



MAY 12 2006

FILE NO. 1285163-9

ARTICLES OF INCORPORATION

OF

WHITEWING AT GERMANN ESTATES HOMEOWNERS ASSOCIATION

The undersigned hereby adopts the following Articles of Incorporation effective 11 May, 2006:

1. Name: The name of the corporation shall be WHITEWING AT GERMANN ESTATES HOMEOWNERS ASSOCIATION (or the "Association").
2. Purpose: The Association is organized and shall be operated as a nonprofit corporation for the purposes set forth for the "Association" as provided in the Declaration, these Articles of Incorporation, the Bylaws for the corporation, and for conducting any or all lawful affairs for which corporations may be incorporated under Title 10, Chapter 5, Arizona Revised Statutes.
3. Character of Affairs: The character of affairs which the corporation initially intends to conduct in Arizona is the fulfillment of all its duties and responsibilities and the exercise of all its rights, powers and prerogatives under the Declaration.
4. Board of Directors: The board of directors (the "Board") shall consist of three members, subject to increase as provided in the Bylaws. The initial directors and their addresses are:

Gregory L. Bamford
P.O. Box 1561
325 S. Higley Rd., #110
Higley, AZ 85236

David T. Bamford
P.O. Box 1561
325 S. Higley Rd., #110
Higley, AZ 85236

Adam S. Bamford
P.O. Box 1561
325 S. Higley Rd., #110
Higley, AZ 85236

5. Incorporator: The name and address of the Incorporator of the Association is:

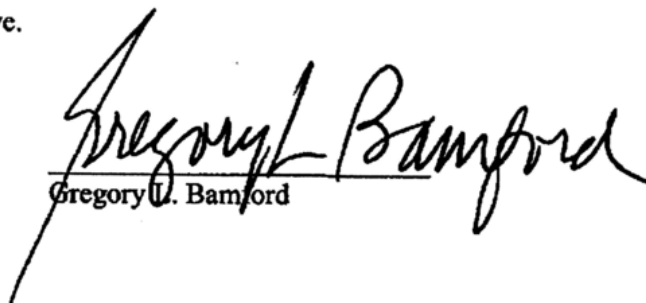
Gregory L. Bamford
P.O. Box 1561
325 S. Higley Rd., #110
Higley, AZ 85236

6. Statutory Agent: Robert J. Brown c/o Brown Property Management, Inc., whose address is 7255 E. Hampton Avenue, Suite 101, Mesa, Arizona, 852093, is hereby appointed the initial statutory agent of this corporation.

1285163-9

7. Net Earnings: Transfer of Assets on Dissolution: No part of the net earnings of the Association shall inure to the benefit of or be distributable to any Member, director or officer of the Association, or to any private individual, except the Association may pay reasonable compensation for services and make payments in furtherance of its purposes. Upon dissolution of the Association, the assets of the Association, whether real or personal, after rebate to Members of excess assessments or fees, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as close as possible to those which they were required to be devoted by the Association. If such dedication is not accepted, such assets shall be transferred to a nonprofit corporation, trust or other organization to be devoted to purposes as close as possible to those which they were required to be devoted by the Association. Use of funds for acquisition, construction, management or maintenance of association property or rebates to Members of excess assessments or fees shall not constitute an inurement of net earnings.
8. Members: The Members of the Association and their voting rights shall be determined as provided in the Declaration.
9. Amendments: The Articles and Bylaws may only be amended by following the procedure prescribed by the Declaration.
10. Indemnification: The Association shall indemnify each person identified in A.R.S. 10-1005C to the fullest extent permissible: (a) under the provisions of A.R.S. 10-1005; (b) under indemnification provisions of successor or amended statutes; (c) as provided in the Declaration or Bylaws; or (d) by any agreement adopted pursuant to the provisions of A.R.S. 10-1005.
11. Director Liability: A director of the Association shall not be personally liable to the Association or its Members for monetary damages for breach of fiduciary duty as a director. This article shall not eliminate or limit the liability of a director for any conduct described in clauses (a) through (c), inclusive, of Section 10-1029(A)(8), Arizona Revised Statutes. If the Arizona Revised Statutes are amended to authorize further elimination or limitation of a director, then the liability of a director of the Association shall be eliminated or limited to the fullest extent permitted by the Arizona Revised Statutes as so amended. Any repeal or modification of this article shall not increase the liability of a director of the Association arising out of acts or omissions occurring before the repeal or modification becomes effective.

EXECUTED as of the date set forth above.

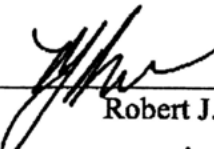

Gregory U. Bamford

1285163-9

ACCEPTANCE OF APPOINTMENT AS STATUTORY AGENT

DATED this 11 day of May, 2006.

I, Robert J. Brown, having been designated to act as Statutory Agent for Whitewing at Germann Estates Homeowners Association, hereby consent to act in that capacity until removed, or resignation is submitted in accordance with the Arizona Revised Statutes.



Robert J. Brown

Date: May 11, 2006

**BYLAWS
OF
WHITEWING AT GERMANN ESTATES HOMEOWNERS ASSOCIATION**

**ARTICLE I
Identity**

Section 1. Declaration. These Bylaws shall govern the operation of the Whitewing at Germann Estates Homeowners Association ("the Corporation"), an Arizona non-profit corporation created pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Whitewing at Germann Estates as amended from time to time, as recorded initially on June 13, 2006, as Instrument No.20060795915 in the official records of Maricopa County, Arizona (the "Declaration"), which by this reference is incorporated herein. Any amendments to the Declaration shall automatically be incorporated herein, and all references to the Declaration shall be deemed to include any such amendments.

Section 2. Terms. Terms used herein which are defined in the Declaration shall have the same meanings as in the Declaration.

Section 3. Principal Office. The principal office of the Corporation shall be located initially at 325 S. Higley Road, Suite 110, P.O. Box 1561, Higley, Arizona 85236.

**ARTICLE II
Membership**

Section 1. Members. As set forth in the Declaration and the Articles of Incorporation (the "Articles") of the Corporation, each Owner of a Lot shall be a member of the Corporation so long as he shall be an owner, and such membership shall automatically terminate when he ceases to be an Owner, and, upon the transfer of his ownership interest, the new Owner succeeding to such ownership interest shall likewise automatically succeed to membership in the Corporation.

Section 2. Meetings. Meetings of members shall be held at the principal place of business of the Corporation or at such other convenient place as may be designated by the Board of Directors. The first annual meeting of the members shall be held at such time as the Board of Directors shall designate, but no later than 60 days after the date that Class B memberships are converted to Class A memberships. Thereafter, annual meetings of the members shall be held on the same day or at such time as the Board of Directors shall designate each year. Declarant shall appoint the members of the Board of Directors until the first annual meeting of the members after the date that Class B memberships are converted to Class A memberships.

Special meetings of the members may be called by the President or by a majority of the directors or by members having at least two-fifths of the votes entitled to be cast at such meeting. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice, unless by consent of two-thirds of the Owners present, either in person or by proxy.

Section 3. Voting. The Corporation shall have two classes of voting membership:

Class A. Class A members shall be all Owners but, so long as any Class B memberships are outstanding, shall not include Declarant. Each Class A member who is the Owner of one or more Lots shall be entitled to one vote for each Lot owned on each matter to be decided. When more than one person holds an interest in any Lot, all such Persons shall collectively hold the voting rights for the Lot. The voting for such a Lot shall be exercised as they determine among themselves, but in no event shall the vote be split or more than one vote be cast with respect to any Class A Lot. If such Persons are unable to agree how their single vote is to be cast, their vote shall not be counted.

Class B. Class B member shall be the Declarant. Until the entire Parcel has been subdivided, the Declarant shall have 120 memberships in the Association. After the entire Parcel has been subdivided, the Declarant shall have one membership for each Lot owned by the Declarant. The Declarant shall be entitled to three votes for each such Class B membership on each matter to be decided. Declarant may cast its votes in such proportions on any matter as Declarant may determine. Class B memberships shall cease and be converted to Class A memberships, without further act or deed, upon the happening of any of the following events, whichever occurs first:

a. 90 days following the first date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or

b. Five years following the conveyance of the first Lot by the Declarant.

If any lender to whom the Declarant has assigned, or hereafter assigns, all or substantially all of its rights under the Declaration as security succeeds to the interests of Declarant by virtue of the assignment, the Class B memberships shall not be terminated, and the lender shall hold the Class B memberships on the same terms as they were held by the Declarant.

Section 4. Proxies. In accordance with Arizona Revised Statutes, no proxies are valid except for Class B members which may be used until such time as the election of the initial Board of Directors. Any Class B member who seeks to exercise a proxy bears the burden of proving its validity. A facsimile, telegram, email, or cablegram, appearing to have been transmitted by a Class B member or by his duly authorized attorney-in-fact, may be accepted as a sufficiently written and executed proxy.

Section 5. Cumulative Voting for Board Members. In any election for the members of the Board of Directors, every member of the Corporation entitled to vote at such an election shall have its number of votes, as determined under Article 11, Section 3, multiplied by the number of directors to be elected. Each member shall have the right to cumulate these votes for one candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 6. Notice. Notice of all meetings of the members stating the time, the place and the objects for which the meeting is called shall be given by the President, Vice President or Secretary unless notice is waived in writing. Such notice must be in writing and addressed to each member entitled to vote at such meeting at his address as it appears on the books of the Corporation (or if no such address appears, at his last known address), and shall be mailed not less than ten days nor more than 50 days prior to the date of the meeting. Notice of meetings may be waived before, during or after the meeting by each member entitled to vote at such meeting.

Section 7. Quorum. A quorum of members for any meeting shall be constituted by members represented in person (and/or proxy in the case of Class B members) and holding ten percent of the votes entitled to be cast at the meeting. Unless the vote of a greater number is required by these Bylaws, the Articles, the Declaration or Arizona law, the affirmative vote of a majority of the members represented at a meeting and entitled to vote shall be binding as the act of the members.

Section 8. Adjourned Meetings. If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person (or by proxy in the case of Class B members), may adjourn the meeting to a time not more than 48 hours from the time the original meeting was called.

Section 9. Order of Business. The order of business at all meetings of the members shall be as follows:

- (a) Roll call (and verification of proxies in the case of Class B members).
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Appointment of inspectors of election when required.
- (g) Election of members of the Board of Directors when required.
- (h) Unfinished Business.
- (i) New Business.
- (j) Adjournment.

ARTICLE III **Board of Directors**

Section 1. Number and Qualification. The business, property and affairs of the Corporation shall be managed, controlled and conducted by a Board of Directors. The Board of Directors shall initially consist of three members. The number of directors may be altered from time to time by resolution of a majority vote of the Board of Directors, or of the members of the Corporation at any regular or special meeting called for such purpose, but only within the limits prescribed by the Articles. In the event of any increase in the number of directors at the annual meeting, each additional director shall be elected by the then Board of Directors and hold office until his successor is elected and shall qualify. Each director (other than the directors originally named to the Board in the Articles and any director elected or appointed by Declarant) shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of such Owner). If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall

be deemed vacant. Until the first annual meeting, Declarant shall appoint the members of the Board of Directors.

Section 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Corporation, and may do all such acts and things as are not by law or otherwise directed to be exercised and done by the members. The powers of the Board of Directors shall include, but not be limited to, all of the rights and duties of the Board of Directors as set forth elsewhere in these Bylaws, the Articles and the Declaration and shall also include the power to promulgate such rules and regulations pertaining to the rights and duties of members of the Corporation (which rules and regulations may include, without limitation, reasonable fines, penalties, and/or fees for infractions of such rules and regulations), and all other matters, as may be deemed proper and which are consistent with the foregoing. The Board of Directors may delegate to one or more committees thereof, and to other persons, such duties and powers, all as appear to the Board of Directors to be in the best interests of the Corporation and to the extent permitted by law. Except as expressly set forth in the Declaration, the Articles, the Bylaws or by statute, all the powers and duties of the Association shall be exercised by the Board, which shall include, without limitation, the authority, but not the obligation, to suspend the voting rights and rights to use of Common Areas of any Owner in default in the payment of any regular or special assessment. Such voting and use rights may also be suspended by the Board after notice and a hearing, for a period not to exceed 60 days, for infraction of rules and regulations adopted by the Board in accordance with the Declaration.

Section 3. Election and Term of Office. The election of the directors shall be as provided in these Bylaws, the Articles and the Declaration. The directors shall be elected so that they hold office for staggered terms. At the time of the first annual meeting of the Board of Directors, the incumbent directors shall divide the directors into three groups, with the number of directors in each group being equal, to the extent possible. The first term of the directors included in the first group shall be one year, the first term of the directors in the second group shall be two years, and the first term of the directors in the third group shall be three years. Thereafter, the terms of all directors shall be three years. Every year at the annual meeting of the members, the members shall elect the requisite number of directors needed to fill the vacancies occurring in the group of directors whose terms are expiring.

Section 4. Removal. Any director may be removed from office, with or without cause, by a majority vote of the members at any annual meeting or at any special meeting called for that purpose. Any director may be removed from office, with cause, by a majority vote of the Board of Directors at any regular or special meeting of the Board of Directors called for that purpose. It shall be cause for removal if a director is absent from more than three consecutive meetings of the Board of Directors and such absences were not excused by the President of the Corporation prior to the meetings in question.

Section 5. Vacancies. Vacancies on the Board of Directors caused by any reason shall be filled by vote of the majority of the remaining directors even though less than a quorum, or by the remaining director if there be only one, and each person so elected shall be a director until his successor is duly elected by the members of the Corporation and shall qualify.

Section 6. Compensation. No compensation shall be paid to directors for their services as directors. No remuneration shall be paid to a director for services performed by him for the Corporation in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken. Directors and officers, however, may be reimbursed for any actual expenses incurred in connection with their duties as such officers or directors.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors, but at least two such meetings (including an organizational meeting within ten days of election of directors by the members of the Corporation) shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone, email, or telegraph, at least three days prior to the day named for the meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President or Secretary on three days' notice to each director, given personally or by mail, telephone, email, or telegraph, which notice shall state the time, place and purpose of the meeting. Upon the written request of at least two of the directors, special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice.

Section 9. Telephonic or other Electronic Meetings. Meetings of the Board of Directors, regular or special, may be held by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear or receive communication from each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

Section 10. Waiver of Notice. Before, at or after any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be deemed to be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

Section 11. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business, but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time. Every act or decision done or made by a majority of the directors at a duly held meeting at which a quorum is present shall be regarded as the act of the Board unless the Articles, the Bylaws or the Declaration otherwise specifically requires the affirmative vote of a different number of directors on a specific matter.

Section 12. Adjournments. The Board of Directors may adjourn any meeting from time to time as may be prudent or necessary in the interests of the Corporation, provided that no meeting may be adjourned for a period longer than 30 days.

Section 13. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 14. Fidelity Bonds. The Board of Directors may require, in its discretion, and shall require to the extent required by the Declaration, that all officers and employees of the Corporation handling or responsible for the Corporation's funds shall furnish fidelity bonds. In the event such bonds are required upon determination of the Board of Directors, the premiums thereof shall be paid by the Corporation.

Section 15. Committee. The Board of Directors may by resolution appoint committees of the Board, which committees shall have the powers and authority designated in the resolution or resolutions establishing them.

ARTICLE IV

Officers

Section 1. Designation. The principal officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors. The directors may appoint an Assistant Secretary and an Assistant Treasurer, and such other officers as in their judgment may be necessary. Officers of the Corporation must be persons who are directors of the Corporation. Any one person may hold two or more offices at the same time, except that no one person shall simultaneously hold the office of President and Secretary.

Section 2. Election of Officers. The officers of the Corporation shall be elected from time to time by the Board of Directors. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected.

Section 4. Resignation of Officers. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office may be filled by vote of a majority of the Board of Directors. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6. President. The President shall be the chief executive officer of the Corporation. He shall preside at all meetings of the members of the Corporation and of the Board of Directors. He shall have all of the general powers and duties which are normally vested in the office of the President of a corporation, including, but not limited to, the powers to appoint committees from among the members of the Corporation from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Corporation.

Section 7. Vice President. The Vice President (or most senior Vice President, if there shall be more than one) shall take the place of the President and perform his duties whenever the President shall be absent, unable to act or refuses to act. If neither President nor a Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. A Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors and the minutes of all meetings of the members of the Corporation; he shall have custody of the seal of the Corporation; he shall have charge of the membership books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 9. Treasurer. The Treasurer shall have the responsibility for the Corporation's funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Corporation. He shall be responsible for the deposit of all moneys and other

valuable effects in the name and to the credit of the Corporation in such depositories as may from time to time be designated by the Board of Directors.

Section 10. Compensation. No compensation shall be paid to officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Corporation in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken.

ARTICLE V **Indemnification**

The Corporation shall indemnify any and all of its directors and officers, and former directors and officers, against expenses incurred by them, including legal fees, or judgments or penalties rendered or levied against any such person or entity in a legal action brought against any such person or entity for acts or omissions alleged to have been committed by any such person or entity while acting within the scope of his or its authority as a director or officer of the Corporation, or exercising the powers of the Board of Directors, provided that the Board of Directors shall determine in good faith that such person or entity did not act, fail to act, or refuse to act with gross negligence or with wrongful, fraudulent or criminal intent in regard to the matter involved in the action. Notwithstanding anything to the contrary expressed herein, the Board of Directors shall have the right to refuse indemnification as to expenses in any instance in which the person or entity to whom indemnification would otherwise have been applicable shall have incurred expenses without approval by the Board of Directors which are excessive and unreasonable in the circumstances and are so determined by the Board of Directors, and as to expenses, judgments, or penalties in any instance in which such person or entity shall have refused unreasonably to permit the Corporation, at its own expense and through counsel of its own choosing, to defend him or it in the action or to compromise and settle the action. The Corporation shall also indemnify the employees and direct agents of the Corporation in the same manner and with the same limitations as provided above with respect to directors and officers.

ARTICLE VI **Miscellaneous**

Section 1. Books and Accounts. The Board, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all voting Owners, at reasonable times, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise. The membership records of the Corporation, the Declaration, the Articles and the Bylaws of the Corporation shall likewise be available for inspection by any member at the principal offices of the Corporation. The Board may impose a reasonable charge for copies of books, records or other documents requested by any member. Information obtained by any member pursuant to this section may be used by the member only in connection with the business and affairs of the Corporation, and not for any other purposes (including, but not limited to, the solicitation of members).

Section 2. Execution of Corporate Documents. With the prior authorization of the Board of Directors, all notes, checks and contracts or other obligations shall be executed on behalf of the Corporation by such officer or officers of the Corporation as said Board shall designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be January I through December 31, or such other period as the Board of Directors may deem appropriate.

Section 4. Conflict in Documents. In the case of any conflict between the Articles and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, or between the Articles and the Declaration, the Declaration shall control. In the event of any conflict between the Declaration, the Articles, or these Bylaws and the regulations of any Institutional Guarantor, said regulations shall control.

ARTICLE VII **Amendment of the Bylaws**

(a) These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of the Members having more than 50% of the-votes entitled to be cast by the Members present in person (or by proxy in the case of Class B members).

(b) The Declarant, as long as the Declarant owns any Lot, and thereafter, the Board, without a vote of the Members and without the consent of any First Mortgage may amend these Bylaws in order to conform these Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

(c) So long as there is a Class B membership in the Association, any amendment of these Bylaws must be approved by the Veterans Administration or the Federal Housing Administration.

(d) So long as the Declarant owns any Lot, any amendment to these Bylaws must be approved in writing by the Declarant.

CERTIFICATE OF ADOPTION

This is to certify that the foregoing Bylaws were duly adopted by the Board of Directors of the Whitewing at Germann Estates Homeowners Association at the organizational meeting of the Board of Directors duly held on the 11th day of May 2006.



Secretary

OFFICIAL RECORDS OF MARICOPA
COUNTY RECORDER HELEN PURCELL
20060795915 06/13/2006 02:34
ELECTRONIC RECORDING
Other 335389-43-1-1--

When recorded, return to:

SECURITY TITLE AGENCY
ATTN: MS. MARIE WARREN
3636 N. Central Avenue #140
Phoenix, AZ 85212

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

FOR

WHITEWING AT GERMANN ESTATES

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
WHITEWING AT GERMANN ESTATES

TABLE OF CONTENTS

	PAGE
ARTICLE 1 DEFINITIONS	1
1.1 "Annual Assessments"	1
1.2 "Architectural Committee"	1
1.3 "Articles"	1
1.4 "Assessments"	1
1.5 "Association"	1
1.6 "Association Rules"	2
1.7 "Board"	2
1.8 "Bylaws"	2
1.9 "Common Area"	2
1.10 "Common Expenses"	2
1.11 "Declarant"	2
1.12 "Designated Builder"	2
1.13 "Declaration"	2
1.14 "Dwelling Unit"	2
1.15 "Eligible Mortgage Holder"	2
1.16 "First Mortgage"	2
1.17 "Lot"	2
1.18 "Maximum Annual Assessment"	2
1.19 "Member"	2
1.20 "Mortgage"	3
1.21 "Mortgagee"	3
1.22 "Occupant"	3
1.23 "Owner"	3
1.24 "Plat"	3
1.25 "Property and Project"	3
1.26 "Record or Recording"	3
1.27 "Special Assessments"	3
1.28 "Visible From Neighboring Property"	3
ARTICLE 2 PROPERTY RIGHTS	3

ARTICLE 3	MEMBERSHIP AND VOTING RIGHTS	4
3.1	Votes of Owners of Lots	4
3.2	Declarant	4
3.3	Voting Classes	4
3.4	Right to Vote	5
3.5	Members' Rights	5
3.6	Transfer of Membership	5
ARTICLE 4	MAINTENANCE	5
4.1	Association's General Responsibilities	5
4.2	Maintenance of Owner's Structures	6
4.3	Publicly-Dedicated Areas	6
4.4	No Discrimination	6
ARTICLE 5	INSURANCE; FIDELITY BONDS; CASUALTY LOSSES	7
5.1	Insurance to be Obtained by the Association	7
5.2	Insurance to be Obtained by Owners	10
5.3	Casualty Losses	10
ARTICLE 6	RIGHTS AND OBLIGATIONS OF THE ASSOCIATION	12
6.1	Common Area	12
6.2	Personal Property and Real Property for Common Use	12
6.3	Rules and Regulations	12
6.4	Enforcement of "On Lot" Storm Water Retention	12
6.5	Availability of Books, Records and Other Documents	13
6.6	Financial Review	13
6.7	Implied Rights	13
6.8	Board of Directors and Officers	13
ARTICLE 7	ASSESSMENTS	13
7.1	Creation of Assessment Right	13
7.2	Covenants with Respect to Assessments	13
7.3	Lien for Assessments; Foreclosure	14
7.4	Dates Assessments Commence	14
7.5	Computation of Assessments: Annual Budget	14
7.6	Due Dates	15
7.7	Maximum Annual Assessment	15
7.8	Notice of Quorum	16
7.9	Special Assessments	17
7.10	Certificates	17
7.11	Surplus Monies	17

7.12	Declarant's Obligation for Deficiencies	17
7.13	Common Expenses Resulting From Misconduct	17
ARTICLE 8	ARCHITECTURAL STANDARDS/COMMITTEE	17
8.1	Appointment of Architectural Committee	17
8.2	Jurisdiction of Architectural Committee	18
8.3	Submission and Review of Plans	19
8.4	Obligation to Obtain Approval	19
8.5	Changes to Interiors of Dwelling Units	20
8.6	Other Approvals: Liability	20
8.7	Fee	20
8.8	Inspection	20
8.9	Wavier	20
8.10	Appeal to Board	20
8.11	Landscaping	21
ARTICLE 9	USE RESTRICTIONS AND OTHER COVENANTS	21
9.1	Residential and Recreational Purpose	21
9.2	Garages and Driveways	22
9.3	New Construction	22
9.4	Signs	22
9.5	Heating, Ventilating and Air Conditioning Units	22
9.6	Solar Collecting Panels or Devices	22
9.7	Antennas, Poles, Towers and Dishes	22
9.8	Basketball Goals and Similar Structures	23
9.9	Tanks	23
9.10	Vehicles	23
9.11	Underground Facilities	24
9.12	Outdoor Burning	24
9.13	Sanitation	24
9.14	Fences, Interferences and Obstructions	24
9.15	Nuisance	25
9.16	Drainage Alteration, Easements	25
9.17	"On Lot" Storm Water Retention	25
9.18	Clothes-Drying Facilities	25
9.19	Pets	26
9.20	Storage and Tool Sheds or Structures	26
9.21	Landscaping and Maintenance	26
9.22	Roof Materials	27
9.23	Encroachments	27
9.24	Leasing: Obligations of Tenants and Occupants	27
9.25	Exterior Lighting	28
9.26	Yard Fenced During Construction	28
ARTICLE 10	PARTY WALLS	28
10.1	General Rules of Law to Apply	28

10.2	Repair and Maintenance	29
10.3	Sharing of Repair and Maintenance	29
10.4	Consents to Modification	29
ARTICLE 11	GENERAL PROVISIONS	29
11.1	Term	29
11.2	Amendment	30
11.3	Indemnification	31
11.4	Easements for Utilities	31
11.5	No Partition	32
11.6	Severability; Interpretation: Exhibits: Gender	32
11.7	Perpetuities	32
11.8	Enforcement	32
11.9	Property Held in Trust	33
11.10	FHA/VA Approval	33
11.11	Notice Mortgage Holders, Insurers or Guarantors	33
11.12	Dissolution or Termination of Association or Real Property	33
11.13	Amendments Requested by Governmental Agency	34
11.14	Number of Days	34
11.15	Right to Use Similar Name	34
11.16	Temporary Sign Easement	34
11.17	Notice of Violation	34
11.18	Disclaimer of Representatives	35
11.19	Disclosure of Adjacent Land Uses	35
11.20	Declarant's Rights	35
11.21	Amendments Affecting Declarant Rights	36
11.22	References to VA/FHA	36
11.23	Amendments to Articles and Bylaws	36

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHITEWING AT GERMANN ESTATES**

This Declaration of Covenants, Conditions and Restrictions is made as of June 12, 2006, by Whitewing V, LLC, an Arizona limited liability company, as "Declarant," with reference to the following:

A. As of the date hereof, Declarant is the owners of fee title to the Property.

B. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Property. Declarant desires to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

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

ARTICLE I

DEFINITIONS

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

1.1 "Annual Assessments" shall mean those Assessments designated as such in this Declaration and computed and levied as provided in Section 7.5.

1.2 "Architectural Committee" shall mean the committee established pursuant to Article 8.

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

1.4 "Assessments" shall mean the Annual Assessments, and the Special Assessments, (as well as any other amounts declared by this Declaration to be a part of the Assessments or declared by this Declaration to be secured by the lien created under Section 7.3).

1.5 "Association" shall mean Whitewing at Germann Estates Homeowners Association, an Arizona non-profit corporation, and its successors and assigns.

1.6 "Association Rules" shall mean the reasonable rules and regulations adopted by the Association pursuant to Section 6.3.

1.7 "Board" shall mean the board of directors of the Association elected in accordance with the provisions of the Articles, the Bylaws and the statutes and regulations of the State of Arizona.

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

1.9 "Common Area" shall mean all real property (including the improvements thereto), all easements and licenses, and all personal property and facilities owned by the Association for the common use and enjoyment of the Owners,

1.10 "Common Expenses" shall mean the actual and estimated expenses of operating the Association (including any reasonable reserves), for exercise by the Association of its rights hereunder and of fulfillment by the Association of its duties and obligations imposed hereby, all as may be found to be necessary and appropriate by the Board pursuant to the Articles or the Bylaws.

1.11 "Declarant" shall mean Whitewing V, LLC, and its successors and assigns.

1.12 "Designated Builder" shall mean any person or entity designated by the Declarant in writing engaged in the business of constructing and selling residences in the Property to the public and entitled to enjoy the privileges and benefits provided for in this Declaration.

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

1.14 "Dwelling" shall mean any building or part thereof situated upon a Lot and intended for use and occupancy as a residence by a single family.

1.15 "Eligible Mortgage Holder" shall mean any holder (as evidenced by a Recorded instrument) of a First Mortgage who or which shall have made written request to the Association for notice of any proposed action, that pursuant to Section 11.2 or Section 11.12 requires the consent of specified percentage of Eligible Mortgage Holders (which written request must contain the name and address of the Eligible Mortgage Holder and the Lot number or street address of the Lot against which the First Mortgage held by said Mortgage Holder is Recorded).

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

1.17 "Lot" shall mean and refer to a lot into which any part of the Property is subdivided as set forth on the Plat.

1.18 "Maximum Annual Assessment" shall mean the amount determined for each fiscal year of the Association in accordance with Section 7.7.

1.19 "Member" shall mean any Person entitled to membership in the Association, as provided in this Declaration.

1.20 "Mortgage" shall mean a deed of trust, as well as a mortgage, which in either case, is Recorded against a Lot.

1.21 "Mortgagee" shall mean a beneficiary under a deed of trust, as well as a mortgagee under a mortgage, which in either case, is Recorded against a Lot.

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

1.23 "Owner" shall mean the Record owner, whether one or more persons or entities, of fee simple title to any Lot, whether or not subject to any Mortgage, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to a Lot is vested of Record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et. seq., fee simple title shall be deemed to be in the trustor.

1.24 "Plat" shall mean the plat Recorded in Book 843 of Maps, Page 13 as hereafter amended, corrected or supplemented.

1.25 "Property" and "Project" are synonymous, and means the real property described as follows: Lots 1 through 120 inclusive, Tracts A through Z inclusive, Tracts AA through NN inclusive and Tract PS, **WHITEWING AT GERMANN ESTATES**, according to the plat recorded in Book 843 of Maps, Page 13, records of Maricopa County, Arizona, together with all improvements located thereon and shall include the Lots, the Tracts, the Common Areas, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.26 "Record" or "Recording" refers to the act of recording a document in the office of the County Recorder of Maricopa County, Arizona.

1.27 "Special Assessments" shall mean those Assessments levied in accordance with Section 7.9.

1.28 "Visible from Neighboring Property" means capable of being clearly seen without artificial sight aids by an individual six feet tall standing at ground level on any Lot or on any public street in or abutting the Property.

ARTICLE 2

PROPERTY RIGHTS

Every Owner shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, subject to any restrictions or limitations contained in this Declaration or in any Recorded instrument conveying such property to the Association or subjecting such property to this Declaration, and subject further to the Association Rules. Any Owner may assign his, her or its right of enjoyment (and share the same with) the members of his or her household and assign the same to and share the same with his, her or its tenants and invitees subject to the provisions of this Declaration and to reasonable regulation

by the Board and otherwise in accordance with such procedures as the Board may adopt. An Owner who leases his, her or its Lot shall be deemed to have delegated such Owner's rights and easements under this Article 2 to the lessee of such Lot for the term of such lease.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS

3.1 Votes of Owners of Lots. Every Owner of a Lot automatically shall be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable. In the event any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall either: (a) make such designation in which event such designation shall be binding for all purposes; or (b) declare that until all Persons who together hold such membership jointly make such written designation, the vote(s) attributable to such membership under this Declaration shall not be cast or counted on any questions before the Members; provided; however, that if any one such Persons casts a vote representing a certain Lot without objection from any other Person sharing ownership of such Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing. Notwithstanding the foregoing, so long as the Class B membership is in existence, no Class B Member shall at the same time be a Class A Member nor shall a Class B Member have any Class A votes, and the membership and number of votes of the Class B Member(s) shall be determined in accordance with Subsection 3.3.2. Subject to Subsection 3.3.1, each Owner (other than the Declarant, so long as the Class B membership is in existence) shall have one vote for each Lot owned by such Owner.

3.2 Declarant. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B membership.

3.3 Voting Classes. The Association shall have two classes of voting Members.

3.3.1 Class A. Class A Members shall be all Owners except Declarant (until the conversion of Declarant's Class B membership to Class A Membership as provided below). Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 3.1; and

3.3.2 Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by such Member. Declarant shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class B membership (as well as all or any other rights appurtenant thereto) to one or more persons acquiring for purposes of development and sale, any part of the Property. Further, Declarant shall have the right, at any time and from time to time, to designate an individual or individuals to exercise Declarant's voting rights (whether appurtenant to Class A or Class B membership) provided, however, that such designation shall not act as an assignment by Declarant of its membership or voting rights hereunder.

The Class B membership automatically shall cease and be converted to a Class A membership upon the happening of the first of the following events:

(a) The date which is 90 days after the date upon which the total number of votes of the Class A Members equals the total number of votes of the Class B Member;

(b) The date, which is five (5) years after the date this Declaration is Recorded;

(c) The date on which Declarant Records a written notice electing to convert the Class B membership to Class A membership.

3.4 Right to Vote. No Change in the ownership of a Lot shall be effective for voting until the Board receives written notice of such change together with satisfactory evidence thereof. The vote for each Member must be cast as a single unit. Split or fractional votes shall not be allowed.

3.5 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules and any other rules and regulations adopted pursuant to any of the foregoing.

3.6 Transfer of Membership. Except as otherwise provided in this Declaration, the rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of Record ownership of such Class A Member's Lot and then only to the transferee thereof.

ARTICLE 4

MAINTENANCE

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

4.1.1 maintenance, repair and replacement of all landscaping and other flora, structures and improvements situated upon the Common Area;

4.1.2 maintenance, repair and replacement of landscaping and flora in or upon public rights-of-way immediately adjacent to the exterior boundaries of the Property, and of any perimeter or boundary walls on or surrounding the exterior boundaries of the Property;

4.1.3 maintenance, repair and replacement of landscaping and signs within areas designated on one or more subdivision plats or other instruments Recorded by, or bearing the written approval of, Declarant with respect to all or portions of the Property as "landscape easements," "landscape and wall easements" or "landscape and sign easements" to be maintained by the Association;

4.1.4 maintenance, repair and replacement of the side facing a street or portion of the Common Area of any boundary or perimeter wall situated within area designated on one or more

subdivision plats or other instruments Recorded by, or bearing the written approval of the Declarant with respect to the Property as "wall easements" to be maintained by the Association; and

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

Notwithstanding anything to the contrary in the foregoing, except where otherwise provided in an instrument Recorded by, or bearing the written approval of, Declarant, the Association shall be responsible for maintaining the side of any boundary wall facing a public street or roadway (or a private street or roadway owned by the Association), while the Owner of a Lot shall be responsible for maintaining the side of any boundary wall facing such Owner's Lot. For purposes of the preceding sentence a "boundary wall" shall be any wall or fence separating a Lot from a public street or roadway adjacent to or along the exterior perimeter boundaries of Whitewing at Germann Estates or adjacent to or along a major arterial street or roadway (whether public or owned by the Association) within Whitewing at Germann Estates if, in the case of a wall within Whitewing, such wall is designed as a "common" or "theme" wall presenting a uniform appearance along its length.

4.2 Maintenance of Owner's Structures. Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of all structures existing or constructed upon such Owner's Lot (including, without limitation, fences,) and, particular, each Owner shall cause the exterior of said structures to be maintained in good condition and repair and in an attractive state consistent with the Association Rules, any guidelines, standards or rules of, the Architectural Committee and general community standards within the Property. In the event that the Board shall determine, after providing reasonable notice and an opportunity to be heard, that any Owner is in breach of such Owner's obligations under the preceding sentence, the Board shall promptly give such Owner written notice of such determination, including a reasonably detailed list or description of the repairs, maintenance or other work required to cure such Owner's breach, and in the event the Owner shall not have cured such breach within thirty (30) days after the date of said written notice, the Association may, in the discretion of the Board, cause the repairs, maintenance or other work to be performed so as to cure such Owner's breach, and the costs of doing so, together with interest from the date of expenditure at the rate set forth in Section 11.8, and management fees and attorney fees incurred shall be the personal obligation of such Owner and may be enforced in the manner described in Section 7.3. The Association shall also have standing and authority to request that a court of competent jurisdiction compel such Owner to cure such breach, and to the extent not inconsistent with an order of such court, the Association may pursue either or both of the courses of action described in this sentence.

The Association shall have an easement on, over, across and through each Lot to permit it to carry out its duties and obligations under this Article 4.

4.3 Publicly-Dedicated Areas. Except as expressly provided in this Article 4, except as may otherwise be required by applicable law, the Association shall have no responsibility to maintain any areas within the Property (including, but not limited to, public streets) which are dedicated to or the responsibility of a municipality or other governmental entity.

4.4 No Discrimination. The provision of services in accordance with this Article shall not be deemed to be discrimination in favor of or against any Owner.

ARTICLE 5

INSURANCE AND FIDELITY BONDS: CASUALTY LOSSES

5.1 Insurance to be obtained by the Association.

5.1.1 Hazard Insurance.

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

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

(c) The policy or policies providing the insurance required by this Subsection 5.1.1 shall also contain (if applicable at no additional cost or at such additional cost as not demonstrably unreasonable) the following endorsements (or their equivalents): (i) "agreed amount" and "inflation protection" endorsements; (ii) "increased cost of construction" endorsement; (iii) "contingent liability from operation of building laws or codes" endorsement; (iv) "demolition cost" endorsement; and (v) "current replacement cost" endorsement.

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

5.1.2 Liability Insurance. The Board, acting on behalf of the Association, shall obtain and maintain at all times a comprehensive general liability policy insuring the Association, each member of the Board, each Owner and each Declarant Designee (as defined below), against any liability to the public or to any Owner or Occupant (and such Owner's or Occupant's invitees, agents, employees, tenants, guests, servants and household members) for death, bodily injury and property damage arising out of or incident to the ownership or use of the Common Area or arising out of or incident to the performance by the Association of its maintenance and other obligations hereunder. The Board, with the assistance of the insurer(s) providing such coverage, shall review annually the amounts of coverage afforded by said comprehensive general liability policy, but in no event shall said policy or policies provide coverage less than One Million Dollars (\$1,000,000.00) for death, bodily injury and property damage for any single occurrence. The policy or policies providing such insurance shall, by specific endorsement or otherwise, preclude denial by the insurer(s) providing such insurance of a claim under such policy or policies because of negligent acts or omissions of the Association, any Owner(s) or any Declarant Designee(s) or any other Person named as an insured or additional insured thereunder.

For purposes of this Subsection 5.1.2 (and Subsection 5.1.7), the term "Declarant Designee" shall mean Declarant and, so long as Declarant or any affiliate of Declarant, or any Person with whom Declarant or any such affiliate contracts directly for the performance of all or a substantial portion of the Declarant's rights and obligations hereunder, or for the construction of substantial improvements on the Property, retains an interest in the Property or any Lot, such affiliate and such other Person, if identified by the Declarant to the Association, provided that any added premium cost or other expense resulting from naming Declarant, such affiliate or such other Person as insured shall be borne by Declarant, such affiliate or such other Person.

5.1.3 Flood Insurance. In the event any part of the Common Area is in a "special flood hazard area," as defined by the Federal Emergency Management Agency (or its successors), the Board, acting on behalf of the Association, shall obtain (and maintain at all times during which any part of the Common Area is in such a "special flood hazard area") a "master" or "blanket" policy of flood insurance covering all insurable improvements on the Common Area and covering any personal property situated from time to time within such improvements (to the extent such personal property is normally covered by the standard flood insurance policy available from time to time in the State of Arizona).

Said insurance shall be in the amount not less than the lesser of (a) 100% of the current replacement cost, from time to time, of all such insurable improvements (and such insurable personal property) located in the "special flood hazard area"; or (b) the maximum coverage available for such insurable improvements and insurable personal property under the National Flood Insurance Program. Unless a higher maximum deductible is required by applicable law, the policy providing insurance shall provide for a deductible not to exceed the lesser of \$5,000 or one percent (1%) of the face amount of such policy.

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

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

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

(c) In no event shall the insurance coverage obtained and maintained by the Board hereunder be bought in contribution with insurance purchased by individual Owners, Occupants or their Mortgagees or other lienholders, and the insurance carried by the Association shall be primary;

(d) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Board or the Owners and their respective tenants, servants, agents, employees, guests and household members;

(e) Each policy providing insurance coverage shall require the applicable insurer to give not less than ten (10) days written notice to the Association, and to each Mortgagee which shall be given such insurer written notice of such Mortgagee's interest in a Lot, of any cancellation, refusal to renew or material modification of such policy; and

(f) To the extent reasonably available, each policy providing insurance coverage required shall contain a waiver by the applicable insurer of its rights to repair and reconstruct instead of paying cash.

5.1.5 Fidelity Bonds. The Board, acting on behalf of the Association, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of the officers, directors and employees of the Association and all others who handle, or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association. Any independent management agent which handles funds for the Association shall also obtain (and pay for) such fidelity bond coverage with respect to its own activities (and those of its directors, officers, employees, whether or not such directors, officers or employees receive compensation for services rendered).

Such fidelity bonds: (a) shall name the Association as obligee; (b) shall be issued by one or more companies authorized to issue such bonds in the State of Arizona; and (c) shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Association or such agent at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three (3) months' Annual Assessments on all Lots, plus the total of funds held in the Association's reserves. Each such fidelity bond shall provide that the issuer thereof shall provide not less than ten (10) days written notice to the Association and to each Eligible Mortgage Holder before such bond may be canceled or substantially modified for any reason.

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

5.1.7 Cost of Insurance. All premiums for the insurance or bonds required to be obtained by the Board shall be Common Expenses, the cost of the fidelity bond required by any independent management agent shall be paid by such agent, and, as provided in Section 5.1.2, any added cost of naming the Declarant, or any other Declarant Designee, shall be borne by the Declarant (or such other Declarant Designee). The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Section, or for any loss or damage resulting from such failure, if such

failure is due to unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance coverage is available at an unreasonable cost.

5.1.8 Subsequent Changes in Insurance Requirements. It is the intention of this Article 5 (and, in particular, of this Section 5.1), to impose upon the Association the obligation to obtain and maintain in full force and effect at least those types and amounts of insurance as are required, at the time this Declaration is Recorded, by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and Federal Housing Administration. However, notwithstanding any provision of this Declaration to the contrary, should any or all said agencies subsequently amend or modify their respective requirements regarding the insurance coverage required to be maintained by the Association, the Board, acting on behalf of the Association, shall promptly upon receiving notice of such amendment or modification from any such agency, from any Owner or Eligible Mortgage Holder or from Declarant, obtain such additional, modified or amended policy or policies of insurance as may be necessary to conform to such amended or modified requirements (provided, however, that the Board shall not be required to alter the types or amounts of coverage if the amendments or modifications adopted by any such agency reduce or eliminate required types or amounts of insurance). Should such requirements of any such agency conflict with the requirements of any other such agency or with applicable provisions of law, the Board, acting on behalf of the Association, shall diligently work with such agency or agencies to resolve such conflict and shall thereafter obtain and maintain such additional, modified or amended policy or policies of insurance as may be necessary to conform with the requirements of such agencies, taking into account the resolution of said conflict.

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

5.2 Insurance to be obtained by the Owners.

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

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

5.3 Casualty Losses.

5.3.1 Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the property required to be insured by the Association under Section 5.1, the Board or its duly authorized agent shall (i) proceed with the filing and adjustment of all claims arising under such insurance; (ii) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed

property; and (iii) upon receipt of the proceeds of such insurance and except as otherwise provided in this Subsection, use such proceeds to repair or reconstruct the damaged or destroyed property. The terms "repair" and "reconstruction" (or variants thereof), as used in this Article 5 shall mean repairing or restoring the property in question to substantially the same condition as that in which it existed prior to the fire or other casualty (or where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed property as it existed prior to such damage or destruction).

(b) Any major damage or destruction to the property required to be insured by the Association under Section 5.1 shall be repaired or reconstructed unless: (i) at a special meeting of the Members of the Association duly noticed and convened within sixty (60) days after the occurrence of such damage or destruction, the Members determine, by a vote of Persons holding not less than seventy-five (75%) of the votes in each class of Members, not to so repair or reconstruct; and (ii) Eligible Mortgage Holders representing at least fifty-one (51%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders concur in such determination not to so repair or reconstruct.

If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not exceed an additional sixty (60) days. The Board shall determine whether any minor damage or destruction to the Common Area should be repaired or reconstructed.

(c) In the event that it is determined in the manner described above that the damage or destruction of any part of the Common Area shall not be repaired or reconstructed and alternative improvements are authorized, then and in that event such property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area.

5.3.2 Excess or Deficiency of Proceeds. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to pay the cost thereof, the Board shall, without the necessity of a vote of the Members, levy assessments against the Owners of all Lots, which assessments shall be allocated equally among all Lots. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Any assessments levied pursuant to this Subsection shall be deemed to be a part of the Assessments and shall be secured by the lien created by Section 7.3. If the funds available from insurance proceeds exceed the cost of repair, such excess shall be used to meet Common Expenses or, in the discretion of the Board, placed in a reserve account for contingencies or capital improvements.

5.3.3 Repair or Reconstruction of Dwelling Units or Other Structures. In the event of the destruction of a Dwelling Unit or other structure on a Lot, or of damage to such Dwelling Unit or other structure which, in the reasonable judgment of the Board, materially affects the exterior appearance thereof, the Board shall have the right, at its option, exercisable by written notice to the Owner of the Lot upon which such Dwelling Unit or other structure is situated, to require such Owner to repair or reconstruct (or cause to be repaired or reconstructed), at such Owner's expense (subject to any insurance proceeds as such Owner may then or thereafter receive in respect of such damage or destruction), such Dwelling Unit or other structure within such reasonable period of time as shall be specified by the Board in such notice (which period of time shall in no event be less than eight (8) months from the date of such destruction or damage). The Board may exercise such right and establish such time period notwithstanding such Owner's failure to maintain hazard or casualty insurance upon such Owner's Lot or any structures

thereon and notwithstanding any unavailability or delay in receipt of proceeds of any insurance policy or policies, although the Board may take such matters into account in establishing or extending the time period within which such repair or reconstruction must be completed. Any such repair or reconstruction work shall be performed in compliance with all applicable provisions thereof, and the Owner of such Lot shall take such steps as are reasonably necessary to prevent damage to surrounding property and injury to persons as may result or arise in connection with the destroyed or damaged Dwelling Unit or other structure or the repair or reconstruction activities with respect thereto.

ARTICLE 6

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

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

6.2 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property, except that, subject to the provisions of Section 11.2, 11.10 and 11.11, no dedication, sale or transfer of all or any part of the Common Area shall be made or effective unless approved by not less than two-thirds (2/3) of the votes of each Class of Members represented in person or by a valid absentee ballot at a meeting of Members duly called for such purpose. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the Property as may be conveyed or assigned to the Association by Declarant (including, but not limited to, such parts of the Common Area as may now or hereafter be held by Declarant).

6.3 Rules and Regulations. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area and the Lots provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Property and the Common Area. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. Sanctions for violation of the Association Rules or of this Declaration may be imposed by the Board and may include suspension of the right to vote, and may also include reasonable monetary fines (so long as such fines are reasonable and nondiscriminatory, and are in accordance with a general schedule of fines adopted or amended by the Board prior to the date of the particular violation for which a fine is to be imposed). No suspension of an Owner's right to vote due to a violation of the Association Rules may be for a period longer than sixty (60) days (except where such Owner or Occupant fails or refuses to cease or correct an on-going violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each until such violation ceases or is corrected).

6.4 Enforcement of "On Lot" Storm Water Retention. The Board is expressly charged with the responsibility and authority to make certain that the water retention area(s) as designated on each individual Lot remains at not less than the capacity approved by the Town of Gilbert and/or the retention

calculations for each individual building permit as it is approved by the Town of Gilbert. The Board may impose sanctions in the form of monetary fines as indicated in Section 6.3 and/or exercise the right to enter upon the Lot to make physical corrections necessary to ensure that the retention capacity is adequate to keep neighboring properties, including common areas, from taking more than their fair share of storm water.

6.5 Availability of Books, Records and Other Documents. The Association shall maintain complete and current copies of this Declaration, the Articles, the Bylaws and the Association Rules (as well as any amendments to the foregoing) and of the books, records and financial statements of the Association, and, upon the prior written request to the Association by any Owner or by any holder, insurer or guarantor of a First Mortgage, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner or such holder, insurer or guarantor.

6.6 Financial Review and/or Compilation. The Board of Directors shall conduct an annual financial review or compilation of the Association which shall be completed no later than one hundred and eighty (180) days after the end of the Association's fiscal year and shall be made available upon written request to the members, any holder, insurer and/or guarantor of a First Mortgage within thirty (30) days after its completion. The cost of having such a financial statement prepared shall be a Common Expense.

6.7 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

6.8 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board may determine the compensation to be paid to the manager.

ARTICLE 7

ASSESSMENTS

7.1 Creation of Assessment Right. In order to provide funds to enable the Association to meet its financial and other obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Annual Assessments shall be for Common Expenses and shall be allocated equally among all Lots, subject to the provisions of this Article 7.

7.2 Covenants with Respect to Assessments. Each Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Lot, is deemed to covenant and agree to pay the Assessments levied pursuant to this Declaration with respect to such Owner's Lot, together with interest from the date due at a rate of ten percent (10%) per annum and "costs" herein shall include all costs related to collection, including but not limited to court costs, late charges, management fees, notice fees, lien fees

and the like. Each of the Assessments with respect to a Lot, together with interest, costs and reasonable attorneys' fees as provided in this Section, shall also be the personal obligation of the Person who or which was the Owner of such Lot at the time such Assessment arose with respect to such Lot, provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of his, her or its obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Common Area, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

7.3 Lien for Assessments: Foreclosure. There is hereby created and established a continuing lien against each Lot which shall secure payment of all Assessments assessed or levied against such Lot or the Owner or Occupant thereof (together with any late fees, collections costs (including, but not limited to management fees) and attorney fees and costs or other amounts levied against such Lot or the Owner or Occupant thereof pursuant to this Declaration or the Articles, the Bylaws or the Association Rules). Such lien is and shall be prior and superior to all other liens affecting the Lot in question, except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale and transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period any Lot is owned by the Association, no right to vote shall be exercised with respect to said Lot and no Assessments (whether Annual Assessments or Special Assessments) shall be assessed or levied on or with respect to said Lot, provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Area.

The Association may maintain a suit to recover a money judgment for unpaid Assessments, rent, interest, fines and penalties, collections costs and attorneys' fees and costs without foreclosing or waiving the lien securing same. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

7.4 Dates Assessments Commence. Assessments shall be payable in respect of a Lot (including any Lot owned by Declarant) from the date upon which title to said Lot, or any other Lot within the Phase containing such Lot, shall first be conveyed to a retail purchaser, and such Assessments shall be payable regardless of whether a Dwelling Unit or other structure shall be situated upon such Lot on such date. As to any Lot owned by Declarant prior to which Assessments shall have commenced as provided in the preceding sentence, the Assessments payable by Declarant with respect to such Lot shall be an amount equal to twenty-five (25%) of the Assessments which would otherwise be payable hereunder with respect to such Lot if it were owned by an Owner other than Declarant. As to any Lot conveyed by Declarant to a

retail purchaser, Assessments to such Lot shall be prorated as of the close of escrow with respect to such Lot (or, if no escrow is utilized, as of the date of Recordation of the deed conveying such Lot to such retail purchaser).

7.5 Computation of Assessments: Annual Budget. The Board shall prepare and adopt an estimated annual budget for each fiscal year of the Association, which annual budget shall serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations of Section 7.7 hereof). Such budget shall take into account the estimated Common Expenses and cash requirements of the Association for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Common Area. The annual budget shall also provide for a reserve for contingencies for the year (and for subsequent fiscal years) and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board, taking into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. No later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause to be delivered or mailed to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for the fiscal year in question. In the event the Board fails to adopt a budget for any fiscal year prior to the commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Subject to the provisions of Section 7.5 and of Sections 7.7 and 7.9, neither the annual budget (nor any amended budget) adopted by the Board, nor any Assessment levied pursuant thereto, shall be required to be ratified or approved by the Owners.

If, at any time during the fiscal year of the Association the Board deems it necessary to amend the budget for such year, the Board may do so and may levy an Additional Annual Assessment for such year (subject to the limitations imposed by Section 7.7) or may call a meeting of the Members to request that the Members approve a Special Assessment pursuant to Section 7.9. Within sixty (60) days after adoption of the amended budget (if the Board elects to levy an additional Annual Assessment), the Board shall cause a copy of the amended budget and a statement of the additional Annual Assessments to be levied against the Lots to be delivered or mailed to each Owner; if, instead the Board elects to call a meeting of Members to seek approval of a Special Assessment, the Board shall cause a copy of the amended budget proposed by the Board to be delivered or mailed to each Owner with the notice of such meeting, and if a Special Assessment is duly approved by the Members at such meeting, shall cause a statement of the Special Assessment to be levied against each Lot to be promptly mailed or delivered to each Owner.

7.6 Due Dates. Annual Assessments for each fiscal year shall be due and payable in equal periodic installments, payable not more frequently than monthly nor less frequently than semiannually, as determined for such fiscal year by the Board, with each such installment to be due and payable on or before the first day of the applicable period during that fiscal year. Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board. In addition to any other powers of collection or enforcement granted hereunder, in the event any Assessments (or installments thereof) with respect to a Lot are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date on which all Assessments with respect to such Lot are due and payable. For purposes of this Declaration, Assessments shall be deemed "paid" when actually received by the Association or by its manager or agent designated by the Association to collect the same (provided, however, that if any Assessments were paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due). The

Board shall have the power to establish reasonable late charges for delinquent payments consistent with Arizona law.

7.7 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the Maximum Annual Assessment, as determined in accordance with this Section. For the fiscal year ending December 31, 2006, the Maximum Annual Assessment shall be Two Thousand Seven Hundred Dollars (\$2,700.00) for each Lot. (The "Clean Lot" assessment as defined in Section 9.21 is a separate assessment and is not to be included in calculating the Maximum Annual Assessment.) Thereafter, unless a greater increase is approved by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid absentee ballot at a meeting of Members duly called for such purpose, the Association shall not impose a Maximum Annual Assessment that is more than twenty percent greater than the immediately preceding fiscal year's assessment.

Notwithstanding the foregoing, the Board may, without approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; or (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, in either case, (i) or (ii) notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is at a rate greater than otherwise permitted under the preceding sentence. In addition, in the event Declarant (or a trustee for the benefit of Declarant, or any assignee of either) at any time hereafter annexes any property, the Association's added maintenance and other responsibilities with respect to the Common Area and other property thereby annexed necessitate an increase in the Maximum Annual Assessment greater than otherwise permitted under this Section without approval of the Members, Declarant may nevertheless increase such Maximum Annual Assessment, effective not earlier than the first sale to a retail purchaser of a Lot within the portion(s) so annexed, without the vote of the Members, so long as such increase is in an amount and in accordance with a revised budget approved by the Veterans Administration or the Federal Housing Administration (unless such agencies waive in writing their rights to approve such revised budget, in which event such approval shall not be required); such new Maximum Annual Assessment, if so approved, shall thereupon be substituted for the previously established Maximum Annual Assessment for the applicable fiscal year of the Association. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in the full amount of the Maximum Annual Assessment for each fiscal year, and the election by the Board not to levy Annual Assessments in the full amount of the Maximum Annual Assessments for any fiscal year shall not prevent the Board from levying Annual Assessments in subsequent fiscal years in the full amount of the Maximum Annual Assessment for such subsequent fiscal year (as determined in accordance with this Section.) In the event that, for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the Maximum Annual Assessment for such fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during said fiscal year so long as the total of the Annual Assessments levied during said fiscal year does not exceed the Maximum Annual Assessment for such fiscal year.

7.8 Notice of Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision thereof or of the Articles, Bylaws or Association Rules, written notice of any meeting called for the purpose of (a) approving the establishment of any Special Assessment, as required in Section 7.9 hereof; or (b) approving any increase in the Maximum Annual Assessment greater than that permitted by application of the formula set forth in Section 7.7, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting.

At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Annual Assessment, a quorum shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by valid absentee ballot), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first.

7.9 Special Assessments. In addition to the Annual Assessments, the Association may levy Special Assessments from time to time, provided, however, that any Special Assessment shall be effective only with the approval of not less than two-thirds (2/3) of the votes of each Class of Members represented in person or by valid absentee ballot at a meeting of the Members duly called and convened to consider such Special Assessment. Subject to Section 7.4, Special Assessments shall be allocated equally among all Lots.

7.10 Certificates. The Association shall, upon the written request of any Owner or the holder, insurer or guarantor of any Mortgage, and upon payment of such reasonable charge as may be determined by the Board, furnish to the requesting party a certificate, executed by an officer of the Association, stating the date to which Assessments with respect to such Owner's Lot have been paid and the amount, if any, of any Assessments which have been levied with respect to such Lot but which remain unpaid as of the date of such certificate; said certificate shall be binding upon the Association as to the matters set forth therein as of the date thereof.

7.11 Surplus Monies. Unless otherwise expressly determined by the Board, any surplus monies of the Association shall be held by the Association and placed in one or more reserve accounts as determined by the Board, and shall not be paid to the Owners or credited against the Owner's respective liabilities for Assessments.

7.12 Declarant's Obligations for Deficiencies. So long as the Class B membership exists, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such times as may be requested by the Board, such funds as may be necessary, when added to the Assessments levied by the Association pursuant to this Declaration, to provide for: (a) the operation and maintenance of the Common Area and the recreational facilities located thereon; (b) the maintenance of adequate reserves; and (c) the performance by the Association of all other obligations of the Association under this Declaration or the Articles or Bylaws. Declarant's obligations under this Section may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both.

7.13 Common Expenses Resulting from Misconduct. Notwithstanding any other provisions of this Article 7, if any Common Expense is caused by the misconduct of any Owner (or any Occupant, tenant, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law,) the Association may assess that Common Expense exclusively against such Owner and such Owner's Lot, which amount (together with any and all costs and expenses, including but not limited to attorneys' fees, incurred by the Association in recovering the same) shall be secured by the lien created pursuant to Section 7.3.

ARTICLE 8

ARCHITECTURAL STANDARDS: ARCHITECTURAL COMMITTEE

8.1 Appointment of Architectural Committee: Standing to Enforce. All property which is now or hereafter subject to this Declaration shall be subject to architectural, landscaping and aesthetic review as provided herein. This review shall be in accordance with this Article 8 and such standards as may be promulgated by the Architectural Committee, which is hereby established. Authority and standing on behalf of the Association to enforce in any court of competent jurisdiction decisions of the Architectural Committee and the provisions of this Article 8 shall be vested in the Board, provided, however, that so long as the Declarant has the right to appoint the Architectural Committee under this Section 8.1 Declarant shall have the right, but not the obligation, to enforce decisions of the Architectural Committee and the provisions of this Article 8, on behalf of the Association, in courts of competent jurisdiction. So long as Declarant (or a trustee for the benefit of Declarant) owns any part of the Property, the Architectural Committee shall consist of up to three (3) individuals appointed by Declarant. At such time as either: (a) neither Declarant nor a trustee for the benefit of Declarant owns any part of the Property; or (b) Declarant Records a written waiver of its right to appoint the Architectural Committee, the Board shall appoint the members of the Architectural Committee, which shall have the same number of members (but not less than three (3) as the Board may elect, from time to time. Each member of the Architectural Committee appointed by the Board shall serve one year terms in such capacity or until: (i) such member is removed by the Board with or without cause; or (ii) such member resigns such position or dies. Prior to the appointment of the initial members of the Architectural Committee, and at any time when there is no one serving on the Architectural Committee (whether due to death, resignation or removal), the Board shall have and exercise any and all rights, powers, duties and obligations of the Architectural Committee.

8.2 Jurisdiction of the Architectural Committee: Promulgation of Standards. The Architectural Committee shall have exclusive jurisdiction over all original construction and any modifications, additions or alterations to improvements on any portion of the Property (including, but not limited to, the construction or installation of, or modifications, additions or alterations to: (a) Dwelling Units and any other buildings or other structures including, without limitation, fences and other structures, (b) landscaping; (c) fences and fence walls; (d) heating, ventilating, air conditioning and cooling units; (e) solar panels; (f) paint; (g) exterior lighting; and (h) any other construction, modification, addition or alteration affecting the exterior appearance of any structure or Lot).

The Architectural Committee shall adopt, and may from time to time amend, supplement and repeal, architectural and landscaping standards and application procedures and shall make the same available to Owners, builders and developers who seek to engage in development of or construction upon any portion of the Property. Such standards and procedures shall interpret, implement and supplement this Declaration, and shall set forth procedures for Architectural Committee review. Such standards and procedures may include, without limitation, provisions regarding:

8.2.1 the size of Dwelling Units; shall mean a minimum of 3200 square feet for ground level Dwelling Units and a minimum of 2800 square feet on the ground level for two-story Dwelling Units which may be built only on lots designated on the Final Plat;

8.2.2 architectural design, with particular regard to the harmony of the design with surrounding structures and topography;

8.2.3 placement of buildings;

8.2.4 landscaping design, content and conformance with the character of the Property, and permitted and prohibited plants;

8.2.5 requirements concerning exterior color schemes, exterior finishes and materials (including, without limitation, materials, exterior color schemes and exterior finishes of any secondary buildings);

8.2.6 signage and exterior lighting.

Such standards and procedures shall have the same force and effect as the Association Rules. Further, after termination of Declarant's right to appoint the members of the Architectural Committee pursuant to Section 8.1, any and all amendments, supplements, repeals or replacements to or of such standards and procedures shall be subject to the approval of the Board.

8.3 Submission and Review of Plans. No original construction, modification, alteration or addition subject to the Architectural Committee's jurisdiction (including, but not limited to, landscaping) shall be commenced until it has been approved or is deemed approved by the Architectural Committee as provided herein.

Any Owner or other Person seeking to construct or install any new improvements or landscaping or to make any modification, alteration or addition to any existing improvement (including, but not limited to, landscaping) upon any portion of the Property (or to cause same to be constructed, installed or made) shall first submit to the Architectural Committee detailed plans, specifications and elevations relating to the proposed construction, installation, modification, alteration or addition; said plans, specifications and elevations (including, but not limited to, a detailed site plan) shall be sent by: (a) personal delivery to the architectural committee; or (b) by U.S. Mail, postage paid, certified mail, return receipt requested, to Mr. Gregory L. Bamford, Bamford Realty, Inc., 325 S. Higley Road, Suite 110, PO Box 1561, Higley, AZ 85236 or successors. The review by the Architectural Committee for the original single family residence on a Lot is a two-step process which includes a preliminary and a final application. After the review of each application, a written response is given to the Owner or other designated person detailing acceptance, disapproval or need for additional information. This process can easily take two to three months to complete, but must be accomplished before submitting plans to the Town of Gilbert. Applications for changes, modifications, alterations or additions to existing improvements (including, but not limited to, landscaping) usually require only a single review, after which a similar written response is given.

8.4 Obligation to Obtain Approval.

8.4.1 Except as otherwise expressly provided in this Declaration or the Architectural Committee's standards and procedures, without the prior written approval by the Architectural Committee of plans and specifications prepared and submitted to the Architectural Committee in accordance with the provisions of this Declaration and such standards and procedures:

(a) no improvements, alterations, repairs, excavation, grading, exterior lighting, landscaping or other work shall be done which in any way alters the exterior appearance of any such property or improvements thereon from their natural or improved state existing on the date such property first becomes subject to this Declaration; and

(b) no building, fence, exterior wall, pool, roadway, driveway, stable, barn corral or other structure, improvement or grading shall be commenced, erected, maintained, altered, changed or made on any Lot at any time.

8.4.2 No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Property except in compliance with plans and specifications thereof which have been submitted to and approved by the Architectural Committee in accordance with its standards and procedures and except in compliance with Section 8.11.

8.4.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Property, once approved by the Architectural Committee, shall be permitted without approval of the change or deviation by the Architectural Committee.

8.5 Changes to Interiors of Dwelling Units or Other Structures. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his, her or its Dwelling Unit or other structure on such Owner's Lot or to paint the interior of his, her or its Dwelling Unit or such other structure any color desired, except to the extent such remodeling or painting is visible from outside such Dwelling Unit or other structure or affects the exterior appearance of such Dwelling Unit or other structure.

8.6 Other Approvals; Liability. No approval by the Architectural Committee of any proposed construction, installation, modification, addition or alteration shall be deemed to replace or be substituted for any building permit or similar approval required by any applicable governmental authority, nor shall any such approval be deemed to make the Architectural Committee (or the Board or the Association) liable or responsible for any damage or injury resulting or arising from any such construction, modification, addition or alteration. Declarant, the Association, the Board or the Architectural Committee (or any member thereof) shall not be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

8.6.1 the approval or disapproval of any plans, drawings or specifications, whether or not defective;

8.6.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or

8.6.3 the development of any Lot.

8.7 Fee. The Board may establish a reasonable processing fee to defer the costs of the Architectural Committee in considering any request for approvals submitted to the Architectural Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted.

8.8 Inspection. Any member or authorized consultant of the Architectural Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot, after reasonable notice to the Owner or Occupant of such Lot, in order to inspect the improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with this Declaration, the

standards and procedures adopted by the Architectural Committee and any approved plans, drawings or specifications.

8.9 Waiver. Approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

8.10 Appeal to Board. Except as provided in this Section 8.10, any Owner or Occupant aggrieved by a decision of the Architectural Committee may appeal the decision to the Board in accordance with the procedures to be established in the Architectural Committee's standards and procedures. In the event the decision of the Architectural Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Committee shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, until termination of the Declarant's right to appoint the members of the Architectural Committee pursuant to Section 8.1, no decision of the Architectural Committee may be appealed to the Board.

8.11 Landscaping. All Lots, excluding driveways, parking areas and areas covered by structures, and excluding that portion of the Lot, if any, which is enclosed by a perimeter wall around the rear yard, shall be landscaped in a manner and using plants and soil approved in advance by the Architectural Committee. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon any Lot except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee in accordance with this Article 8 and the Architectural Committee's standards and procedures. No material changes or deviations in or from the plans and specifications for any work to be done on any Lot, once approved by the Architectural Committee, shall be permitted without approval of the change or deviation by the Architectural Committee. Neither this Section 8.11 nor Sections 8.3 or 8.4 above shall be construed to prevent normal landscape maintenance or the replacement of dead or diseased plants with other similar plants (so long as the replacement plants are permitted by the Architectural Committee's standards and procedures).

ARTICLE 9

USE RESTRICTIONS AND OTHER COVENANTS **CONDITIONS AND EASEMENTS**

9.1 Residential, and Recreational Purpose. The Property shall be used only for residential, recreational and related purposes. No Lot or any other part of the Property shall be used, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, vending or other similar purpose. Notwithstanding the foregoing, an Owner or Occupant may conduct a business activity in the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements; (c) the business activity does not involve the door-to-door solicitation of Owners or other Occupants in the Property; (d) the use of the Dwelling Unit for trade or business shall in no way destroy or be incompatible with the residential character of the Dwelling Unit or the surrounding neighborhood; (e) the trade or business shall be conducted only inside the Dwelling Unit or inside an accessory building or garage, and shall not involve the viewing, purchase or taking delivery of goods or merchandise within the Property; (f) the trade or business shall be conducted by the Owners or

Occupants of the Dwelling Units with no more than one (1) employee working in or from such Dwelling Unit who is not an Occupant thereof, (g) no more than twenty (20%) of the total floor area of the Dwelling Unit shall be used for trade or business; (h) the Dwelling Unit used for trade or business shall not be used as storage facility for a business conducted elsewhere; (i) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (j) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (k) a trade or business shall not utilize large vehicles not customary to a residential use. The terms "business" and "trade" as used in the Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involved the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of a Dwelling Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

9.2 Garages and Driveways. The interior of all garages situated upon the Property shall be maintained by the respective Owners or Occupants thereof in a neat, clean and sightly condition. Such garages shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. All driveways on Lots shall be of concrete or brick paver construction, and shall be of such design, color, texture, and/or bordered so as to give interest and variation. All garages shall have side or rear yard entries.

9.3 New Construction. All buildings or structures erected on the Property shall be of new construction and the buildings and structures shall not have been moved to the Property from other locations. No guest-house, garage, or similar structure shall be erected on any Lot until construction of the Dwelling Unit shall have been commenced on such Lot, and no guesthouse or similar structure shall be maintained or occupied until construction on the Dwelling Unit is finalized and ready for occupancy according to approval of the Architectural Committee.

9.4 Signs. No billboards or signs of any type or character shall be erected or permitted on any part of the Property or on any Lot, however, one (1) sign of not more than five (5) square feet may be temporarily erected or placed on a Lot for the purpose of advertising the property for sale or rent, or except signs used by the Declarant to advertise the Property during the construction and sales period, and except for any sign erected by the Association for the community. Nothing herein shall be deemed to prohibit attachment to the exterior of a Dwelling Unit of a single nameplate and a single address plate identifying the occupant and the address of such Dwelling Unit. Further, nothing herein shall be deemed to prohibit installation and maintenance of directional signs, subdivision identification signs, street signs or similar signs as may be approved by Declarant or by the Architectural Committee for installation or maintenance by the Association.

9.5 Heating, Ventilating and Air Conditioning Units. No heating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the roof or exterior walls of any structure on any part of the Property.

9.6 Solar Collecting Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the improvements thereon, thereby protecting the value generally of the Property and the various portions

thereof, and the various Owner's respective investments therein. Therefore, subject to the prior approval of the plans by the Architectural Committee pursuant to Article 8 above, solar collecting panels and devices may be placed, constructed and maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be visible from ground level view from adjacent properties; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and such means of screening or concealment as the Architectural Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a person six feet tall standing at ground level on adjacent properties.

9.7 Antennas, Poles, Towers and Dishes. No television, radio, short-wave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon the Property (including, but not limited to, upon the roof or exterior walls of any Dwelling Unit or other structure), unless: (a) where such antenna, pole, tower or dish is installed upon the roof of a Dwelling Unit or other structure, such antenna, pole, tower or dish is fully screened and concealed from view from adjacent properties by a parapet wall which conforms architecturally with the structure of the Dwelling Unit or other structure; or (b) in all other cases, such antenna, pole, tower or dish acceptably screened or concealed from view from adjacent properties, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Architectural Committee and subject to federal law regarding acceptable quality signals. Further, notwithstanding the foregoing, the Architectural Committee may adopt a rule or regulation permitting an Owner or Occupant to install and maintain a flagpole upon such Owner's or Occupant's Lot, provided that the location and size of such flagpole (and the number and size of any flag(s) mounted thereon) may be regulated by the Architectural Committee and may, if so provided in such rule or regulation, be made subject to the prior approval thereof by the Architectural Committee. Poles to which basketball backboards, goals and related equipment are affixed shall be governed by Section 9.8. Lights on poles similar to street light poles shall not be permitted.

9.8 Basketball Goals and Similar Structures. No basketball goal or similar structure or device (whether mounted on a pole, wall or roof) shall be placed or constructed upon the front yard, front elevation, front roof surface of any structure on any part of the Property, or in a location where such goal would be visible from a street running along side to a Dwelling Unit without prior approval, in writing, by the Architectural Committee. Placing a temporary, portable basketball goal or standard on the driveway or in the front yard is not allowed.

9.9 Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on the Property unless such tanks are either: (a) buried underground; or (b) of such size and height, in such location and attractively screened from view of adjacent properties in such a manner, as may be required by the Architectural Committee and further compliance with federal, state, and local regulations. Nothing herein shall be deemed to prohibit use or storage upon the Property of propane or similar fuel tanks with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace.

9.10 Vehicles.

9.10.1 No private passenger automobiles, other vehicles or pickup trucks shall be parked upon the Property or any roadway adjacent thereto except within a garage, in a private driveway appurtenant to a Dwelling Unit, or within areas designated for such purposes by the Board.

9.10.2 No other vehicles (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers (including, but not limited to trucks, campers or similar equipment) shall be kept, placed or maintained upon the Property or any roadway adjacent thereto, except: (a) within a fully enclosed garage appurtenant to a Dwelling Unit; or (b) as set forth in Section 9.10.5; or (c) in such areas and subject to such rules and regulations as the Board may designate and adopt.

9.10.3 No vehicle (including, but not limited to, those enumerated in Subsections 9.10.1 and 9.10.2) shall be constructed, reconstructed or repaired upon the Property or any roadway adjacent thereto except within a fully enclosed garage.

9.10.4 No motor vehicles of any kind which are unregistered or not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit).

9.10.5 Vehicles such as mobile homes, motor homes, boats, trailers, campers and similar recreational vehicles may be parked in the driveway or on the street in front of the Owner's or Occupant's Dwelling Unit for a maximum of twenty-four (24) hours for purposes of cleaning, loading or unloading.

9.11 Underground Facilities. No cesspool or well may be dug or installed without the prior written approval of the Board. No part of the Property shall be used for purposes of boring, mining, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

9.12 Outdoor Burning. There shall be no outdoor burning of trash or other debris, provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills and outdoor fireplaces.

9.13 Sanitation. Garbage and refuse facilities, containers and the like shall be attractively screened and camouflaged in such a manner as to conceal them from view of neighboring Lots, Dwelling Units, property, roads and streets (except during reasonable periods to allow for collection by the appropriate municipal or private sanitation service). All equipment for the storage and disposal of garbage or other waste shall be kept in a clean and sanitary condition. All trash and garbage shall be kept only in containers meeting applicable municipal sanitation requirements (and any applicable reasonable rules and regulations of the Association), shall be regularly removed from the Property and shall not be allowed to accumulate thereon. All pet manure shall be kept in covered containers meeting applicable municipal sanitation requirements (and any applicable reasonable rules and regulations of the Association) and shall be regularly removed from the Property.

9.14 Fences, Interferences and Obstructions.

9.14.1 There is no requirement that fences be installed between individual Lots in the Property. However, when a fence is constructed on a property line between individual lots, reasonable costs of said fencing shall be shared by the respective lot owners adjacent to the fence. All fences shall be of block construction (except as may be otherwise permitted with the prior written consent of the Architectural Committee) and, except as otherwise approved by the Architectural Committee, shall be stuccoed and painted or colored to match the exterior of the structure(s) enclosed by or upon the same Lot as such fence.

No wooden posts of fencing of any kind, barbed or stranded wire or electric fences are permitted. No fence shall exceed six and one-half (6 1/2) feet in height, provided that no fence within thirty-five (35) feet of the front property line of a Lot shall exceed three (3) feet in height (provided that the Architectural Committee have the authority to establish and enforce even more restrictive limitations on the height, locations and appearance of fences and fence walls, either in individual cases or as a general restriction on portions or all of the Property, where necessary or appropriate, in the reasonable judgment of the Architectural Committee, to comply with applicable zoning, building or public safety ordinances). The foregoing shall not apply to boundary walls or fences (if any) constructed by the Declarant along property lines bounding public rights-of-way, provided, however, that such boundary walls or fences shall be constructed so as to comply with applicable municipal zoning and other laws and ordinances. No fence shall be permitted to interfere with existing Recorded restrictions, drainageways or easements. Except as otherwise provided by applicable restrictions or requirements set forth in any Recorded utility

easement, provided, however, that should the utility companies ever require access to such easement, it shall be the responsibility of the Owner of the applicable Lot, at his, her or its sole expense, to remove and replace such fence.

9.14.2 Lots adjacent to South Reseda Street may extend existing perimeter lot fencing next to the parkway so long as it is done as an exact continuation of the established design, materials, colors, and construction of Whitewing theme fence.

9.14.3 No structure, shrubbery or other vegetation shall be permitted to exist on any Lot or other portion of the Property, the height or location of which shall be deemed by the Architectural Committee either to constitute a traffic hazard or to be unattractive in appearance or unreasonably detrimental to adjoining Property.

9.15 Nuisance. No rubbish or debris of any kind shall be placed or permitted to accumulate for any unreasonable length of time on any portion of the Property, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly or offensive or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Occupants. No noxious, destructive or offensive activity, or any activity constituting an unreasonable source of annoyance, shall be conducted on any Lot or on the Common Area. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary intercom systems or security devices used exclusively for security purposes, shall be located, used or placed on the Property. The Board in its discretion shall have the right to determine the existence of any such activity or item. The Association shall have the standing and authority to institute legal proceedings to abate such activity or to secure the removal of such item. Furthermore, the Board shall have the right to remove any such activity or item at the expense of the Owners responsible for the nuisance (or at the expense of the Owner whose tenant, Occupant or guest is responsible for such activity or item). Each Owner and Occupant shall refrain from any act on or use of his, her or its Lot or the Common Area which could reasonably cause embarrassment, discomfort or annoyance to other Owners or Occupants, and the Board shall have the power to make and enforce reasonable rules and regulations in furtherance of this provision.

9.16 Drainage Alteration, Easements. No vegetation (except suitable ground cover) may be planted or permitted to remain on area subject to drainage easements, as shown on Recorded plats, in such a manner as to interfere with drainage or which shall be deemed by the Board to be a detriment to utilities located under or near such vegetation. Except as otherwise provided herein, or by applicable

governmental rule, regulation or ordinance, the owner of property subject to Recorded easements shall be responsible for maintaining said property.

9.17 "On Lot" Storm Water Retention. For lots that are 20,000 square feet and larger, each individual Lot Owner is responsible to provide area(s) on the respective Lot in accordance with the Plat and/or the retention calculations as approved by the Town of Gilbert at time of issuance of any and all building permit(s) for that particular Lot for the retention of natural storm water falling on the Lot. Failure to maintain such capacity shall result in the imposition of sanctions or other measures as might be established by the Board as authorized in Section 6.3 herein.

9.18 Clothes-Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any part of the Property.

9.19 Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept on the Property, provided, however, that nothing herein shall be construed as prohibiting the keeping of a reasonable number of ordinary household pets in or on a Lot, subject to rules and regulations adopted by the Board, provided that such pets are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no pets may be kept upon the Property or on or in any Lot which, in the opinion of the Board, result in any annoyance or are obnoxious to Owners or Occupants of other Lots in the vicinity.

9.20 Storage and Tool Sheds or Structures. Except as provided in Section 9.2, no storage or tool sheds or similar structures shall be placed, erected or maintained upon any part of the Property except: (i) where such storage or tool shed or similar structure is constructed as an integral part of a Dwelling Unit (including materials, color and the like). Notwithstanding part (i) of the Section, an Owner or other Person shall be permitted to erect, on his, her or its Lot, a storage building which is not attached to the Dwelling Unit on that Lot, so long as the storage building meets all of the following requirements:

(a) The storage building shall be constructed to match the main Dwelling Unit on the same Lot and conform to the same architectural style of the main Dwelling Unit;

(b) The roof of the storage building shall be of the same material to match the roof of the Dwelling Unit on the same Lot;

(c) The storage building shall be no higher than fifteen (15) feet at its highest point;

(d) The storage building shall comply with all laws, ordinances and regulations (including, but not limited to, city set back requirements); and

(e) The storage building shall not be attached at any point to any fence (including any block wall fence) and must conform to the Town of Gilbert setback requirements.

Any Owner or other Person who wishes to erect such a storage building on his, her or its Lot must still comply with all other provisions of the Declaration and, in particular, shall submit plans for the proposed storage building to the Architectural Committee for review in accordance with Article 8 of this Declaration, and shall not commence erection or construction of such storage building until such plans are approved by the Architectural Committee in accordance with Article 8 of this Declaration.

9.21 Landscaping and Maintenance. Maintenance (meaning primarily controlling weed growth and removing trash) on individual lots is the Owner's responsibility; however this will be done by

the Association until such time as construction begins on a Dwelling for each respective Lot. A “Clean Lot” fee in the initial amount of twenty dollars (\$20) per month will be paid in addition to the general HOA dues, commencing at the close of escrow. This “Clean Lot” assessment will be discontinued at the time the Homeowner notifies the manager of the HOA that a construction fence has been installed, and requests the assessment be discontinued. However, Owner is responsible throughout the construction period to keep the Property free of weeds and trash.

Within thirty (30) days following the issuance of Certificate of Occupancy for a respective Lot, each Owner (other than Declarant) shall landscape, if not already landscaped, such Lot and any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and an adjacent street, except where the installation or maintenance (or both) of landscaping within any public right-of-way area is designated on a Recorded plat Recorded by or with written approval of Declarant as being the responsibility of the Association.

Each Owner shall maintain the landscaping on such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street, and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in accordance with the standards of quality prescribed by the Board and otherwise in a manner and to a level not less than the standards of quality established by the Board with respect to the quality, quantity and frequency of watering, mowing, weeding, trimming, fertilizing, painting and the like. In the event any Owner fails to perform the obligations provided herein, the Association may, at the discretion of the Board, perform those obligations at the expense of such Owner, which expense, together with attorney's fees, costs and interest as provided in Section 11.8 and are the personal obligation of the Owner which are collectible by terms established by Section 7.3.

9.22 Roof Materials. The roof of each Dwelling Unit (or of any building containing Dwelling Units) within the Property, shall consist of concrete or clay tile, slate or other approved masonry unless such Dwelling Unit has a flat roof with no pitch (i.e., a horizontal roof).

9.23 Encroachments. There are reserved and granted for the benefit of each Lot; over, under and across each other Lot and the Common Area, and for the benefit of the Common Area, over, under and across each Lot, non-exclusive easements for encroachment, support, occupancy and use of such portions of Lots and/or Common Area as are encroached upon, used or occupied as a result of any original construction, design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any improvements on a Lot or on Common Area are partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is built pursuant to the original construction design. The easement for the maintenance of the encroaching improvement(s) shall exist for as long as the encroachment exists; provided, however, that no easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may but need not be cured by repair or restoration of the structure.

9.24 Leasing: Obligations of Tenants and Other Occupants.

9.24.1 All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws and the Association Rules as though such tenant were an Owner (except that such tenant shall

not have any voting rights appurtenant to the Lot occupied by such tenant. Each Owner shall cause his, her or its tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents.

9.24.2 In the event that a tenant or other Occupant violates any provision of the Declaration, the Articles, the Bylaws or the Association Rules, the Association shall have the power to bring an action or suit against such tenant or other Occupant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. The Association's costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest as provided in Section 11.8, shall be reimbursed by the tenant or other Occupant to the Association (or in the absence of reimbursement by the tenant or other Occupant, or at the election of the Board, by the Owner of the Lot occupied by such tenant or other Occupant) and constitute a lien on the applicable Lot which shall have the priority, and may be enforced in the manner, described in Section 7.3.

9.24.3 The Board shall also have the power to suspend the right of the tenant, other Occupant and/or Owner to use of a part of the Common Area for any violation by the tenant or other Occupant of any duty imposed under this Declaration, the Articles, the Bylaws or the Association Rules and, where approved by Members holding a majority of the votes in each class of Members represented in person or by valid absentee ballot at a meeting of the Members duly called for such purpose, to impose reasonable monetary fines upon the tenant or the Owner of the applicable Lot, or both. No suspension hereunder of the right of a tenant, other Occupant and/or Owner to use of part of the Common Area may be for a period longer than sixty (60) days except where the tenant, other Occupant and/or Owner fails or refuses to cease or correct an on-going violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each until such violation ceases or is corrected; the foregoing limitation shall not affect or prevent termination of the applicable lease if permitted by the terms of said lease or otherwise applicable law.

9.24.4 No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period less than thirty (30) days. Upon leasing his, her or its Lot, an Owner shall promptly notify the Association of the commencement and termination dates of the lease and the names of the tenant or other Person who will occupy the Lot during the term of the lease.

9.24.5 The provisions of this Section shall not apply to Declarant's use of Lots owned by (or leased to) Declarant as a model home or office or for marketing purposes pursuant to Section 9.1.

9.25 Exterior Lighting. Exterior lighting shall be permitted on a Lot so long as: (a) the source of lighting is not visible from neighboring property; (b) such lighting is limited to what is reasonably necessary for the safety and convenience of the Occupants of such Lot; and (c) such lighting conforms to such other requirements as may be imposed by the Architectural Committee. Notwithstanding the foregoing, but subject to reasonable regulation by the Architectural Committee, Owners or Occupants of Lots may display temporary holiday lighting during the Christmas season, provided that no such lighting shall be permitted only for the period beginning Thanksgiving through the following January 5th.

9.26 Yard Fenced During Construction. It is the responsibility of each Owner to provide perimeter fencing of the construction area – either permanent or temporary – prior to commencement of building of any kind on his or her respective Lot. If temporary fencing is used, it must be of chain link at

least six feet (6 ft.) in height and must serve the purpose of keeping construction materials and/or debris from leaving the Lot under construction. Said temporary fencing shall remain on the lot until substantial completion of the building, meaning that stage when there are no construction materials or debris of any kind stored on the unfenced portion of the Lot.

ARTICLE 10

PARTY WALLS

10.1 **General Rules of Law to Apply.** Each wall or fence which is located between two Lots or between a Lot and Common Area shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article 10, the general rules of law regarding party walls and liability for property damages due to negligent or willful acts or omissions shall apply thereto. (For purposes of this Article 10 only, in the case of a party wall between a Lot and Common Area, in interpreting the provisions of this Article the Common Area bounded by such wall shall be deemed to be a "Lot" and the Association shall be deemed to be the "Owner" of such "Lot.")

10.2 **Repair and Maintenance.** No Owner or Occupant of any Lot (or any tenant, guest, invitee, employee or agent of such Owner or Occupant) shall do or permit any act (or omit to do any act) that will or does damage, destroy or impair the structural soundness or integrity of any party wall, or which would cause any party wall to be exposed to the elements, and, in the event any such Owner, Occupant, tenant, guest, invitee, employee or agent does or permits any such act (or so omits to do any act), such Owner's or Occupant's liability with respect to such damage, destruction, impairment or exposure shall be determined in accordance with applicable law.

10.3 **Sharing of Repair and Maintenance.** In the event any repair, maintenance or reconstruction of any party wall shall be necessary (other than due to the negligence or willful act or omission of the Owner or Occupant of one Lot, or such Owner's or Occupant's tenants, guests, invitees, employees or agents) the cost thereof shall be borne equally by the Owners and/or Occupants of the Lot(s) having in common such party wall, and in the event any Owner (or Occupant) fails or refuses timely to pay such Owner's (or Occupant's) share of such cost, the other Owner (or Occupant) shall have the right to pay in full such cost and recover from such Owner (or Occupant) such Owner's (or Occupant's) share of such cost (together with interest as provided in Section 11.8).

10.4 **Consents to Modification.** No Owner or Occupant shall alter or modify any party wall in any respect without having first obtained the written consent of the Owner of the other Lot adjoining such party wall, provided that such consent shall not be required in the case of repair or restoration of such party wall to its condition prior to any damage or destruction if the negligence or willful act or omission of the Owner or Occupant of such other Lot was the cause of such damage or destruction and such Owner or Occupant fails or refuses to repair or restore such party wall promptly upon the request of the other Owner or Occupant. Any consent required by this Section shall be in addition to and not in substitution for consents or approvals of the Architectural Committee required by this Declaration or any municipal or other governmental body having jurisdiction over the Property.

ARTICLE 11

GENERAL PROVISIONS

11.1 Term. The covenants, conditions and restrictions of this Declaration: (a) shall run with and bind the Property; (b) shall inure to the benefit of and shall be enforceable by the Association or by the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns; and (c) subject to the right to amend at any time in Section 11.2, shall remain in full force and effect until January 1, 2043; beginning January 1, 2043, and at January 1 every twenty-five (25) years thereafter, this Declaration, and all of the conditions, covenants and restrictions herein, shall automatically be extended for successive periods of twenty-five (25) years each, unless and until revoked by an affirmative vote of Members holding not less than sixty-seven percent (67%) of all votes then entitled to be cast. For any such revocation to be effective, the vote required by this Section shall be taken at a special meeting of the Members duly called for such purpose, which meeting shall be held no earlier than six (6) months before the January I date at which this Declaration would automatically be extended absent such vote; in the event such meeting is duly called and held, and at that meeting the requisite number of votes are cast to revoke this Declaration, the President and Secretary of the Association shall execute and Record a notice of such revocation, and such revocation shall be effective as of the applicable January date at which this Declaration would automatically be extended absent such vote. Notwithstanding any such revocation of this Declaration, each Owner of a Lot (and such Owner's, Occupant's, tenants, agents, guests and invitees) shall nevertheless have a permanent easement across the Common Area for access to such Lot and for access to and use of such recreational facilities as may exist on the Common Area at the time of such revocation.

11.2 Amendment. Except as otherwise provided herein (and subject to the provisions of Sections 11.9, 11.10, 11.11, and 11.12), this Declaration may be amended at any time only by affirmative vote (in person or by absentee ballot) or written consent of (i) Members holding not less than sixty-seven percent (67%) of all Class A votes then entitled to be cast; and (ii) so long as the Class B membership is in existence, Declarant. No amendment to this Declaration shall be effective unless and until such amendment is Recorded.

In addition to and notwithstanding the foregoing: (a) so long as the Class B membership exists, no amendment to this Declaration shall be effective without the prior approval of the Federal Housing Administration and the Veterans Administration; and (b) no amendment of a material nature to this Declaration (or to the Articles or the Bylaws) shall be effective unless approved by Eligible Mortgage Holders representing at least fifty-one percent (51%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders. A change to any of the following would be considered to be a change of a material nature:

11.2.1 provisions relating to voting rights in the Association;

11.2.2 provisions relating to Assessments, Assessment liens or subordination of Assessments;

11.2.3 provisions relating to reserves for maintenance and repairs;

11.2.4 provisions relating to Owner's rights to use the Common Area;

11.2.5 boundaries of any Lot;

11.2.6 conversion of any Lot into Common Area or vice versa;

11.2.7 provisions relating to insurance or fidelity bonds;

11.2.8 provisions relating to the leasing of Lots (or Dwelling Units thereon);

11.2.9 provisions relating to the right of an Owner to sell or transfer such Owner's Lot;

11.2.10 restoration or repair of any structure or improvements on the Common Area following a hazard damage or condemnation in a manner other than specified in this Declaration;

11.2.11 any action to dissolve or otherwise terminate the Association or the legal status of the Property after substantial destruction or condemnation of improvements on the Property occurs; or

11.2.12 any provisions that expressly benefit the holders, insurers or guarantors of Mortgages.

An Eligible Mortgage Holder shall be deemed to have approved a proposed material change if such Eligible Mortgage Holder fails to submit to the Association a response to a written notice of the proposed material change within thirty (30) days after its receipt of such notice, so long as such notice is sent by certified or registered mail, return receipt requested.

11.2.13 Restrictions on Amendment. This Declaration cannot be amended in any way to alter the rights of the Town of Gilbert as specified in Section 4.1.6 hereinabove to enter upon and maintain the Common Areas in the event the Association fails to do so and assess the Members therefor.

11.3 Indemnification. The Association shall indemnify each and every officer and director of the Association (including, for purposes of this Section, former officers and directors of the Association) against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or directors of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an officer or director of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be Members of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive for any other rights to which any officer or director, or former officer or director of the Association, may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any director or officer (or former director or officer) of the Association who may be entitled to indemnification hereunder to enable such Person to meet ongoing costs and expenses of defending himself or herself in any action or proceeding brought against such Person by reason of his or her being, or having been, an officer or director of the Association. In the event it is ultimately determined that a current or former officer or director to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles, Bylaws or applicable law, such current or former officer or directors shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her

benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

11.4 Easements for Utilities. There is hereby reserved to the Association the power to grant blanket easements upon, across, over and under all of the Common Area for installation, replacement, repair and maintenance of master televisions antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewer, telephone, cable television, gas and electricity, and for delivering or providing public or municipal services such as refuse collection and fire and other emergency vehicle access (which easements shall also include appropriate rights of ingress and egress to facilitate such installation, replacement, repair and maintenance, and the delivery or provision of such public, municipal or emergency services), provided that no such easement shall interfere with a Dwelling Unit or its reasonable use or with Declarant's construction and sales activities and such easements shall require the holder of the easement to repair any damage caused to the property of any Owner.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate Recordable document, the Association shall have the right to grant such easement on said property in accordance with the terms hereof

11.5 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title of real property (other than disposition of title to the Common Area) which may or may not be subject to this Declaration.

11.6 Severability: Interpretation: Exhibits: Gender. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. The provisions hereof shall be construed and interpreted with reference to the laws of the State of Arizona. References in this Declaration to Articles, Sections and Subsections shall be deemed to be references to the specified Articles, Sections and Subsection of this Declaration (unless otherwise specifically stated), whether or not phrases such as "of this Declaration," "hereof" or "herein" are used in connection with such references. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof. Where the context hereof so requires, any personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all genders, and the singular shall include the plural and vice versa. Titles of Articles and Sections are for convenience only and shall not affect the interpretation hereof

11.7 Perpetuities. If any of the covenants, conditions or restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

11.8 Enforcement. Subject to Section 8.1, the Association shall have the standing and power to enforce the provisions of this Declaration, the Articles, the Bylaws and the Association Rules, and the provisions of any other Recorded document pertaining to any Lot or Lots, and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the

costs are expended at a rate equal to the greater of ten percent (10%) per annum or New York Prime Interest Rate as published in *The Wall Street Journal*, shall constitute a lien on all Lots owned by the Owner or Owners against whom the action is taken (or against whose Occupants the action is taken), which lien shall have priority and may be enforced in the manner described in Section 7.3. Further, any Owner shall have the standing and right to bring an action against the Association for any violation or breach by the Association of any provision hereof or of the Articles or the Bylaws.

In addition, any Owner or Owners shall have the standing and power to enforce the provisions of this Declaration, the Articles and the Bylaws, and the prevailing party or parties in any action by an Owner or Owners to enforce such provisions shall be entitled to recover from the other party or parties its or their costs in such action (including reasonable attorneys' fees), together with interest thereon at a rate equal to the greater of ten percent (10%) per annum, or New York Prime Interest Rate as published in *The Wall Street Journal*, and shall further be entitled to have all such costs (including such interest) included in any judgment awarded to the prevailing party or parties in such action. Failure by the Association or by any Owner to take any such enforcement action shall in no event be deemed a waiver of the right to do so thereafter.

11.9 Property Held in Trust. Any and all portions of the Property which are now hold in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is Declarant, shall be deemed for all purposes under this Declaration to be owned by Declarant, as applicable, and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by Declarant, as applicable. No conveyance, assignment or other transfer of any right, title or interest in or to any such property by Declarant to any such trust (or trustee thereof) or to Declarant by any such trust (or trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

11.10 FHA/VA Approval. So long as the Class B membership is in existence, the following actions shall not be taken without the prior approval of the Federal Housing Administration and the Veterans Administration: (a) annexation of additional properties to the Property (except to the extent such annexation is in accordance with a plan of annexation or expansion previously approved by such agencies); (b) dedication of any part or all of the Common Area; or (c) amendment of this Declaration.

11.11 Notices to Certain Mortgage Holders, Insurers or Guarantors. The Association shall give timely written notice of any of the following actions, events or occurrences to any holder, insurer or guarantors of a Mortgage who or which, prior to such action, event or occurrence, shall have made written request to the Association for such notice (which written request shall state the name and address of such holder, insurer or guarantor and the Lot number or street address of the Lot to which the applicable Mortgage pertains):

11.11.1 Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing the applicable Mortgage;

11.11.2 Any delinquency lasting sixty (60) days or more in payment of any Assessments or other charges owed to the Association by the Owner of the Lot securing the applicable Mortgage, or any other breach or default hereunder by the Owner of the Lot securing the applicable Mortgage which is not cured within sixty (60) days after notice thereof from the Association to such Owner;

11.11.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

11.11.4 Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders, as provided in Section 11.2.

11.12 Dissolution or Termination of the Association or Legal Status of the Property. No action to dissolve or otherwise terminate the Association or the legal status of the Property for any reason other than the substantial destruction or condemnation of the Property shall be taken without the consent of Eligible Mortgage Holders representing not less than sixty-seven percent (67%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

In no event shall the Association be dissolved unless another entity has agreed to fulfill all of the maintenance requirements as set forth in Section 4.1 hereinabove.

11.13 Amendments Requested by Governmental Agency. Notwithstanding any other provision of this Declaration, Declarant shall have the right to amend all or part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other governmental or quasi-governmental agency which issues, guarantees, insures or purchases Mortgages (or securities or other debt instruments backed or secured by Mortgages), or otherwise governs transactions involving Mortgages or instruments evidencing same, or otherwise governs development of the Property or the Annexable Property, as a condition to such agency's approval of this Declaration, the development encompassing the Property or any subdivision constituting a part of the Property. Any such amendment shall be effected by Declarant's Recording an instrument executed by Declarant and appropriately acknowledged, specifying the governmental or quasi-governmental agency requesting such amendment and setting forth the appropriate amendatory language. Recording of such amendment shall constitute conclusive proof of such governmental or quasi-governmental agency's request for such amendment. Such amendment shall be effective, and shall thereupon and thereafter be binding upon any and all Owners or other Persons having any interest in all or any part of the Property. Except as expressly provided in this Section, neither Declarant nor any other Person(s) shall have the right to amend this Declaration except in accordance with and pursuant to the other provisions and requirements of this Declaration.

11.14 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

11.15 Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same as or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, as applicable, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other non-profit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

11.16 Temporary Sign Easement. Declarant hereby reserves to itself and its agents a temporary easement over, upon and across those portions of the Common Area adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs identifying building upon or developing portions of the Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Property, but in no event later than five (5) years after the date this Declaration is Recorded.

11.17 Notice of Violation. The Association shall have the right to Record a written notice of violation by an Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws or the Association Rules. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information (a) the name of the Owner or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice, is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Lot Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

11.18 Disclaimer of Representations. Notwithstanding anything to the contrary within, the Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Whitewing at Germann Estates can or will be carried out, or that any real property now owned or hereafter acquired by Declarant will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use will continue in effect. While the Declarant has no reason to believe that any of the restrictive covenants contained within this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

11.19 Disclosure of Adjacent Land Uses. Notice is hereby given that the Whitewing at Germann Estates subdivision is adjacent to properties currently used for agricultural purposes including horses and other animals. These uses are legal and should be expected to continue indefinitely.

11.20 Declarant's Rights. Subject to Section 1.11, any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation or enlarge a right beyond that contained herein, and provided, further, that no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly Recorded. Notwithstanding any provisions contained within this Declaration to the contrary, so long as construction and initial sale of the Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of

Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units and sales offices, and Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots owned by Declarant and any clubhouse or community center which may be owned by the Association, as models, sales offices and other purposes related to Declarant's sales activities on the Property. So long as Declarant continues to have rights under this Section, no Person shall Record any subdivision plat or map, any declaration of covenants, conditions and restrictions, any declaration of condominium or any similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted Recordation without compliance herein shall result in such subdivision plat or map, declaration of covenants, conditions and restrictions, declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by Recorded consent of Declarant; provided, however, the rights contained in this Section shall terminate upon the earlier of: (a) five (5) years from the date this Declaration is Recorded; or (b) upon Recording by Declarant of a written statement that all sales activity has ceased.

11.21 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including, but not limited to, this Section) which grants to or confers upon Declarant any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as Declarant or a trustee for the benefit of Declarant owns any portion of the Property, without the express written consent of Declarant.

11.22 References to VA and FHA. In various places throughout this Declaration, references are made to the Veterans Administration ("VA") and the Federal Housing Administration ("FHA") and, in particular, to various consents or approvals as required of either or both such agencies. These references are included so as to cause this Declaration to meet certain requirements of such agencies should Declarant submit the Whitewing at Germann Estates project (or portions thereof) for approval by either or both of such agencies. However, Declarant shall have no obligation to submit the Whitewing at Germann Estates project (or any portion thereof) for approval by either or both such agencies, and Declarant shall have full discretion whether to submit the Whitewing at Germann Estates project (or any portion thereof) for approval by either or both agencies. Unless and until the VA or the FHA shall have approved the Whitewing at Germann Estates project, and at any time during which both: (a) such approval, once given, shall be revoked, withdrawn, canceled or suspended; and (b) there are no outstanding mortgages or deeds of trust Recorded against any Lot or other portion of the Property to secure payment of an FHA-insured or VA-guaranteed loan, all references herein to required approvals of such agencies shall be deemed null and void and of no force or effect.

11.23 Amendments to Articles and Bylaws. Except as otherwise provided in the Declaration, the Articles and Bylaws may only be amended by following the procedure set forth in this Section. The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of Members, which may be either an annual meeting or a special meeting, and if approved by Members holding (either personally or by valid absentee ballot) the Applicable Percentage (defined below) of the votes eligible to be cast on the amendment (including votes otherwise eligible to be cast but not represented personally or by valid absentee ballot at such meeting), such amendment shall have been adopted, provided, however, that a copy of any such proposed amendment or a summary of the changes to be effected shall be given to each Member in good standing at least ten (10) days prior to said meeting of the Members. For purposes hereof, the "Applicable Percentage" shall mean, in the case of an amendment to the Articles, sixty-seven percent (67%), and in the case of an amendment to the Bylaws, fifty-one percent (51%). Any number of amendments may be submitted and voted upon at any

one meeting. Notwithstanding the foregoing but subject to Section 11.23, so long as the Class B membership is in existence, the following actions shall require the prior approval of the Federal Housing Administration and the Veterans Administration: (a) amendment of the Articles or the Bylaws; (b) dissolution of the Association; and (c) merger or consolidation of the Association with any other entity.

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IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year set forth above.

DECLARANT AND OWNER:

WHITEWING V, LLC, an Arizona limited liability company

BY: **BAMFORD SOUTHWEST, INC.**, a Colorado corporation, Member

BY: Gregory L. Bamford
Gregory L. Bamford, President

BY: **MORRISON ENTERPRISES**, a Nebraska general partnership, Member

BY: Kenneth Morrison
Kenneth Morrison, Business Manager

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

On this 7th day of June, 2006 before me, the undersigned officer, personally appeared GREGORY L. BAMFORD, who acknowledged himself/herself to be PRESIDENT OF BAMFORD SOUTHWEST, INC., MEMBER OF WHITEWING V, LLC, and that he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of said entities by himself/herself.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Margery A. Rhode
Notary Public

My Commission Expires:

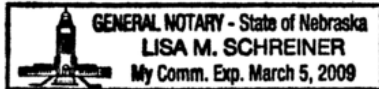
April 23, 2009



STATE OF NEBRASKA)
)
COUNTY OF ADAMS)

On this 6th day of June, 2006, before me, the undersigned officer, personally appeared Kenneth Morrison, who acknowledged himself/herself to be a Business Manager for Morrison Enterprises, member of Whitewing II, LLC, and that he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of said entities by himself/herself.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Lisa M. Schreiner
Notary Public

My Commission Expires:

March 5, 2009

COURTESY RECORDING
NO TITLE LIABILITY

OFFICIAL RECORDS OF MARICOPA
COUNTY RECORDER HELEN PURCELL
20061102699 08/18/2006 12:41
ELECTRONIC RECORDING
Other 330605389-2-1-1--

When recorded, return to:

Whitewing V, LLC
P.O. Box 1561
325 South Higley Road, #110
Higley, AZ 85236

33-06-5389

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
WHITEWING AT GERMANN ESTATES**

The undersigned, President of Whitewing at Germann Estates Homeowners Association, an Arizona nonprofit corporation, hereby amends the Declaration of Covenants, Conditions, and Restrictions for Whitewing at Germann Estates, as recorded June 13, 2006, as instrument No. 2006-0795915 in the records of Maricopa County, Arizona (the "Declaration"), as follows:

Section 9.27 of ARTICLE 9 of the Declaration is added as follows:


9.27 Building Setbacks for All Lots. The front and rear building setbacks are 30 feet, the west side building setback is 20 feet, and the east side building setback is 10 feet.

The undersigned hereby certifies that this First Amendment has been approved as required by Section 11.23 of the Declaration.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment this 17th day of August, 2006.

**WHITEWING AT GERMANN ESTATES
HOMEOWNERS ASSOCIATION, an Arizona
nonprofit corporation**

BY:


Gregory L. Bamford, President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 17th day of August, 2006, before me, the undersigned Notary Public, personally appeared Gregory L. Bamford, who acknowledged himself to be the president of WHITEWING AT GERMANN ESTATES HOMEOWNERS ASSOCIATION, an Arizona nonprofit corporation, and that as such officer being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Margery A. Rhode
Notary Public

My commission expires:
April 23, 2009



**Whitewing at Germann Estates Homeowners Association
2005 Operating Budget**

		<u>2007 Total</u>	<u>Per</u>
June 1, 2006		<u>Year</u>	<u>Owner/</u>
			<u>Per</u>
			<u>Month</u>
Income			
410	Residential Assessments 120 Custom Lots	\$329,400	\$225.00
418	Developer Income	\$0	
425	Plan Review Income	\$10,000	
442	Legal Fee Income	\$0	
470	Late Fee Income	\$0	
	Total Residential Income	\$339,400	\$225.00
Expenses			
	Landscaping		
515	Overseeding	\$3,500	\$2.43
516	Tree Maintenance	\$2,000	\$1.39
517	Landscaping- Plants/Annuals	\$6,000	\$4.17
518	Lawn Service Contract	\$24,000	\$16.67
519	Fertilizer/Weed Control	\$3,500	\$2.43
522	General Grounds Maintenance	\$3,500	\$2.43
	Total Landscape	\$42,500	\$29.51
	Maintenance		
542	Fence Walls	\$2,000	\$1.39
544	Electrical	\$2,500	\$1.74
547	Gates	\$4,000	\$2.78
554	Painting	\$1,500	\$1.04
558	Plumbing	\$1,500	\$1.04
562	Sprinkler Systems	\$4,000	\$2.78
565	General	\$2,500	\$1.74
566	Janitorial	\$900	\$0.63
567	Street Sweep	\$2,000	\$1.39
570	Pest Control	\$750	\$0.52
	Total Maintenance	\$21,650	\$15.03
	Utilities		
576	Telephone	\$1,200	\$0.83
580	Electricity	\$3,200	\$2.22
584	Water	\$17,000	\$11.81
	Total Utilities	\$21,400	\$14.62
	Administrative		
632	Tax Accounting	\$350	\$0.24
633	Plan Review Fee	\$10,000	\$6.83
634	Bank Charges	\$0	\$0.00
638	Insurance	\$4,500	\$3.07
640	Gen Administrative	\$3,500	\$2.39
642	Legal Expense	\$0	\$0.00
999	Security	\$135,000	\$92.21
644	Management	\$11,500	\$7.86
650	Copies and Envelopes	\$850	\$0.58
652	Postage	\$1,000	\$0.68
662	Real Estate Taxes	\$500	\$0.34
663	Income Tax	\$50	\$0.03
669	Web Site	\$600	\$0.41
	Total Administrative	\$167,850	\$115
	Total Operating Expense	\$253,400	\$174
701	Transfer to Reserves	\$86,000	\$59.72
Total Surplus/(Loss)		\$0	\$0.00

