

CITY OF PRESCOTT
INTEROFFICE MAIL

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Yavapai County, Arizona
Ana Mayman-Trujillo, Recorder
03/03/2005 02:41P PAGE 1 OF 3
ESTANCIA DE PRESCOTT
RECORDING FEE 5.00
SURCHARGE 8.00
POSTAGE 0.00

**DECLARATION OF ANNEXATION
FOR
ESTANCIA DE PRESCOTT PHASE TWO**

This Declaration of Annexation for Estancia De Prescott (the "Annexation") is made on this THIRD Day of FEBRUARY, 2005, by Estancia De Prescott, L.L.C., an Arizona Limited Liability Company (hereinafter "Declarant").

WITNESSETH

WHEREAS, the Declarant is the owner of the real property located in Yavapai County, Arizona, which is described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, pursuant to Article II, Section 2.4 of Declaration of Covenants, Conditions and Restrictions for Estancia De Prescott Phase I, located at Book 4114 of Records, page 800, records of the Yavapai County Recorder (the "Declaration"), the Declarant may subject additional property to the Declaration and annex property into the Estancia De Prescott Phase I Homeowners Association (the "Association"); and

NOW, THEREFORE, Declarant hereby annexes the Property into the Association and declares that all of the Property shall be held, sold, and conveyed subject to the easements, restrictions and covenants contained in the Declaration which are for the purpose of protecting the value and desirability of and which shall run with said Property, and be binding on all parties having any right, title of interest in said Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

Additionally, the maintenance responsibility concerning the E-1 Low Pressure Sewer System installed within the Property shall be that of the Association pursuant to Article VIII, Section 8.9 of the Declaration. (Exhibit B).

IN WITNESS WHEREOF, Estancia De Prescott, L.L.C., an Arizona Limited Liability Company, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first above written.

ESTANCIA DE PRESCOTT, LLC An Arizona Limited Liability Company

Its administrative member:

By: *Darcy Howard*
Darcy Howard

State of Arizona)
) ss.
County of Yavapai)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 22ND
day of FEBRUARY, 2004, 2005 (RM)
by DARCY HOWARD, the
MANAGING MEMBER of Estancia De Prescott, L.L.C., an Arizona limited liability company, for and on behalf of the company.

Robert H. Sebring
Notary Public

My Commission Expires: 03-23-2007

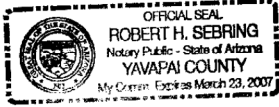


EXHIBIT "A"

Located in a portion of the Northeast Quarter of Section 27, Township 14 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona. Containing 63 lots on 33.63 Acres, +/-.

EXCEPT any portion lying within Estancia De Prescott, PHASE ONE, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, recorded in Book 50 of Maps, Page 47.

To be known as to Lots 21 through 84, and Tract A, Estancia De Prescott, PHASE TWO, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, recorded in Book 52 of Maps, Page 71.

When recorded, return to:

Jeffrey B. Corben, Esq.
CARPENTER HAZLEWOOD, PLC
1400 East Southern Ave., Suite 640
Tempe, Arizona 85282



3678883 BK 4114 PG 800
Yavapai County, Arizona
Patsy Jenney-Colon, Recorder
01/29/2004 03:41P PAGE 1 OF 51
FIRST AMERICAN TITLE INS CO
RECORDING FEE 51.00
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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
ESTANCIA DE PRESCOTT PHASE I**

Table of Contents

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
ESTANCIA DE PRESCOTT PHASE I**

ARTICLE I	CONCEPTS AND DEFINITIONS	1
ARTICLE II	CREATION OF THE COMMUNITY	5
ARTICLE III	ENVIRONMENTAL ACTIVITIES	6
ARTICLE IV	USE AND CONDUCT	7
ARTICLE V	ARCHITECTURAL APPROVAL	10
ARTICLE VI	MAINTENANCE AND REPAIR	14
ARTICLE VII	THE ASSOCIATION AND ITS MEMBERS	17
ARTICLE VIII	ASSOCIATION POWERS AND RESPONSIBILITIES	18
ARTICLE IX	ASSOCIATION FINANCES	27
ARTICLE X	EXPANSION AND REDUCTION OF THE COMMUNITY	32
ARTICLE XI	RIGHTS RESERVED TO DECLARANT	33
ARTICLE XII	EASEMENTS	34
ARTICLE XIII	EXCLUSIVE COMMON AREAS	38
ARTICLE XIV	PARTY WALLS AND OTHER SHARED STRUCTURES	39
ARTICLE XV	DISPUTE RESOLUTION AND LIMITATION ON LITIGATION	40
ARTICLE XVI	PROTECTION OF MORTGAGEES	42
ARTICLE XVII	RELATIONSHIPS WITH OTHER ENTITIES	43

ARTICLE XVIII	CHANGES IN OWNERSHIP OF UNITS	44
ARTICLE XIX	CHANGES IN COMMON AREA	44
ARTICLE XX	AMENDMENT OF DECLARATION	45

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR ESTANCIA DE PRESCOTT PHASE I**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR Estancia De Prescott Phase I Homeowners Association is made as of January 21, 2004, by Estancia De Prescott, L.L.C., an Arizona limited liability company (the "Declarant").

INTRODUCTION TO THE COMMUNITY

Declarant is the owner of the real property legally described in Exhibit "A" attached hereto which is within the master-planned community commonly referred to as Estancia de Prescott Phase I in Prescott, Arizona. This Declaration creates mutually beneficial covenants, conditions and restrictions for such property and establishes a flexible but reasonable procedure for its overall development, administration, maintenance and preservation. As part of the development plan, Declarant has formed the Estancia de Prescott Phase I Homeowners Association as an association comprised of all Owners in Estancia de Prescott Phase I. By executing this Declaration, Declarant intends to create an environmentally sensitive community boasting a high quality of life for its residents. The Estancia de Prescott Phase I Homeowners Association will be responsible for implementing the Declarant's goals for the community, as they are expressed herein. Foremost among these goals is the Declarant's desire to preserve and display the natural beauty of the surrounding environment through the plan of development and the uses of the land.

**Article I
CONCEPTS AND DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Additional Property": The real property, together with all improvements thereon, described on Exhibit A; and any other real property, together with the improvements located thereon, located not more than five miles from the property described on Exhibit A.

1.2. "Architectural Review Committee": The committee which the Declarant or Board may create, subject to provisions of Article V, and at such time as it shall determine in its discretion, to review construction and administer and enforce architectural standards.

1.3. "Area of Common Responsibility": The Common Area, together with any other areas which become the responsibility of the Association.

1.4. "Articles": The Articles of Incorporation of the Estancia de Prescott Phase I Homeowners Association, as they may be amended from time to time.

1.5. "Association": Estancia de Prescott Phase I Homeowners Association , Inc., an Ari-

zona nonprofit corporation, its successors and assigns, also known as Estancia de Prescott.

1.6. "Base Assessment" or "Regular Assessment": Assessments levied on all Units to fund Common Expenses, as more particularly described in Article IX.

1.7. "Benefited Assessment": Assessments levied on one or more but less than all Units, as more particularly described under Section 9.7.

1.8. "Benefited Assessment Area": Any part of the Properties designated in a Tract Declaration (or other instrument recorded in the Official Records approved by the Declarant, and by the Owner of the property subject thereto, if other than Declarant) as an area which is to be operated, maintained repaired and replaced by the Association but which is for the sole or primary benefit of Owners of fewer than all of the Lots and Parcels in the Properties.

1.9. "Board of Directors" or "Board": The body responsible for administration of the Association.

1.10. "Builder": Any Person which purchases one or more Units or parcels of land within Estancia de Prescott, for the purpose of constructing improvements for later sale to consumers, or for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.11. "Bylaws": The Bylaws of the Estancia de Prescott Phase I Homeowners Association, as they may be amended from time to time.

1.12. "Class "B" Control Period": The period during which the Class "B" Member is entitled to appoint a majority of the Board as provided in Article VII below.

1.13. "Common Area": All real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term may include, without limitation, recreational facilities, entry features, signage, landscaped medians, lakes, water courses and wetlands, as well as hiking, walking and bicycle trails.

1.14. "Common Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and appropriate.

1.15. "Covenant to Share Costs": Any declaration or other instrument executed by Declarant or the Association which creates easements for the benefit of the Association and the present and future owners of the real property subject to such declaration or other instrument and/or which obligates the Association and such owners to share the costs as described therein. Any Covenant to Share Costs may, affect less than all Owners.

1.16. "Declarant": Estancia De Prescott, L.L.C., an Arizona limited liability company or any successor, or assignee thereof designated as the Declarant in a written instrument executed by

the immediately preceding Declarant.

1.17. "Design Guidelines": The architectural, design, development, and other guidelines, standards, controls, and procedures including, but not limited to, application and review procedures, as they may be amended from time to time.

1.18. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article XIII.

1.19. "Governing Documents": This Declaration together with the Articles and By-laws of the Association, any Declaration of Easements and Covenants to Share Costs, Tract Declarations, the Design Guidelines, Use Restrictions and Rules, and any rules, regulations or policies adopted by the Board shall contain the standards for the Properties and the Association.

1.20. "Improvement": (a) Any Unit, building, fence or wall; (b) any swimming pools, tennis court, basketball goal or court, road, driveway, parking area or satellite dish; (c) any trees, plants, shrubs, grass or other landscaping improvements of every type and kind; (d) any statuary or statue, fountain, artistic work, craft work, lighting fixture, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Unit or Lot); and (e) any other structure of any kind or nature.

1.21. "Land Use Classification": The classification established by a Tract Declaration which designates the type of Improvement which can be constructed on a Unit, Lot or other portion of the Properties and the purposes for which the Unit, Lot or other Properties, and the Improvements situated thereon, may be utilized.

1.22. "Master Plan": The Master Plan for the development of Estancia de Prescott filed with the City of Prescott, Arizona, as it may be amended, updated, or supplemented from time to time. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration nor shall the exclusion of property from the Master Plan bar its later annexation.

1.23. "Member": A Person entitled to membership in the Association.

1.24. "Mortgage": A mortgage, deed of trust, deed to secure debt, or any other form of security deed.

1.25. "Mortgagee": A beneficiary or holder of a Mortgage.

1.26. "Neighborhood": A group of Units designated by Declarant or the Board following expiration of the Class "B" Control, Period as a separate Neighborhood for any reasonable purpose including, without limitation, sharing Exclusive Common Areas and/or receiving other benefits or services from the Association which are not provided to all Units within the Properties. If the Association provides benefits or services to less than all Units within a particular Neighborhood, then the benefited Units may, in the Board's discretion, constitute a sub-

Neighborhood for purposes of determining and levying Neighborhood Assessments for such benefits or services.

1.27. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses.

1.28. "Neighborhood Association": An owners' association, established by or with the approval of the Board having jurisdiction over any Neighborhood concurrent with, but subordinate to, the Association.

1.29. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred for the benefit of the Owners within a particular Neighborhood or Neighborhoods.

1.30. "Official Records": The Office of the County Recorder of Yavapai County, Arizona.

1.31. "Owner": Collectively, one or more Persons who hold the legal or equitable title to any unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a contract of sale, the purchaser (rather than the fee owner) will be considered the Owner, unless the contract specifically provides otherwise.

1.32. "Person": A human being, a corporation, a partnership, a trustee, or any other legal entity.

1.33. "Properties": The real property described in Exhibit "A," together with any additional property annexed and made subject to this Declaration.

1.34. "Reviewing Body": The body authorized to exercise architectural review pursuant to Article V.

1.35. "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) persons not all so related, who maintain a common household in a Unit.

1.36. "Special Assessment": Assessments levied against all Owners to cover unanticipated costs, as more particularly described in Article IX.

1.37. "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article X which subjects additional property to this Declaration, identifies any Common Area within the additional property, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.38. "Unit" or "Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit or Lot as well as any improvements thereon.

1.39. "Use Restrictions": The rules and use restrictions adopted by the Board, as they may be modified, canceled, limited or expanded under Article IV.

**Article II
CREATION OF THE COMMUNITY**

2.1. Initial Declaration. Declarant hereby declares that the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration or Tract Declarations shall be held, sold, used, and conveyed subject to the covenants, conditions, and restrictions herein which shall run with the title to the land. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns.

2.2. Duration. Unless terminated as provided below, this Declaration shall have perpetual duration. Unless otherwise provided by Arizona law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the consent of all Owners. After 20 years from the date of recording, this Declaration may be terminated only by an instrument in writing, signed by the Association and approved by 67% of the then Owners. This instrument shall then be recorded in the Official Records of the Yavapai County Recorder to evidence the termination of this Declaration.

2.3. Tract Declarations. The Declarant reserves the right, but not the obligation, to record one or more Tract Declarations with respect to Lots, Units or Parcels within the Properties and/or Master Plan (and with respect to portions of the Additional Property, in connection with, or subsequent to, the annexation and subjection of such portions to this Declaration pursuant to Section 2.4). A Tract Declaration must be executed by the Declarant and by the Owner of the Parcel or Lots subject to such Tract Declaration, if other than the Declarant. A Tract Declaration may: (a) designate Common Area, Common Area within a Neighborhood, Exclusive Common Area and Benefited Assessment Area; (b) establish the Land Use Classification for the property subject thereto; (c) reserve or grant easements to such Persons and for such purposes as the Declarant may deem appropriate; (d) impose such additional covenants, conditions and restrictions as the Declarant may deem appropriate for the property subject to the Tract Declaration; and (e) annex and subject the property covered thereby to this Declaration (subject to the provisions of Section 2.4). If a Tract Declaration designates any Benefited Assessment Area, the Tract Declaration shall also designate the Lots and Units which solely or primarily benefit from the Benefited Assessment Area and which shall be subject to Benefit Assessment pursuant to Section 9.4. Except as otherwise expressly provided in the Tract Declaration itself, the Tract Declaration may only be amended by: (i) the affirmative vote or written consent, or any combination thereof, of Members representing at least 67% of the total Class "A" votes subject to that Tract Declaration; (ii) the Association; and (iii) the consent of the Declarant so long as the Declarant owns any Lot or property subject to the Tract Declaration.

2.4. Annexation of Additional Property.

(a) At any time before December 31, 2045, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person (other than the Person who owns the property to be annexed, if other than the Declarant). The annexation of all or any portion of the Additional Property shall be effected by the Declarant recording a written instrument (which may, but shall not be required to be, a Tract Declaration) in the Official Records setting forth the legal description of the Additional Property being annexed and stating that such portion of the Additional Property is annexed and subject to the Declaration.

(b) The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or boundaries thereof. Property annexed by the Declarant pursuant to this Section 2.4 need not be contiguous with other property in the Master Plan, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property. The Declarant makes no assurances as to which, if any, part of the Additional Property will be annexed.

Article III **ENVIRONMENTAL ACTIVITIES**

The Declarant intends for the development and future use of Estancia de Prescott, to be carried out in an environmentally sensitive manner. In this regard, the Declarant has two goals: (1) to incorporate and feature the natural beauty of the surrounding environment into the physical development of Estancia de Prescott, and (2) to regulate the use of the Properties such that any interference with the surrounding environment is minimized. It is the intention of this Declaration that the Association be given the authority through both express and implied powers to regulate landscaping, site planning and building design, construction, and activities on the Properties in order to achieve these goals.

The Association shall specifically be authorized to take an active role in raising the environmental consciousness of the residents of Estancia de Prescott, by, among other things, organizing environmental and educational programs for Estancia de Prescott, residents and others in the region. Such programs may be designed to promote public awareness of and participation in environmental activities throughout Estancia de Prescott, and may address topics which include but need not be limited to conservation, management, and enhancement of the natural environment.

The Declarant, on behalf of itself, its successors and assigns, and the Association, acknowledges and agrees that the architectural and landscaping requirements and guidelines set forth in the Design Guidelines, as initially prepared, and as may be amended from time to time, shall remain consistent with the environmental and design philosophy espoused in this Article.

Article IV

USE AND CONDUCT

4.1. Framework for Regulation. The Declarant has established a general plan of development for Estancia de Prescott, in order to enhance the aesthetics and environment within Estancia de Prescott, and to engender a sense of community within the Properties. To accomplish this objective, the Properties are subject to the provisions of the Governing Documents governing individual conduct and use of or actions upon the Properties. Pursuant to the Governing Documents, the Board and the Members shall have the ability to respond to changes in circumstances, conditions, needs, and desires affecting the Owners.

All provisions of the Governing Documents shall apply to all Persons on the Properties. The lessee and all occupants of leased Units shall be bound by the terms thereof, whether or not the lease so provides. All Owners shall be responsible for inserting a provision in any lease informing the lessee and all occupants of the Unit of all applicable rules and use restrictions affecting the Unit, the Common Area or Exclusive Common Area.

4.2. Rule Making Authority.

(a) Subject to the terms of this Article, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions.

(b) Alternatively, with the approval of the Declarant during the Class "B" Control Period, the Voting Members, at a meeting duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions.

(c) Nothing in this Article shall authorize the Board or the Voting Members to modify, repeal or expand the Governing Documents to circumvent any requirements of the State of Arizona, the County of Yavapai, Arizona, or the City of Prescott, Arizona, concerning the development of the Properties. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

4.3. Owners' Acknowledgment. All Owners are subject to the Use Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Members may add, delete, modify, create exceptions to, or amend the Use Restrictions. Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

4.4. Signs. No sign of any nature whatsoever, other than a "for sale" or "for rent" sign, shall be placed on any residence or Lot which are visible from outside the residence or Lot. The Association may adopt rules governing the size, style and manner in which the "for sale" and "for rent" signs may be displayed.

4.5. Nuisance. No noxious or offensive activity shall be carried on upon or within Properties, Common Areas, or Units nor shall any activity which might be or become an annoyance or nuisance to Owners or Occupants be permitted to interfere with their rights and quiet enjoyment. The

Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other dwellings, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance. No Owner or Occupant shall engage in any activity within the the Properties, Common Areas or Units in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. Nothing herein shall be construed to prevent Declarant and its agents from engaging in all forms of construction and sales activities until all Lots have been sold by Declarant. The Board, in its sole discretion, shall have the right to determine the existence of any nuisance.

4.6. Religious, Holiday and other Displays. Owners and occupants may display religious and holiday signs, symbols, and decorations on their Units of the kinds customarily displayed in residences located in single-family residential neighborhoods. The signs, symbols and displays may only be displayed for a reasonable period of time before and after each applicable holiday, but under no circumstances may the signs, symbols or displays be displayed more than thirty (30) days before nor thirty (30) days after the applicable holiday. No other signs, symbols, displays or decorations may be placed, installed or displayed in any manner on any Lot without the prior written approval of the Architectural Review Committee. The Association may adopt reasonable time, place, and manner restrictions and/or rules regulating signs, decorations and displays which are visible from outside the Unit.

4.7. Single Family Residential Use. All Lots shall be used, improved and devoted exclusively to Single Family residential use. No trade or business may be conducted on any Lot or from any Unit, except that an Owner or other Resident of a Unit may conduct a business activity within a Unit so long as: (i) the existence and operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Neighborhood; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Neighborhood; and (iv) the business activity is consistent with the residential character of the Neighborhood and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Residents in the Neighborhood, as may be determined from time to time in the Board's sole and absolute discretion. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to person other than the provider's family and for which is the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Unit by the Owner thereof shall not be construed a trade or business within the meaning of this Section.

4.8. Pets. No animals, wolf-hybrids, wolf-mixes, fish, fowl, poultry, livestock, or birds of any kind shall be raised, bred or kept on any Lot or in any Unit, except that commonly accepted household pets, including domestic dogs, cats, fish and birds in cages

may be kept, provided that such pets are kept solely for domestic purposes and are not kept, bred or maintained for any commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. All pets, at all times, must be carried or on a leash while in any part of the Properties. The Owner of each pet is responsible for cleaning any soilage occasioned by the pet in the Neighborhood as well as damage to the Properties. The Association may adopt Rules applicable to the provisions of this Section and to the keeping of pets within the Properties, and their enforcement, including the assessment of charges to owners and Occupants who violate such Rules. Any charges so assessed shall be special Assessments. The Association shall have the right to require the removal of any pet or animal that does not comply with this Section or that presents a threat to the health or safety of residents. The Association shall also have the right to bring suit in law or in equity to require the abatement of any nuisance or unreasonable source of annoyance as determined by the Board or its designee.

4.9. Parking and Vehicles.

(a) Unless otherwise permitted by the Board, no motor vehicle (including a motorcycle or golf cart), commercial vehicle, truck or other vehicle designed for commercial purposes, mobile home, recreational vehicle, motor home, trailer, travel trailer, tent trailer, camper shell, detached camper, boat, boat trailer, all terrain vehicle or other similar equipment or vehicle may be kept or stored on any Lot (except within fully enclosed garages), or the Properties. Nothing herein shall be construed as preventing Declarant from using temporary parking in connection with its sales activities within the Properties. Nothing herein shall be construed as preventing Declarant from using temporary parking in connection with its sales activities within the Property.

(b) The Board may adopt Association Rules relating to the admission and temporary parking of vehicles within the Properties, including the assessment of charges to Owners and Residents who violate, or whose invitees violate, such rules. Any charges so assessed shall be Special Assessments.

(c) The Board shall have the right to tow any motor vehicle or equipment or similar item parked, kept, stored, maintained, constructed, reconstructed or repaired in violation of the Declaration, Bylaws or Association Rules at the sole expense of the owner of the vehicle or equipment.

4.10. Leases. The Association or the Board may require a minimum lease term of up to 12 months on a parcel by parcel basis. The Association may require that Owners use lease forms approved by the Association. No Owner shall be permitted to lease his or her Unit for transient or hotel purposes, which shall be defined as the use of a Unit by a Person unrelated to the Owner thereof for payment of rent for a period of less than thirty (30) days.

4.11. Maintenance of Landscaping. Each Owner of a Lot shall properly maintain and keep neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material all shrubs, trees, hedges, grass and plantings of every kind (collectively, "Landscaping") located on : (a) his, her or its Lot; (b) any public right-of-way easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his Lot and the

paved area of any street, sidewalk, bike-pth or similar area (unless otherwise directed by the Board). For purposes of this Section 4.11, proper maintenance of Landscaping shall include, without limitation, removal and replacement of dead Landscaping, subject to the Design Guidelines, Rules or Use Restrictions.

4.12. Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop, as generally anticipated in the Master Plan, including, but not limited to, the rights of the Declarant as set forth in Article X.

4.13. Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require the removal of any property which was being kept on the Properties prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law. Notwithstanding the above, the rights conferred under this subsection are for the benefit of affected Owners only and shall not be transferable or run with title to any Unit.

Article V **ARCHITECTURAL APPROVAL**

5.1. General Requirement for Prior Approval. No structure or improvement of any type whatsoever shall be placed, erected or installed upon any portion of the Properties, no alterations or improvements of or additions to the existing landscaping, and no improvements (including staking, clearing, excavation, grading, and other site, work, and exterior alteration of existing improvements) shall take place within the Properties without the approval of the Reviewing Body. In addition to the construction of dwellings and other buildings, it is specifically intended that the placement or posting of other structures (fences, signs, light fixtures, antennae and satellite dishes, clotheslines, playground equipment, basketball hoops, pools, propane and other fuel tanks (other than portable gas grills), lighting, temporary structures, solar devices, and artificial vegetation) on the exterior of any Unit or other portion of the Properties shall require the approval of the Reviewing Body. Modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to this Article.

5.2. Architectural Review.

(a) New Construction. Until expiration of the Class "B" Control Period, the Declarant or the Architectural Review Committee ("ARC"), if one has been established, shall have exclusive authority to administer and enforce the architectural controls created pursuant to this Declaration and to review and act upon all applications submitted for approval. There shall be no surrender of this right prior to that time except in a written instrument executed by Declarant and delivered to the Board. The ARC, if established, shall consist of at least three, but not more than five, persons who shall serve and may be removed in the Declarant's sole discretion during the Class "B" Control and thereafter shall be appointed by the Board.

It is specifically intended that all dwellings and other buildings be constructed by licensed

and bonded contractors. No Owner may construct his, her or its own dwelling or building unless the Owner is a licensed and bonded contractor.

(b) Fees: The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, landscape architects, engineers or other professionals and a reasonable refundable deposit all or any portion of which may be retained by the Association if it is determined by the Reviewing Body that the applicant or any Person acting on behalf of the applicant has failed to comply with the Governing Documents. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's Budget as a Common Expense.

5.3. Mailboxes.

In addition to and notwithstanding the architectural standards contained in any Rules, Design Guidelines or other Governing Documents:

(a) The exterior of each mailbox shall be covered with either brick, stone or stone veneer which matches the brick, stone or stone veneer on the exterior of the house on suchh Lot.

(b) One copper light fixture will be installed on the top of each mailbox at the time of construction of each Unit. In the event such copper light fixture becomes damaged, destroyed or must be replaced, the light fixture must be replaced with a unit identical to the one it replaces. In the event an identical copper light fixture is no longer available, the light fixture must be replaced with one as close to the original as possible. In the event it becomes necessary to install a different light fixture, such fixture cannot be installed without the prior written approval of the Association in accordance with Article V.

5.4. Exterior of Houses. In addition to and notwithstanding the architectural standards contained in any Rules, Design Guidelines or other Governing Documents:

(a) The exterior of each house on a Lot shall contain stone or stone veneer which covers approximately 50% of the exterior area of the house.

(b) All roofs shall be constructed of tile. Composition roofs are prohibited.

(c) The paint on the exterior of all improvments situated on a Lot shall be between 15 and 50 LRV.

(d) All exterior metal surfaces (i.e., vents on houses) located upon any improvements on a Lot shall be painted to match the color of the house.

(c) All hardsape on a Lot including, but not limited to, driveways, walkways, sidewalks, or courtyards shall be colored concrete, pavers, aggregate, or a combination thereof. Gray concrete is

prohibited.

5.5. Fences. Chain link fences are strictly prohibited. Fences may not enclose more than ten percent (10%) of the total area of any Lot. No fence may be installed on any Lot without the prior written approval of the Association in accordance with Article V.

5.6. Guidelines and Procedures.

(a) Design Guidelines. The Declarant has prepared or shall prepare the initial design guidelines (the "Design Guidelines") which shall apply to all matters requiring approval pursuant to this Declaration. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon location, unique characteristics, intended use, the Master Plan, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Body, and compliance with the Design Guidelines does not guarantee approval of any application.

During the Class "B" Control Period, the Declarant shall have the sole authority to amend the Design Guidelines from time to time in its discretion. Thereafter, the ARC shall have the authority to amend the Design Guidelines, with the consent of the Board, in a manner consistent with the philosophy for the development of Estancia de Prescott, as set forth in Article III. Subject to Article III, there shall be no limitation on the scope of amendments to the Design Guidelines; the Declarant is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive in whole or in part.

The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties, and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Declarant's discretion, the Design Guidelines may be recorded in the Official Records, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

All structures and improvements constructed upon a Unit shall be constructed in substantial compliance with the plans and specifications for such improvements submitted and approved by the Reviewing Body. So long as the Reviewing Body has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of, or compliance with the Design Guidelines and this Declaration shall be final.

(b) Procedures. Prior to commencing any activity requiring approval under this Article V, an Owner shall submit an application for approval of the proposed work to the Reviewing Body. Such application shall be in the form required by the Reviewing Body and shall include plans and specifications ("Plans") showing site layout, structural design,

exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor and other features of proposed construction, as required by the Design Guidelines and as applicable. The Reviewing Body may require the submission of such additional information as it deems necessary to consider any application.

In reviewing each submission, the Reviewing Body may consider whatever reasonable factors it deems relevant, including, but not limited to, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the general intent of the environmental and design philosophy stated in Article III, and architectural merit. Decisions may be based purely on aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewing Body shall, within the period specified in the Design Guidelines, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) approval of Plans, or (ii) segments or features of the Plans which are deemed to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines. If the Reviewing Body fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval and suggestions for curing objections, approval shall be deemed to have been denied unless the Reviewing Body fails to respond within an additional 30 days following written request from the applicant, in which case approval shall be deemed as having been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery and facsimile transmission of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

If construction does not commence on a project for which Plans have been approved within 120 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Reviewing Body for reconsideration. If construction is not completed on a project for which Plans have been approved within one year of such approval, such approval may, in the sole discretion of the Reviewing Body, be deemed withdrawn, and such incomplete construction shall then be deemed in violation of this Declaration.

5.7. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and Reviewing Body will change from time to time and that interpretation, application and enforcement of the Governing Documents may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for

approval. Should the Reviewing Body permit nonconforming improvements through hardship or error, it shall not be construed as a waiver of future enforcement rights or permission for future noncompliance.

5.8. Variances. The Reviewing Body may authorize variances or deny approvals (a) when reasonable circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (b) when construction in substantial accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties or construction if not disapproved would have a significant detrimental effect on adjoining properties or Estancia de Prescott, . Notwithstanding the above, the ARC may not authorize variances without the consent of the Declarant during the Class "B" Control Period.

5.9. Limitation of liability. Neither the Declarant, the Association, the Board, the ARC, nor any member or officer of the foregoing, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARC, nor any member or officer of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the Board, the ARC and their members and officers shall be defended and indemnified by the Association as provided in the Bylaws.

5.10. Enforcement. All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. The Association shall be primarily responsible for enforcement of this Article in accordance with the Governing Documents. If, however, in the discretion of the Declarant, the Association fails to take appropriate enforcement action within a reasonable time period, the Declarant, during the Class "B" Control Period for so long as it owns any portion of the Properties or has a right to annex property pursuant to Section 10.1, shall be authorized to exercise any enforcement rights which could have been exercised by the Association.

Article VI
MAINTENANCE AND REPAIR

6.1. Level of Maintenance Required. Estancia de Prescott, shall be maintained in accordance with the Governing Documents and any development agreements or orders between the Declarant and the City of Prescott, Arizona. Each Person responsible for maintenance of any portion of the Properties shall maintain or provide for such maintenance in accordance with such standards, which may include special requirements or exemptions for property owned by the Declarant or the Association or for the Area of Common Responsibility.

Maintenance, as used in this Article, shall include, without limitation, repair and

replacement as needed, as well as such other duties, including irrigation, as the Board may determine necessary or appropriate during the Class "B" Control Period. During the Class "B" Control Period, the Declarant and, thereafter, the Board, may establish a higher standard for portions of the Properties that are environmentally sensitive or that provide a greater than usual aesthetic value and may require additional maintenance for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, neither the Association, nor any Owner, nor any other entity responsible for the maintenance of a portion of the Properties shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

6.2. Installation of Landscaping. The Owner of a Lot shall install (if not already installed) grass, trees, plants and other landscaping improvements (together with an irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements) not later than one hundred eighty (180) days after the date on which title to the Lot is first conveyed to a Purchaser (as evidenced by Recordation of a deed). All landscaping must be installed in accordance with plans approved in writing by the Architectural Committee or other entity granted with such authority by the Association. If landscaping and an irrigation system are not installed on a Lot in the manner and by the applicable dates provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Lot to install such landscaping improvements as the Association deems appropriate (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

6.3. Owner's Responsibility. Each Owner shall maintain his or her Unit in accordance with the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

In addition to any other enforcement rights provided for in the Governing Documents, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred against such Owner in accordance with Article IX. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

6.4. Neighborhood's Responsibility. The Owners of Units within each Neighborhood shall be responsible for paying Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and open space between the Units within the Neighborhood and adjacent

public roads and private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association. As an alternative, the Board may resolve that such maintenance shall be performed by the applicable Neighborhood Association or Committee, if any. The Owners of Units within Neighborhoods to which an Exclusive Common Area is assigned shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring such Exclusive Common Area pursuant to Article XIII of this Declaration.

The Association may, but shall not be obligated to, assume maintenance responsibility for property within any Neighborhood, in addition to any property which the Association is obligated to maintain, either by agreement with the Neighborhood Association, if any, or because, in the opinion of the Board, the level and quality of service then being provided is not acceptable.. All costs of such maintenance shall be assessed as a Neighborhood Assessment against the Units' within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

6.5. Responsibility for Repair and Replacement. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may but are not obligated to do hereunder). Each Owner shall provide the Association with a certificate of insurance or similar evidence thereof.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article V. Alternatively, the Owner shall clear the Unit of building debris and maintain it in a condition consistent with the environmental and design philosophy set forth in this Declaration. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association or Committee responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association or Committee were an Owner and the common property were a Unit. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units if the structures are not rebuilt or reconstructed.

COMMUNITY GOVERNANCE AND ADMINISTRATION

Article VII
THE ASSOCIATION AND ITS MEMBERS

7.1. Functions of Association. The Association shall be (i) the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility; (ii) the primary entity responsible for compliance with and enforcement of the Governing Documents; and (iii) the entity permitted to provide for and fund such community activities and services as deemed necessary, appropriate or desired in accordance with the Governing Documents. Any action, approval, duty or other matter to be performed as undertaken by the Association or the Board under the terms of the Governing Documents may be delegated to any Neighborhood Association, Neighborhood Committee or other person if the Board determines such delegation to be in the best interests of the Owners. The Association and all Neighborhood Associations, if any, shall perform its functions in accordance with the Governing Documents and Arizona law.

7.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 7.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

7.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one vote for each Unit in which they hold the interest required for membership under Section 7.2, except that there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 9.12. All Class "A" votes shall be cast as provided in Section 7.3(c) below. If a Unit consists of real property which has not been platted into individual Units, the Owner of such Unit shall be deemed to own the number of Units equal to the maximum number of individual units permitted for such Unit under the appropriate Master Plan.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint a majority of the members of the Board until termination of the Class "B" Control Period, as set forth below. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-laws and the Articles, are specified in the relevant sections of this Declaration, the By-laws and the Articles.

The Class "B" membership shall terminate upon the earlier of:

- (i) when 95% of the total number of Units permitted under the most current Master Plan have been conveyed to Owners other than the Declarant or affiliates thereof:

(ii) December 31, 2045; provided that, in the event the Declarant annexes additional property pursuant to the Declaration at any time after December 31, 2040, this date shall be extended for additional three year periods for every 50 acres of property annexed, or any fraction thereof; or

(iii) when, in its discretion, the Declarant so determines.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Voting Member representing the Neighborhood, as provided in Section 7.4(b). The Voting Member may cast all such votes as it, in its discretion, deems appropriate.

In any situation where a Member is entitled personally to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

7.4 Neighborhoods and Voting Members. Any Neighborhood, acting either through a majority of the Owners within the Neighborhood, a Neighborhood Committee, or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate shall be assessed against the benefited Units within such Neighborhood as a Neighborhood Assessment.

Article VIII **ASSOCIATION POWERS AND RESPONSIBILITIES**

8.1. Acceptance and Control of Association Property. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Properties, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Area of Common Responsibility by the Association at its expense for the benefit of its Members.

8.2. Maintenance of the Area of Common Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility. The Association may also maintain and improve other property which it does not own, including, without limitation, wetlands, wildlife habitats, and property, including any trail systems, that may be dedicated to public use, if the Board determines that such maintenance is necessary or desirable and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, any Covenant to Share Costs, other recorded covenants, or agreements with such Persons. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment against the Units within the Neighborhood(s) to which the Exclusive Common Area is assigned.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless the Board and the Class "B" Member, if any, agree in writing to discontinue such operation.

(c) The costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed to the Neighborhood(s) to which the Exclusive Common Areas are assigned.

8.3. Maintenance in Public Rights-of-Way. The Association may, in its reasonable discretion, locate and maintain all improvements that are located within or on public easements or public rights-of-way in accordance with applicable ordinances of the City of Prescott, Arizona and the terms of any easements or licenses applicable.

8.4. Insurance.

(a) Types and Limits of Insurance. To the extent deemed reasonably necessary by the Board, the Association, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage

is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority and interest to insure any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, the Board, officers of the Association, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment, except that (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Units within the benefited Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefited unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Association shall have no insurance responsibility for any portion of the Golf Course.

(b) Policy Requirements. All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 8.5(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable

insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Unit(s) as a Benefited Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Arizona which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a coinsurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) an endorsement requiring at least 30 days' prior written notice to the

Association of any cancellation, substantial modification, or non-renewal;

(vi) a cross liability provision; and

(vii) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes or desired architectural and design alternatives.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Board elects to call for a vote on such matters and Voting Members representing at least 75% of the total Class "A" votes and the Class "B" Member, if any, decide within 6 months after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such period, then the period shall be extended until such funds or information are available.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Voting Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage.

8.5. Compliance and Enforcement.

(a) Every Owner and every occupant of a Unit shall comply with the Governing Documents and all rules, regulations and policies of the Association. The Board may impose sanctions for violation of the foregoing, after notice and a hearing in accordance with the procedures

set forth in the By-Laws. Such sanctions may include, without limitation some or all of the following:

(i) reasonable monetary fines which shall constitute a lien upon the violator's Unit. (If any occupant, guest or invitee of a Unit violates the Declaration, the By-Laws or any rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to prohibit ingress or egress to or from a Unit;

(iv) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of any applicable parking rules and regulations and removing pets that, in the Board's sole discretion, violate the applicable provisions of the Governing Documents and/or rules and regulations); and

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Article V and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article V from continuing or performing any further activities in the Properties; and

(viii) levying Benefited Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

(b) In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(i) exercising self-help in any emergency situation; and

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents or any rule or regulation, the Association shall be entitled to recover all costs, including, without limitation, all attorneys' fees and court costs incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with the applicable law, or in any case in which the Board reasonably determines that it would not be economically prudent or would otherwise not be of sufficient benefit to the Association to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or stop or prohibit the Association from enforcing any other covenant, restriction or rule.

8.6. Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

8.7. Powers of the Association Relating to Neighborhoods. The Association shall have the right, in its sole discretion, to delegate to an appropriate Neighborhood Association or Committee any responsibility or authority it may have with respect to any Neighborhood including, without limitation, establishing the level of services, Neighborhood assessments, reserves for such Neighborhoods and the budgets applicable to such Neighborhoods. The Association may disapprove any action taken or contemplated by any Neighborhood Association or Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Governing Documents. If the Board makes such a determination, it shall advise the Neighborhood Association or Committee, in writing, of such determination and no action referred to in such notice shall become effective or be implemented until and unless the Association and Declarant, during the Class "B" Control Period, shall have approved such action, in writing. The Association also may require specific action to be taken by any Neighborhood Association or Committee to fulfill its obligations and responsibilities under this Declaration or any other applicable covenants. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Committee, and (b) require that a proposed Neighborhood budget include the cost of such work.

Any action specified by the Association in a written notice pursuant to the foregoing paragraph shall be taken within the reasonable time frame set in such written notice. If the Neighborhood Association fails to comply with such requirements, the Association shall have the right to take such action and to enter upon, over and across any property reasonably necessary in order to take such

action. .

8.8. Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to promote the health, safety and welfare of Owners and occupants of any Unit. Notwithstanding anything contained in the Governing Documents or any other document governing or binding the Association, neither the Association, the Board, any officers of the Association, the management company of the Association, the Declarant nor any successor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Unit or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Unit and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Properties, including all recreational facilities, if any, and may be required to execute specific liability waivers from time to time as a condition of such use.

Neither the Association, the Board, any officers of the Association, the Association's management company, the Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by- the presence or malfunction of utility lines, or utility sub-stations adjacent to, near, over, or on the Properties. Each Owner and occupant of a Unit and each tenant, guest, and invitee of any Owner, Declarant, or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines, utility sub-stations, and electromagnetic fields and further acknowledges that the Association, the Board, the officers of the Association, the management company of the Association, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner, Declarant, or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations, or electromagnetic fields.

No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the Board, the officers of the Association, the management company of the Association, the Declarant nor any successor Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Unit) and each other Person having an interest in or lien upon, or making any use of, any portion of the Properties (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the Board, the officers of the Association, the Association's management company, the Declarant and any successor Declarant arising from or connected with any matter for which the liability has been disclaimed.

8.9. Provision of Services. The Association may provide services and facilities for the Members of the Association and for third parties if the Board determines it to be in the best interest of the Association. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and

facilities. In addition to Common Expense charges, the Board shall be authorized to charge additional use and consumption fees for selected services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein is a representation as to what services and facilities will or will not be provided.

8.10. Security. It is the goal of all Owners, including Declarant, to have a safe and healthy environment. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be: provided, neither the Association, the Board, the officers of the Association, the Association's management company, nor the Declarant or any successor Declarant, shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association, the Board, the officers of the Association, the Association's management company, nor the Declarant or any successor Declarant shall be held liable for any loss or damage for failure to provide adequate security or ineffectiveness of security measures undertaken.

All Owners and occupants of any Unit, and all tenants, guests and invitees of any Owner or the Declarant, acknowledge that the Association and its officers, its Board of Directors, the Association's management company, the Declarant, or any successor Declarant, do not represent or warrant that any entrance, patrolling of the Properties, neighborhood watch group, volunteer security patrol, or any security system may not be compromised or circumvented; nor that any entrance, patrolling of the Properties, neighborhood watch group, volunteer security patrol, or any security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that any entrance, patrolling of the Properties, neighborhood watch group, volunteer security patrol, any fire protection system, burglar alarm system, or other security systems will in all cases provide the detection or protection for which the system is designed or intended.

All Owners and occupants of any Unit and all tenants, guests, and invitees of any Owner or the Declarant assume all risks for loss or damage to Persons, to Units, and to the contents of Units and no Owner, occupant, or any tenant, guest, or invitee of any Owner or the Declarant relied upon any representations or warranties, expressed or implied, relative to any entrance, patrolling of the Properties, neighborhood watch group, volunteer security patrol, or any security systems recommended or installed or any security measures undertaken within the Properties.

Guardhouses and/or guardgates may be constructed at various entrances to the Properties and some or all Neighborhoods in order to limit access and to provide more privacy for the Owners. Each Owner and occupant, and their families, guests and invitees acknowledge that any guardhouse and/or guardgate may restrict or delay entry by the Police, the Fire Department, ambulances and other emergency vehicles or personnel. Each Owner and other occupant and their families, guests and invitees agree to assume the risk that any

guardhouse and/or guardgate may restrict or delay entry by emergency vehicles and personnel. Neither the Association, the Board, the officers of the Association, the Association's Management Company, nor the Declarant or any successor Declarant shall be liable to any Owner or other occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence of maintenance of any guardhouse and/or guardgate.

Each Owner and other occupant and their families, guests and invitees acknowledge that any guardhouse and/or guardgate does not guarantee the safety or security of the Owners and other occupants and their families, guests and invitees or guarantee that no unauthorized Person will gain access to the Project.

8.11. Governmental, Educational and Religious Interests. During the Class "B" Control Period, Declarant and thereafter the Board may designate sites within the Properties for government, education or religious activities and interests, including, but not limited to, fire, police, utility facilities, schools or education facilities, houses of worship, libraries, parks, art, nature study, museum, and other public facilities. The sites may include Common Areas and, in such case, the Association shall dedicate and convey such sites as directed by the Declarant and no membership approval shall be required.

8.12. Equestrian/Pedestrian Trail System Open to the Public. All Owners hereby acknowledge that equestrian, hiking, bicycle, pedestrian or similar type trail system or systems located within all or a portion of the Properties may be maintained by the Association, and may be open for the use and enjoyment of the public in accordance with any applicable rules, regulations and ordinances of the City of Prescott.

8.13. Common Area Parks. All Owners hereby acknowledge that use of the Common Area parks including, but not limited to, Tract A, is limited exclusively to Owners and their guests. Members of the public who are not Owners or Owner's guests may not use or enter upon Common Area parks including, but not limited to, Tract A.

Article IX **ASSOCIATION FINANCES**

9.1. Budgeting and Allocating Common Expenses. Not less than 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget may include a reserve fund as provided below.

The Base Assessment shall be levied equally against all Units subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 9.10 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to

become subject to assessment during the fiscal year.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 9.5), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be disclosed as a line item in the Common Expense budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years.

Notice of assessments shall be posted in a prominent place within the Properties and included in the Association's newsletter, if any. If the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

9.2. Budgeting and Allocating Neighborhood Expenses. At least 30 days before the beginning of each fiscal year, the Association shall prepare a separate budget for each Neighborhood covering the estimated Neighborhood Expenses, if any, expected to be incurred on behalf of such Neighborhood during the coming year. The budget may include a reserve fund as provided in Section 9.3. Any Neighborhood, upon a majority vote of the Owners within such neighborhood, may request that additional services or an increased level of services be provided, and in such case, any additional costs shall be added to such budget. Such budget may include a reserve contribution establishing a fund for repair and replacement of items maintained as a Neighborhood Expense, if any, as well as any other assessments permitted under Section 9.4 below. Neighborhood Expenses shall be levied as a Neighborhood Assessment against all Units subject to assessment within such Neighborhood and shall be allocated equally among such Units.

Notice of the Neighborhood Assessment shall be provided as set forth in Section 9.1. If the Board fails for any reason to determine the Neighborhood budget for any year, then and until such time as such budget shall have been determined as provided herein, the Neighborhood budget in effect for the immediately preceding year shall continue for the current year.

9.3. Budgeting for Reserves. The Board shall prepare, on an annual basis, reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in the Base Assessments and Neighborhood Assessments reserve contributions in amounts sufficient to meet these projected needs, if any.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes and for each Neighborhood. During the Class "B" Control Period, neither the Association nor the Board shall adopt,

modify, limit, or expand such policies without the Declarant's prior written consent.

9.4. Authority to Assess Owners: Time of Payment. The Association may levy assessments against each Unit for Association or Neighborhood expenses as the Board may specifically authorize from time to time. There shall be four types of assessments for Association expenses: (a) Base Assessments; (b) Neighborhood Assessments; (c) Special Assessments; and (d) Benefited Assessments. Each Owner, by acquiring legal or equitable title for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

Assessments shall be paid in such manner and by such dates as the Board may establish. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may assess a late charge and require unpaid installments of all outstanding assessments to be paid in full immediately.

9.5. Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, Declarant may annually elect either to pay assessments on all of its unsold Units or to pay the shortage (or operating deficit), if any, for such fiscal year; provided however, Declarant shall not be responsible for any shortage resulting from the failure of any Owner to pay assessments applicable to such Owner. Such "shortage" shall be deemed to exist if Income and Revenues, as defined in paragraph (a) below, are less than Expenditures incurred, as defined in paragraph (b) below.

(a) Income and Revenues are: the amount of all income and revenue of any kind received and/or earned by the Association.

(b) Expenditures are: the amount of all actual operating expenses incurred, or obligated for, by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds.

Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

9.6. Special Assessments. In addition to other authorized assessments, the Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if for Common Expenses, or against the Units within any Neighborhood, if for Neighborhood Expenses. Such Special Assessments shall become effective unless disapproved by the Declarant during the Class "B" Control Period within 60 days following the levy of such assessment.

Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.7. Benefited Assessments. The Board may levy Benefited Assessments against particular Units for expenses incurred or to be incurred by the Association or any Neighborhood Association or Committee as follows:

(a) to cover the costs or reasonable portion thereof, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize, which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing before levying a Benefited Assessment under this subsection (b).

The Board may also levy a Benefited Assessment against the Units within a Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents.

9.8. Personal Obligation. Each Owner is deemed to covenant and agree to pay all assessments authorized in this Declaration. All assessments, together with interest from the due date of such assessment at the rate of 18% per annum unless a different rate is a rate determined by the Board, reasonable late charges established by Board, costs, and attorney's fees, shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of legal or equitable title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

No Owner may exempt himself from liability for assessments, by non-use of Common Area, abandonment of his Unit, or any other means. 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 for any alleged failure of the Association or Board or the applicable Neighborhood Association and its board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Board shall, upon request, furnish to any Owner liable for any type of

assessment a certificate in writing signed by an officer of such board or its designated agent setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. Payment of a processing fee for the issuance of such certificate may be required.

9.9. Lien for Assessments. All assessments shall constitute a lien against the Unit against which they are levied until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of all interest, late charges, costs of collection and such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when any assessment or other charge is delinquent, or take any other action either independently or simultaneous to the extent permitted at law or in equity.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue or take any other action permitted at law or in equity for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment, including such acquirer, its successors and assigns.

9.10. Date of Commencement of Assessment Obligations. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the date the Unit is made subject to this Declaration, or (b) the date the Association or any Neighborhood Association or Committee first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base and Neighborhood Assessments against each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

9.11. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association or Neighborhood Association or Committee, if any, may retroactively assess any shortfalls in collections.

9.12. Exempt Property. The following property shall be exempt from payment of as-

assessments:

- (a) all Common Area;
- (b) all property dedicated to and accepted by any governmental authority or public utility; and
- (c) all property owned and maintained by a Neighborhood Association exclusively for the common use and enjoyment of its members; and

In addition, the Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

9.13. Capitalization of Association. Upon acquisition of legal or equitable title to a Unit by any Person other than a Builder or a Mortgagee by foreclosure or by operation of law, the purchasing Owner shall make a contribution to the working capital of the Association in an amount equal to \$200 per Unit or such other amount as reasonably determined by the Board. This amount shall be in addition to, not in lieu of, any other assessments, and shall not be considered an advance payment of any assessments. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses, fundings, reserves or meeting any other obligations incurred by the Association pursuant to the terms of this Declaration.

COMMUNITY DEVELOPMENT

Article X

EXPANSION AND REDUCTION OF THE COMMUNITY

10.1. Expansion by the Declarant. Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" or any other real property located adjacent to or in the vicinity thereof by filing a Supplemental Declaration or Tract Declaration in the Official Records describing the additional property to be subjected. A Supplemental Declaration filed pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

The Declarant's right to expand the community pursuant to this Section shall expire upon termination of the Class "B" Control Period or 20 years after the recording of this Declaration in the Public Records, whichever is earlier. Nothing in this Declaration shall be construed to require the Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

10.2. Expansion by the Association. The Association may also subject additional property to the provisions of this Declaration by filing a Supplemental Declaration or Tract Declaration in the Public Records describing the additional property. Any such Supplemental Declaration shall

require the affirmative vote of Voting Members representing a majority of the Class "A" votes of the Association and the consent of the owner of the property. In addition, during the Class "B" Control Period, the consent of the Declarant shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

10.3. Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

10.4. Effect of Filing Supplemental or Tract Declaration. Any Supplemental or Tract Declaration filed pursuant to this Article shall be effective upon recording in the Public Records unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

10.5. De-annexation of Property. Declarant reserves the right to de-annex any real property from the terms of this Declaration at any time during the Class "B" Control Period without prior notice and without the consent of any Person, for the purpose of removing such real property from the coverage of this Declaration or clarifying that such property is no longer subject to annexation, provided such action is not materially adverse to the overall, uniform scheme of development for the Properties. If Declarant elects to de-annex any property, Declarant shall record a Supplemental Declaration in the Official Records.

Article XI **RIGHTS RESERVED TO DECLARANT**

11.1. Construction of Improvements. The Declarant and its employees, agents and designees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing such improvements to the Common Area as it deems appropriate in its sole discretion.

11.2. Right to Use Common Area. The Declarant and its designees may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model Units, and sales offices. The Declarant and its designees shall have easements for access to and use of such facilities.

The Declarant and its designees, during the course of construction on the Properties adjacent to any Common Area, may use such Common Area for temporary storage and for facilitating construction on adjacent property. The user of such Common Area will return the Common Area to the condition it was in prior to its use. If the Declarant use under this Section results in additional costs to the Association, the Declarant shall reimburse the Association for such costs, but the Declarant shall not be obligated to pay any use fees, rent or similar charges for its use of Common Areas pursuant to this Section.

The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

11.3. Other Covenants Prohibited. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

11.4. Right to Approve Changes. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any rules, use guidelines or restrictions, or Design Guidelines affecting the Properties shall be effective without prior notice to and the written approval of the Declarant during the Class "B" Control Period.

11.5. Right to Transfer or Assign Declarant Rights. Any or all of the rights and obligations of the Declarant set forth in this Declaration may be transferred to other Persons. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Official Records.

11.6. Amendment. This Article shall not be amended without the prior written consent of Declarant during the Class "B" Control Period. The rights contained in this Article shall terminate upon the earlier of (a) 50 years after the conveyance of the first Unit to an Owner, or (b) upon recording by Declarant of a written statement that all sales activity has ceased. Thereafter, the Declarant and its designees may continue to use the Common Area for purposes stated in this Article only pursuant to a rental or lease agreement between the Declarant and/or such designee and the Association.

PROPERTY RIGHTS WITHIN THE COMMUNITY

Article XII EASEMENTS

12.1. Easements in Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration, and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to owners of Units and their guests, and rules limiting the number of occupants and guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area;
- (e) The right of the Association to dedicate or transfer all or any part of the Common Area to governmental entities;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any recreational facility situated upon the Common Area;
- (g) The right of the Board to permit use of any Common Area recreational, or educational, or cultural facilities by non-Owners, their families, lessees and guests;
- (h) The right of the Board to create, enter agreements with, grant easements to and transfer portions of the Common Area to tax-exempt organizations;
- (i) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for Association obligations;
- (j) The rights of certain Owners to the exclusive use of those portions of the Common Area designated as Exclusive Common Area;
- (k) The right of the Board to change the use of any portion of the Common Area with the consent of the Declarant during the Class "B" Control Period; and
- (l) The rights and obligations of the Association, acting through its Board, to restrict, regulate or limit Owners' and occupants' use of the Common Area for environmental preservation purposes, including, without limitation, wildlife corridors, winter wildlife ranges and natural wildlife habitat.

12.2. Easements of Encroachment. Declarant reserves unto itself, easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or

settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of the Declarant. Additionally, Declarant reserves easements of encroachment for Unit Owners if the encroaching item or structure was built in substantial conformity with plans approved by the appropriate Reviewing Body pursuant to Article V.

12.3. Easements for Utilities, Etc. Declarant reserves unto itself, and grants to the Association an easement for the purpose of access and maintenance upon, across, over, and under all of the Properties to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to Estancia de Prescott, subject to the limitations herein.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Unit on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board and Declarant during the Class "B" Control Period.

12.4. Easements to Serve Additional Property. The Declarant hereby reserves unto itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B" whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

12.5 Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall discharge any water, backwash any pool, spa or

similar improvements or alter the natural drainage on any Unit to increase materially the drainage of storm water onto adjacent portions of the Properties, the Golf Course or the Common Areas without the consent of the Owner(s) of the affected property, the Board, and the Declarant during the Class "B" Control Period.

12.6 Right of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any dwelling on any Unit to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities. Public providers of emergency services shall have access to Units in an emergency as provided by state law and, if applicable, City of Prescott, Arizona, operating policies.

12.7. Easements for Maintenance and Enforcement. Authorized agents of the Association, shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit to (a) perform its maintenance responsibilities under Article VI, and (b) make inspections to ensure compliance with this Declaration. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage caused by the Association shall be repaired by the Association at its expense. The Association also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents.

12.8. Rights to Stormwater Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees, including but not limited to the owner of the Golf Course, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent. This Section may note-be amended- without the consent of the Declarant or its successor, and the rights created in this Section shall survive termination of this Declaration.

The Properties are hereby burdened with a non-exclusive easement in favor of the Association for overspray of water from any irrigation system serving the Area of Common Responsibility. The Association may use treated effluent in the irrigation of any Area of Common Responsibility. Under no circumstances shall the Association or any other Person be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

12.9. Easements for Lake and Pond Maintenance and Flood Water. Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, rivers, streams, and wetlands located within the Area of Common Responsibility to (a) construct, maintain, and repair pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, rivers, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within one hundred feet of lake beds, ponds, rivers, streams and wetlands within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, rivers, streams, and wetlands within the Area of Common Responsibility subject to the approval of all appropriate regulatory bodies; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, rivers, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising their rights under this Section. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from, the intentional exercise of the rights granted under such easements. Nothing herein shall be construed to make Declarant, the Association, or any other Person liable for damage resulting from flooding due to heavy rainfall, hurricanes, or other natural occurrences.

12.10. Easement for Use of Private Streets. The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress and egress over the private streets within the Common Area, for law enforcement, fire fighting, paramedic, rescue and other emergency vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; private delivery or courier services; and for vehicles, equipment and personnel providing garbage collection service to the Properties; provided, such easement shall not authorize any such Persons to enter the Properties except while acting in their official capacities.

12.11. Easements for Tax Exempt Organizations. Tax exempt organizations designated or established by the Declarant or the Association to maintain or assist in the preservation of any environmentally sensitive areas, including but not limited to any wetlands or wildlife habitat areas, shall have easements over the Area of Common Responsibility to the extent necessary to carry out their responsibilities.

Article XIII
EXCLUSIVE COMMON AREAS

13.1. Purpose. Certain portions of the Common Area may be designated as Exclusive Common Areas and reserved for the exclusive use or primary benefit of Owners,

occupants and invitees of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation. Exclusive Common Areas may include entry features, shared private drives, and recreational facilities such as swimming pools, shared private drives, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Exclusive Common Area is assigned.

13.2. Designation. Initially, the Declarant shall designate any Exclusive Common Area. No such assignment shall preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods during the Class "B" Control Period.

Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Voting Members representing a majority of the Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Areas are assigned, if applicable.

13.3. Use by Others. The Association may permit Owners of Units in other Neighborhoods to use all or a portion of Exclusive Common Areas upon such terms and conditions as the Association deems reasonable.

Article XIV
PARTY WALLS AND OTHER SHARED STRUCTURES

14.1. General Rules of Law to Apply. Each wall, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

14.2. Maintenance: Damage and Destruction. All Owners who make use of any party structure shall share the cost of reasonable repair and maintenance of such structure equally.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners subsequently use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

14.3. Right to Contribution Runs With Land. The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

14.4. Disputes. Any dispute concerning a party structure shall be subject to the dispute

resolution procedures set forth in Article XV.

RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Article XV

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

15.1 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that specified claims, grievances or disputes described in this Section ("Claims") shall be resolved using alternative dispute resolution procedures in lieu of filing suit in any court.

15.2. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the shall be subject to the provisions of Section 15.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 15.3:

- (a) any suit by the Association to enforce the provisions of Article IX (Association Finances);
- (b) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IV (Use and Conduct) and Article V (Architectural Approval);
- (c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 15.3(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the

alternative dispute resolution procedures set forth in Section 15.3.

15.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing and provide a copy to the Board (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy; and
4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations), Claimant shall have 30 additional days to submit the Claim to such entity as is designated by the Association for mediating claims or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Prescott, Arizona, area.

3. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The

Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

The Claimant shall thereafter be entitled to sue in any court of competent jurisdiction or to initiate proceedings before any appropriate administrative tribunal on the Claim. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. .

15.4. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 15.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

Article XVI **PROTECTION OF MORTGAGEES**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Community.

16.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Parcel or the Owner or Occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

16.2. No Priority. No provision of this Declaration gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Parcel.

CHANGES IN THE COMMUNITY

Article XVII

RELATIONSHIPS WITH OTHER ENTITIES

17.1. Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations, the operation of which confers some benefit upon the Properties, the Association, its Members, or residents. The Association may contribute money, real or personal property, or services to such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

The Association may maintain multiple use facilities within the Properties for temporary use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for the use of such facilities.

17.2. Environmental Entities. During the Class "B" Control Period, the Declarant shall have the right to enter into agreements with environmental entities for the purpose of observing, maintaining, or preserving environmentally sensitive areas located within the Properties and monitoring or conducting such natural resource, habitat preservation or other environmental programs or plans which may be implemented within the Properties. Entities designated by the Declarant shall have the right to enter the Properties and perform environmental activities subject to reasonable time, place, and manner restrictions adopted by the Board. The Board shall have the right to enter into agreements with environmental entities with the consent of the Declarant during the Class "B" Control Period.

17.3. Cost Sharing with Nonresidential Properties. Adjacent to or in the vicinity of the Properties, there may be certain nonresidential areas, including, without limitation, the Golf Course, multi-family developments (apartments), churches, schools, retail shopping areas, and commercial parcels which may not be subject to this Declaration, are not dedicated to the public, and are neither Units nor Common Area as defined in this Declaration (hereinafter "nonresidential properties").

The Declarant or the Association shall be authorized to enter into a Covenant to Share Costs with owners of nonresidential properties under which such nonresidential owners shall be obligated to share in certain costs incurred by the Association associated with the maintenance, repair, replacement, and insuring of such property which the Association is obligated to maintain, repair, replace, or insure pursuant to this Declaration and which is used by or which benefits jointly the owners of the nonresidential properties and the Owners within the

Properties. The Association shall be obligated to perform the duties and functions set forth for it in the Covenant to Share Costs.

17.4. Conflicts. This Declaration is not intended to supersede applicable County ordinances and all Owners and Members are required to comply with County codes and ordinances. In the event of any conflict between the standards set forth in this Declaration or any Supplemental Declaration, and the standards contained in County ordinances, the more stringent standard shall be applied.

CHANGES IN THE COMMUNITY

Article XVIII

CHANGES IN OWNERSHIP OF UNITS

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least fourteen days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. In addition, all Owners acknowledge that the Association may be required to provide resale disclosure statements or other similar type information required by applicable law and may charge such Owner a reasonable fee in addition to any assessments, for the provision of such information. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Article XIX

CHANGES IN COMMON AREA

19.1. Condemnation. Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, each Owner shall be entitled to notice thereof. The Board may convey Common Area under threat of condemnation if the Board reasonably determines that it is in the best interest of the Association and approved in writing by Declarant during the Class "B" Control Period.

The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless within 60 days after such taking the Declarant, so long as the Declarant owns any portion of the Properties or has the right to annex property, shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.

If the taking does not involve any improvements on the Common Area, or if a decision is

made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

19.2. No Partition. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

19.3. Dedication of Common Area. The Association may dedicate or grant easements over portions of the Common Area to any local, state, or federal governmental entity.

Article XX
AMENDMENT OF DECLARATION

20.1. Amendment by Declarant. Until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make or purchase Mortgage loans on the Units; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Units; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. However, any such amendment shall not adversely affect the title to any Unit unless the affected Owner shall consent thereto in writing.

20.2. Amendment by Owners. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Unit Owners representing at least 67% of the total Class "A" votes, and the consent of the Declarant, during the Class "B" Control Period.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

20.3. Validity and Effective Date of Amendments. Amendments in accordance with this Declaration shall become effective upon recordation in the Official Records unless a later effective date is specified therein.

IN WITNESS WHEREOF, Estancia De Prescott, L.L.C., an Arizona limited liability

company, has executed this Amendment as of the day and year first above written.

ESTANCIA DE PRESCOTT, L.L.C.
an Arizona limited liability company

By: Nancy K Howard

Its: President Estancia Home Builders, Inc.
Managing Member Estancia De Prescott, LLC

State of Arizona)
) ss.
County of Yavapai)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 24 day of Jan, 2004, by Nancy Howard President Estancia Home Builders, Inc. the Managing member of Estancia De Prescott, L.L.C., an Arizona limited liability company, for and on behalf of the corporation.

Rebecca Howard
Notary Public

My Commission Expires:

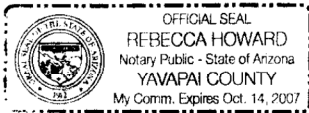


EXHIBIT A

PROPERTY SUBJECT TO THE DECLARATION AND LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 20, inclusive, and Tract A, according to the Declaration of Covenants, Conditions and Restrictions to which this Exhibit is attached and the Plat of ESTANCIA DE PRESCOTT – PHASE ONE in Book 48 of Maps and Plats, Page 88, all of which were recorded in the Official Records of Yavapai County, Arizona.

EXHIBIT "B"

The Northwest quarter of the Northeast Quarter and Lot No. 2, Section 27, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

EXCEPT any portion lying within EAGLE RIDGE, UNIT IV, "THE VISTAS AT EAGLE RIDGE", according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, recorded in Book 45 of Maps, Page 52.