

Unofficial
DocumentTRANSAMERICA TITLE INS.
BUILDER SERVICES

430

When recorded, mail to:

Lynn T. Ziolk, Esq.
McLoone & Theobald, P.C.
2525 E. Arizona Biltmore Circle
Suite 140
Phoenix, Arizona 85016

PROP RSTR (RS)

87 452517

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY ARIZONA JUL 16 '87 - 3 00 KEITH POLETIS, County Recorder FEE 42 ⁰⁰ PGS 37 I.G. 11

DECLARATION OF HOMEOWNER BENEFITS AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
COLLEGE POINT
(DETACHED SINGLE FAMILY RESIDENCES)

87 452517

**TABLE OF CONTENTS
FOR
DECLARATION OF HOMEOWNER BENEFITS
AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
COLLEGE POINT
(DETACHED SINGLE FAMILY RESIDENCES)**

<u>SECTION</u>		<u>PAGE</u>
1	DEFINITIONS	2
1.1	"Architectural Committee"	2
1.2	"Architectural Committee Rules"	2
1.3	"Articles"	2
1.4	"Association"	2
1.5	"Association Rules"	2
1.6	"Bylaws"	2
1.7	"Common Area"	2
1.8	"Declarant"	2
1.9	"Declaration"	3
1.10	"Detached Dwelling Unit"	3
1.11	"Lot"	3
1.12	"Member"	3
1.13	"Mortgage"	3
1.14	"Mortgagee"	3
1.15	"Mortgagor"	3
1.16	"Owner" <small>Unofficial Document</small>	3
1.17	"Plat"	3
1.18	"Project Documents"	3
1.19	"Single Family"	4
1.20	"Single Family Residential Use"	4
1.21	"Visible From Neighboring Property"	4
1.22	"Person"	4
2	PROPERTY RIGHTS IN COMMON AREAS	4
2.1	Owners' Easements of Enjoyment	4
2.2	Delegation of Use	5
3	MEMBERSHIP AND VOTING RIGHTS	5
3.1	Membership	5
3.2	Class	5
4	COVENANT FOR MAINTENANCE ASSESSMENTS	6
4.1	Creation of the Lien and Personal Obligation for Assessments	6
4.2	Purpose of Assessments	7

87 452517

<u>SECTION</u>	<u>PAGE</u>
4.3	Initial and Annual Assessments 7
4.4	Special Assessments for Capital Improvements 8
4.5	Notice and Quorum for any Action Authorized Under Sections 4.3 or 4.4 8
4.6	Uniform Rate of Assessment 8
4.7	Date of Commencement of Assessments - Due Date 9
4.8	Effect of Nonpayment of Assessments - Remedies of the Association. 9
4.9	Subordination of the Lien to Mortgages 10
5	EXTERIOR MAINTENANCE. 10
5.1	By Association 10
5.2	Necessitated by Owner. 11
5.3	By Owner 11
5.4	Access at Reasonable Hours 11
5.5	Landscaping. 12
5.6	General Standards. 12
6	DUTIES AND POWERS OF THE OWNER'S ASSOCIATION. 12
6.1	Duties and Powers. 12
6.2	Insurance. 13
6.3	Damage and Destruction - Reconstruction 16
6.4	Other Duties and Powers. 17
6.5	Association Rules. 17
7	UTILITIES 18
7.1	Utility Service. 18
8	USE RESTRICTIONS. 18
8.1	Restricted Use 18
8.2	Business and Related Uses. 18
8.3	Signs. 18
8.4	Noxious or Offensive Activities. 19
8.5	Restricted Residences. 19
8.6	Vehicles and Recreational Equipment. . 19
8.7	Animals. 19
8.8	Drilling and Mining. 20
8.9	Trash. 20
8.10	Screening and Fencing. 20
8.11	Antennas 20
8.12	Temporary Window Covering. 20

87 452517

<u>SECTION</u>	<u>PAGE</u>
8.13	Leasing. 20
8.14	Encroachments. 21
8.15	Machinery and Equipment. 21
8.16	Restriction on Further Subdivision and Time Shares. 21
8.17	Diseases and Insects 21
9	PARKING 21
9.1	Parking. 21
9.2	Street Parking Prohibited. 21
9.3	Temporary Basis Defined. 22
10	FENCES AND WALLS 22
10.1	Fence. 22
10.2	Encroachments. 22
10.3	Maintenance. 22
10.4	Easement for Repair. 23
10.5	Permanent Easement 23
11	ARCHITECTURAL CONTROL. 23
11.1	Architectural Approval 23
11.2	Appointment of <small>Unofficial Document</small> Architectural Committee. 24
11.3	Reflective Materials 24
11.4	Architectural Committee Rules. 24
12	RESERVATION OF EASEMENTS 24
12.1	Declarant's Utility Easement 24
12.2	Declarant's Construction Easements 25
12.3	Easement for Encroachments 25
12.4	Easements for Ingress and Egress 25
13	CONDEMNATION 25
13.1	General Provisions on Condemnation 25
13.2	Partial Condemnation of Lot. 26
13.3	Condemnation of Common Area. 26
14	GENERAL PROVISIONS 26
14.1	Enforcement. 26
14.2	Severability 27
14.3	Term 27
14.4	Amendment. 27
14.5	Inclusion of Additional Phase. 28
14.6	Construction 28

87 452517

SECTION	PAGE
14.7	Notices 29
14.8	General Declarant Rights 29
14.9	Leases of Lots 29
14.10	Management Agreements. 29
14.11	No Partition 29
14.12	Declarant's Right to Use Similar Name. 29
14.13	Joint and Several Liability. 30
14.14	Construction 30
14.15	Survival of Liability. 30
14.16	Waiver 30
14.17	Attorneys Fees 30
EXECUTION	31
ACKNOWLEDGEMENT	31
ATTACHMENT	Exhibit "A"

Unofficial Document

87 452517

**DECLARATION OF HOMEOWNER BENEFITS
AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
COLLEGE POINT
(DETACHED SINGLE FAMILY RESIDENCES)**

THIS DECLARATION OF HOMEOWNER BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the date set forth at the end of this Declaration by THE GREG HANCOCK CO., INC., an Arizona corporation.

RECITALS:

A. Declarant is the owner of certain property in the City of Phoenix, County of Maricopa, State of Arizona, (hereinafter called "Property" or "Project") set forth on the Plat and which is additionally described as follows:

See Exhibit "A" Unofficial Document attached to and incorporated in this Declaration by this reference.

B. Declarant desires to provide for the phased construction of a planned area development consisting of detached single family residences, common areas, recreational facilities, and other facilities; and

C. Declarant, at this time, includes in this Declaration and imposes these benefits, covenants, conditions, and restrictions upon only the lots and those tracts described on the Plat, but may, subsequent to the date of this Declaration, desire to include in this Declaration additional phases of COLLEGE POINT, that is to say, to incorporate additional lots and tracts in COLLEGE POINT, as provided in Section 14.5 below;

NOW, THEREFORE, Declarant hereby declares that the lots and tracts described on the Plat, together with any other lots and tracts in COLLEGE POINT hereafter included in this Declaration as provided in Section 14.5, shall be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges, and liens (hereinafter sometimes collectively termed "covenants and restrictions"), which are for the purpose of protecting the value, attractiveness, and desirability of the Property, and which constitute covenants and shall benefit, burden, and run with the title to the Property and be binding upon all parties

87 452517

having any right, title, or interest in or to any part of the Property, or any part thereof, and their heirs, successors, and assigns, and which covenants and restrictions shall inure to the benefit of each Owner.

SECTION 1

DEFINITIONS

1.1 "Architectural Committee" shall mean the committee established pursuant to Section 11 of this Declaration and the provisions of any other Project Documents.

1.2 "Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as may from time to time be amended.

1.3 "Articles" shall mean the Articles of Incorporation of the Association which have been or will be filed in the office of the Corporation Commission of the State of Arizona, as may from time to time be amended in the manner set forth in the Articles.

1.4 "Association" shall mean COLLEGE POINT HOMEOWNERS ASSOCIATION, INC., which has been or will hereafter be incorporated by Declarant and/or others as a non-profit Arizona corporation, and that Association's successors and assigns.

1.5 "Association Rules" shall mean the rules and regulations adopted by the Association, as may from time to time be amended.

1.6 "Bylaws" shall mean the bylaws of the Association, as may from time to time be amended in the manner set forth in the Bylaws.

1.7 "Common Area" shall mean all that real property described on the Plat (except for the real property identified as individual Lots) which shall be owned by the Association when the first Lot is conveyed to a Class A Member, and all other real property hereafter owned by the Association for the common use and enjoyment of the Owners, together with all structures, facilities, furniture, fixtures, recreational facilities, improvements, and landscaping located on the real property owned by the Association, and all rights, easements, and appurtenances relating to the real property owned by the Association.

1.8 "Declarant" shall mean THE GREG HANCOCK CO., INC., an Arizona corporation, and its successor(s) and assign(s), if such successor(s) or assign(s) should acquire more than one undeveloped Lot from the Declarant for the purpose of resale and

87 452517

1.19 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) adult persons not all so related who maintain a common household in a Detached Dwelling Unit.

1.20 "Single Family Residential Use" shall mean the occupation or use of a Detached Dwelling Unit and Lot in conformity with the Project Documents and the requirements imposed by applicable zoning laws or other state, county, or municipal rules, ordinances, codes, and regulations.

1.21 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of the neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

1.22 "Person" and "person" shall mean a natural person, a corporation, a partnership, a trust, or other legal entity.

SECTION 2

PROPERTY RIGHTS IN COMMON AREAS

2.1 Owners' Easement Unofficial Document Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and pass with the title to every Lot, subject to the following:

(a) Charges and Regulations. The right of the Association to charge reasonable admission and other fees to the use of the Common Areas and to regulate the use of the Common Area;

(b) Suspension of Voting and Usage Rights. The right of the Association to suspend the voting rights of any Owner and to suspend the right to the use of the Common Areas by an Owner (or the Owner's family, guests, invitees, lessees, and licensees) for any period during which any assessment (together with accrued interest, late charges, and all attorneys' fees incurred) against that Owner's Lot remains unpaid, and, in the case of any non-monetary infraction of the Project Documents, for any period during which such infraction remains uncured; and

(c) Dedication/Transfer. The right of the Association to dedicate or transfer all or 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 Members. Except as provided in Section 12.1, no such dedications or transfers shall be effective unless an instrument agreeing to such dedication or transfer is signed by Members owning two-thirds (2/3) of the Lots, and the

87 452517

shall execute and record a supplemental declaration declaring itself as a succeeding Declarant hereunder. "Declarant" does not include any Mortgagee.

1.9 "Declaration" shall mean the homeowner benefits, covenants, conditions, and restrictions set forth in this entire document (in entirety or by reference), as may from time to time be amended.

1.10 "Detached Dwelling Unit" shall mean all buildings located on a Lot and used for Single Family Residential Use.

1.11 "Lot" shall mean any one of the lots described and shown on the Plat of COLLEGE POINT and any other lot of COLLEGE POINT hereafter included in this Declaration as provided in this Declaration.

1.12 "Member" shall mean an Owner of a Lot in COLLEGE POINT which is, or has become by supplemental declaration under Section 14.5, subject to this Declaration.

1.13 "Mortgage" and "mortgage" shall mean the conveyance or assignment of any Lot to secure the performance of an obligation, and the instrument thereof, and may include a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation or duty.

1.14 "Mortgagee" and "mortgagee" shall mean a person or entity to whom a Mortgage is made.

Unofficial Document

1.15 "Mortgagor" shall mean a person or entity who mortgages his, her, or its property to another, e.g., the maker of a Mortgage.

1.16 "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple legal title to any Lot, including without limitation, one who is buying a Lot under a recorded contract, but excluding others having an interest merely as security for the performance of an obligation or duty. In the case of Lots in which the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, §§ 33-801, *et seq.*, legal title shall be deemed to be in the trustor. In the case of a Lot covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, *et seq.*, the buyer shall be described as the "Owner."

1.17 "Plat" refers to the subdivision plat for COLLEGE POINT recorded in Book 312 of Maps, Page 37, Records of Maricopa County, as it may be amended from time to time pursuant to Section 14.5 or any other provision of this Declaration.

1.18 "Project Documents" refers to this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Committee Rules, and the Plat, collectively.

87 452517

instrument has been recorded. Further, except as otherwise may be provided in this Declaration, the Common Areas may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the written consent of the holders of seventy-five percent (75%) of the first mortgage liens on any of the Lots subject to this Declaration.

2.2 Delegation of Use. Any Owner may delegate, subject to and in accordance with the Project Documents, its right of enjoyment to the Common Areas to the members of its family and its tenants, social invitees, or contract purchasers who reside on the Property.

SECTION 3

MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Upon the permitted transfer of an ownership interest in a Lot, the new Owner shall automatically become a Member of the Association.

3.2 Class. The Association shall have two classes of voting membership:

Unofficial Document

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, for all voting purposes and quorum purposes, they shall together be considered to be one Member. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Any attempt to cast multiple votes for a given Lot shall result in the invalidity of all such votes.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership (thereby entitling Declarant to only one (1) vote for each Lot owned) on the happening of any of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;

(b) on December 31, 1993; or

87 452517

(c) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

The period of time during which Class B membership is in existence shall be referred to in this Declaration as the period of "Declarant Control." For the purposes of Subsection (a) above, the number of votes shall be based upon the Lots initially covered by this Declaration, plus all Lots thereafter included in or covered by this Declaration as provided in this Declaration, minus all Lots withdrawn from this Declaration, if any.

SECTION 4

COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed for that Lot (or otherwise becoming an "Owner") whether or not it shall be so expressed in such deed (or in any other instrument), is deemed to covenant and agree to be bound by all duties, obligations, and provisions of the Project Documents and pay to the Association:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements, as provided in Section 4.4, and Unofficial Document unconnected expenses;
- (c) An amount sufficient to, on demand, indemnify and hold the Association harmless for, from, and against all obligations undertaken or incurred by the Association at or on account of that individual Owner's special request and to repay the Association for all expenditures on account of such special request;
- (d) An amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner under the Project Documents which the Owner has failed to timely pay or perform; and
- (e) Such other assessments as may be fixed, established, and collected from time to time as provided in this Declaration or the other Project Documents, including, without limitation, any accrued interest, taxable court costs, late fees, attorneys' fees, or other charges.

The aforesaid assessments and obligations, together with all accrued interest, taxable court costs, attorneys' fees, late fees, and all other collection expenses incurred in connection with such assessments and obligations (collectively, sometimes called "assessments"), whether or not a lawsuit or other legal action is initiated, shall be a charge and a continuing lien upon the Lot against which each such assessment is made, or with reference to which each such charge is incurred. Each assessment

87 452517

and obligation, together with all accrued interest, taxable court costs, attorneys' fees, late fees, and all other collection expenses, whether or not a lawsuit or other legal action is initiated, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due or charge was incurred, or, in the case of more than one Owner, the personal obligation of each person, jointly and severally. The personal obligation for delinquent assessments shall not pass to the particular Owner's successors in title unless expressly assumed by them, and such personal obligation for the delinquent assessments or charges shall not be deemed released or discharged by reason any assignment, conveyance, or transfer of title, but the assessment shall additionally continue as a charge against the Lot in the hands of the subsequent Owner. The recordation of this Declaration shall constitute record notice and perfection of any assessment and further recordation of any claim of lien (or notice of lien) for assessment shall not be required.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of:

- (a) promoting the recreation, health, safety, welfare, and desirability of the Owners, Common Areas, and Lots;
- (b) operating of the Common Areas;
- (c) insuring, maintaining, repairing, painting, and replacing improvements in the Common Areas; and
- (d) enhancing and protecting the value, desirability, and attractiveness of the Lots and Common Areas generally.

4.3 Initial and Annual Assessments. Until December 31, 1988, the maximum annual assessments shall be Three Hundred and No/100 Dollars (\$300.00) per Lot, which is equivalent to Twenty-Five and No/100 Dollars (\$25.00) per month, or such lesser amount as the Board of Directors may determine. From and after the "base year" ending December 31, 1988, the maximum annual assessment shall be as determined by the Board of Directors. In no event, however, shall the percentage increase in the assessment in any given year over the assessment in the previous year be increased by more than the increase of the Consumer Price Index in Maricopa County, Arizona, as determined by First Interstate Bank of Arizona, N.A. (or its successor), for the October immediately preceding that given year over the Consumer Price Index for October in the previous year, unless any further additional increase is approved by an affirmative vote of two-thirds (2/3) of the votes cast in person or by proxy of each class of Members at a regular or special meeting duly called for that purpose. (By way of example only, the percentage increase in the assessment for 1989 cannot be increased by more than the increase in the Consumer Price Index for October, 1988, over the Consumer Price Index in October, 1987). If First Interstate Bank of Arizona, N.A. (or its successor) ceases to determine and

87 452517

promulgate the Consumer Price Index in Maricopa County, the "United States Bureau of Labor Statistics, Consumer Price Index, United States and selected areas, (1967=100) all items" issued by the U.S. Bureau of Labor Statistics, or its equivalent (or revised or successor index), shall govern. The annual assessment may include a reserve fund for taxes, insurance, maintenance, repairs, and replacements of the Common Area and other improvements which the Association is responsible for maintaining.

4.4 Special Assessments for Capital Improvements. The Association may, at any time and from time to time in any assessment year, in addition to the annual assessments authorized above or any other assessments authorized elsewhere in this Declaration, levy a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement (whether or not due to destruction, governmental taking, or otherwise) of a capital improvement upon the Common Areas (including fixtures and personal property related to the Common Area) or the cost of any other unexpected expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes cast in person or by proxy by each class of Members at a regular or special meeting duly called for that purpose.

4.5 Notice and Quorum for Any Action Authorized Under Sections 4.3 or 4.4. Written Unofficial Document of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all Members at the commonly known street address for each Lot not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called regarding any given proposal, the presence at the beginning of the meeting of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, one other meeting for the same purpose may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all assessable Lots. The rate for incomplete or unoccupied Lots owned by Declarant shall be twenty-five percent (25%) of the rate for completed and occupied Lots. Declarant shall not be obligated to pay the Association for any deficiencies caused by reason of Declarant's reduced assessments. Assessments may be collected on a quarterly basis or on such more or less frequent basis as the Board of Directors from time to time shall determine. This provision shall not preclude the Association from making a separate or additional charge to an Owner for or on account of special services or benefits rendered to, conferred upon, or obtained by or for that Owner or the Owner's Lot. If

87 452517

any common expense is caused by the misconduct of any Lot Owner or the Owner's guests, family, invitees, licensees, and lessees, the Association may assess the expense exclusively against such Owner and/or Lot.

4.7 Date of Commencement of Assessments - Due Date.

The annual assessments provided for in this Declaration regarding any given Lot subject to this Declaration shall commence on the first day of the month following the conveyance of the Common Areas to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall endeavor to fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; however, the annual assessment shall be binding notwithstanding any delay. Written notice of the annual assessment and of any special assessments shall be sent to every Owner subject to the assessment. The due dates shall be established by the Board of Directors. The Association acting through the Board of Directors shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments and charges on a specified Lot have been paid. Assessments shall be payable in the full amount specified by the assessment notice, and no offsets against such amount shall be permitted for any reason whatsoever including, without limitation, abandonment of the Owner's Lot, a claim that the Association is not properly ex^{Unofficial Document}ercising its duties in maintenance or enforcement, or the non-use or claim of non-use by Owner of all or any portion of the Common Area. Assessments may be collected in advance or in arrears as the Board of Directors shall determine in their sole discretion.

4.8 Effect of Nonpayment of Assessments - Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be subject to a one-time late charge of Fifty Dollars (\$50.00) and shall additionally bear interest from the due date at the minimum rate of twelve percent (12%) per annum, or at such higher legal interest rate as may be determined from time to time by the Board of Directors. Each Owner by acceptance of a deed (or otherwise becoming an "Owner") to a Lot hereby vests in the Association and its agents the right and power to bring all actions against such Owner personally for the collection of all assessments due under the Project Documents as a debt, and to enforce the lien securing the assessment by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the like manner as a mortgage of real property, a deed of trust, and/or as a mechanic's lien, and, to the extent permitted by law, each Owner grants to the Association a private power of sale in connection with the lien. The Association may make payments on any prior liens including any Mortgage or taxes on the Lot, and such payments shall be added to the lien in favor of the Association. The lien provided for in this Section 4 shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in

87 452517

any foreclosure sale pursuant to such foreclosure, and to acquire, hold, lease, mortgage, and convey the Lot so purchased. The Association may institute suit to recover a money judgment for unpaid assessments of the Owner without being required to foreclose its lien on the Lot involved and without waiving the lien which secures such assessments. Any foreclosure may be taken without regard to the value of the Lot, the solvency of the Owner, or the relative size of the Owner's default. The assessment lien and the rights of foreclosure under this Declaration shall be in addition to and not in substitution of all other rights and remedies which the Association may have under the Project Documents or under Arizona law.

4.9 Subordination of the Lien to Mortgages. The lien for the assessments and charges provided for in this Declaration shall be automatically subordinate to the lien of any institutional first Mortgage. Sale or transfer of any Lot shall not affect the lien for assessments; however, the transfer of any Lot pursuant to foreclosure of an institutional first Mortgage (or the acceptance of a deed in lieu thereof) shall extinguish the lien which became due prior to such transfer, but no transfer pursuant to foreclosure of any institutional first Mortgage shall relieve any Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing in this Declaration, however, shall be construed to release any Owner from the Owner's personal obligation to pay for any assessment levied pursuant to this Declaration.

SEC^UOfficial Document

EXTERIOR MAINTENANCE

5.1 By Association. Except as provided in Section 5.2, the Association shall be responsible for the maintenance, repair, and replacement of the Common Area, and may, without any approval of the Owners being required, do any of the following:

(a) Reconstruct, repair, replace, and refinish any improvement located on or used in connection with the Common Area (to the extent that the work is not performed by a governmental entity, if any, responsible for the maintenance and upkeep of such area and improvements); and

(b) Do any other acts which the Board of Directors of the Association deems necessary to preserve, beautify, and protect the Common Area in accordance with the general purposes specified in the Project Documents.

The Board of Directors of the Association shall be the sole and absolute judge as to the appropriate maintenance of the Common Area.

87 452517

5.2 Necessitated by Owner. In the event that the need for maintenance and/or repair work described in Section 5 to the Common Area is caused through the willful or negligent act or omission of an Owner, and/or the Owner's family, guests, licensee, lessees, or invitees, the cost of such maintenance and/or repairs shall be added to and become a part of the assessment against the Lot owned by that Owner, less insurance proceeds, if any, available to the Association, to pay the cost of such maintenance and/or repairs. In addition to the foregoing, if the Owner of a given Lot is held liable to the Association by a court of competent jurisdiction for maintenance and/or repair work described in Section 5 regarding any other Lot (not owned by that Owner), the amount of that judgment shall be added to and become a part of the assessment against the Lot owned by that Owner.

5.3 By Owner. Each Lot and the Detached Dwelling Unit located on the Lot (and all other permitted structures located on the Lot) shall be maintained in good, clean, safe, and attractive condition and repair solely by the Owner of that Lot and Detached Dwelling Unit; provided, however, that if an Owner shall fail to do so, by act or omission, then, upon vote of a majority of the Board of Directors, and after not less than thirty (30) days prior notice to that Owner, the Association, in addition to any other remedy, shall have the right (but not the obligation) to enter upon or into that Lot and provide such maintenance or make such repairs or replacements. The cost of these repairs shall be added to ^{Unofficial Document} assessments charged to such Owner, shall be promptly paid to the Association by that Owner as a special assessment or otherwise, and shall constitute a lien upon that Owner's Lot. Without limiting the foregoing, the Owner of each Lot shall be responsible for the following:

(a) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained on the Lot;

(b) All service equipment, such as refrigerators, air conditioners, heaters, dishwashers, washers, dryers, ovens, and stoves; and

(c) All floor coverings, windows, doors, paint (internal and external), finishes, siding, and electrical and plumbing fixtures.

5.4 Access at Reasonable Hours. For the purpose of performing the maintenance, repairs, or replacements permitted by Section 5.3, the Association's agents or employees shall have the right, after reasonable notice to an Owner (except in the case of emergency, in which case no notice need be given), to enter onto the Owner's Lot. For the purposes of performing the maintenance

87 452517

authorized by Section 5.1 or upon any portion of the Common Areas, the Association's agents or employees may enter onto the Lot, if applicable, or Common Area without notice to any Owner at reasonable hours.

5.5 Landscaping. Landscaping at all times must be maintained by each Owner in a clean, safe, neat, and attractive manner. Without limiting the preceding sentence, each Owner of a Lot shall keep all shrubs, trees, grass, plantings, and landscaping located on that Owner's Lot (including setback areas, if any) which are Visible From Neighboring Property neatly trimmed, properly cultivated, and free from trash, weeds, and other unsightly material.

5.6 General Standards. Except as may be otherwise provided in this Declaration or the other Project Documents, the Association and each respective Owner of a Lot, as applicable, shall maintain the areas they are respectively responsible for at a level of general maintenance at least equal to that prevailing with respect to areas of a similar nature located in residential communities commonly and generally deemed to be of high quality.

SECTION 6

DUTIES AND POWERS OF THE OWNER'S ASSOCIATION

6.1 Duties and Powers. In addition to the duties and powers enumerated in its ^{Unofficial Document} Articles, Bylaws, other Project Documents, or as elsewhere provided in the Declaration, the Association shall:

(a) Common Areas. Maintain and otherwise manage the Common Areas, and all other real and personal property that may be acquired by the Association;

(b) Legal and Accounting Services. Have the power and authority to obtain legal, accounting, and other services deemed by the Board, in its discretion, to be necessary or desirable in the operation of the Association and the Common Areas;

(c) Easements. Grant easements where necessary for utilities, sewer facilities, and CATV on, under, over, through, upon, and/or across the Common Areas to serve the Common Areas and/or any Lot;

(d) Employment of Managers. Have power and authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, which such managers, persons, independent contractors, or managing agents may be related to or affiliated with the Declarant;

87 452517

(e) Purchase Insurance. Have the authority to purchase insurance for the Common Areas for such risks, with such companies, and in such amounts as the Board shall determine necessary, desirable, or beneficial, subject to the provisions of Section 6.2 below;

(f) Other. Have the authority to perform other acts authorized expressly or by implication under this Declaration and/or under the Articles and/or the By-laws of the Association and/or the other Project Documents including, without limitation, the right to construct improvements on the Lots and Common Areas; and

(g) Enforcement. Enforce the provisions of this Declaration, the Articles, the By-Laws, and the other Project Documents by all legal means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, and/or the establishment of a system of fines or penalties for the enforcement of this Declaration, the Articles, the By-Laws, and the other Project Documents.

6.2 Insurance.

(a) Liability Insurance. Comprehensive public liability insurance covering the Common Areas shall be purchased and obtained by the Board, or acquired by assignment from Declarant, promptly following the Board's election, and shall be maintained in Unofficial Document all times. The premium thereon shall be paid out of the Association's funds. The insurance shall be carried in reputable companies authorized and qualified to do business in Arizona. The minimum amounts of coverage shall be \$500,000 for personal injury to any one person, \$1,000,000 for personal injury to any number of persons sustained in any one accident or mishap, and \$100,000 property damage. The policy shall name the Association (its directors, officers, employees, and agents in the scope of their employment), the Declarant (its directors, officers, partners, employees, and agents in the scope of their employment), and the Owners as insureds. This policy shall include, but need not be limited to, insurance against injury or damage occurring in or on the Common Areas.

(b) Fire Insurance - Master Policy for Common Areas. A master or blanket fire insurance policy shall be purchased or obtained by the Board, or acquired by assignment from Declarant, promptly following the construction of any building or improvement on the Common Areas (the "fire insurance policy"), and shall thereafter be maintained in force at all times. The premium thereon shall be paid out of the Association's funds. The fire insurance policy shall be carried with reputable companies authorized and qualified to do business in the State of Arizona, and shall insure against loss from fire and other hazards covered in the fire

87 452517

insurance policy, for the full insurable value of all of the permanent improvements upon the Common Areas. The fire insurance policy shall contain extended coverage and replacement cost endorsements (without deduction for depreciation), if available, as well as vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause, and a determinable cash adjustment clause, or a similar clause(s) to permit cash settlement covering full value of the improvements in the event of partial destruction. The fire insurance policy shall be in such amounts as shall be determined from time to time by the Board in its sole discretion. The fire insurance policy shall name the Declarant, Association, and any first Mortgagee of the insured improvements as insureds, as their respective interests may appear, and shall contain a loss payable endorsement in favor of the Trustee described in Section 6.2(d).

(c) Fire Insurance - Detached Dwelling Units. The Association shall not be obligated to obtain property insurance, liability insurance, flood insurance, or any other type of insurance covering the Detached Dwelling Units or the Lots. The procurement and maintenance of insurance on the Detached Dwelling Units and the Lots shall be the sole obligation of the Owners of the respective Lot and Detailed Dwelling Unit.

(d) Trustee for Insurance Proceeds. Subject to the rights of Mortgagees under Subsection 6.2(f), all insurance proceeds payable under Subsections 6.2 (b) shall be paid to a Trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others as their respective interests shall appear. The "Trustee" shall be a commercial bank or branch thereof, or other trust company or escrow company licensed to do business in the State of Arizona, which has agreed in writing to accept such a trust relationship and duties.

(e) Other Insurance. The Board may purchase (but is not obligated to purchase) additional insurance as the Board may determine to be advisable or necessary including, but not limited to, workmen's compensation insurance, boiler explosion insurance, demolition insurance to remove improvements that are not rebuilt, flood insurance, fidelity bonds, director and officer liability insurance, and insurance on Association owned personal property. All premiums for these types of insurance and bonds shall be paid out of the Association's funds. The Association may assess the Owners monthly in advance for the estimated cost of these types of insurance.

(f) Mortgagee's Rights. With respect to insurance coverage under Subsections 6.2 (b) above, any Mortgagee of record may have the option, if it so elects and is permitted

87 452517

under its loan documents, to apply insurance proceeds payable to it in reduction of the obligation secured by its Mortgage.

(g) General Provisions on Insurance. The Board of Directors of the Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Association pursuant to Paragraph 6.2. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and the Members. Any policy of insurance obtained by the Association may contain a reasonable deductible. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and, in the event multiple parties are responsible, the deductible shall be allocated in relation to the amount each party's loss bears to the total.

(h) Nonliability of Association. Notwithstanding the duty of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant (or its officers, directors, partners, or employees), the Association, nor any director, officer, or agent of the Association shall be liable to any Owner or any other party if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

(i) Provisions Required. The comprehensive public liability insurance referred to in Subsection 6.2(a) and the fire insurance policy referred to in Subsection 6.2(b) shall, to the extent possible, contain the following provisions:

1. Any "no other insurance" clause shall exclude insurance purchased by any Owners or first Mortgagees;
2. The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by any Owners or first Mortgagees;
3. The act or omission of any one or more of the Owners, or the Owner's lessees, guests, invitees, licensees, family members, or agents shall not constitute grounds for avoiding liability on any such policies and shall not be a condition to recovery under the policy;

87 452517

4. A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim based upon negligent acts or omissions of the Association or Owners;

5. Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such an election is not exercisable without the prior written consent of the Association;

6. Each insurer shall waive its rights to subrogate under each policy against the Association (and its directors, officers, agents, and employees) and the Owner (and the Owner's family members, lessees, guests, invitees, licensees, or agents); and

7. A standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association, for the use and benefit of first Mortgagees as their interest may appear, or which must be otherwise endorsed to fully protect the interest of first Mortgagees, FNMA, and FHLMC, their successors and assigns.

6.3 Damage and Destruction - Reconstruction. In the event of damage or destruction of any improvements upon the Common Areas, the Board shall obtain bids and contract for repair or reconstruction of these improvements. If the proceeds of any insurance policies payable as a result of such loss are insufficient for repair or reconstruction, the deficiency shall be the subject of a special assessment approved by a vote of the Owners as provided in Section 4. Insurance proceeds shall be paid to the contractor or contractors designated by the Board at such times and upon such conditions as may be designated by the Board in their sole discretion. All repair or reconstruction on the Common Areas or to structures on any Lot shall be made in accordance with the original plans and specifications, or according to such revised plans and specifications as may be approved by the Board. In the event that the cost of repairing or reconstructing the improvements in and upon the Common Areas exceeds the available insurance proceeds, and the Members fail to approve a special assessment to cover the deficiency, the Board shall then cause any remaining portion of such improvement which is not usable (as determined by the Board in its sole discretion) to be removed and the area cleared and landscaped in an aesthetically pleasing manner consistent with the appearance of the remainder of the Project. In the event that a structure on any Lot shall be substantially destroyed by fire or other casualty, and if replacement or demolition and landscaping is not commenced and prosecuted within a reasonable period of time by the Owner thereof, the Board may elect to demolish and remove the damaged structure and clear and landscape the Lot until the Owner elects to replace the structure. The cost of the demolition and such other work shall be added to the assessments charged to the

87 452517

Owner of that Lot and shall be promptly paid to the Association by that Owner. In the event that the Board fails to proceed in good faith to repair or reconstruct damaged or destroyed improvements upon the Common Areas, any individual Owner may call a meeting of the Association upon thirty (30) days notice in writing to all Owners, and the Association may, if a quorum of Members is present at the beginning of the meeting and upon a simple majority vote of the Members present, enter into contracts for the repair and reconstruction of any damaged improvements.

6.4 Other Duties and Powers. The Association acting through the Board shall, if required by this Declaration or by law or if deemed necessary or proper by the Board for the operation of the Association or enforcement of this Declaration, obtain, provide, and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments. If, however, any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are specifically provided for or apply to particular Lots, the cost thereof shall be specially assessed to the Owners of such Lots. The Association may likewise pay any amount necessary to discharge any lien or encumbrance levied against all the Lots, or any part thereof, which may, in the sole discretion of the Board, constitute a lien against the Common Areas, rather than merely against the interests therein of a particular Owner. If one or more Owners is responsible for the existence of such lien, however, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of the lien or liens, shall be specially assessed to the Owners. The Association may exercise any other right or privilege given to it by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it in the Project Documents or reasonably necessary to effectuate any such right or privilege.

6.5 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 rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any guest, invitee, licensee, agent, employee, or lessee of such Owner (or the Owner's family) and may additionally establish a system of fines and charges for violations of the Project Documents; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended, or repealed, shall be available for inspection by the Members at reasonable times. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in full and were a part of this Declaration.

87 452517

SECTION 7**UTILITIES**

7.1 Utility Service. Notwithstanding anything to the contrary contained in any of the Project Documents, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property except as initially installed and approved by the Declarant or thereafter approved by the Declarant, during the period of Declarant Control, or the Board, after the period of Declarant Control.

SECTION 8**USE RESTRICTIONS**

In addition to all other covenants contained in this Declaration and the other Project Documents, the use of the Common Areas, Lots, and the Detached Dwelling Units is subject to the following:

8.1 Restricted Use. Except as otherwise provided in this Declaration, none of the Lots shall be used except for Single Family Residential Use. No Lot shall have more than one living unit located on the Lot. The construction on all Lots shall be restricted to single-family houses and related improvements.

8.2 Business and Related Uses. No Lot shall ever be used, allowed, or authorized to be used in any way, directly or indirectly, for any business, ^{Unofficial Document} commercial, manufacturing, industrial, mercantile, storing, vending, or other such purposes; provided, however, that Declarant, and/or its successors or assigns, may use the Lots for such facilities as, in their sole opinion, may be required, convenient, or incidental to the construction and sale of living units, including, without limitation, a business office, management office, storage area, construction yards, signs, a model site or sites, and display and sales office during the construction and sales period. This Section 8 shall not prohibit an Owner from maintaining his/her own personal business library, files, and records or from conducting his/her own personal business correspondence (whether written, telephonic, or otherwise) in his/her own Detached Dwelling Unit.

8.3 Signs. No emblem, logo, sign, or billboard of any kind shall be displayed to the public view on any of the Lots or Common Areas, except for:

- (a) reasonable signs used by Declarant to advertise the Lots or living units on the Lots for sale or lease;

87 452517

(b) such other reasonable signs on the Common Areas as may be placed and approved by the Declarant or the Board; and

(c) one sign not more than eighteen (18) inches by twenty-four (24) inches in size, advertising a Lot for sale or rent placed in a location designated by the Board for such signs.

8.4 Noxious or Offensive Activities. No noxious or offensive activity shall be engaged in (or permitted to be engaged in) on any part of the Lots, nor shall anything be done on the Lots which may currently be, or may become, an annoyance or nuisance to the neighborhood generally or other Lot Owners specifically, or which shall, in any way, interfere with the use and quiet enjoyment of each of the Owners, and of the Owner's respective Lot and improvements thereon, or which shall in any way increase insurance rates on policies maintained by the Association or any Owner.

8.5 Restricted Residences. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be temporarily or permanently placed, maintained, or used on any Lot ^{Unofficial Document} at any time as a residence. No buildings or structures shall be moved from other locations onto any Lot, and all improvements erected on a Lot shall be of new construction.

8.6 Vehicles and Recreational Equipment. No commercial truck, wagon, trailer, camper, mobile home, motor home, boat, or similar equipment or vehicles shall be kept, placed, maintained, constructed, reconstructed, or repaired upon any Lot or upon any street (public or private) in such a manner as will be Visible From Neighboring Property, other than on a non-recurring, temporary basis.

8.7 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure thereon except that up to two (2) dogs, or two (2) cats, or two (2) other household pets, or two (2) of any combination of common household pets may be kept on or within the rear yard portion of the Lots or in the Detached Dwelling Unit, provided they are not kept, bred, or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on any Lot which results in an annoyance to, or are obnoxious to, other Owners in their reasonable opinion. The size of pets may be limited and regulated in the Bylaws or any Association Rules. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets. The Owner shall not leave any pet unattended for any unreasonable length of time and shall not allow its pet to move about the Property or Common Area unrestrained. Owners shall be liable for all damage caused by their pets. The Association may, in the Association Rules, establish a system of fines or charges for any infraction of this Section 8.7.

87 452517

8.8 Drilling and Mining. No oil or well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon or in any Lot. No oil wells, tanks, tunnels, or mineral excavations or shafts shall be permitted upon the surface of any Lot. No derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, maintained, or permitted upon any lot.

8.9 Trash. All rubbish, trash, and garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate on any Lot. The Association may arrange and contract for trash removal services, which shall become part of the common expenses, or, in the case of an Owner who allows such trash to accumulate on the Owner's Lot, the Association may arrange and contract for the removal and clean-up of the trash, and the costs thereof, shall become a special assessment to that Owner. No incinerators shall be kept or maintained on any Lot.

8.10 Screening and Fencing. All refuse containers (except for purposes of trash collection, and then for only the shortest time reasonably necessary for collection), woodpiles, storage areas, machinery, and equipment shall be prohibited upon any Lot, unless located in the rear yard and unless obscured and not Visible From Neighboring Property and Common Areas by a fence or appropriate screen approved Unofficial Document by the Architectural Committee.

8.11 Antennas. No alteration to or modification of any radio and television antenna system, as developed by Declarant, shall be permitted, and no Owner may be permitted to construct, use, and/or operate its own external radio or television antenna or satellite dish, without the written approval of the Architectural Committee.

8.12 Temporary Window Covering. Temporary coverings of windows in the front or side wall of any Detached Dwelling Unit may be installed only if the color and material of the covering has been approved by the Architectural Committee and may be used only for the time period approved by the Architectural Committee.

8.13 Leasing. Nothing in the Declaration shall be deemed to prevent the leasing of a Lot and Detached Dwelling Unit to a Single Family from time to time by the Owner of the Lot, subject to all of the provisions of the Project Documents. Any Owner who leases his Lot and Detached Dwelling Unit shall promptly notify the Association and shall advise the Association of the terms of the lease and the name of each lessee. The original term of all leases (excluding any extensions) shall not be shorter than one (1) year in length.

87 452517

8.14 Encroachments. No tree, shrub, or planting of any kind on any Property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of twelve (12) feet, without the prior approval of the Architectural Committee.

8.15 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence, appurtenant structures, or other improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Property.

8.16 Restriction on Further Subdivision and Time Shares. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such lot shall be conveyed or transferred by any Owner without the prior written approval of the Board. Neither the ownership nor occupancy of any Lot shall be in time shares. No Owner shall transfer, sell, assign, or convey any time share in his Lot and any such transaction shall be void. "Time share" as used in this Declaration shall Unofficial Document be the right to occupy a Lot or any one of several Lots during two (2) or more separated time periods of less than thirty (30) days per period over a period of at least five (5) years, including renewable options, whether or not coupled with an estate or interest in a Lot or a specified portion of a Lot. Notwithstanding the foregoing, in the event a conveyance or transfer shall be deemed a time share under Arizona law, then such transfer or conveyance shall be deemed a "time share" as used in this Declaration.

8.17 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property which shall induce, breed, or harbor infectious plant diseases or infectious or noxious insects.

SECTION 9

PARKING

9.1 Parking. Each Lot shall have one garage which shall be used by the Owner of the Lot for parking purposes only. No garage may be used for storage or any other use which restricts or prevents the garage from being used for parking automobiles.

9.2 Street Parking Prohibited. Except for emergency and service vehicles temporarily on the Project premises and any other vehicles on the Project premises on a non-recurring, temporary basis, no vehicle of any kind shall be parked or maintained

87 452517

on any street or roadway within the Project. Any vehicle in violation of this Declaration shall be immediately removed from the Project without prior notice to, and at the sole expense of, the Owner and/or operator of such vehicle.

9.3 Temporary Basis Defined. For the purposes of Sections 8 and 9 only, the words "temporary basis" or "temporarily" shall mean less than twenty-four (24) hours.

SECTION 10

FENCES AND WALLS

10.1 Fence. Except as may be installed by the Declarant, no side or rear fence and no side or rear wall (collectively called "fence" or "fencing"), other than the wall of the Detached Dwelling Unit constructed on the Lot, if any, shall be more than six (6) feet in height. Notwithstanding the foregoing, any prevailing governmental regulations shall take precedent over these restrictions if the governmental regulations are more restrictive. Unless otherwise approved by the Architectural Committee, all fencing and any materials used for fencing, dividing, or defining the Lots must be of block construction or wood construction and of new materials, and erected in a good and workmanlike manner. The color(s) of the fencing for all Lots will be as selected by the Declarant and may not be changed without the prior approval of the Architectural Committee. All fences shall be maintained in good condition and repair, and ^{Unofficial Document} on being started, must be completed within a reasonable time not exceeding three (3) months from commencement of construction (except as to the Declarant). Subject to the other provisions of this Section 10, in the event any fence installed by the Declarant is wholly or partially damaged by any cause, the damaged portion must be promptly restored to its original condition by the Owners of the adjacent Lots.

10.2 Encroachments. Declarant shall endeavor to construct all fences upon the dividing line between the Lots. By virtue of accepting a deed for a Lot (or otherwise becoming an "Owner"), all Owners acknowledge and accept that the fences installed by Declarant may not be exactly upon the dividing line, but rather may be near or adjacent to the dividing line because of minor encroachments, engineering errors, or because existing easements prevent a fence from being located on the dividing line.

10.3 Maintenance. All fences constructed upon or near the dividing line between the Lots shall be maintained and repaired at the joint cost and expense of the adjoining Lot Owners. Fences constructed upon the back of any Lot (which do not adjoin any other Lot) by the Declarant shall be maintained and repaired at the sole cost and expense of the Lot Owner upon whose Lot (or immediately adjacent to whose Lot) the fence is

87 452517

installed. These dividing line fences may not be altered or changed in design, color, material, or construction from the original construction made by the Declarant without the prior approval of the adjoining Owner(s), if any, and the Architectural Committee. In the event any dividing line fence is damaged or destroyed by the act or acts of one of the adjoining Lot Owners or the Owner's family, agents, guests, invitees, licensees, or tenants, that Owner shall be responsible for the damage and shall promptly rebuild and repair the fence to its prior condition, at that Owner's sole cost and expense. All gates shall be no higher than the adjacent fence. Except as may otherwise be provided in this Declaration, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions of any person shall apply.

10.4 Easement for Repair. For the purpose of repairing and maintaining any fence located upon the dividing line between Lots (or located near or adjacent to the dividing line), an easement not to exceed five (5) feet in width is hereby created over the portion of every Lot immediately adjacent to any perimeter fence to allow the adjoining Owner access for maintenance purposes set forth in this Declaration and no other purpose.

10.5 Permanent Easement Unofficial Document With respect to any fence not located exactly on a dividing line between Lots but located near or adjacent to the dividing line, an Owner of a Lot shall have and is hereby granted a permanent easement over any property immediately adjoining the Owner's Lot up to the center line of the fence for the use and enjoyment of that Owner.

SECTION 11

ARCHITECTURAL CONTROL

11.1 Architectural Approval. No building, fence, wall, solar collector, awning, or other improvement or structure shall be commenced, erected, constructed, or maintained upon any Lot, nor shall any exterior addition to or change or alteration be made in or on any Lot or Detached Dwelling Unit, until plans and specifications showing the nature, kind, color, shape, height, materials, floor plan, approximate cost, location, and other material attributes shall have been submitted to the Architectural Committee and approved in writing as to harmony and compatibility of external design and location in relation to surrounding structures and topography. In the event the Architectural Committee fails to approve or disapprove such design and location within thirty (30) days after complete and legible copies of the plans and specifications have been submitted to it, the application shall be deemed approved, and this Section shall be deemed fully complied with. All decisions of the Architectural Committee shall be final. All structures and improvements must also be in conformity with city and county building codes and may only be commenced if a proper building permit, if applicable, is issued by the appropriate authority.

87 452517

11.2 Appointment of Architectural Committee. Declarant shall initially appoint the Architectural Committee, consisting of not less than three (3) persons, who shall hold office whenever there is a Class B member. When there is no Class B member, the Architectural Committee shall be composed of the Board or by three (3) or more representatives appointed by the Board. Such representatives need not be Members of the Association. In the event of the inability, failure to serve, or the resignation of any member of the Architectural Committee prior to the time when the Board is vested with authority, Declarant shall have the right to appoint such member's successor. When the Board becomes vested with authority over the Architectural Committee, it shall have the right to appoint such member's successor.

11.3 Reflective Materials. No reflective materials, including, but without limitation, aluminum foil, reflective screens, reflective glass, mirrors, or similar type items, shall be installed or placed upon the outside or inside of any windows of a Detached Dwelling Unit without the prior written approval of the Architectural Committee. No enclosures, shades, screens, or other items affecting the exterior appearance of a Detached Dwelling Unit shall be constructed or installed upon any Lot without the prior written consent of the Architectural Committee. Nothing contained in this Section shall be construed to prohibit the installation or use of a solar energy device as defined in Arizona Revised Statutes §43-1074 (as may from time to time be amended); provided, however, that no solar energy device may be installed on roofs of Detached Dwelling Units or elsewhere on the Lot without the prior written approval of the Architectural Committee or Declarant.

11.4 Architectural Committee Rules. The Architectural Committee, by unanimous vote or unanimous written consent, may adopt, amend, and repeal rules and regulations regarding the architectural style, nature, kind, shape, height, materials, exterior colors, surface texture, and location of any improvement on a Lot, which such rules and regulations shall be called the Architectural Committee Rules. The Architectural Committee Rules shall not be inconsistent with the Declaration, the Articles, the Bylaws, or the Plat.

SECTION 12

RESERVATION OF BASEMENTS

12.1 Declarant's Utility Easement. A blanket easement upon, across, over, and under the Lots for the installation and maintenance of electric, telephone, water, gas, CATV, drainage facilities, sanitary sewer, or similar utility lines, all as shown on the recorded Plat of COLLEGE POINT (as may be amended), and as may be hereafter required or needed to service the Common Areas, is hereby reserved by Declarant, together with the right to grant and transfer the same while Declarant holds a Class B

87 452517

membership. This easement shall be for the benefit of Declarant (and its assigns) and any providing utility or service company. This easement shall in no way affect any other recorded easements.

12.2 Declarant's Construction Easements. Declarant hereby reserves the right to use any easement created or referred to in the Project Documents through the Common Areas and the Lots (and the additional phases as provided for in Paragraph 14.5) for the purposes of making improvements to the Common Areas and/or Lots.

12.3 Easement for Encroachments. Each Lot and the Common Area shall be subject to a reciprocal appurtenant easement for encroachments created by construction, settling, and overhangs as designed or constructed by Declarant. A valid easement for these encroachments (and for their maintenance, so long as they exist), shall and does exist for the benefit of the encroaching Lot and its Owner and/or the Association.

12.4 Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their family, guests, tenants, licensees, and invitees for pedestrian traffic over, through, and across sidewalks, paths, walks, and lanes Unofficial Document from time to time may exist upon the Common Area; and for vehicular traffic over, through, and across any portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

SECTION 13

CONDEMNATION

13.1 General Provisions on Condemnation. If an entire Lot is acquired by eminent domain, or if part of a Lot is acquired by eminent domain leaving the Owner with a remnant which may not practically be used for the purposes permitted by this Declaration, the award shall compensate the Owner for his/her unit and its appurtenant interest in the Common Area, whether or not any Common Area interest is acquired by the condemning party. Upon acquisition of the Lot, unless the condemnation decree provides otherwise, the affected Lot's entire Common Area interest, vote, and membership in the Association, and all common expense liabilities, are automatically reallocated to the remaining Lots in the Project in proportion to the respective interests, votes, and liabilities of those Lots prior to the taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting these reallocations. For purposes of this Section, by acceptance of a Lot or any interest in a Lot, the Owners shall be deemed to have appointed the Association as their attorney-in-fact for the purposes of amending, executing, and recording the Declaration as

87 452517

provided in this Section 13. Any remnant of a Lot remaining after the taking under this Section 13.1 shall be deemed thereafter a part of the Common Areas.

13.2 Partial Condemnation of Lot. Except as provided in Section 13.1, if a part of a Lot is acquired by eminent domain, the award shall compensate the Owner for the reduction in value and its appurtenant interest in the Common Areas. Upon such taking, the Lot's interest in the Common Areas, votes, and membership in the Association, and all common expense liabilities, shall remain the same as that which existed before the taking, and the condemning party shall have no interest in the Common Areas, votes, or membership in the Association, or liability for the common expenses.

13.3 Condemnation of Common Area. If a portion of the Common Areas is acquired by eminent domain, the award shall be paid to the Association. The Association shall cause the award to be utilized for the purpose of repairing and restoring the Common Area, including, if the Board deems it necessary or desirable, the replacement of any improvements. Any portion of the award not used for any restoration or repair of the Common Area shall be divided among the Owners and first Mortgagees in proportion to their respective interests in the Common Areas prior to the taking, as their respective interests may appear.

Unofficial Document
SECTION 14

GENERAL PROVISIONS

14.1 Enforcement. The Association, in the first instance, or any Owner, should the Association fail to act within a reasonable time, shall have the right to enforce, by any proceeding at law or in equity, all limitations, conditions, reservations, covenants, restrictions, liens, and charges now or hereafter imposed by the provisions of this Declaration, or any amendment to this Declaration or by the Association's Articles of Incorporation, Bylaws, and/or other Project Documents. Failure by the Association or by any Owner to enforce any limitation, condition, reservation, lien, charge, covenant, or restriction contained in this Declaration, or in those Articles, Bylaws, and/or other Project Documents shall in no event be deemed a waiver of the right to do so thereafter. Deeds of conveyance of the Property, or any part of the Property, may contain the above restrictive covenants by reference to this Declaration, but whether or not such reference is made in such deeds, each and every covenant and restriction shall be valid and binding upon the respective grantees. Violators of any one or more of the covenants may be restrained by any court of competent jurisdiction and damages awarded against such violators; provided, however, that a violation of these restrictive covenants (or any one or more of them) shall not affect the lien of any Mortgage now of record or which hereafter may be placed of record upon the Lots or any part of any Lot. The remedies

87 452517

established in this Declaration may be exercised jointly, severally, cumulatively, successively, and in any order. Without limiting anything contained in the Project Documents, a suit to recover a money judgment for unpaid Assessments, interest, rent, costs, attorneys' fees, or an other amount due, to obtain specific performance, and/or to obtain injunctive relief may be maintained without the foreclosing, waiving, releasing, or satisfying the liens created under this Declaration.

14.2 Severability. Invalidation of any one of these covenants and restrictions, or any portion thereof, by judgment or court order shall not affect the validity of any other provisions of the Project Documents, which shall remain in full force and effect.

14.3 Term. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years for so long as the Lots shall continue to be used for Single Family Residential Uses, or unless terminated at the end of such term, or any extension thereof, by a vote of the Owners of ninety percent (90%) of the Lots entitled to vote.

14.4 Amendment. This Declaration and/or the Plat may be amended as provided in this Declaration; however, no amendment may change the ratio of assessments without prior written approval of the then holders of all first Mortgages on seventy-five percent (75%) of the Lots. During the first twenty (20) year period and except as otherwise provided in this Section and Section 14.8, amendments shall be made by a recorded instrument executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association, and the amendment shall be adopted if approved by the vote of not less than two-thirds (2/3) of the Members cast in person or proxy at a regular or special meeting. After the initial twenty (20) year period, amendments shall be made by a recorded instrument approved and adopted by the vote of not less than two-thirds (2/3) of the Members cast in person or by proxy at a regular or special meeting, and the amendment shall be executed on behalf of the Association by an officer of the Association designated for the purpose or, in the absence of designation, by the President of the Association. Declarant may unilaterally amend this Declaration and/or Plat prior to recordation of the first deed of any Lot to an Owner and/or the recordation of a contract to sell a Lot to an Owner other than Declarant, provided that any such amendment shall either contain the approval (if any is required) of the Veterans Administration or an affidavit that its approval has been requested in writing and that the Veterans Administration has not either approved or disapproved such request within thirty (30) days after its delivery to the Veterans Administration.

87 452517

14.5 Inclusion of Additional Phase. Prior to December 31, 1993, additional phases of Lots and Common Area tracts in COLLEGE POINT may be annexed to and included under and be made subject to this Declaration by Declarant or its successors without the consent of any Member by recording a supplemental or amended Declaration signed by the Declarant, describing the lots and tracts to be included and expressly referring to this Declaration and reciting that those lots and tracts are thereby added or annexed. Any supplement or amendment shall either contain the approval of the Veterans Administration (if any is required) or an affidavit that its approval has been requested in writing and that it has not either approved or disapproved within thirty (30) days after delivery of that request. When a phase has been included (annexed) under this Declaration, the Owners of the Lots of such additional phase shall have the same rights and duties under this Declaration as the Owners of Lots in the first phase (i.e., the Lots initially covered by this Declaration) and vice versa. Any tracts added as Common Areas shall be added for the benefit of the lot Owners in the first phase and in any previously added phases as well as the lot Owners added in the same phase as that tract. Further, upon the addition of a tract, the common area tract shall be conveyed unencumbered by any mortgage lien to the Association. The Association shall maintain any such added common area tracts, and all lot Owners shall be assessed for the maintenance and subsequent development of any additional common area tract as though all lots and all common area tracts then covered by this Declaration had been initially included with the first phase. Unofficial Document

14.6 Construction. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a planned area development consisting of Single Family Detached Dwelling Units and Common Areas with maintenance as provided in this Declaration and the other Project Documents. The provisions of this Declaration shall be construed in a manner which will effectuate the inclusion of additional lots pursuant to Section 14.5. Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms) regardless of the number and gender in which they are used shall be deemed and construed to include any other number and any other gender as the context or sense of this Declaration may require, with the same effect as if such number and words had been fully and properly written in the required number and gender. Whenever the words and symbol "and/or" are used in this Declaration, it is intended, if consistent with the context, that this Declaration be interpreted and the sentence, phrase, or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word "and" inserted, and once with the word "or" inserted, in the place of words and symbol "and/or." Any reference to this Declaration shall automatically be deemed to include all amendments to this Declaration.

87 452517

14.7 Notices. Any notice permitted or required to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered and received twenty-four (24) hours after a copy of the notice has been deposited in the United States mail, postage prepaid, addressed to each person at the address given by such person to the Association for the purpose of service of such notice. This address may be changed from time to time by notice in writing received by the Association. If an Owner fails to provide the Association with an address for purposes of receiving notices, the address of any Detached Dwelling Unit owned by the Owner may be used in giving the notice.

14.8 General Declarant Rights. Declarant specifically reserves the right to construct such improvements to the Lots and/or Common Areas as are provided for in this Declaration and/or the Plat and to change the unit mix of the Lots as provided for in the Declaration and/or the Plat. Declarant also reserves the right, during any period of Declarant Control, to amend the Declaration and/or Plat to comply with applicable law or correct any error or inconsistency in the Declaration provided the amendment does not materially and adversely affect the rights of any Owner. Declarant reserves the right, during any period of Declarant Control, to amend the Declaration to conform with any rules or guidelines of FNMA, FHA, VA, FHLMC, or other secondary market guidelines. Declarant reserves the right, during any period of Declarant Control, to ^{Unofficial Document} withdraw the Property or portions of the Property from this Declaration and subdivide Lots, convert Lots into Common Areas, and convert Common Area into Lots.

14.9 Leases of Lots. Without limiting any other provision of this Declaration, any lease of a Lot must be in writing and must provide that the lease is subject in all respects to the provisions of the Declaration, the Articles of Incorporation, Bylaws of the Association, and the other Project Documents and that any failure by the lessee to comply with those instruments shall be a default under the lease, which default shall be enforceable by the Association.

14.10 Management Agreements. Any management agreement made by the Association or Declarant may be made with an affiliate of Declarant and shall be terminable by the Association with or without cause and without penalty upon thirty (30) days written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive periods of one year or less.

14.11 No Partition. There shall be no partition of any Lot, nor shall Declarant or any Owner or other person acquiring any interest in any Lot, or any part thereof, seek any partition.

14.12 Declarant's 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 or deceptively

87 452517

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, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission (or any other governmental entity) in order for any other 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.

14.13 Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by the Declaration and the other Project Documents shall be joint and several.

14.14 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules, or Architectural Committee Rules, the provisions of this Declaration shall prevail in all instances.

14.15 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any ^{Unofficial Document} rights or remedies which the Association may have against such former Member arising out of or in any way connected with such membership and the covenants and obligations incident to such membership.

14.16 Waiver. The waiver of or failure to enforce any breach or violation of the Project Documents shall not be deemed a waiver or abandonment of any provision of the Project Documents or a waiver of the right to enforce any subsequent breach or violation of the Project Documents. The foregoing shall apply regardless of whether any person affected by the Project Documents (or having the right to enforce the Project Documents) has or had knowledge of the breach or violation.

14.17 Attorneys Fees. In the event an action is instituted to enforce any of the provisions contained in the Project Documents, the party prevailing in such action shall be entitled to recover from the other party all reasonable attorneys' fees and court costs. In the event the Association is the prevailing party in such action, the amount of such attorneys' fees and court costs may be deemed all or part of a special assessment against the Lot and Owner involved in the action.

87 452517

DATED as of the 15th day of July, 1987.

"DECLARANT"

THE GREG HANCOCK CO., INC.,
an Arizona corporation

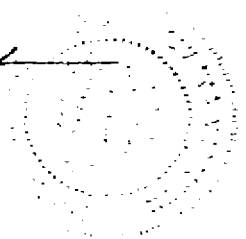
By *Gregory S. Hancock*
Gregory S. Hancock, President

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me this 15th
day of July, 1987, by Gregory S. Hancock as President
of THE GREG HANCOCK CO., INC., an Arizona corporation, and the
Declarant.

Pam Greenwood
Notary Public

Unofficial Document



My Commission Expires:
July 14, 1989

87 452517

EXHIBIT "A"
(Legal Description)

The North half of the Northwest quarter of the Northeast quarter of Section 31, Township 4 North, Range 4 East of the Gila and Salt River Base and Meridian. EXCEPT the West 33 feet and the North 40 feet thereof.