Section 14.7: Arbitration

If any dispute arises concerning a party wall, or the provisions of this Article XIV, each party will choose one arbitrator and the two arbitrators must choose a third arbitrator, and the dispute will be decided by a majority of all the arbitrators in accordance with the provisions of A.R.S. Section 12-1501 *et seq.*

Section 14.8: Private Agreements

Private agreements between Owners may not modify the provisions of this Article XIV.

**ARTICLE XV
GENERAL PROVISIONS**

Section 15.1: Enforcement

- A. Each Owner has the right to enforce the Governing Documents by filing a lawsuit against any other Owner and the successful party will be entitled to an award of reasonable attorney fees, litigation expenses and costs incurred.
- B. The Association may enforce the Governing Documents in any manner provided for herein, or by filing a lawsuit, including, but not limited to:
 - 1) Imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Owner ;
 - 2) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association;
 - 3) Exercising self-help or taking action to abate any violation of the Governing Documents;
 - 4) Requiring an Owner, at the Owner's expense, to remove any Improvement on the Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition. After Notice stating a time within which the Owner must perform, if the Owner fails to take action, the Board or its designee has the right to enter the Lot, remove the Improvement in violation and restore the Lot to substantially the same condition as previously existed and any such action will not be deemed a trespass;
 - 5) Without liability to the Association or Board, prohibiting any Person engaged by an Owner who fails to comply with the terms and provisions of the Governing Documents, from continuing or performing any further activities in the Properties;
 - 6) Towing vehicles which are parked in violation of the Governing Documents; and
 - 7) Filing a lawsuit to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover fines or money

damages or to obtain such other relief to which the Association may be entitled.

- C. All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy will not waive the Association's right to exercise another right or remedy.
- D. No delay or failure by the Association or any Owner in exercising any right under this Declaration or any of the other Governing Documents will operate as a waiver of such right or any other right, and no single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.
- E. No claim or cause of action will accrue against the Board, the Association or any Owner for their neglect or refusal to exercise such right of enforcement.

Section 15.2: Attorney Fees

In any action to enforce the provisions of the Governing Documents, including the collection of delinquent assessments, the successful party will have the right to recover any attorney fees, litigation expenses, costs or other expenses incurred as a result of any breach or alleged breach of any of the provisions of the Governing Documents. If the Association is the successful party, such charges will be deemed to be a Reimbursement Assessment and may be recovered against the Owner personally or against the Lot. The right of the Association to recover such charges exists regardless of whether the Association files suit or is successful in compelling compliance without filing suit.

Section 15.3: Lien of Mortgages

No breach of the provisions, conditions, restrictions or covenants contained within this Declaration will defeat or render invalid the lien of any Mortgage made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants shall be enforceable against any portion of the Properties acquired by any person through foreclosure or by deed in lieu of foreclosure or any breach occurring after such acquisition.

Section 15.4: Trustee's Sale and Foreclosure

During the pendency of any trustee's sale or with respect to any proceeding to foreclose a First Mortgage, including any period of redemption, the First Mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot including, but not limited to, the right, if any, to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

Section 15.5: Severability

Invalidation of any covenant, restriction, provision or term of this Declaration by judgment or court order will not affect any other covenant, restriction, provision or term hereof which will remain in full force and effect.

Section 15.6: Amendment

Except as otherwise provided herein, this Declaration may be amended at any time by the affirmative vote of a majority of the Total Voting Power. Any proposed amendment may also be approved by the affirmative vote of a majority of the Total Voting Power by a written mailed ballot as provided in and in accordance with the Bylaws. If the Board proposes amendments to this Declaration, it must provide a copy of the amendment to all of the Owners with notice that the vote on the proposed amendment will be taken at a regular or special meeting of the Members called and held in accordance with the by-laws or, in the alternative that all Owners will be entitled to vote on the proposed amendment by submitting a written ballot to the Association. If the vote is by ballot, the ballot will be included with the notice of the proposed amendment.

Proposed amendments to the Declaration will also be submitted to the Owners for their approval provided that a resolution setting forth such proposed amendments signed by at least 75 Owners is submitted to the Board with a request that the proposed amendment either be provided to the Owners with a written ballot or that the proposed amendment be voted on at a regular or special meeting of the members called and held in accordance with the Bylaws, except that the vote required to approve such proposed amendments will be the affirmative vote of a majority of the Total Voting Power.

Amendments will be evidenced by a document signed by the president and secretary of the Association attesting that the amendment was approved by the requisite number of votes. Amendments will become effective when recorded in the office of the Pima County Recorder.

Section 15.7: Indemnification

The Association will indemnify its officers, directors and committee members to the fullest extent permitted by the Arizona Non-profit Corporation Act, as amended from time to time; provided, however, that no officer, director or committee member will be indemnified in connection with any action brought by him against the Association (whether by derivative action or counterclaim) unless he has been successful on the merits, after trial. The right of indemnification hereinafter provided will not be exclusive of other rights to which any director, officer or committee member may otherwise be entitled by law.

Section 15.8: No Liability

The Association, the members of any committee and the Association's directors and officers will not liable to any Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval, disapproval, act, omission or error made in good faith (whether or not negligent) and which such director, officer or committee member reasonably believed to be within the scope of his duties.

Section 15.9: Change of Circumstances

No change of condition or circumstances within the Properties will, in any manner, operate to terminate or modify any of the provisions of this Declaration.

Section 15.10: Action by Association

Whenever, under the provisions of the Governing Documents, any right, power, privilege or authority of the Association is to be exercised or withheld, or any consent or approval by the Association is to be given or withheld, then, unless specifically set forth in the Governing Documents, such right, power, privilege or authority will be exercised or withheld, or such consent or approval will be given or withheld by the Board and not by the Members of the Association, and a decision of a majority of the Board present at a duly called and held directors' meeting will be the decision of the Association in regard thereto. This Section will not apply to architectural matters within the Properties that are subject to the review of the Architectural Committee as provided for or as permitted herein.

Section 15.11: Other Committees

The Board may establish such additional committees as it may from time to time determine to be necessary or desirable for the proper implementation of the provisions of this Declaration, which committees will have such names, composition, duties and procedures as the Board may from time to time determine.

Section 15.12: Age Restrictions

- A. The Lots described in this Declaration comply with the exemption provisions of the Fair Housing Act Amendments of 1988, Public Law 100-430, 42 U.S.C. § 3601, *et. seq.*, as further interpreted by Rules and Regulations of the Department of Housing and Urban Development promulgated January 23, 1989 at page 3290, which rules and regulations are incorporated herein by reference, and which laws and regulations have been adopted in substantial conformity by Arizona Revised Statutes § 41-1491.04 (the “Exemption”). The Exemption is based, generally, upon a standard that at least one occupant per household must be 55 years of age or older. Certain exceptions are made in the Fair Housing Act Amendments of 1988 for cases where at least eighty percent (80%) of the dwellings are so occupied.
- B. Accordingly, except as provided below, each Lot must be occupied by at least one person who is at least 55 years of age or older and these Properties will be deemed to be Housing for Older Persons as defined in the Fair Housing Amendments Act of 1988. All sales of the Lots are subject to the Housing for Older Persons requirements, and it will be a violation of the terms and provisions of this Declaration if any Lot is subsequently sold and is not occupied by at least one person 55 years of age or older. However, if an occupant who is 55 years of age or older dies and leaves the Lot to a surviving spouse or other companion who was residing with the decedent, then provided such surviving spouse or other co-habitant is at least 45 years of age, and provided at least eighty percent (80%) of the Lots are occupied by at least one person 55 years of age or older, the Association may elect to allow the surviving spouse or co-habitant to remain the occupant of the Lot without violating this Declaration.
- C. This Declaration, as it pertains to age restrictions governing the Lots, may be amended by the affirmative vote of seventy-five percent (75%) of the Total Voting Power.
- D. No minor may reside on any Lot for more than three months during any 12 month period. Nothing in this Declaration will be construed to permit a minor to reside in any Dwelling Unit.
- E. These age restrictions apply to all occupants, whether Owners or tenants, and to all leases as well as sales.
- F. The Owners acknowledge that it is the responsibility of each Owner to comply with the age restrictions and to notify the Association, in writing, of the residents upon the sale or lease of any Lot. The Association has the right to verify the age of all occupants of a Lot in accordance with the requirements of the Fair Housing Act Amendments of 1988 and to periodically update those records.

Section 15.13: Binding Effect

By accepting a deed to or acquiring any ownership interest in any Lot, each Owner, for himself or itself, his or its heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Governing Documents and amendments thereof. In addition, each Owner acknowledges that this Declaration sets forth a general scheme for the development and use of the Properties.

Section 15.14: Captions

All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

