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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
FESTIVA TEMPE**

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
FESTIVA TEMPE

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
FESTIVA TEMPE**

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Festiva Tempe is executed as of the 21st day of March, 1995, by Groves Center Development Limited Partnership II, an Arizona limited partnership (the "Master Declarant"), and D.R. Horton, Inc., a Delaware corporation ("Declarant").

RECITALS

A. A Declaration of Covenants, Conditions, Restrictions and Easements was recorded at Recording No. 94-0662458, records of Maricopa County, Arizona (the "Initial Declaration"), to establish a general plan for the real property described on Exhibit "A" attached to the Initial Declaration (the "Property").

B. Section 12.1 of the Initial Declaration provides that the Initial Declaration may be amended by the vote or written consent of Members holding not less than sixty-seven percent (67%) of all Class A votes in the Association and by the Declarant under the Initial Declaration, so long as the Declarant under the Initial ^{Unofficial Document} Declaration is an owner of any lot subject to the Initial Declaration. In addition, the consent of the City of Tempe is required for any amendment to Section 11.1.1 of the Initial Declaration.

C. Kaufman and Broad of Arizona, Inc. which was designated as the "Declarant" under the Initial Declaration no longer owns any part of the property subject to the Initial Declaration. Groves Center Development Limited Partnership II, an Arizona limited partnership (the "Master Declarant"), and D.R. Horton, Inc., a Delaware corporation ("Declarant"), collectively, are the owners of all of the property subject to the Initial Declaration. Master Declarant has entered into a Purchase Agreement with Declarant pursuant to which Declarant has acquired an option to purchase the lots owned by Master Declarant which are subject to the Initial Declaration.

D. Master Declarant and Declarant desire to amend and restate the Initial Declaration and intend that this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements shall supersede and replace the Initial Declaration in its entirety and that the Initial Declaration shall be of no further force and effect upon the recording of this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements with the County Recorder of Maricopa County, Arizona. This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements does not amend in any respect Section 11.1.1 of the Initial Declaration

and, therefore, the consent of the City of Tempe to this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements is not required by the Initial Declaration.

NOW, THEREFORE, Master Declarant and Declarant, as the present fee owners of the Property, hereby amend and restate the Initial Declaration as follows:

ARTICLE 1

DEFINITIONS

As used in this Declaration, the following terms shall have the following meanings:

1.1 "**Articles**" shall mean the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

1.2 "**Assessments**" shall mean all assessments levied pursuant to *Article 8* and all fees, fines and charges due under this Declaration or the Association Rules.

1.3 "**Association**" shall mean the "Festiva Tempe Community Association", an Arizona nonprofit corporation and its successors and assigns.

1.4 "**Association Rules**" shall mean the ^{Unofficial Document} reasonable rules and regulations adopted by the Association pursuant to *Section 6.3* of this Declaration.

1.5 "**Board**" shall mean the Board of Directors of the Association.

1.6 "**Bylaws**" shall mean the Bylaws of the Association, as amended or restated from time to time.

1.7 "**City**" shall mean the City of Tempe or other municipality within which a portion of the Property may be located now or in the future.

1.8 "**Committee**" shall mean the Design Review Committee formed pursuant to *Article 4* of this Declaration.

1.9 "**Common Areas**" shall mean (a) those portions of the Project, together with the buildings, structures and improvements thereon, which the Association may, from time to time, own in fee or in which it may have an easement interest, for as long as the Association holds fee title or an easement interest; (b) all land within the Project which Declarant, by this Declaration or in any other Recorded instrument, makes available for use by Members of the Association or otherwise designates as Common Areas for purposes of this Declaration; (c) all land or right-of-way easements

within the Project which are dedicated to the public or to the City, but which the City or other governmental agency requires the Association to maintain; and (d) any other areas with respect to which the Association has assumed in writing administrative or maintenance responsibilities.

1.10 "Common Expenses" shall mean the expenses of operating the Association.

1.11 "Declarant" shall mean D.R. Horton, Inc., a Delaware corporation, and the successors and assigns of Declarant's rights and powers hereunder, provided that if that certain agreement between Declarant and Master Declarant pursuant to which Declarant is purchasing Lots from Master Declarant is ever terminated prior to Declarant purchasing all Lots within the Property, then Master Declarant shall automatically succeed to all rights of Declarant hereunder.

1.12 "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements, as amended or supplemented from time to time as herein permitted.

1.13 "Dwelling Unit" shall mean any building, or part thereof, situated upon a Lot and intended for use and occupancy as a residence.

1.14 "FHA" shall mean the Federal Housing Administration.

1.15 "First Mortgage" shall mean a deed of trust or mortgage recorded against a Lot which has priority over all other deeds of trust or mortgages recorded against the same Lot.

1.16 "Lot" shall mean a lot into which any part of the Property is subdivided, for the purposes of construction of a Dwelling Unit thereon, as set forth in the Recorded subdivision plat for the Project.

1.17 "Master Declarant" shall mean Groves Center Limited Partnership II, an Arizona limited partnership.

1.18 "Member" shall mean any Person entitled to a membership in the Association hereunder.

1.19 "Membership" shall mean the combination of rights and duties of Members in the Association.

1.20 "Occupant" shall mean any Person, other than an Owner, occupying or in possession of a Lot, or any portion thereof or any building or structure thereon, whether as a lessee under a lease or otherwise.

1.21 "Owner" (when capitalized) shall mean (and any reference in this Declaration to "own", "owned" or "ownership" when used in reference to a portion of the Property shall be

deemed to include) the Record holder of legal title to the fee simple interest in any Lot or, in the case of a Recorded "contract," as that term is defined in A.R.S. § 33-741(2), then the holder, of Record, of the purchaser's or vendee's interest under said contract, but excluding others who hold such title merely as security. If fee simple title to a Lot is vested of Record in a trustee pursuant to A.R.S. § 33-801 *et seq.*, then for purposes of this Declaration legal title shall be deemed to be held by the trustor (or the trustor's successor of Record), and not by the trustee.

1.22 "**Person**" shall mean a natural person, corporation, partnership, trustee or any other legal entity.

1.23 "**Project**" shall mean the planned community known as "Festiva Tempe" to be developed on the Property.

1.24 "**Property**" shall mean the real property more particularly described on *Exhibit "A"* attached hereto and incorporated by this reference.

1.25 "**Record," "Recording" and "Recorded"** shall mean placing or having placed a document of public record in the Official Records of Maricopa County, Arizona.

1.26 "**Special Assessments**" shall mean the assessments, if any, levied by the Board pursuant to *Section 8.7*.

1.27 "**VA**" shall mean the ^{Unofficial Document} United States Veterans' Administration.

1.28 "**Visible From Neighboring Property**" shall mean, with respect to any given object, that such object is or would be visible to an individual six (6) feet tall, standing at ground level on any portion of the neighboring property.

ARTICLE 2

PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 **General Declaration.** This Declaration is established for the purpose of enhancing the value, desirability and attractiveness of the Property. Master Declarant and Declarant hereby declare that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as the same may be amended or modified from time to time. This Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of

Declarant, the Association, and all Owners and Occupants of the Property and their successors in interest.

2.2 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Master Declarant and Declarant make no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that the Property 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, such use will continue in effect. While Master Declarant and Declarant have no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Master Declarant and Declarant make 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 a Lot agrees that Master Declarant and Declarant shall have no liability with respect thereto.

2.3 Other Applicable Covenants, Conditions, Restrictions and Easements. In addition to this Declaration, the Property is also subject to the Declaration of Covenants, Conditions, Restrictions, Assessments, Liens and Rights of Use recorded at Recording No. 94-0656742, records of Maricopa County, Arizona (the "Canal CC&Rs"), the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Elliot Groves Commerce Center recorded at Recording No. 85-197553, records of Maricopa County, Arizona (the "Elliot Groves CC&Rs"), and the Tract Declaration for Tract A, According to Plat for The Groves, Second Amended, recorded at Recording No. ^{Unofficial Document} 94-0656742, records of Maricopa County, Arizona (the "Tract Declaration"). The Canal CC&Rs, the Elliot Groves CC&Rs and the Tract Declaration impose additional covenants, conditions and restrictions upon the Property and require the Owners of Lots in the Property and/or the Association to pay assessments and other fees and charges to the community associations created pursuant to the Canal CC&Rs and the Elliot Groves CC&Rs. In the event that the Association is obligated to pay assessments or other fees or charges to the community associations created pursuant to the Canal CC&Rs, the Elliot Groves CC&Rs or the Tract Declaration, such assessments or other fees and charges shall be included as part of the Common Expenses assessed to the owners by the Association pursuant to this Declaration. Any assessments, fees or charges payable by the Owners of Lots in the Property to the community associations created pursuant to the Canal CC&Rs, the Elliot Groves CC&Rs or the Tract Declaration shall be in addition to the assessments levied against and payable by the Owners pursuant to this Declaration. In addition, any consents or approvals that may be required to be obtained by Owners pursuant to the Canal CC&Rs, the Elliot Groves CC&Rs or the Tract Declaration shall be in addition to, and not in lieu of, any consents or approvals required pursuant to this Declaration.

ARTICLE 3

EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS

3.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas which shall pass with the title to each Owner's Lot. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

(a) The right of the Association to suspend the voting rights and the right to use and enjoy the Common Areas of any Owner or the Owner's Occupant:

(i) for any period during which an Assessment remains delinquent;

(ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association Rules; or,

(iii) for successive 60-day periods if any such delinquency or infraction is not corrected during any preceding suspension period;

(b) The right of the Association to regulate and control use of the Common Areas pursuant to the Association Rules ^{Unofficial Document} or otherwise in accordance with this Declaration;

(c) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association in accordance with *Section 10.5*;

(d) The rights arising from any Declarations of Covenants, Conditions, Restrictions and Easements or other instrument properly recorded against the Property prior to the date hereof.

3.2 Delegation of Use. Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his rights of use and enjoyment in the Common Areas to the members of his family or his Occupants, employees or guests subject to the limitations set forth herein and in the Association Rules.

3.3 Easement for Common Areas Maintenance. The Association shall have an easement upon, over, under and across all Lots and other property within the Project (except property owned by Declarant) for the purpose of (a) repairing, maintaining and replacing the Common Areas and all improvements thereon, and (b) performing all other rights, duties and obligations of the Association under this Declaration.

ARTICLE 4

DESIGN CONTROL

4.1 Design Review Committee. Declarant shall establish the Committee to perform the functions of the Committee set forth in this Declaration. The Committee shall adopt procedural rules and regulations for its performance of such duties, including procedures for the preparation, submission and consideration of the application for any approvals required by this Declaration. The Committee shall consist of such number of regular Members and alternate Members as Declarant may designate. All such Members shall be appointed by Declarant for so long as Declarant owns property within the Project. Thereafter, the members of the Committee shall be appointed by the Board. The Committee shall promulgate Design Guidelines to be used by the Committee in rendering its decisions. The Committee shall have all the powers, duties and authority conferred upon it by this Declaration and the Design Guidelines. The decisions of the Committee shall be final on all matters submitted to it pursuant to this Declaration.

4.2 Variances. The Committee may grant variances from the standards set forth in the Design Guidelines if the Committee determines the matter permitted under the requested variance will not have a substantially adverse effect on the other Owners and Occupants and is consistent with the high quality of life intended for the Project.

4.3 Fee. The Committee may establish a reasonable fee from time to time to defer the costs of the Committee in considering ^{Unofficial Document} any requests for approvals submitted to the Committee, which fee shall be paid at the time the request for approval is submitted. The Committee may also authorize supplemental fees to cover the cost of retaining consultants and other professional services needed to evaluate properly any matter submitted to the Committee for review.

ARTICLE 5

PERMITTED USES AND RESTRICTIONS

5.1 Residential Purposes. No gainful occupation, profession, business, trade or other nonresidential use shall be conducted on or in any Dwelling Unit, provided that an Owner or Occupant may conduct limited business activities in a 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 requirements; (c) the business activity does not involve door-to-door solicitation of other Owners and Occupants; (d) the business activity does not generate drive-up traffic or customer or client parking; and (e) the business activity is consistent with the residential character of the property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other Owners, as may be determined in the sole discretion of the Board.

5.2 Animals. No animal, bird, livestock, poultry or fowl of any kind, other than a reasonable number of generally recognized house pets (as determined by the Board and set forth in the Association Rules) shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. 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.

5.3 Garbage. No garbage, trash or debris shall be allowed, stored or placed on a Lot except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. No incinerator shall be maintained on any Lot and no trash, garbage or debris shall be burned thereon by open fire or otherwise.

5.4 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot unless they are not Visible From Neighboring Property.

5.5 Window Coverings. In no event shall the interior or exterior of any windows be covered with reflective material, such as foil, or with paper, bed sheets or other temporary coverings.

5.6 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 and clean condition. Such garages shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons. All driveways on Lots shall be of concrete construction. Detached garages shall not be permitted.

5.7 Temporary Structures; New Construction. No temporary residence, structure or garage shall be placed or erected upon any part of the Property except as permitted by this *Section*. Except with the express written approval of Declarant, no Dwelling Unit or other structure on any Lot shall be occupied in any manner while in the course of original construction or prior to issuance by the appropriate local governmental authority of a certificate of occupancy (or other similar document) with respect to such Dwelling Unit or other structure. 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 (except for temporary construction and/or sales facilities placed or maintained on the Property in connection with Declarant's construction and sales activities).

5.8 Heating, Ventilating and Air Conditioning Units. No heating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Property, including, but not limited to, upon the roof or exterior walls of any structure on any part

of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall which conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Committee.

5.9 Solar Collection 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 of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Committee, and subject to any approvals of the City of Tempe as required by law, solar collecting panels and devices may be placed, constructed or 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 Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the 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 (6) feet tall standing at ground level on adjacent properties.

5.10 Antennas, Poles and Towers, ^{Unofficial Document} ~~Towers~~, Basketball Goals. No television, radio, shortwave or other antenna, pole or tower 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 or tower is installed upon the roof of a Dwelling Unit or other structure, such antenna, pole or tower is fully screened and concealed from view from adjacent properties by a parapet wall which conforms architecturally with the structure of such Dwelling Unit or other structure; or (b) in all other cases, such antenna, pole or tower is fully and attractively 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 Committee. 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 or front roof surface of any structure on any part of the Property. For purposes of the foregoing sentence, the term "front" shall be deemed to mean visible from ground level view from the street(s) running immediately in front of or along the side of a Dwelling Unit or other structure.

5.11 Vehicles. No private passenger automobiles or pickup trucks shall be parked on the Property or any roadway therein or adjacent thereto except within a garage or in a private driveway appurtenant to a Dwelling Unit. The preceding sentence shall not preclude guest parking in designated guest parking locations or occasional overflow parking in a street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners or

Occupants of other Lots. No other vehicle (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents or similar vehicles or 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) in such areas and subject to such rules and regulations as the Board may designate and adopt. No vehicle (including, but not limited to, those enumerated in the preceding sentences) shall be constructed, reconstructed or repaired on the Property or any roadway therein or adjacent thereto except within a fully enclosed garage. No motor vehicles of any kind which are not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit). The provisions of this *Section* shall not apply to vehicles of Declarant or its employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property.

5.12 Fences, Interferences and Obstructions. No fence, wall, hedge, shrub or other plant which obstructs sight lines at elevations between two (2) feet and six (6) feet above adjacent public streets shall be permitted on any corner Lot within the triangular area formed by the streets and a straight line connecting those property lines at points twenty-five (25) feet from the intersection of those property lines (or, in the case of a rounded Lot corner, from the intersection of those property lines as extended). No tree shall be permitted to remain within such area unless the foliage line is maintained a sufficient height to prevent obstruction of such sight lines.

5.13 Leasing; Obligations of Tenants and Other Occupants. All tenants shall be subject to the terms and conditions of this ^{Unofficial Document} Declaration, the Articles, the Bylaws and the rules and regulations of the Association. Each Owner shall cause his, her or its tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws and the rules and regulations of the Association 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. No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. 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 for marketing purposes.

5.14 Landscaping and Maintenance; Reconstruction. Within ninety (90) days of acquiring an improved 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. 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. Landscaping shall be installed under this *Section* so as to be consistent, in terms of general appearance and level of care and attention, with other normal completed residential landscaping within the Property and within other residential properties in the vicinity of the Property. Each Owner shall maintain the

aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean and attractive condition consistent in appearance with other properly-maintained, improved Lots within the Property. In the event any Dwelling Unit or other structure is totally or partially damaged or destroyed by fire, Act of God or any other cause, the Owner shall fully repair the damage and complete reconstruction of the Dwelling Unit or other structure within eighteen (18) months after occurrence of the damage or destruction. The provisions of this *Section* shall not apply to any Lot or other property owned by Declarant.

5.15 Signs. No signs of whatever nature shall be placed on any Lot which are Visible from Neighboring Property except (a) signs required by legal proceedings; (b) a maximum of two (2) street address identification signs for each individual residence, each with a maximum face area of 72 square inches or less; (c) "for sale" and "for lease" signs no larger than five (5) square feet; (d) signs used by Declarant to advertise the Property during the construction and sales period; and temporary signs related to political campaigns which are displayed for no more than sixty (60) days.

5.16 Prohibited Uses. No use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance or unreasonable source of annoyance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Owner shall be permitted on any Lot. No use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the City or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot.

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5.17 Dust Control. The areas on each Lot which are not improved with buildings ("Clear Areas") shall be landscaped. Until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris. The Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain its Lot in a manner which minimizes the possibility of dust being transmitted into the air and over adjacent properties.

5.18 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property for any unreasonable time, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Occupants. No loud, noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Board shall have the right to determine, in its sole discretion, whether the provisions of this *Section* have been violated. Any decision rendered by the

Board shall be conclusive and shall be enforceable in the same manner as other restrictions in this Declaration.

5.19 Drainage. No Owner or Occupant shall interfere with the drainage established for the Property or any other property adjacent to its Lot.

5.20 Party Walls. Except as hereinafter provided, the rights and duties of Owners of contiguous Lots which have shared walls or fences ("Party Walls") shall be as follows:

(a) each Owner shall have an equal right to use the Party Walls to the extent such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the act or omission of an Owner or the Owner's Occupants, agents, guests or family (whether or not such act is negligent or otherwise culpable), such Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense (provided that this shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any insurer, Occupant, agent, guest or other Person who otherwise may be liable to such Owner);

(c) if any portion of a Party Wall is damaged or destroyed other than by the act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin such portion of the Party Wall to immediately rebuild and repair it, and the expense shall be ratably divided among such Owners based on the amount of linear footage of their respective Lots located along such portion of the Party Wall;

(d) if a dispute occurs between Owners regarding a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Committee, whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing the damage;

(e) The Association shall have the right but not the obligation to perform any work which an Owner or Owner(s) fails to do in a timely manner. The Owner(s) responsible for such work shall upon demand pay all costs incurred by the Association together with interest at 12 percent (12%) per annum and an administrative fee at ten percent (10%) of the amount incurred by the Association.

5.21 Exemption of Declarant. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant (or its designated agents and contractors), during the period of development and construction on the Property, of any model homes and sales offices and parking incidental thereto, landscaping or signs deemed

necessary or convenient by Declarant, in its sole discretion, to the development or sale of property within the Property.

5.22 Miscellaneous. The Board, in its good-faith discretion, may grant such waivers of the restrictions contained in this *Article 5* as it shall deem appropriate, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration. In addition, the Property shall continue at all times to be subject to applicable zoning laws and ordinances; provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

ARTICLE 6

ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and as set forth in the Articles, the Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors ^{Unofficial Document} ~~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 Bylaws. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager and/or other staff members to be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to each such employee. Unless this Declaration, the Articles or Bylaws require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

6.3 Association Rules. 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 Areas, provided 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. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules, as adopted or amended, shall be available for inspection at the office of the Association.

6.4 Personal Liability. No Board member, officer, committee member, employee or representative of the Association, nor the Association, shall be personally liable to any Owner,

or to any other Person, including the Association, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, unless such person has failed to act in good faith or has engaged in willful or intentional misconduct.

ARTICLE 7

MEMBERSHIPS AND VOTING

7.1 Membership. Every Owner, including Master Declarant and Declarant, automatically shall be a Member of the Association 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; provided, however, that if any one of such Persons casts a vote or votes representing a 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.

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7.2 Votes. The Association shall have two classes of voting Members. Class A Members shall be all Owners except Master Declarant and Declarant. A Class A Member shall have one vote for each Lot owned by such Member. The Class B Members shall be Master Declarant and Declarant. Each Class B Member shall have three (3) votes for each Lot owned by such Member. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives satisfactory evidence thereof. Fractional votes shall not be allowed. The Class B Membership shall automatically cease and be converted to a Class A Membership upon the happening of the first of the following events:

- (a) the date which is 120 days after the date on which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Membership;
- (b) the date which is twenty (20) years after the date this Declaration is Recorded; or
- (c) the date on which Master Declarant and Declarant relinquish their Class B Membership by notifying the Class A Members in writing.

7.3 Property Rights. Every Owner shall have a non-exclusive right and easement of enjoyment in, to and over the Common Areas, subject to this Declaration and to reasonable rules

adopted by the Board pursuant hereto. Any Owner may assign that right of enjoyment to (and share the same with) the members of his or her household and assign the same to and share the same with his, her or its tenants and invitees subject to the provisions of this Declaration and to reasonable regulation by the Board. An Owner who leases his, her or its Lot shall be deemed to have delegated such Owner's rights and easements under this *Section* to the lessee of such Lot for the term of such lease.

ARTICLE 8

ASSESSMENTS

8.1 Creation of Assessment Right; Covenants to Pay. In order to provide funds to enable the Association to meet its 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. Assessments shall be for Common Expenses and shall be allocated equally among all Lots. Each Owner, by acceptance of his, her or its deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot, together with interest from the date due at the rate of twelve percent (12%) per annum, and together with all costs and reasonable attorneys' fees incurred by the Association in seeking to collect such Assessments. 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 was the Owner of such Lot at the time such Assessments arose with respect to such Lot; ^{Unofficial Document} 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 the obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the 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.

8.2 Lien for Assessments; Foreclosure. There is hereby created and established a lien in favor of the Association against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any other amounts levied against such Lot or the Owner thereof pursuant to the Declaration or the Articles, the Bylaws or the rules and regulations of the Association). Such lien shall be prior and superior to all other liens affecting the Lot in question, except: (a) taxes, bonds, assessments and other levies which, by law, are 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 or 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 shall not 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 the Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that 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 Areas. The Association may maintain a suit to recover a money judgment for unpaid Assessments, rent, interest and attorneys' fees 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).

8.3 Dates Assessments Commence; Declarant's Obligations. Assessments shall be payable with respect to a Lot commencing with the initial conveyance of such Lot to a purchaser by Declarant (or by a trustee, for the benefit of Declarant). Assessments with respect to a Lot shall be prorated as of the date of such initial conveyance. Master Declarant and Declarant shall not be obligated to pay any Assessments with respect to Lots owned by Master Declarant or Declarant, provided that Master Declarant and Declarant shall each pay or contribute to the Association a proportionate share of the cash, goods or ^{Unofficial Document} services (as in Master Declarant or Declarant may elect) as may be necessary to make up any budget shortfalls of the Association resulting from Master Declarant's and Declarant's exemption from Assessments (but in no event shall Master Declarant or Declarant be required to make such payments or contributions in excess of the Assessments Master Declarant or Declarant would be required to pay, in the absence of this sentence, with respect to Lots owned by Master Declarant or Declarant). The proportionate share of Master Declarant and Declarant of any budget shortfall to be paid by Master Declarant and Declarant shall be the percentage obtained by dividing the number of Lots owned by Master Declarant or Declarant, respectively, by the total number of Lots owned by Master Declarant and Declarant at the time the budget shortfall accrues.

8.4 Computation of Assessments; Annual Budget. The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the Assessments for the applicable fiscal year (subject to the limitations of *Section 8.6* hereof). Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall deliver or mail to each Owner a copy of the budget and a statement of the amount of Assessments to be levied against such Owner's Lot for that year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided in *Section 8.6*, neither the budget nor any Assessment levied pursuant thereto shall be required to be approved by the Owners.

8.5 Due Dates. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are 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).

8.6 Maximum Annual Assessment. The 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, 1994, the Maximum Annual Assessment shall be Forty Dollars (\$40.00) per month for each Lot. Thereafter, except as provided below, unless a greater increase is approved by a vote of two-thirds (2/3) of the votes of each class of Members represented in person or by proxy at a meeting of Members called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor); or (b) ten percent (10%). Further, notwithstanding the foregoing, the Board may, without the 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 this Declaration to be maintained by the Association; and (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is greater than otherwise permitted under the third sentence of this *Section 8.6*.

8.7 Special Assessments. The Association may levy a Special Assessment but only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owned by the Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment must be approved by at least two-thirds (2/3rds) of the votes of each class of Members voting in Person or by proxy at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners.

ARTICLE 9

USE OF ASSOCIATION FUNDS

9.1 Use of Association Funds. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all funds and property collected and received by the Association from any source ("Funds") for the common good and benefit of the Property, the Owners and the Occupants. The Funds may be used, among other things, to insure, acquire, construct, alter, clean, maintain, supervise, provide and operate, in any manner whatsoever, any and

all land, properties, improvements, services, projects, programs, studies and systems within the Property and the Common Areas as may be necessary, desirable or beneficial to the general common interests of the Owners and Occupants. In connection with the foregoing, the Funds may be used for the administration, office expenses, salaries and other personnel costs of the Association. The Association may in its discretion collect and maintain Funds to be held in reserve for any of the uses referred to in this *Section*.

9.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate, and may utilize Funds to repay any such loans.

9.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all Funds received by it in such year, and the Board may carry forward as surplus or hold in reserve (for general purposes or for specified future expenditures) any balances remaining. The Association shall not be obligated to reduce the amount of the annual Assessment in any succeeding year if a surplus or reserves exist from a prior year or years.

ARTICLE 10

RIGHTS AND POWERS OF ASSOCIATION

10.1 Rights, Powers and ^{Unofficial Document} Duties of the Association. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights, powers and duties as may be reasonably necessary in order to effect all of the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

10.2 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration. Further, Declarant and any other Owner, so long as Declarant and such other Owner owns property within the Project, shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

10.3 Contracts with Others. Subject to the restrictions and limitations contained herein, or in the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts or other transactions with other parties, including Declarant or its affiliated companies. Such contracts or other transactions shall not be void or voidable because one or more directors or officers of the Association are employed by, have a financial interest in or are otherwise affiliated with such other parties, including Declarant or its affiliates (even if such officer(s) or director(s) is present and/or votes at the meeting of the Board or committee which authorizes the contract or

transaction), if (a) the fact of such interest has been previously disclosed or made known to the other members of the Board or the committee acting upon such contract or transaction, and (b) the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any management contract entered into by the Association must be terminable, without penalty, by the Association for cause at any time and without cause upon reasonable notice.

10.4 Procedure for Change of Use of Common Areas. Upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Areas is no longer in the best interests of the Owners and Occupants, and the approval of such resolution by not less than two-thirds (2/3rds) of the votes of all Members entitled to vote and voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use: (a) also shall be for the common benefit of the Owners and Occupants; and (b) shall be consistent with any Recorded deed and zoning regulations.

10.5 Procedure For Transfers of Common Area. The Association shall not make any dedication or other transfer of the Common Areas, or mortgage or otherwise encumber Common Areas except upon: (i) the adoption of a resolution by the Board stating that the transaction would be in the best interests of the Owners and Occupants, (ii) the approval of such resolution by not less than two-thirds (2/3rds) of the votes of each class of Members; and (iii) approval of the proposed action by VA and FHA, as applicable if required under Section 14.10 of the Declaration. If ingress or egress to any Lot is through the Common Area to be conveyed or encumbered, such conveyance or encumbrance shall be subject to an easement for ingress and egress benefiting such Lot.

ARTICLE 11

MAINTENANCE

11.1 Common Areas and Public Rights-of-Way.

11.1.1 Areas of Association Responsibility. The Association, or its duly designated representative, shall maintain manage and control the Common Areas and shall keep the Common Areas in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof. The Association's costs of doing so shall be Common Expenses of the Association. Such maintenance shall include: (a) maintenance, repair and replacement of all landscaping situated upon the Common Areas; and (b) maintenance, repair and replacement of landscaping in or upon public rights-of-way immediately adjacent to the Common Areas. The Association shall maintain the Common Area landscaping in accordance with the landscaping plan approved by the City and in accordance with City Ordinances. This Section 11.1.1 may not be amended without the approval of the City of Tempe.

11.1.2 Delegation of Responsibilities. The Board shall have the sole discretion to determine whether the Association or an individual Owner should be responsible for maintenance of certain Common Areas or public rights-of-way considering cost, uniformity of appearance, location and other relevant factors.

11.1.3 Standard of Care; Disclaimer of Liability. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas so that the Project will reflect a high degree of pride of ownership. The Board, however, shall be the sole judge as to the appropriate level of maintenance of all Common Areas by the Association. Notwithstanding any duty the Association may have to maintain and repair the Common Areas, the Association and Declarant shall not be liable for any injury or damage caused by a latent condition or by any Member, Owner, Occupant or other Person. Neither the Association nor Declarant shall be liable to any Person for any claim, injury or damage arising from the use of the Common Areas and the same shall be used at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage or repair the Common Areas.

11.2 Party Walls and Fences. If a party wall is located on the boundary line between Common Areas and a Lot or between the Property and other property, the Association shall be responsible for the painting and maintenance and repair of the surface on the side thereof that faces the Common Areas or other property and the top of such wall, and the Owner or Owners owning the opposite side of the wall shall be responsible for the maintenance, repair, painting and replacement of such opposite side and for all structural repairs and replacement (i.e., in the case of destruction of both sides of a wall, the Owner(s) owning ^{Unofficial Document} Lots adjacent to the wall shall be responsible for replacement of the wall and the Association shall have no such responsibility). Unless otherwise approved in writing by the Board or Committee, all walls and fences constructed by an Owner or Occupant must be located entirely within the property line of the Owner's or Occupant's Lot. No wall may be located on the Common Areas unless it is part of the Common Areas.

11.3 Improper Maintenance and Use of Lots. If (a) any portion of any Lot is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot or other area, or is used in a manner which violates this Declaration, (b) the Owner of any Lot fails to perform such Owner's obligations under this Declaration, or the Association Rules, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot that unless specified corrective action is taken within a specified time period the Association, at such Owner's, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to cause corrective action to be taken and/or to commence appropriate legal action. The cost thereof, including court costs and attorneys' fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot is subject and shall be secured by the lien described in *Section 8.2*.

ARTICLE 12

TERM; AMENDMENTS; TERMINATION

12.1 Term; Amendment. 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) shall remain in full force and effect (as amended, if applicable) until January 1, 2020, at which time said conditions, covenants and restrictions shall automatically be extended for successive periods of twenty-five (25) years each, unless revoked by an affirmative vote of: (i) Members holding not less than ninety percent (90%) of all Class A votes; and (ii) Declarant, so long as Declarant is an Owner. Except as otherwise provided herein, this Declaration may be amended only by the vote or written consent of: (i) Owners of not less than seventy-five percent (75%) of the Lots; and (ii) Declarant, so long as Declarant is an Owner; and (iii) with respect to Section 11.1.1 of this Declaration only, the City of Tempe. No amendment to this Declaration shall be effective until such amendment is Recorded.

12.2 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institution. Anything in this *Article* to the contrary notwithstanding, Declarant reserves the right to amend this Declaration as may be requested or required by the FHA, VA or any other agency with whom Declarant elects to do business as a condition precedent to such agency's approval of this Declaration. Any such amendment shall be effected by Declarant recording an amendment duly executed and acknowledged by Declarant specifying the agency requesting the amendment and setting forth the requested or required amendment(s). Recordation of such Amendment shall be deemed conclusive proof of the agency's or institution's request or requirement and such Certificate, when Recorded, shall be binding upon all of the Property and all persons having an interest therein.

ARTICLE 13

EMINENT DOMAIN AND INSURANCE (COMMON AREAS)

13.1 Eminent Domain. The term "Taking" as used in this *Section* shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Areas, the Owners hereby appoint the Board and such persons as the Board may designate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association and shall constitute Funds of the Association.

13.2 Association's Authority to Purchase Insurance. The Association shall purchase and maintain such property damage and liability insurance upon the Common Areas and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any Member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions. Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association, as well as all regular and alternate members of the Committee, in amounts and on terms adequate to permit the Association to meet its obligations to indemnify such persons pursuant to the Articles and Bylaws.

13.3 Individual Responsibility; Disclaimer of Liability. It shall be the responsibility of each Owner or Occupant to provide insurance for himself on his real or personal property interests on or within the Property, including, but not limited to, additions and improvements thereto, furnishings and personal property thereon, and for his personal liability. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. The Association, any Board member and Declarant shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

13.4 Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage unless otherwise approved by a majority of the votes of each class of Members at a meeting called for such purpose. Any proceeds remaining upon repair of such damage may be retained by the Association as reserves or to reduce future Assessments.

ARTICLE 14

ADDITIONAL TERMS

14.1 Enforcement. The Association shall have the standing and power to enforce the provisions of this Declaration, the Articles, the Bylaws and the rules and regulations of the Association, 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 the rate of twelve percent (12%) per annum, 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 the priority and may be enforced in the manner described in *Section 8.2*. 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 any 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 the rate equal of twelve percent (12%) per annum, 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. While Declarant has no reason to believe that any of the restrictive covenants contained in 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.

14.2 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association. 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. 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.

14.3 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 Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Areas or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only appurtenant thereto).

14.4 Interpretation of the Covenants. Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and

interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

14.5 Severability. If any provision of this Declaration or any application thereof shall be invalid or unenforceable, the remainder of this Declaration and any other application of such provision shall not be affected thereby.

14.6 Rule Against Perpetuities. If any of the interests, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such provision shall continue until twenty-one (21) years after the death of the survivor of the descendants of William Clinton, President of the United States, living on the date this Declaration is Recorded.

14.7 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

14.8 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine, feminine or neuter genders, or the singular or plural number, shall each include the others.

Unofficial Document

14.9 Captions. All captions, titles or headings of all Articles and Sections are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

14.10 Approvals Required.

(a) For as long as there is a Class B Member and if VA or FHA certification is desired by Declarant, the following actions will require the prior approval of the VA and FHA, unless such agencies have waived such requirements or unless the last sentence of this section applies: (i) annexation of additional properties into the Project (unless such annexation is in accordance with a plan of annexation or expansion previously approved by such agencies); (ii) mergers and consolidations; (iii) mortgaging or otherwise encumbering Common Area; (iv) dedication or other transfer of Common Areas; (v) dissolution of the Association; and (vi) amendment of the Articles, this Declaration or the Bylaws. Consent of the FHA and VA to the foregoing will not be required if the FHA and VA have elected not to approve the Project for certification or if such approval has been revoked, withdrawn, canceled or suspended.

(b) No amendment to the requirement that the Association maintain landscaping on the Common Area in accordance with City Ordinance and the landscaping plan

approved by the City shall become effective unless consented to by the City Attorney or the City Community Development Director or another properly authorized City official.

14.11 No Absolute Liability. No provision of this Declaration shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Areas or the Lots. Owners shall only be liable for damage to the Common Areas or the Lots caused by the Owner's negligence or intentional acts.

14.12 Initial Declaration Superseded. This Declaration shall supersede and replace the Initial Declaration in its entirety. Upon the Recording of this Declaration, the Initial Declaration shall be of no further force and effect.

IN WITNESS WHEREOF, Master Declarant and Declarant have caused this Declaration to be duly executed.

D.R. HORTON, INC., a Delaware corporation

By: Will K. [Signature]

Its: VICE PRESIDENT

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GROVES CENTER DEVELOPMENT LIMITED PARTNERSHIP II, an Arizona limited partnership

By: ELLMAN RESIDENTIAL DEVELOPMENT, INC., an Arizona corporation, its general partners

By: R. Conner

Its: Executive Vice President

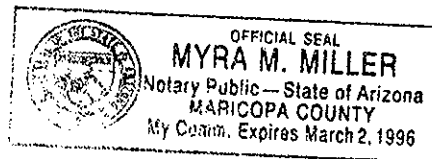
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 22nd day of March, 1999, before me, the undersigned notary public, personally appeared William K Peck, who acknowledged himself to be the Vice President of D.R. Horton, Inc., a Delaware corporation, and that he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Myra M. Miller
Notary Public

My Commission Expires:

March 2, 1996



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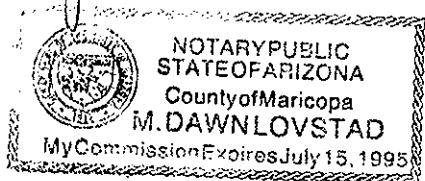
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 22 day of March, 1995, before me, the undersigned notary public, personally appeared ROBERT LOUITE, who acknowledged himself to be the EXECUTIVE VICE PRESIDENT of Ellman Residential Development, Inc., an Arizona corporation, the general partner of Groves Center Development Limited Partnership II, an Arizona limited partnership, and that he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

M. Dawn Lovstad
Notary Public

My Commission Expires:

July 15, 1995



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EXHIBIT A

Lots 1 through 105, inclusive, and Tracts A through F, inclusive, FESTIVA TEMPE, according to the plat recorded in Book 386 of Maps, page 2, records of Maricopa County, Arizona.

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