

WHEN RECORDED, RETURN TO:

MICHAEL G. WALES
Burdman Law Group
2999 N. 44th Street, Suite 535
Phoenix, Arizona 85018



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2004-0584805 05/25/04 15:58
1 OF 3

IBARRAS

**AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DESERT SUMMIT**

This Amendment to the Declaration of Covenants, Conditions and Restrictions for Desert Summit (this "Amendment") is made on this 18th day of May, 2004 by Desert Summit Homeowners Association, an Arizona corporation (the "Association").

RECITALS

A. BH II, LLC, a Delaware limited liability company (the "Declarant") caused a Declaration of Covenants, Conditions and Restrictions for Desert Summit (the "Declaration") to be recorded at Instrument No. 98-0250283, records of Maricopa County, Arizona, recorded on March 31, 1998, imposing certain covenants, conditions and restrictions upon the real property described therein.

B. The Declaration provides that it may be amended by the written approval or the affirmative vote of not less than sixty-seven percent (67%) of Owners entitled to cast a vote. The amendments to the Declaration set forth below have been approved in writing by more than sixty-seven percent (67%) of Owners entitled to cast a vote as evidenced by the written approvals maintained by the Association.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Section 3.18 is amended by deleting all existing words and substituting in their place the following words:

"Section 3.18 – Rental: Obligations of owners, tenants and other occupants. Only entire Living Units may be rented, provided the occupancy of rented Living Unit shall be limited to the Lessee and his or her family and guests. A guesthouse may not be separately rented. Units may be leased for such a term as a unit owner shall determine; provided, however, that no living unit may be leased for any lesser period of time than six (6) months. All lease agreements shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Project Documents and any failure by Lessee to comply with the terms of such documents shall be a default under the Lease. A copy of the lease agreement shall be delivered by the owner to the Board of Directors on or before the commencement of the occupancy under the agreement. Upon written request to the Board thirty (30) days prior to the termination of the lease, the Board may extend approval for a consecutive month to month lease extended to the initial lessee. A copy of the CC&Rs and the Association's current rules and regulations shall be provided by landlord to tenant prior to commencement of the occupancy."

WHEN RECORDED, RETURN TO:

C. Timothy White, Esq.

Tiffany & Bosco, P.A.

1850 N. Central Ave., Suite 500

Phoenix, Arizona 85004

229-347-1108869

First American Title 2/15



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

98-0250283 03/31/98 11:56

VIRGINIA 2 OF 15

DECLARATION OF COVENANTS, CONDITIONS,

RESTRICTIONS AND EASEMENTS

FOR

DESERT SUMMIT

Scottsdale, Arizona

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS	1
Section 1.01 - "Additional Property"	1
Section 1.02 - "Additional Property Owners"	1
Section 1.03 - "Adjacent Owner Easements"	1
Section 1.04 - "Architectural and Landscaping Standards"	1
Section 1.05 - "Areas of Association Responsibility"	2
Section 1.06 - "Articles of Incorporation"	2
Section 1.07 - "Assessment"	2
Section 1.08 - "Assessment Lien"	2
Section 1.09 - "Association"	2
Section 1.10 - "BH II"	2
Section 1.11 - "Board"	2
Section 1.12 - "Bylaws"	2
Section 1.13 - "City"	2
Section 1.14 - "Committee"	3
Section 1.15 - "Common Areas"	3
Section 1.16 - "Custom Lots"	3
Section 1.17 - "Declarant", "Declarants" and "Co-Declarants"	3
Section 1.18 - "Declaration"	3
Section 1.19 - "Eligible Insurer or Guarantor"	4
Section 1.20 - "Eligible Mortgage Holder"	4
Section 1.21 - "First Mortgage"	4
Section 1.22 - "First Mortgagee"	4
Section 1.23 - "Improvement"	4
Section 1.24 - "Landscaping"	4
Section 1.25 - "Lessee"	4
Section 1.26 - "Living Unit"	4
Section 1.27 - "Lot"	4
Section 1.28 - "Member"	4
Section 1.29 - "Monterey"	4
Section 1.30 - "Monterey Standards"	4
Section 1.31 - "Occupant"	5
Section 1.32 - "Option Agreement"	5
Section 1.33 - "Owner"	5
Section 1.34 - "Person"	5
Section 1.35 - "Plat"	5
Section 1.36 - "Project"	6
Section 1.37 - "Project Documents"	6
Section 1.38 - "Property"	6
Section 1.39 - "Purchaser"	6
Section 1.40 - "Roadway"	6
Section 1.41 - "Rules and Regulations"	6
Section 1.42 - "Semi-Custom Lots"	6
Section 1.43 - "Seventeen-Acre Additional Property"	6
Section 1.44 - "Single Family"	6

Section 1.45 - "Single Family Residential Use"	6
Section 1.46 - "Twenty-Acre Additional Property".	6
Section 1.47 - "Visible From Neighboring Property"	7
ARTICLE 2 - PLAN OF DEVELOPMENT	7
Section 2.01 - Property Subject to the Declaration	7
Section 2.02 - Common Areas	7
Section 2.03 - Private Roadway.	7
Section 2.04 - Guard House and Access Gates.	7
Section 2.05 - Guard House and Access Gate Limitations.	8
Section 2.06 - Security and Monitoring Service.	8
Section 2.07 - Disclaimer of Representations	8
Section 2.08 - Annexation of Additional Property.	9
ARTICLE 3 - COVENANTS AND RESTRICTIONS	10
Section 3.01 - Residential Use	10
Section 3.02 - Temporary Occupancy and Buildings	11
Section 3.03 - Nuisances	11
Section 3.04 - Trash Containers and Collection	11
Section 3.05 - Animals.	11
Section 3.06 - Motor and Recreational Vehicles	12
Section 3.07 - Garages.	12
Section 3.08 - Signs	12
Section 3.09 - Machinery and Equipment	13
Section 3.10 - Clotheslines	13
Section 3.11 - Sidewalk and Roadway Encroachments.	13
Section 3.12 - Storage and Tool Sheds and Structures	13
Section 3.13 - Window Materials.	13
Section 3.14 - Mineral Exploration.	14
Section 3.15 - Conveyance	14
Section 3.16 - Further Subdivision.	14
Section 3.17 - Violation of Statutes, Ordinances and Regulations.	14
Section 3.18 - Rental	14
Section 3.19 - Drainage.	15
Section 3.20 - Basketball Goals or Play Structures.	15
Section 3.21 - Items Visible From Neighboring Property.	15
Section 3.22 - Declarants' Exemption.	15
ARTICLE 4 - ARCHITECTURAL AND LANDSCAPING CONTROL	16
Section 4.01 - Architectural and Landscaping Control and Requirements	16
Section 4.02 - Appointment of Committee	16
Section 4.03 - Architectural and Landscaping Standards	17
Section 4.04 - Effect of Approval or Disapproval	17
ARTICLE 5 - EASEMENTS	17
Section 5.01 - Easements in Common Areas.	17
Section 5.02 - Blanket Easement	17

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
DESERT SUMMIT
Scottsdale, Arizona**

This Declaration of Covenants, Conditions, Restrictions and Easements for Desert Summit is made as of the 27th day of March, 1998, by Monterey Homes Construction, Inc., an Arizona corporation ("Monterey"), BH II, LLC, a Delaware limited liability company ("BH II"), and Stardust Development, Inc., an Arizona corporation ("Optionor"), to establish a general plan for the improvement, development, operation, maintenance and use of the Property described herein as an attractive and harmoniously designed residential development to be known as Desert Summit (the "Project") for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and the quality of life within the Project. BH II is currently the owner of all of the Lots described herein. Concurrently with the execution hereof, BH II has sold and conveyed the Semi-Custom Lots to Stardust. Monterey is to be the developer of the Semi-Custom Lots and has been granted the right to purchase the Semi-Custom Lots owned by Stardust pursuant to the Option Agreement (as defined herein). In furtherance of that plan, Monterey, BH II and Stardust hereby declare that all of the property within the Project shall be held, sold, conveyed, encumbered, occupied, developed, built on, improved, used, leased and otherwise transferred subject to the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Declaration, each of which shall attach to and run with the land, shall be binding on the Property and all Owners, Occupants, Lessees and other parties having, acquiring or otherwise at any time possessing any right, title or interest in or to the Property or any part thereof, and each of which shall inure to the benefit of said Owners, Occupants, Lessees and other parties.

**ARTICLE 1
DEFINITIONS**

Section 1.01 - "Additional Property". Additional Property shall mean the Twenty-Acre Additional Property and the Seventeen-Acre Additional Property, both of which may be annexed into the Project pursuant to Section 2.08 below.

Section 1.02 - "Additional Property Owners". Additional Property Owners shall mean Owners of Lots located within that part of the Additional Property which at any time is annexed into the Project pursuant to Section 2.08 below.

Section 1.03 - "Adjacent Owner Easements". "Adjacent Owner Easements" is defined in Section 2.08 below.

Section 1.04 - "Architectural and Landscaping Standards". Architectural and Landscaping Standards shall mean the Architectural and Landscaping Design and Review Standards and Procedures attached hereto as Exhibit "A" which are incorporated herein by this reference, as such may be amended from time to time by Declarants or the Committee.

Section 1.05 - "Areas of Association Responsibility". Areas of Association Responsibility shall mean (i) all Common Areas and Improvements situated therein; (ii) all land, and the Improvements situated thereon, situated within the boundaries of a Lot which the Association acknowledges in this Declaration or in another recorded document is land which is to be improved, maintained or repaired by the Association; (iii) any access gates and other Project entry features constructed within the Project; (iv) all perimeter fences of the Project, including any perimeter fence walls located upon or within the boundaries of a Lot, provided, however, the Association shall not be responsible for painting or surfacing the interior side of any perimeter fence walls located upon or within the boundaries of a Lot; (v) if any perimeter fence of the Project is located within the boundaries of a Lot, the area of the Lot located outside such perimeter fence; (vi) walls, embankments and related facilities installed by a developer of the Project within any drainage easements shown on the Plat which are installed for the purpose of alleviating erosion or protecting drainage facilities; (vii) all sewer lift stations, force main extensions and sewer facilities situated on Common Areas; (viii) all land or right-of-way easements within or adjacent to the Project which the City or other governmental agency requires the Association to maintain; and (ix) any other areas with respect to which the Association has, in writing, assumed the administrative or maintenance responsibilities.

Section 1.06 - "Articles of Incorporation". Articles of Incorporation shall mean the Articles of Incorporation of the Association as they may from time to time be amended.

Section 1.07 - "Assessment". Assessment shall mean all assessments authorized and provided by Article 8 of this Declaration.

Section 1.08 - "Assessment Lien". Assessment Lien shall mean a lien created or imposed by Article 8 of this Declaration.

Section 1.09 - "Association". Association shall mean and refer to the Arizona nonprofit corporation to be organized by Co-Declarants to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein and in this Declaration, and its successors and assigns. Co-Declarants intend to organize the Association in the name of "Desert Summit Owners' Association" but if such name is not available, the Association shall be organized under such other name as the Declarants may select.

Section 1.10 - "BH II". BH II shall mean and refer to BH II, LLC, a Delaware limited liability company.

Section 1.11 - "Board". Board shall mean the Board of Directors of the Association.

Section 1.12 - "Bylaws". Bylaws shall mean the Bylaws of the Association, as they may from time to time be amended.

Section 1.13 - "City". City shall mean the City of Scottsdale, Arizona.

Section 1.14 - "Committee". Committee shall mean the Architectural and Landscaping Control Committee created pursuant to Article 4 of this Declaration, and, if no such committee is created or exists, it shall mean the Board.

Section 1.15 - "Common Areas". Common Areas shall mean (i) those portions of the Project, together with the buildings, structures and any other Improvements thereon, which the Association may, from time to time, own in fee or in which it may have an easement interest, for as long as the Association holds fee title or an easement interest, including, but not limited to, Tracts A, B, C, E, F and G, inclusive, as shown on the Plat and (ii) all land within the Project which Declarants, by this Declaration or in any other recorded instrument, make available for use by Members of the Association or otherwise designates as Common Areas for purposes of this Declaration. Tract D, as shown on the Plat, is not part of the Common Areas and shall be maintained by the owner thereof, which is currently BH II.

Section 1.16 - "Custom Lots". Custom Lots shall mean and refer to Lots 11-13, 19-39, 61-63 and 79-94, as shown on the Plat and all Lots within the Additional Property if and when all or portions of the Additional Property is annexed into the Project pursuant to Section 2.08 below.

Section 1.17 - "Declarant", "Declarants" and "Co-Declarants". Declarant shall mean and refer to Monterey and to BH II, separately, and each of their respective successors and assigns and any Person to whom they may expressly assign all of its Declarant's rights under this Declaration. An assignment of the rights of a Declarant under this Declaration may not be an assignment of less than all of the rights of the assigning Declarant under this Declaration. No assignment of a Declarant's rights under this Declaration shall be valid unless made as provided herein and until it is recorded with the County Recorder of Maricopa County, Arizona. "Declarants" or "Co-Declarants" shall mean and refer to Monterey and BH II, collectively, and their respective successors and assigns, until either of the Co-Declarants no longer owns any interest (including an optionee's interest) in a Lot or until either of the Co-Declarants relinquishes its Class "B" Membership in the Association as set forth herein, after which time (a) the remaining Co-Declarant shall be the sole Declarant until the earlier to occur of the date the remaining Co-Declarant no longer owns any interest in a Lot (including any optionee's interest) or until it relinquishes its Class "B" Membership in the Association and (b) all references in this Declaration to Declarants or Co-Declarants shall mean and refer only to the remaining Class "B" Member. Notwithstanding the foregoing, in the event the Option Agreement is terminated prior to the purchase by Monterey from Optionor of all of the Semi-Custom Lots, Optionor may, at its sole discretion, elect to become a Co-Declarant under this Declaration by recording a notice of such election, in which event all references herein to "Declarant" shall, thereafter, mean and refer to each of Monterey, BH II and Optionor until each such Co-Declarant no longer owns any interest in any Lot or until each such Co-Declarant relinquishes its Class "B" Membership in the Association as set forth herein.

Section 1.18 - "Declaration". Declaration means this Declaration of Covenants, Conditions, Restrictions and Easements for Desert Summit, as and if amended.

Section 1.19 - "Eligible Insurer or Guarantor". Eligible Insurer or Guarantor shall mean an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 11.01 of this Declaration.

Section 1.20 - "Eligible Mortgage Holder". Eligible Mortgage Holder shall mean a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 11.01 of this Declaration.

Section 1.21 - "First Mortgage". First Mortgage shall mean any mortgage, deed of trust or any other form of security instrument or agreement given to a financial institution for the purpose of creating a lien on one or more Lots in exchange for a bonafide loan by the financial institution to the Owner of the lot, with the first priority over any other mortgage, deed of trust or other security instrument or agreement.

Section 1.22 - "First Mortgagee". First Mortgagee shall mean the holder of any First Mortgage.

Section 1.23 - "Improvement". Improvement shall mean any building, driveway, parking area, fence, wall or other structure, all parts of a Living Unit, any swimming pool or spa, any Landscaping and all other improvements of every type and kind constructed on a Lot or the Common Areas or otherwise located within the Project.

Section 1.24 - "Landscaping". Landscaping shall mean any tree, plant, shrub, hedge, cacti, grass and other vegetation of any kind, any inert material used as ground cover and any rocks or similar materials used in connection with the landscaping of Lots or Common Areas.

Section 1.25 - "Lessee". Lessee shall mean the lessee or tenant under a lease, oral or written, of any Lot, including any assignee of a lease.

Section 1.26 - "Living Unit". Living Unit shall mean any buildings, or portion of buildings, situated upon a Lot, designed and intended for use and occupancy as a residence (including any guest house). All references to a Living Unit shall be deemed to refer also to the underlying Lot, whether or not developed, and all permanent Improvements thereon.

Section 1.27 - "Lot". Lot shall mean each parcel designated as a lot on the Plat, as and if amended, with the exception of the Common Areas, and where the context indicates or requires, shall include any Living Unit or other Improvement and Landscaping situated thereon.

Section 1.28 - "Member". Member shall mean any Person who is a member of the Association as provided in Article 7 below.

Section 1.29 - "Monterey". Monterey shall mean Monterey Homes Construction, Inc., and/or Monterey Homes Arizona, Inc., which are both Arizona corporations.

Section 1.30 - "Monterey Standards". "Monterey Standards" is defined in Section 3.22 of this Declaration.

Section 1.31 - "Occupant". Occupant shall mean any Person, other than an Owner who occupies or is in possession of a Lot, or any portion thereof, or the Living Unit thereon, whether as a Lessee or otherwise.

Section 1.32 - "Option Agreement". Option Agreement shall mean that certain Option Agreement dated March 19, 1998, by and between Monterey and Optionor, pursuant to which Monterey has the right to purchase the Semi-Custom Lots from Optionor.

Section 1.33 - "Owner". Owner shall mean and refer to the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, (ii) a Lessee or (iii) an Occupant. Owner shall include a purchaser under a contract for the conveyance of Property, subject to the provisions of A.R.S. § 33-741 et seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner. Notwithstanding any provision contained herein or in the other Project Documents to the contrary, each Declarant shall, for purposes of this Declaration and the other Project Documents, be deemed to own any Lots which that Declarant may convey or otherwise arrange to be conveyed to or owned by a third-party landbanker or lender who concurrently grants such Declarant the exclusive right or option to purchase such Lots from the third-party landbanker or lender although a Declarant's deemed ownership of any Lots owned by a landbanker or lender shall automatically cease upon the termination of the option or other agreement pursuant to which Declarant has the exclusive right to purchase such Lots from the landbanker or lender. Any landbanker or lender who owns Lots which are, pursuant to the preceding two sentences, deemed to be owned by a Declarant shall have no rights, obligations or liability whatsoever under this Declaration unless the option or other agreement which grants a Declarant the exclusive right to buy such Lots is terminated, whereupon the landbanker shall, at its option, succeed to such Declarant's rights and future obligations under this Declaration with respect to the Lots then owned by the landbanker or lender.

Section 1.34 - "Person". Person shall mean a natural person, corporation, business trust, estate, trust, limited liability company, partnership, association, joint venture, municipality, governmental subdivision or agency or other legal or commercial entity.

Section 1.35 - "Plat": Plat shall mean the subdivision plat of Desert Summit, as recorded in Book 465 of Maps; page 04 and as Document No. 98-0223858, records of Maricopa County, Arizona, as may hereafter be amended or supplemented, including any recorded subdivision plat for each portion of the Additional Property annexed into the Project pursuant to Section 2.08 of this Declaration.

Section 1.36 - "Project". Project shall mean the Property, together with all Improvements located thereon, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 1.37 - "Project Documents". Project Documents shall mean this Declaration, the Articles, the Bylaws, the Rules and Regulations, the Architectural and Landscaping Standards and all other documents or instruments pertaining to and affecting the Project, as the same may be amended from time to time.

Section 1.38 - "Property". Property shall mean Lots 1 through 132 and Tracts A, B, C, E, F and G, as shown in the Plat, and all Lots and Tracts within each portion of the Additional Property annexed into the Project pursuant to Section 2.08 of this Declaration.

Section 1.39 - "Purchaser". Purchaser shall mean any Person, other than the Declarants or Optionor, who by means of a voluntary transfer, becomes the Owner of a Lot, except for (i) a Person who purchases a Lot and then leases it to Monterey for use as a model home in connection with the sale or lease of other Lots, (ii) a Person who, in addition to purchasing all Lots owned by a Declarant or Optionor, is assigned all of the rights of one of the Declarants under this Declaration or (iii) a landbanker or other Person who hereafter takes title to Lots and concurrently grants to a Declarant the exclusive right to purchase the Lots.

Section 1.40 - "Roadway". "Roadway" is defined in Section 2.03 below.

Section 1.41 - "Rules and Regulations". Rules and Regulations shall mean any rules and regulations adopted and/or amended from time to time by the Association for the Project.

Section 1.42 - "Semi-Custom Lots". Semi-Custom Lots shall mean Lots 1-10, 14-18, 40-60, 64-78 and 95-132, inclusive, as shown on the Plat, although the reference to such Lots shall not denote that custom homes cannot be built upon such Lots.

Section 1.43 - "Seventeen-Acre Additional Property". Seventeen-Acre Additional Property shall mean the parcel of land described on Exhibit "B-1" attached hereto, which is approximately 17 acres in size.

Section 1.44 - "Single Family". 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 so related, who maintain a common household in a Living Unit.

Section 1.45 - "Single Family Residential Use". Single Family Residential Use shall mean the occupation or use of a Lot by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning and other governmental laws.

Section 1.46 - "Twenty-Acre Additional Property". Twenty-Acre Additional Property shall mean the parcel of land described on Exhibit "B-2" attached hereto, which is approximately 20 acres in size.

Section 1.47 - "Visible From Neighboring Property". Visible From Neighboring Property shall mean, with respect to any particular object or matter, if such object or matter would be visible to a person six (6) feet tall, standing on any part of the Project adjacent to the Lot on which the object or matter is situated at an elevation no greater than the elevation of the base of the object or matter being viewed.

ARTICLE 2 PLAN OF DEVELOPMENT

Section 2.01 - Property Subject to the Declaration. Declarants declare that all of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any Lot subject to this Declaration, each Person, for himself or itself, his or its heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transfers and assigns to all of the provisions, restrictions, covenants, easements, charges, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each Person, by so doing, thereby acknowledges that all restrictions, conditions, covenants, easements, charges, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees, Occupants and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. The Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot, even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 2.02 - Common Areas. The Common Areas shall be transferred by Declarants, by special warranty deed, to the Association pursuant to the terms of this Declaration and such special warranty deed. Such transfer shall be subject to all easements of record affecting the Common Areas, and such transfer shall occur concurrently with the recordation of this Declaration.

Section 2.03 - Private Roadway. The roadway to be constructed on Tracts A and C of the Common Areas and the roadway to be constructed on any portion of the Additional Property designated as a Tract on the Plat for those portions of the Additional Property annexed into the Project pursuant to Section 2.08 of this Declaration (the "Roadway") shall be a private Roadway constructed for the exclusive use of Owners, Lessees and their guests and other invitees, and an affirmative easement for ingress and egress over and across the Roadway is hereby granted to each Owner for such purposes. The Association and not the City shall be solely responsible for the upkeep, maintenance and repair of the Roadway.

Section 2.04 - Guard House and Access Gates. There shall be a guard house facility and access gate for the Project installed near the entrance to the Project from Jomax Road for the intended purpose of limiting access to the Project to Owners, Lessees and guests and other invitees and the grantees of the Adjacent Owner Easements and their successors and assigns and respective agents, tenants, guests and invitees, to the extent such Adjacent Owner Easements are in existence. The guard house facility and the access gate shall be part of the Common Areas, and the Association shall be solely responsible for the maintenance of the guard house facility and the access gate. As long as Monterey is a Class "B" Member,

Monterey, in its sole and absolute discretion, shall be entitled to determine whether or not to man the guard house facility and, if so manned, Monterey shall determine the hours during which such facility is to be manned. If Monterey is no longer a Class "B" Member, the remaining Co-Declarant(s) shall have the right to determine whether to man the guard house facility and, if so manned, the hours during which such facility is to be manned. After the Class "B" Membership terminates, the Association shall determine whether to man the guard house facility and, if such facility is manned, the Association shall determine the hours during which such facility is to be manned. Neither Monterey, BH II, Optionor nor the Association makes any representations or warranties that guard service at the guard house facility or elsewhere in the Project will be provided or, if guard service is provided, that it will be provided during any particular hours or will be continued in the future. It is contemplated that the access gate will be operated by remote openers. Each initial Owner [except Additional Property Owner(s)] shall be provided with two (2) remote units. Each Additional Property Owner shall be responsible for purchasing such remote units at the Association's cost. Additional or replacement remote units may be purchased only through the Association at a charge to be established by the Association. Each Owner shall also be responsible for payment of any programming fees charged by the supplier or the programmer of the remote units.

Section 2.05 - Guard House and Access Gate Limitations. While the guard house and access gate are intended to restrict access to the Project, such facilities are not intended to make the Project a secured community. Each Owner, Lessee and their respective family members, guests and other invitees further acknowledge and hereby agree to assume the risks that the guard house and access gate may restrict or delay entry into the Project by police, fire, ambulances and other emergency vehicles or personnel and neither the Declarants, the Optionor nor the Association or any director, officer, agent or employee of Declarants, Optionor or the Association shall be liable to any Owner, Lessee or other occupant, family members, guests, other invitees or any other Person whatsoever for any claims or damages resulting directly or indirectly from (a) the construction, existence, maintenance or adequacy of the guard house and the access gate for the Project; (b) any loss, damage, injury or theft arising from a breach of security within the Project or any deficiencies with any aspect of any security within the Project; and (c) any decision to delete or provide any manned guard service or limit the hours of such manned guard service.

Section 2.06 - Security and Monitoring Service. The Board shall have the authority to enter into agreements with a security and monitoring service company for the purpose of providing security and monitoring to all Living Units within the Project. Any security and monitoring agreements shall be with such companies and upon such terms and conditions as the Board shall determine, and the fees for such monitoring service, to the extent provided to all Living Units within the Project, shall be paid by the Association from Assessments.

Section 2.07 - Disclaimer of Representations. Notwithstanding anything to the contrary herein, neither Declarants nor Optionor make any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out or that the Property or any adjacent real property is or will be committed to, or developed for, a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While neither Declarants nor Optionor have any reason to believe that any of the restrictive covenants contained in this

Declaration are, or may be, invalid or unenforceable, neither Declarants nor Optionor make any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks as to the validity and enforceability thereof, and by accepting a deed to a Lot, agrees that Declarants shall have no liability with respect thereto.

Section 2.08 - Annexation of Additional Property. The Association has entered into two (2) separate Declarations of Easements and Restrictions with the current owners of the Additional Property ("Adjacent Owner Easements") which have been recorded simultaneously with the recordation of this Declaration. The Adjacent Owner Easements provide, among other things, for the granting of nonexclusive easements upon and across Tracts A and C shown on the Plat and for the annexation of the Twenty-Acre Additional Property into the Project when a subdivision plat for the Twenty-Acre Additional Property (which fully complies with the Plat Requirements specified in the Adjacent Owner Easements) has been approved by the City and recorded. Accordingly, subject to the terms and conditions set forth in both of the Adjacent Owner Easements, the Association shall have the right and obligation to annex and subject to this Declaration the Twenty-Acre Additional Property. In addition, the Association, in its sole and absolute discretion and without any obligation whatsoever to do so, may, with the approval of the owner thereof, annex and subject to this Declaration the Seventeen-Acre Additional Property. The annexation of such portions of the Additional Property shall be effected by the Association and the owner of the Additional Property being annexed executing with reasonable diligence after the same is submitted for execution, and recording a written Declaration of Annexation, describing the portion of the Additional Property being annexed, setting forth the recording information for the amendment to the plat covering such portion of the Additional Property and stating that such portion of the Additional Property is annexed into the Project and is subjected to this Declaration. The Additional Property may be annexed as a whole or in one or more portions at different times. The voting rights of the Owners of Lots annexed pursuant to this Section shall, subject to the limitations contained in this Declaration, including, without limitation, those contained in Section 7.03, be effective as of the date when the written Declaration of Annexation annexing such Additional Property is recorded by the Association. Nothing in this Section shall prevent the Additional Property Owners from recording additional covenants, conditions, restrictions and easements solely with respect to the Additional Property, provided that such additional covenants, conditions, restrictions and easements are no less restrictive than and are not inconsistent with those contained in this Declaration.

Notwithstanding any other provision contained in this Declaration, Declarants and Optionor agree as follows with respect to the personal residence and related improvements which, as of the date of this Declaration exist on the Twenty-Acre Additional Property: (i) the owner of the existing residence is not required to make any improvements or modifications to the existing residence or to any existing Improvements on the real property on which it is located as a result of this Declaration, the Adjacent Owner Easements or any annexation of the Twenty-Acre Additional Property into the Project and (ii) the owner of the existing residence may make improvements, alterations, additions and changes to the existing residence without being required to obtain the Committee's approval of plans and specifications for any such improvements and/or Landscaping pursuant to Article 4, provided such improvements do not exceed expenditures in the aggregate of \$150,000 and provided, further, that all such Improvements made after the date of this Declaration is recorded must comply with Sections 3(l) and (n), 5 and 6(a) of the Architectural and Landscaping Standards.

The Adjacent Owner Easements (with the exception of Section 1 thereof) shall automatically terminate upon annexation of the Additional Property into the Project in accordance with Section 2.08.

ARTICLE 3 COVENANTS AND RESTRICTIONS

In addition to all other covenants and restrictions contained herein, the use of the Lots and the Improvements, the Common Areas and all other parts of the Project, are subject to the covenants and restrictions contained in this Article.

Section 3.01 - Residential Use. Each Lot in the Project shall be improved and used exclusively for Single Family Residential Use. No trade or business may be conducted on any Lot or in or from any Living Unit, except that an Owner or other resident of a Living Unit may conduct a business activity within a Living Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the outside of the Living Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project, (iii) the business activity does not involve persons routinely coming onto the Lot or the door-to-door solicitation of Owners or other residents in the Project, (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents within the Project and (v) the business actually conducted on a Lot or from a Living Unit does not involve any employees, other than family members residing in the Living Unit, all as may be determined from time to time in the sole discretion of the Board. If a guest house is located upon a Lot, under no circumstance may such guest house be used as an office. 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 persons other than the provider's family and for which 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 sale or lease of a Living Unit by the Owner thereof shall not be considered a "trade" or "business" within the meaning of this Section. No Lot, Living Unit or any part of the Project shall ever be used or caused, allowed or authorized in any way, directly or indirectly, to be used for any business, professional, religious, institutional, commercial, manufacturing, industrial, mercantile, storing, vending, or related purposes; except (i) Monterey, and its duly authorized agents and employees, may use any of the Semi-Custom Lots for a model site or sites, a display and sales trailer or office, a business office and construction trailer or office during the construction and sales period, (ii) BH II (which, for purposes of this reference, shall include members of BH II or affiliates of such members but shall specifically exclude any other successors or assigns of BH II) may, with or without the construction of a model on a Custom Lot, conduct reasonable marketing activities on the Custom Lots relating to the sale of the Custom Lots and (iii) BH II, each Additional Property Owner and any non-production custom home builder who purchases a Custom Lot from BH II or an Additional Property Owner may conduct customary and reasonable marketing activities within any "spec" home constructed on a Custom Lot, provided such marketing activities pertain only to the sale of that "spec" home and provided, further, that such marketing activities are customarily undertaken by custom home builders in Scottsdale, Arizona. In no event shall an Owner be permitted to hold garage, yard, patio or similar types of sales within the Project.

Section 3.02 - Temporary Occupancy and Buildings. No trailer, bus, mobile home, tent, shack, storage shed, garage, barn or other building of a temporary nature shall be installed, located or used on any Lot at any time as a residence, either temporarily or permanently.

Section 3.03 - Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or any other portion of the Property. In addition, a Living Unit or any other portion of the Project shall not be used in whole or in part for the storage of any property or thing that will cause the Living Unit or the Project or any part thereof to appear in any unclean or untidy condition or that will be unsightly, offensive, obnoxious or detrimental to any other Owners. No substance, thing or material shall be kept or used upon any Lot that will emit a foul, offensive or obnoxious odor or that will cause any noise that will or might disturb the peace, quiet, comfort, serenity or tranquility of the Occupants of adjacent portions of the Project. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any portion of any Lot without the written consent of the Committee. Notwithstanding the foregoing, speakers specifically designed and installed as built-in and recessed exterior speakers for a stereo system installed inside any Living Unit may be installed on a Lot provided that such speakers shall not be Visible From Neighboring Property and shall not be used in a manner so as to disturb the peace or the quiet, serenity or tranquility of the occupants of adjacent portions of the Project. Noise caused by improperly muffled motor vehicles shall not be permitted and construction machinery and equipment must be operated within the manufacturers' recommendations and specifications and only during reasonable working hours. No nuisance of any kind or description shall be permitted to exist or operate upon any Lot so as to be offensive, unsanitary, unsightly or detrimental to the Occupants or Owners of adjacent portions of the Project. The Board, in its sole and absolute discretion, shall have the right to determine the existence of any nuisance whether described herein or not. No improvements or Landscaping shall be permitted to be constructed on or to otherwise be permitted to exist on any Lots, the height or location of which shall be deemed by the Committee (i) to constitute a traffic hazard, (ii) to be unreasonably unattractive, or (iii) to be unreasonably detrimental to adjoining Property.

Section 3.04 - Trash Containers and Collection. No rubbish, trash, garbage or debris shall be placed or kept on any portion of any Lot except in covered containers of a type, size and style which are approved by the Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make such containers available for collection and then only for the shortest period of time (not to exceed eighteen (18) consecutive hours) reasonably necessary to effect such collection. All rubbish, trash, garbage and debris shall be promptly removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be maintained or used and no rubbish, trash, garbage or debris shall be burned by open fire or otherwise on any portion of any Lot.

Section 3.05 - Animals. No animals, fish, fowl, poultry or livestock, including horses, shall be raised, bred or kept on or within any Living Unit or Lot, except that a reasonable number of generally recognized and commonly accepted household pets may be kept on or within the Living Units or Lots; provided, however, such household pets may not

be kept, bred or maintained thereon for any commercial purposes, or in unreasonable numbers. No household pets may be kept on a Lot which result in an annoyance to or which are obnoxious to other Owners or Occupants. All household pets must be kept indoors or within fenced yards and may not be permitted to run loose. No structure for the care, housing or confinement of any animal, bird, fowl, poultry or livestock shall be maintained so as to be Visible From Neighboring Property. The Owner of each pet is responsible for cleaning any dirt or soilage caused by the pet. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, for the purposes of this Section, whether a particular animal, bird, fowl, poultry or livestock is a generally recognized and commonly accepted household pet or a nuisance or whether the number of animals, birds, fowl, poultry or livestock on any Lot is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.

Section 3.06 - Motor and Recreational Vehicles. No mobile home, boat, jet ski boat, jet ski trailer, motor home, recreational vehicle, all-terrain vehicle, off-road vehicle, trailer, horse trailer, camper, camper shell, snowmobile, bus, truck or other motor vehicle classed by manufacturing rating as exceeding three-quarter (3/4) tons, vehicles designed for commercial purposes or similar vehicles shall be kept, placed, maintained, constructed, reconstructed or repaired on any Lot or within the Project so as to be Visible From Neighboring Property; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs. All other motor vehicles shall be permitted to park only in garages or on paved driveways on Lots and may not park on the Roadway; provided, however, vehicles of guests and invitees may park on the Roadway for a temporary period of time not to exceed six (6) hours provided that such parking is done in a fashion so as not to obstruct driveways on other Lots or traffic within the Project and, provided further, that in no event may such vehicles be parked on any Roadway or Common Area overnight. All motor vehicles of Owners, Occupants, guests and invitees shall be kept in garages whenever such facilities are sufficient to accommodate the number of motor vehicles on a Lot. Any vehicle parked in violation of this Declaration may be towed at the direction of the Board or its agent, and the recording of this Declaration shall constitute the legal notice of intent to tow as though the Project were posted in accordance with the applicable laws and ordinances. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments. The Board may adopt additional parking restrictions including the establishment of fines and assessments for their violation.

Section 3.07 - Garages. Garages shall be used for parking vehicles and other garage purposes only and shall not be converted for living or recreational purposes. All garages must be kept in a neat and tidy manner at all times. Garage doors must be kept completely closed at all times except to permit vehicle ingress and egress.

Section 3.08 - Signs. No signs or billboards of any kind shall be displayed to the public view on any portion of the Project except for: (i) signs as may be required by legal proceedings; (ii) not more than two (2) signs for each Living Unit for identification of the

address of such Living Unit with a combined total face area of eighty-four (84) square inches or less; (iii) such signs erected by the Declarants or any developer of the Additional Property on their respective Lots necessary or desirable in connection with the development, sale or operation of their Lots and Improvements during the construction and sales period; (iv) one (1) sign advertising the Lot for sale or for rent, which sign shall not be larger than 24" x 24" and shall be made of metal or fiberboard or wood and mounted on a wood or metal post; (v) one (1) "open house" sign; (vi) signage for the Project at such locations designated or installed by Declarants; and (vii) such other signs, the nature, number and location of which shall have been approved in advance by the Association. All signs provided for under this Section shall require the approval of the Committee as to the size, color, design, message content, location, type and hours of display.

Section 3.09 - Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures or other Improvements, which machinery and equipment shall not be Visible From Neighboring Property, except when it is being operated or used in connection with the construction of Improvements.

Section 3.10 - Clotheslines. No clotheslines of any sort or other device for drying or airing of clothes shall be erected, placed or maintained upon any Lot.

Section 3.11 - Sidewalk and Roadway Encroachments. No tree, shrub, planting or other Landscaping or Improvement of any kind shall be permitted to overhang or otherwise encroach upon any Common Area, sidewalk or roadway within the Project.

Section 3.12 - Storage and Tool Sheds and Structures. No storage or tool sheds or similar structures shall be placed, erected or maintained upon any part of the Project, except where the storage or tool shed or similar structure (i) is constructed of the same or substantially similar materials as, and is the same color as and architecturally comparable to, the exterior of the Living Unit located upon the Lot (all as reasonably determined by the Committee) subject to the applicable provisions of any Architectural or Landscaping Standards; (ii) complies with any applicable set-back line requirements; and (iii) is not Visible From Neighboring Property.

Section 3.13 - Window Materials. No external window covering may be placed, or permitted to remain, on any window of any building, structure or other Improvement without the prior written approval by the Committee in accordance with Article 4. No reflective coating, materials or covering may be placed on any window on any Improvement. Further, all curtains, blinds, interior shutters, screens and window coverings or window treatments which are Visible From Neighboring Property shall be neutral in color. No bedsheets, blankets, bedspreads or other items not designed for use as curtains or other window coverings shall be used for such purposes, whether permanently or temporarily, if they are Visible From Neighboring Property.

Section 3.14 - Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals, gravel or other natural resources of any kind.

Section 3.15 - Conveyance. No portion less than all of a Living Unit or Lot shall be conveyed, transferred or encumbered. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of the Project for public utilities or any other public purposes, in which event the remaining portion of any Lot or Living Unit affected shall, for the purpose of this Declaration, be considered a whole Lot or Living Unit.

Section 3.16 - Further Subdivision. No Lot in the Project shall be further subdivided or separated into smaller lots nor conveyed in less than the full original dimensions of such Lots as shown on the Plat. Notwithstanding this Section or any other provision contained in this Declaration, as long as the Class "B" Membership is in existence, the Class "B" Member(s), without the consent of any other Member, shall have the right to replat the Project in any manner the Class "B" Member(s) deem appropriate, including, without limitation, changing the size, location and configuration of Lots, Roadways, and Common Areas. In the event of any such replat, the Class "B" Member(s) shall have the right, without the consent of any other Member, to amend this Declaration as may be necessary or appropriate as a result of such replat of the Project. In addition, as long as the Class "B" membership is in existence, the Class "B" Members shall have the right to grant such easements over the Common Areas as the Class "B" Members may, in their sole and joint discretion, deem appropriate. The foregoing notwithstanding, only the Additional Property Owners shall have the right to plat or replat the Additional Property. Following the annexation of any part of the Additional Property as provided for in Section 2.08 of this Declaration, and upon the approval of the Declarants and the Additional Property Owners, which shall not be unreasonably withheld, this Declaration may be amended as necessary or appropriate as a result of the platting or replatting of the Additional Property. Except for the easements created in this Declaration over all Common Areas, the granting of any additional easements over Common Areas within the Additional Property will require the approval of the Additional Property Owners, which approval shall not be unreasonably withheld. Monterey, BH II and Stardust agree not to object to the rezoning, subdividing and platting of and other governmental approvals for the Twenty-Acre Additional Property, provided that the requirements with respect to such efforts contained in Section 2.08 of this Declaration and in the Adjacent Owner Easements are satisfied.

Section 3.17 - Violation of Statutes, Ordinances and Regulations. No Lot shall be maintained or utilized in such a manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Arizona, County of Maricopa, the City or any other municipality, governmental agency or subdivision authority having jurisdiction over the Lots or the use or occupation thereof.

Section 3.18 - Rental. Only entire Living Units may be rented, provided the occupancy of any rented Living Unit shall be limited to the Lessee and his family and guests. A guest house may not be separately rented. No Owner shall be permitted to lease a Living Unit for transient or hotel purposes. All lease agreements shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Project Documents, and any failure by Lessee to comply with the terms of such documents shall be a default under the lease. For purposes of this Declaration, "lease" shall

mean any agreement for the leasing or rental of all of a Living Unit, including, but not limited to, "month-to-month" rentals. Upon leasing his Living Unit, an Owner shall promptly notify the Association in writing of the commencement date and termination date of the lease, together with the names of each Lessee or other person who will be occupying the Living Unit during the term of the lease.

Section 3.19 - Drainage. No Living Unit, structure, building, Landscaping, fence, wall or other improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project or any part thereof or for any Lot as shown on the drainage plan on file with the City.

Section 3.20 - Basketball Goals or Play Structures. No basketball goal, backboard or similar structure or device, and no swing set or other play structure, which is Visible From Neighboring Property shall be placed or constructed on any Lot without the prior written approval of the Committee (including, but not limited to, approval of appearance and location). In no event shall basketball goals be permitted to be attached to any Living Unit. All basketball goals must be installed, placed and kept no further forward on any Lot than the garage doors of the Living Unit situated on that Lot. Permanent basketball goals must include a free standing pole, which must be painted the color of the body of the Living Unit. The backboard of any basketball goal must be composed of a clear material.

Section 3.21 - Items Visible From Neighboring Property. The following shall not be erected, used, maintained or kept on any Lot so as to be Visible From Neighboring Property: air conditioners, coolers, pool filters, pool heaters, lawn and yard tools, storage tanks for water, gas, gasoline, oil or other fuel.

Section 3.22 - Declarants' Exemption. Nothing contained in this Declaration shall be construed to prevent or materially impair the erection, operation, maintenance, replacement and repair by Declarants, or their duly authorized agents, of structures, improvements or signs necessary or convenient to the development, administration, management, sale, operation, maintenance and repair of property within the Project, provided that any such activities on the Additional Property shall require the prior written consent of the Additional Property Owner who owns the Lot for which such activities are being proposed. In addition, Monterey is expressly exempted from the provisions hereof requiring submittals to or authorizations by the Committee, including but not limited to Article 4 hereof and the Architectural and Landscaping Standards, provided that the improvements Monterey proposes to construct on any Lot are consistent with the other standards set forth in this Declaration and provided, further, that such improvements are consistent with the quality of homes and improvements constructed by Monterey in its other communities in Metropolitan Phoenix, Arizona (the "Monterey Standards"). Any provisions of this Declaration which prohibit non-residential use of Lots and regulate parking and vehicles shall not prohibit the construction and operation by Monterey of model homes by Monterey (including, without limitation, any use in whole or in part as sales offices) (collectively, the "Models") and the parking available to the visiting of such Models. Any homes or other structures constructed by Monterey as Models shall cease to be used as Models at any time that Monterey is not actively engaged in the construction and sale of homes in the Project, and no home or other structure shall be used as a model home for the sale of homes not located in the Project. No party other than Monterey shall have the right to construct, operate and maintain Models in the Project; provided, however, that (a) BH

II (which, for purposes of this reference, shall include members of BH II or affiliates of such members but shall specifically exclude any other successors or assigns of BH II or purchasers of Custom Lots from BH II), and the developer of the Additional Property may construct and use a model home on a Custom Lot owned by it for the purpose of marketing the Custom Lots and (b) any non-production custom home builder who purchases a Custom Lot from BH II or an Additional Property Owner may conduct customary and reasonable marketing activities within any "spec" home that a builder constructs on a Custom Lot provided such marketing activities pertain only to the sale of that "spec" home and provided, further, such marketing activities are customarily undertaken by reputable custom home builders in Scottsdale, Arizona.

ARTICLE 4 ARCHITECTURAL AND LANDSCAPING CONTROL

Section 4.01 - Architectural and Landscaping Control and Requirements. In no event shall any Improvements be constructed on, removed from or modified on any Lot and in no event shall any Landscaping be planted, installed, placed on or removed from any Lot unless and until the specifications for such Improvements and/or Landscaping are submitted to and approved by the Committee, all in accordance with the Architectural and Landscaping Standards. In addition, no alteration, addition, repair, change, demolition, removal or other work which in any way alters the exterior appearance of any Living Unit or other Improvements on a Lot including, without limitation, the exterior color scheme of any Improvements located thereon, shall be made or done without the prior written approval of the Committee. The foregoing provisions shall not, however, apply to Monterey, provided that the Improvements which Monterey constructs on the Lots are consistent with the Monterey Standards and provided the Landscaping installed by Monterey on any Lot complies with the landscaping standards (although not the approval process) set forth in the Architectural and Landscaping Standards.

Section 4.02 - Appointment of Committee. From the date of this Declaration until the period ending not later than one (1) year after each Declarant has sold its last Lot, there shall be two (2) members of the Committee, which members shall be appointed by the Declarants. As long as there are two (2) Declarants, each Declarant shall select one (1) member of the Committee and in the event the two (2) members of the Committee cannot reach an agreement on any issue, the two (2) members of the Committee shall, within ten (10) days of such event, jointly appoint a single special member of the Committee to rule on the pending submittal or issue. Also, from the date of this Declaration to the earlier to occur of (a) the termination of the Adjacent Owner Easement applicable to the west half of the Twenty-Acre Additional Property for reasons other than by virtue of annexation of such portion of the Additional Property into Desert Summit pursuant to Section 2.08 of this Declaration or (b) the sale of all Lots within the Additional Property, and as long as William Olson ("Olson") is one of the Additional Property Owners, Olson shall be entitled to appoint himself and one other Person as special member(s) of the Committee for the sole purpose of approving any plans and specifications which the Committee may approve for Improvements to be constructed on any of the Lots within the Additional Property before or after annexation thereof into Desert Summit; provided, however, in no event shall such special members of the Committee have any right whatsoever to approve Improvements on any part of the Property other than the Additional Property. If the two (2) members and the two (2) special members of the Committee cannot reach an agreement on any issue under this Article 4 relating to the Additional Property, the two (2) members and the two (2) special members of the Committee shall, within ten (10) days of such event, jointly appoint a fifth (5th) member of the Committee to rule on the pending submittal or issue. As long as the Class "B" membership

is in existence, a Declarant may voluntarily surrender its right to appoint and remove a member of the Committee, and in that event, the remaining Declarant shall have the right to select all members of the Committee. Following the termination of the Class "B" membership, the Committee shall consist of not less than three (3) members appointed by the Board.

Section 4.03 - Architectural and Landscaping Standards. Prior to the termination of the Class "B" Membership, the Class "B" Member(s), without the right of any other Members, shall have the right to modify and amend the Architectural and Landscaping Standards. Upon the termination of the Class "B" Membership, the Board shall have the right to make such changes to the Architectural and Landscaping Standards as the Board shall deem appropriate. Notwithstanding the foregoing, the Architectural and Landscaping Standards shall not be modified or amended by the Class "B" Member of the Board in a manner which does not apply equally to all Custom Lots. The Committee shall keep and maintain a written record of all actions taken in connection with the Committee. The Committee may establish a reasonable processing fee to cover the costs of the Association in considering any request for approval submitted to the Committee, which fee shall be paid at the time of such request for approval is submitted.

Section 4.04 - Effect of Approval or Disapproval. All decisions of the Committee shall be final, and Declarants, the Board, the Committee and any member thereof shall have no liability to any Owner or any other party for any damage or loss suffered or claimed on account of: (i) approval or disapproval of any plans, drawings or specifications or any landscape plan; (ii) construction or modification of any Improvement or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or (iii) the development of any property within the Project.

ARTICLE 5 EASEMENTS

Section 5.01 - Easements in Common Areas. Each and every Member shall have a nonexclusive perpetual easement of use and enjoyment in and to the Common Areas. Such right and easement of use and enjoyment shall be subject to:

- A. The right of the Association to limit the number of guests of Members;
- B. The right of the Association to suspend the right to use the facilities situated upon the Common Areas by any Member for any period during which an Assessment against the Member's Lot remains unpaid or for any violation of the Project Documents;
- C. The right of the Association to dedicate, transfer or convey, all or any part of the Common Areas to any public agency, authority or utility as provided in this Declaration;
- D. The right of the Association to promulgate Rules and Regulations concerning the use of any Common Areas and all facilities located thereon; and
- E. All existing easements of record and any other easements Declarants or the Association shall hereafter create or grant.

Section 5.02 - Blanket Easement. There is hereby created in the Association and any provider to the Project of public utilities a blanket easement upon, across, over and under the Property for ingress and egress for the installation, replacing and maintaining of all utility and service lines and systems, including but not limited to water, sewer, gas, telephone, electrical, air conditioning, heating, television cable or communication lines and systems. By

virtue of this easement, it shall be expressly permissible for the providing utility or service company or the Association or their agents to install and maintain facilities and equipment on the Property and to affix and maintain wires, pipes, lines, conduits, ducts, vents, cables, circuits and other appurtenant items on the Property. Notwithstanding anything to the contrary contained in this Article, no sewer facilities, electrical lines, water lines, communication or cable facilities or other utility or service lines may be installed or relocated on the Property, except as approved by Declarants, as long as Declarants own any interest in any Lot or in the Project and, thereafter, except as approved by the Board. With respect to the construction or installation of any infrastructure improvements to be installed by the developer(s) of that part of any Additional Property annexed into the Project pursuant to Section 2.08 of this Declaration, the approvals provided for in the preceding sentence will not be unreasonably withheld.

Section 5.03 - Easement for Encroachments. Each Lot and the Common Areas shall be subject to an easement for encroachments, including but not limited to encroachments of walls, ceilings, ledges, floors and roofs caused by construction, reconstruction, repair, shifting, settling, movement and overhangs. If any portion of the Common Areas shall actually encroach upon any Lots or if any Lot shall actually encroach upon any portion of the Common Areas, a valid easement for such encroachments and for the maintenance, repair and replacement thereof shall and does exist. In the event that any Improvement is repaired, altered or reconstructed, similar encroachments shall be permitted and a valid easement for such encroachments and for the maintenance thereof shall exist. Owners and any other parties acquiring any interest in the Project shall be deemed to acquiesce and agree to the existence of such easements by accepting a deed or other Ownership interest from any seller of a Lot or by acquiring any interest whatsoever in the Project.

Section 5.04 - Association's Right of Entry. During reasonable hours, the Association or any authorized representative of the Association shall have the right to enter upon and inspect any Lot, excluding the interior of any Improvement located thereon, for the purpose of making inspections to determine whether the provisions of the Project Documents are being complied with by the Owner or Occupants of said Lot.

Section 5.05 - Association's Easement for Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Areas and the Lots for the purpose of repairing, maintaining and replacing those portions of the Lots which the Association is obligated to maintain pursuant to this Declaration and for performing all of the Association's other rights, duties and obligations hereunder.

Section 5.06 - Temporary Easements. Declarants, their agents, employees and contractors shall have a temporary easement upon each Lot and the Common Areas as is necessary for development of adjacent Lots and Common Areas and completion of improvements in public rights-of-way, public utility easements, drainage easements and Common Areas. In addition, Declarants and their agents, employees and contractors shall have a temporary easement upon the Lots and upon the Common Areas as is necessary to carry out any work required by, convenient to or incidental to carrying out the terms of any warranty or guaranty.

Section 5.07 - Public Easements. Each Owner who accepts a deed to or any interest in a Lot agrees to recognize and be bound by any Natural Area Open Space Easements, drainage easements or other easements shown in the Plat or which otherwise exist with respect to the Lot purchased by such Owner or the Common Areas, all in accordance with the applicable ordinances and regulations of the City with respect to such easements.

Section 5.08 - Mailbox Facilities Easement. The Association and the United States Post Office shall have an easement over such Lots as Monterey hereafter designates (and over such Lots within the Additional Property as the United States Post Office may require) as is necessary for the installation, operation, maintenance and repair of a pad located within the right-of-way on said Lots (the "Mailbox Sites") to be used as the sites for the mailbox facilities for the Project. In addition, each Owner shall have a non-exclusive easement over the Mailbox Site on which the mailbox for such Owner's Lot is located for access to and use of the mailbox facility situated thereon.

Section 5.09 - Perimeter Wall Easements and Maintenance. Each Owner who accepts a deed to a Lot which borders Jomax Road, 118th Street or any Common Area tract shall be deemed to grant to the Association a non-exclusive easement for access to, and maintenance and repair of, the perimeter walls for the Project along Jomax Road, 118th Street or any Common Area tract to the extent such exist, and each Owner of such a Lot shall be responsible for maintaining the interior of any such perimeter wall and shall also be responsible for repairing any damage to such perimeter wall caused by such Owner or its family members, guests, lessees or agents. To the extent any perimeter wall for the Project encroaches upon any Lot, an easement for such encroachment is hereby established over the encroached upon portion of any such Lot for the benefit of the Association.

Section 5.10 - Water, Sewer and Other Public Utility Easements. Tracts B, E, F and G of the Common Areas constitute water, sewer and/or other public utility easements over the Lots as shown on the Plat. The Owner of each Lot affected by such easements shall be responsible for all maintenance of such easement areas with the exception of any revegetation or restoration work necessitated as a result of the repair or replacement by any public utility of any public utility facilities contained within such easement areas. Tract B of the Common Areas as shown on the Plat also constitutes a limited access easement for emergency access only.

Section 5.11 - Adjacent Owner Easements. The Adjacent Owner Easements grant the owners of the Twenty-Acre Additional Property an access easement over the Roadway and an easement for the purpose of connection to public utility facilities within the Roadway, both of which easements are subject to certain limitations, restrictions and conditions as set forth in the Adjacent Owner Easements, including, without limitation, a restriction that such easements shall automatically terminate if the Twenty-Acre Additional Property is subdivided into more than eleven (11) residential Lots (with the exception of Section 1 thereof). In addition, the Adjacent Owner Easements are binding upon and are enforceable by the Association and shall automatically terminate and become null and void if and when the Twenty-Acre Additional Property is annexed into the Project pursuant to Section 2.08 of this Declaration. In addition, pursuant to an Easement Agreement dated December 19, 1996, the Roadway is subject to an access and utility easement granted to John and Gail Tranchitella who own a five acre parcel of real property adjacent to the northern boundary of the Project and pursuant to which the owner of such five acre parcel has an easement across the Roadway for purposes of ingress and egress to its parcel and to connect underground utility facilities within its parcel to certain utility facilities for the Project.

ARTICLE 6
MAINTENANCE

Section 6.01 - Maintenance of Areas of Association Responsibility. The Association, or its duly delegated representative, shall be responsible for the maintenance, repair and replacement of (i) the Common Areas, including, but not limited to, any walls, structures, signs, Landscaping, parking areas and streets located thereon, together with all other real and personal property owned by the Association, and (ii) all other Areas of Association Responsibility. Notwithstanding any other provision contained in this Declaration, in no event shall Declarants, Optionor or the Association have any obligation or responsibility to construct any improvements on the Common Areas situated on that part of the Additional Property annexed into the Project pursuant to Section 2.08 of this Declaration, as the sole responsibility for such construction shall be the responsibility of the developer(s) of the Additional Property. In addition, the developer(s) of any Additional Property annexed into the Project shall be responsible for any repair or corrective work to any Improvements on any of the Common Areas on such Additional Property if such work is the result of deficient workmanship and/or materials in connection with such construction.

Section 6.02 - Maintenance of Improvements. No Improvement upon any Lot shall be permitted to fall into disrepair, and all Improvements shall at all times be kept in good condition and repair, adequately painted and otherwise finished. Each Owner shall maintain in good repair the exterior surfaces of each Improvement on said Owner's Lot, including but not limited to walls, roofs, porches, patios and appurtenances. Nothing shall be done in or to any Improvement which will impair the structural integrity of any Improvement except in connection with any alterations and repairs permitted or required by the Committee. In the event of damage or destruction from any cause whatsoever to all or any portion of an Improvement, the Owner of the Lot shall promptly repair, reconstruct or restore the same, or cause the same to be repaired, reconstructed or restored, to the condition existing prior to such damage or destruction. Each Owner shall also maintain in good condition and repair all paved, concrete and other artificially surfaced areas, including driveways and walkways located on the Owner's Lot.

Section 6.03 - Maintenance of Landscaping. All lawn areas shall be kept mowed as needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds. In addition, each Owner of a Lot shall keep all other Landscaping of every kind located on his or its Lot neatly groomed and trimmed (including the pruning of dead wood) according to their plant culture and landscape design, and each Owner shall keep all such Landscaping watered and fertilized at such time and in such quantities as required to keep them alive and attractive and each Owner shall keep all such areas properly cultivated and free of trash, weeds and other unsightly materials. Each Owner shall immediately remove and replace any dead tree, shrub, plant, ground cover or other dead Landscaping on its Lot. Notwithstanding the foregoing, Owners shall not be responsible for maintenance of any area which (i) is an Area of Association Responsibility or (ii) the Association assumes responsibility for in writing.

Section 6.04 - Additional Maintenance; Standard of Care. The Association shall have the right, but not the obligation to undertake any maintenance within the Project as the Board may from time to time determine to be in the best interest of the Association and the Members. The Board shall endeavor to use a high standard of care in providing any maintenance, management and repair, so that the Project will reflect a high pride of ownership.

Section 6.05 - Assessment for Damage or Destruction. Notwithstanding any other provision contained in this Declaration, in the event that any Lot or Common Areas are damaged or destroyed through the willful or negligent act or omission of any Owner, his family, pets, guests, Lessees, Occupants, licensees or agents and the Association performs the appropriate repairs or replacements as required or permitted herein, the cost to repair such damage or destruction shall be added to and become a part of the Assessment to which such Lot is subject.

Section 6.06 - Assessment for Nonperformance of Maintenance. In the event any Owner fails to maintain any portion of its Lot and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of such maintenance and repairs shall be added to and become a part of the Assessment to which such Lot is subject.

Section 6.07 - Maintenance of Walls. Walls (other than any perimeter fences included as Areas of Association Responsibility) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot. Any wall which is placed on the boundary line between a Lot and the Common Area (other than perimeter fences included as Areas of Association Responsibility) shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area.

Section 6.08 - Insurance Obtained by Owner. Each Owner shall be responsible for obtaining property damage insurance for its own benefit and at its own expense covering its own Lot and the Improvements located thereon. Each Owner shall also be responsible for obtaining at his/her own expense personal liability insurance for death, bodily injury or property damage arising out of the use, ownership or maintenance of its Lot and Improvements.

ARTICLE 7 HOMEOWNERS' ASSOCIATION

Section 7.01 - Formation of Association. The Association has been or shall be incorporated as an Arizona non-profit corporation to perform and exercise all or any part of the responsibilities and functions granted to the Association under this Declaration and the Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Rules and Regulations, Architectural and Landscaping Standards or any other Project Document, this Declaration shall control.

Section 7.02 - Membership. Each Owner shall automatically be a Member of the Association, and upon subsequent transfers of the Owner's Lot, the new Owner shall automatically become a Member of the Association and the former Owner's membership shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of any Lot and any attempt to transfer membership, other than upon the transfer of the Lot giving rise to the membership, shall be void. Each and every Owner, by accepting its ownership interest in a Lot, agrees to become a Member of the Association and to be bound by the provisions of the Project Documents and this Declaration.

Section 7.03 - Classes of Membership and Voting Rights. The Association shall have two (2) classes of voting membership designated as Class "A" and Class "B". Class "A" Members shall be all Owners, except a Declarant shall not be a Class "A" Member as long as that Declarant is a Class "B" Member. With the exception of the consent requirements set forth in Sections 8.03, 8.04 and 13.01 of this Declaration, the Class "A" Members shall not be entitled to exercise any voting rights in the Association until the termination of the Class "B" membership. Upon termination of the Class "B" membership, each Class "A" member, including Declarants with respect to any Lots owned by Declarants, shall be entitled to one (1) vote for each Lot owned by it. If a Lot is owned by more than one individual Class "A" Member, the Members owning such Lot shall collectively be entitled to cast only one (1) vote for that Lot. The vote for such Lot shall be exercised as the Owners thereof among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Class "B" Members shall be the Declarants. As long as the Class "B" membership is in existence, the Class "B" Member(s) shall, in their sole discretion, have the right and authority to elect the Board and the Committee and, except for the consent requirements set forth in Sections 8.03 and 8.04 of this Declaration, the Class "B" Members shall have the full right to control the Association. The Class "B" membership shall cease and be converted to Class "A" membership upon the first to occur of the following:

- A. The closing of the sale of the last Lot to a Purchaser; or
- B. Such time as both of the Class "B" Members elect to convert their Class "B" membership to Class "A" membership and provide the Association with written notification of such election.

Upon the withdrawal by a Declarant as a Class "B" Member and provided the withdrawing Class "B" Member still owns a Lot, the withdrawing Declarant's membership shall be converted to Class "A" membership. Upon the termination of the Class "B" membership and provided Declarant(s) still own Lot(s), each Declarant who still owns a Lot shall thereafter be entitled to one (1) vote for each Lot owned by that Declarant. In the event one Declarant withdraws as a Class "B" Member, the other Declarant shall be the sole Class "B" Member until the first to occur of the events described in Subparagraphs A and B above as they pertain to the remaining Declarant. Notwithstanding any other provision contained in this Declaration or any other Project Documents, Optionor shall not have any voting rights in the Association unless Optionor becomes a Co-Declarant in accordance with Section 1.17 of this Declaration or unless Optionor still owns any Semi-Custom Lot at the time the Class "B" Membership shall cease to exist.

Section 7.04 - Duties and Powers of the Association. In addition to the duties and powers enumerated in the Project Documents or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the duty and power to perform the following:

- A. Maintain, repair, replace, restore, operate and manage all Areas of Association Responsibility and all Improvements and Landscaping thereon, and all property that may be acquired by the Association;
- B. Enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel and the commencement and prosecution of legal proceedings;
- C. Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members;
- D. Grant and reserve easements where necessary for utilities and sewer facilities over the Common Area and the Lots;
- E. Employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to the Bylaws and the restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project;
- F. Pay real property taxes, assessments and other governmental charges attributable to the Common Areas and all other expenses of the Association;
- G. Fix, levy, collect and enforce Assessments and fines as set forth in this Declaration and the Rules and Regulations.
- H. Pay all expenses and obligations incurred by the Association for the conduct of its business, including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Common Areas and any other property or property rights owned by the Association;
- I. Engage in activities which will actively foster, promote and enhance the common interests of the Members;
- J. Buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real or personal property and any right or interest therein for any purpose of the Association;
- K. Borrow money for any purpose as may be limited in the Bylaws;

- L. Enter into, make, perform or enforce contracts of every kind and description and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation or other entity or agency, public or private;
- M. Dedicate, sell or transfer all or part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association (such sale, transfer or dedication shall be subject to the restrictions and requirements under the applicable laws of Arizona); and
- N. Have and exercise any and all other powers, rights and privileges and transact any lawful business which nonprofit corporations are permitted to have, exercise or transact under the laws of the State of Arizona, as they may be amended from time to time.

Section 7.05 - Board. The affairs of the Association shall be conducted by the Board which shall be selected in the manner stated in the Project Documents. Each director shall be an Owner of a Lot or the spouse of an Owner, or, if an Owner is a corporation, limited liability company, partnership, trust or other legal entity, a director may be an officer, director, member, partner, beneficiary or authorized agent of such Owner. If a director shall cease to meet such directorship qualifications during his term, he shall automatically cease to be a director and his place on the Board shall be deemed vacant. Notwithstanding the foregoing, as long as there is a Class "B" Membership, directors need not be an Owner of a Lot.

Section 7.06 - No Liability. Neither Declarants nor the Association shall be liable for any theft, vandalism, disturbance, accident, unauthorized entrance or other similar occurrence or breach of the peace or security which may occur or take place within the Project or on the Common Areas or on any Lot.

Section 7.07 - Rules and Regulations. The Association shall from time to time establish such Rules and Regulations as it deems necessary for the conduct and operation of the Project including, by way of illustration and not by way of limitation, Rules and Regulations for the purpose of establishing and maintaining general beautification features within the Project and providing for the health, safety and welfare of Occupants of and visitors to the Project.

Section 7.08 - Use of Common Areas. Every Owner of a Lot, each Occupant of a Lot, each Lot Owner's Lessees, if any, and the social guests and other invitees of the foregoing individuals shall have the non-exclusive right to use the Common Areas; subject to this Declaration and the Rules and Regulations.

Section 7.09 - Funds. All funds received by the Association and the titles of all properties acquired by the Association shall be held in trust for the Members of the Association in accordance with the Project Documents.

Section 7.10 - Availability of Documents. The Association shall make available to all Owners of Lots and prospective purchasers of Lots current copies of the Project Documents.

ARTICLE 8
COVENANTS FOR ASSESSMENTS AND CREATION OF LIENS

Section 8.01 - Creation of the Assessment Lien and Personal Obligations for Assessments. Each Owner of any Lot is deemed to covenant and agree to pay to the Association (i) regular annual Assessments or charges ("Annual Assessments"); (ii) special Assessments for capital improvements and unexpected expenses ("Special Assessments"); and (iii) such other Assessments as are provided for herein or in the Project Documents. The Annual and Special Assessments and any other Assessment or charge made against a Lot pursuant to the Project Documents, together with interest, costs and reasonable attorneys' fees, shall be a charge and a continuing Assessment Lien upon the Lot against which each Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be a personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his contribution toward the Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or the Board to take some action or perform some function under this Declaration or the Project Documents, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

Section 8.02 - Purpose of Assessments. The Assessments by the Association shall be used exclusively for the improvement and maintenance of the Common Areas and any Areas of Association Responsibility, the promotion of the recreation, health, safety and welfare of all the residents in the Project, the operation and administration of the Association and for the common good of the Project. Annual Assessments shall include a reasonable reserve fund for taxes, insurance, maintenance, repairs and replacement of the Common Areas and any Areas of Association Responsibility.

Section 8.03 - Annual Assessments. The Board shall annually determine and fix the amount of the Annual Assessment against each Lot and shall notify the Owner of each Lot in writing as to the amount of such Annual Assessment not less than thirty (30) days prior to the date that such Annual Assessment is to commence. Along with such notification, the Board shall provide the Owners with a proposed budget for the next fiscal year and a summary of the Association's finances for the previous fiscal year. In addition to including amounts for the estimated common expenses and cash requirements of the Association, each budget shall also provide for a reserve for contingencies and a reserve for replacements, all in such amounts as shall be determined by the Board to be reasonably adequate, taking into account the number and nature of replaceable property within the Areas of Association Responsibility, the expected life of such item and each item's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board

adopts the annual budget for the year in question, the Board shall cause a copy of the budget and a statement of the amount of the Annual Assessments to be levied against the Owner's Lot for the fiscal year in question to be delivered or mailed to each Owner. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of the fiscal year, then until and unless a budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Except as to the first Annual Assessment, the Annual Assessment may be neither increased by more than twenty percent (20%) above, nor decreased by more than fifteen percent (15%) below the Annual Assessment for the previous year, without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to fifty-one percent (51%) of the Members are present in person or by proxy. Notwithstanding the foregoing, the Board may without the approval of the Members, increase the maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to cover any increase over the preceding fiscal year for: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; (ii) taxes on the Common Areas or (iii) charges for utility services necessary to the Association's performance of its obligations under this Declaration. If item (i), (ii) or (iii) in the preceding sentence results in an increase in the maximum Annual Assessment, such increase shall be permitted notwithstanding the fact that the resulting increase in maximum Annual Assessment is at a rate greater than otherwise permitted by the preceding portions of this Section. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in a full amount of the maximum Annual Assessment for the fiscal year, and the election by the Board not to levy Annual Assessments in a full amount of the maximum Annual Assessments for the fiscal year shall not prevent the Board from levying Annual Assessments in subsequent years in the full amount of the maximum Annual Assessments for the subsequent fiscal year (as determined in accordance with this Section). In the event that for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the maximum Annual Assessment for the fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during the same fiscal year so long as the total of the Annual Assessments levied during the fiscal year have not exceeded the maximum Annual Assessments for such fiscal year. All Annual Assessments shall be payable in advance in quarterly installments on the first (1st) day of January, April, July and October of each year, or in accordance with such other payment schedule as the Board may determine. In the year of the close of escrow on the sale of the first Lot to a Purchaser, the maximum Annual Assessment per Lot shall be One Thousand Eight Hundred Dollars (\$ 1,800.00), and the Annual Assessment shall be prorated through the date of the close of escrow for each Lot based on the number of full and partial months remaining in the then current quarter.

Section 8.04 - Special Assessments. In addition to the Annual Assessments authorized above, the Board may levy in any assessment year a Special Assessment, applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas and Areas of Association Responsibility, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated expenses normally covered by an Annual Assessment, including taxes assessed against the Common Areas, provided, however, that the aggregate Special Assessments for any fiscal year shall not

exceed fifty percent (50%) of the budgeted gross expenses of the Association for that Assessment year without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to fifty-one percent (51%) of the Members are present in person or by proxy.

Section 8.05 - Enforcement Assessments. The Board shall also have the right to levy assessments against an individual Lot and its Owner to reimburse the Association for costs incurred by the Association in connection with its efforts to require that Owner and his Lot to comply with the provisions of this Declaration and the Project Documents or costs incurred by the Association in connection with causing to be done such work as is necessary to bring a Lot into such compliance (an "Enforcement Assessment"), and such Enforcement Assessments shall not be subject to any limitations as to the amount of such Assessments.

Section 8.06 - Allocation of Assessments. Except as provided for in Section 8.07 below with respect to Declarants and Optionor and in Section 8.05 above with respect to an Enforcement Assessment, the Owner of each Lot shall bear an equal share of Assessments.

Section 8.07 - Exemption for Class "B" Members (Declarants) and Optionor. Notwithstanding any other provision contained in this Declaration, neither the Class "B" Members nor Optionor shall be liable for or be required to pay any Assessments upon Lots owned by them as long as the Class "B" membership is in existence and as long as they remain Class "B" Members. In lieu thereof, so long as the Class "B" membership is in existence, each Class "B" Member shall subsidize the Association by paying its pro rata share (based on the number of Lots owned (or controlled through the Option Agreement) by each Class "B" Member to the total number of Lots owned (or controlled through the Option Agreement) by both Class "B" Members, which calculation shall be made on January 1 and July 1 of each year) of the difference, if any, between the amount of Annual Assessments levied by the Association and the actual cost of operating and administering the Association (other than costs for which a Special Assessment or Enforcement Assessment is levied). Such payments by Class "B" Member(s) shall be made at such times as the Class "B" Member(s) and the Board shall agree. A Class "B" Member's obligations under this Section may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. Notwithstanding any other provision contained in this Declaration, as long as the Option Agreement is in effect, no Assessments shall be levied against Lots which remain subject to the Option Agreement.

Section 8.08 - Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a semi-annual basis or such other more frequent basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Rules and Regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments; provided that the procedures are not inconsistent with this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his or its liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than twenty (20) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at

any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during any period for which any such Assessment pertains. Successor Owners of Lots shall be given credit for prepayments of Assessments, on a prorated basis, made by prior Owners.

Section 8.09 - Enforcement of Assessment Obligation. If any Assessment is not paid within fifteen (15) days after the due date provided for herein or otherwise established by the Board, a late fee in an amount equal to the greater of \$15 or ten percent (10%) of the delinquent Assessment shall automatically become due and payable by the delinquent Member. In addition, any part of any Assessment not paid within fifteen (15) days after the due date shall bear interest from the sixteenth (16th) day following the due date until paid at the greater of (i) fifteen percent (15%) per annum or (ii) two percent (2%) per annum over the prime rate of Bank One, Arizona, NA, or its successor. Any monies paid by a Member for a delinquent Assessment shall be applied first to the principal amount unpaid and then to the late charge and interest accrued. The sale or transfer of any Lot shall not affect any Assessment Lien against such Lot. The Assessment Lien on each respective Lot shall be prior to and superior to all other liens except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record made in good faith and for value. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, all in connection with a First Mortgage, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable subsequent to the recording of the First Mortgage but prior to the acquisition of such Lot by the First Mortgagee or other Person. An Assessment Lien, when delinquent, may be enforced by sale by the Association in accordance with the provisions of the Arizona Revised Statutes applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by law; however, the right to foreclose the same shall be in addition to and not in substitution of all of the rights and remedies which the Association and the Board may have in accordance with the provisions of this Declaration or otherwise. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the Assessment Lien shall continue in effect and the Assessment Lien may be enforced by the Association or by the Board for the respective Lot's Assessment that was due prior to the final conclusion of such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as a personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a Member. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the Assessment Lien securing the same. The Board may impose additional reasonable monetary penalties and may temporarily suspend the Association membership rights of an Owner who is in default in payment of any Assessment.

Section 8.10 - Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year but may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the

amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 8.11 - Working Capital and Reserve Funds. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services and to create a reasonable reserve fund, each initial Purchaser who purchases a Lot from a Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-fourth (1/4th) of the then current Annual Assessment against its Lot. Such payment shall be non-refundable and shall be paid in addition to, and shall not be offset against or considered as an advance payment of, any Assessment or transfer fee levied by the Association pursuant to this Declaration.

Section 8.12 - Transfer Fee. Each Purchaser, except for a Purchaser who purchases a Lot from a Declarant, shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in an amount equal to one-fourth (1/4th) of the then current Annual Assessment against the Lot, which amount shall be used by the Association to cover administrative costs incurred by the Association in connection with such transfer and to supplement the Association's reserve fund. The transfer fee shall be in addition to, and shall not be offset against or considered as an advance payment of, any Assessment levied by the Association pursuant to this Declaration, and the payment of such transfer fee shall not entitle an initial Purchaser to return of any working capital and reserve payments made to the Association pursuant to Section 8.12 above.

Section 8.13 - Fines. In accordance with the Rules and Regulations or any policy adopted by the Board, the Association shall have the power to levy reasonable fines against any Owner who violates any provision of the Project Documents.

Section 8.14 - Books and Records. The Board shall at all times keep true and correct records of account for the Association in accordance with generally accepted accounting principles applied on a consistent basis, and shall furnish for the inspection of all voting Owners at reasonable times such records which shall specify in detail all expenses incurred and funds accumulated from Assessments or otherwise. If a management agent contracts with the Association to perform all or a part of the Association's duties, the management agreement therefore shall require such management agent to maintain records in accordance with the foregoing requirements, and to provide the Board with a report of its activities under such management agreement prior to the close of each fiscal year of the Association, and at such additional times as may be requested by the Board. The information set forth in such report shall be included in the annual budget and report from the Board to the Owners required by Section 8.03 above.

ARTICLE 9 ENFORCEMENT

The Association shall have the right to enforce the restrictions, conditions and covenants set forth herein, and the Association shall be the proper party plaintiff in any legal

action initiated to enforce any provision of this Declaration. During reasonable hours and after notice (except in the event of an emergency), members of the Board or the Committee or persons authorized by the Board or the Committee shall have an easement on, over, across and through each Lot to inspect any portion of each Lot and the Improvements thereon for the purpose of ascertaining whether the provisions of this Declaration have been or are being complied with and to permit it to carry out its rights, duties and obligations under this Declaration and such persons shall not be deemed guilty of trespass by reason of such entry. In the event the Board determines that an Owner is in breach of the Owner's obligations under this Declaration, the Board may give the Owner written notice of its determination, including a reasonably detailed list or description of the repairs, maintenance, work or corrective measure required to cure the Owner's breach. If the Owner does not cure the breach within thirty (30) days after the date of the written notice, the Board, on behalf of the Association, may cause the repairs, maintenance, work or corrective measures to be performed so as to cure the Owner's breach. The Association's costs incurred in curing such a breach by an Owner, together with a fee in an amount equal to ten percent (10%) of such amount, shall constitute a lien on the Owner's Lot, which lien amount shall thereafter bear interest at the rate of ten percent (10%) per annum until paid. The Association shall also have standing and authority to request that a court of competent jurisdiction compel the Owner to cure the breach and to the extent not inconsistent with an order of such a court, the Association may pursue either or both of the courses of action described in this Section. Owners, by accepting a deed to a Lot, waive any right to assert that damages shall be an adequate remedy for any such non-compliance. If the Association shall fail or refuse to enforce any of the terms of this Declaration for an unreasonable period of time after being notified of a non-compliance, then any Owner shall become a proper party plaintiff.

ARTICLE 10 INSURANCE

Section 10.01 - Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

A. Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner.

B. Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

E. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

F. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association and the Owners.

G. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

i) That there shall be no subrogation with respect to the Association, its agents, servants and employees, with respect to Owners and members of their households;

ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

iii) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

iv) Statement of the name of the insured as the Association;

v) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the First Mortgagee or other beneficiary under a deed of trust named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

Section 10.02 - Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner and First Mortgagee or other beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each First Mortgagee or other beneficiary under a deed of trust to whom certificates of insurance have been issued.

Section 10.03 - Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 10.01 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

Section 10.04 - Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any First Mortgagee or other beneficiary under a deed of trust. Subject to the provisions of Section 10.05 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

Section 10.05 - Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 11
RIGHTS OF FIRST MORTGAGEES

Section 11.01 - Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

A. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;

B. Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by such Owner of any obligation under the Project Documents, which delinquency remained uncured for a period of twenty (20) days;

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

D. Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Sections 11.02 and 11.03 of this Declaration.

Section 11.02 - Approval Required to Terminate Project. Any termination of the legal status of the Association for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

Section 11.03 - Approval Required for Amendment to Declaration, Articles or Bylaws.

The approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions to the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- i) Expansion of the Project or the addition or annexation of property to the Project;
- ii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- iii) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- iv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

B. Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

Section 11.04 - First Mortgagee's Right of Inspection of Records. Any First Mortgagee shall, upon written request, be entitled to (i) inspect the books and records of the Association during normal business hours, (ii) receive within sixty (60) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association free of charge to the requesting party and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

Section 11.05 - Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each Lot against which the First Mortgage acts as a lien) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

- i) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned by the Association. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area and any conveyances of a corrective nature made by a Declarant shall not be deemed a transfer within the meaning of this Subsection;
- ii) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;

iii) Fail to maintain fire and extended coverage insuring the Common Areas on a current replacement cost basis in an amount at least one hundred percent (100%) of insurable value; and

iv) Use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such Common Area.

Section 11.06 - No Priority over First Mortgagees. No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Areas.

Section 11.07 - Failure of First Mortgagees to Respond. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of First Mortgagee shall be deemed to have approved such action if the Association has not received a written negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

Section 11.08 - Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provisions of the Project Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different sections of this Article or between the provisions of this Article and any other provisions of the Project Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of this Declaration, the Article or the Bylaws, (ii) a termination of the Project or (iii) certain actions of the Association as specified in Sections 11.02, 11.03 and 11.05 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that so long as there is a Class "B" Membership in the Association, the Declarants, without the consent of any Owner or First Mortgagee being required, shall jointly have the right to amend this Declaration, the Articles or the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any other federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by Declarants.

ARTICLE 12 TERM

This Declaration shall remain in full force and effect for a period of twenty (20) years from the date hereof. After such twenty (20) year period, this Declaration shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked by an amendment in writing, executed and acknowledged by the then Owners representing not less than two-thirds (2/3) of the Lots; or such higher percentage as required by applicable law, and recorded in the Maricopa County, Arizona Recorder's Office, within sixty (60) days prior to the expiration of the initial period hereof or any ten (10) year extension. Upon the expiration, revocation, termination or revocation of this Declaration, title to the Common Areas shall

immediately pass in equal, undivided interests to the Owners, as tenants in common, but each Owner shall nevertheless continue to be individually and collectively liable under the duty to pay its pro rata share of the costs of maintaining the Association Areas of Responsibility, payment of all taxes assessed or due with respect to the Common Areas and securing and paying the premium for comprehensive general liability insurance for all Association Areas of Responsibility. If any Owner does not pay its pro rata share within twenty (20) days following written demand from any other Owner or the City, and if any other Owner or the City pays the delinquent Owner's pro rata share, the Person paying such delinquent Owner's pro rata share shall be entitled to assess the delinquent Owner's Lot, impose a lien upon and enforce such lien upon the delinquent Owner's Lot in accordance with the provisions of Article 8 hereof, as if such Person was the Association. The foregoing provisions of this Article shall survive the expiration, revocation, termination or cancellation of this Declaration.

ARTICLE 13 GENERAL PROVISIONS

Section 13.01 - Amendments.

A. Except for amendments made pursuant to Section 8.03 or 8.04 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners entitled to cast not less than sixty-seven percent (67%) of the votes in the Association, provided that as long as the Adjacent Owner Easements are in effect, any amendment to Section 2.08 of this Declaration or any amendment to any other provision in this Declaration to the extent such amendment only affects rights or privileges granted to the Additional Property Owners under this Declaration must be approved by the owners of the Twenty-Acre Additional Property.

B. The Board may amend this Declaration or the Plat without obtaining the approval or consent of any Owner or First Mortgagee in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any other federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by a Declarant.

C. Notwithstanding any other provisions contained in this Declaration, so long as a Declarant owns (or holds an optionee's interest in) any Lot, any amendment to this Declaration must be approved in writing by each Declarant who owns a Lot. Also, as long as Optionor owns any Lot, any amendment to this Declaration must be approved in writing by Optionor.

D. Any amendment approved pursuant to Section 13.01(A) or Section 13.01(B) of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarants pursuant to Section 11.08 of this Declaration shall be executed by Declarants and shall be recorded with the County Recorder of Maricopa County, Arizona.

Section 13.02 - Interpretation of Covenants. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the terms of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the terms of this Declaration, the Architectural and Landscaping Standards, the Rules and Regulations and the Project Documents shall be final, conclusive and binding upon all Persons, any Lot and the Project.

Section 13.03 - Severability. Any determination by any court of competent jurisdiction that any term of this Declaration is invalid, illegal or unenforceable shall not affect the validity, legality or enforceability of the remaining provisions of this Declaration and the same shall remain in full force and effect.

Section 13.04 - References to This Declaration. Any and all instruments of conveyance or lease of any interest in any Lot must contain reference to this instrument and shall be subject to the terms of this Declaration the same as if they were therein set forth in full. Notwithstanding the foregoing, the terms of this Declaration shall be binding upon all Owners and all other persons and entities affected by the same, whether such express reference is made to this Declaration or not.

Section 13.05 - Waiver or Abandonment. The failure to enforce any breach or violation of any of the provisions of this Declaration shall not constitute an abandonment or a waiver of any right to enforce such provision or of any of the other terms hereof.

Section 13.06 - Violation of Law. Any violation of any federal, state, municipal or local law, ordinance or regulation, including zoning laws or ordinances pertaining to the ownership, occupation or use of any Lot is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 13.07 - Agents and Committees. The Board shall have the right to appoint agents or committees or both to act on behalf of the Association for the purpose of exercising any right, power or duty given to or imposed upon it by this Declaration.

Section 13.08 - Waiver of Damages. The Declarants and the Association and their respective officers, directors, employees and agents shall not be liable for damages to anyone relating in any manner to their actions or failures to act in performing or failing to perform their respective responsibilities and functions under this Declaration by reason of mistake in judgment, negligence, malfeasance or nonfeasance and each and every Owner, by accepting a deed to or acquiring any ownership interest in a Lot, thereby agrees to indemnify and hold harmless the Declarants and the Association and their respective officers, directors, employees and agents in respect to the foregoing, except where such indemnification is contrary to Arizona law. Neither this provision nor any other provision, restriction or limitation contained in this Declaration shall in any way constitute a waiver of any rights a Declarant may have against a Co-Declarant for the Co-Declarants' actions or failures to act in performing or failing to perform the Co-Declarants' responsibilities and functions under this Declaration or under any other agreements between the Co-Declarants.

Section 13.09 - Remedies Cumulative. Each remedy provided by this Declaration is cumulative and non-exclusive.

Section 13.10 - Gender and Number. Whenever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders, words used in the singular shall include the plural and words used in the plural shall include the singular.

Section 13.11 - Captions, Tables and Headings. All captions, titles and headings in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context of the terms of this Declaration.


Section 13.12 - Limitation on Declarants' and Optionor's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner, and each other person, by acquiring any interest in the Project, acknowledges and agrees, that neither of the Declarants nor the Optionor (including, but not limited to, any assignee of the interest of such parties) nor any partner, shareholder, officer, director, employee or affiliate of Declarants or Optionor shall have any personal liability to the Association, or to any Owner, Member or other person, arising under or in connection with this Declaration or resulting from any action or failure to act with respect to this Declaration, the Association or the Committee except, in the case of Declarants or Optionor (or their assignees), to the extent of their respective interests in the Project; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

Section 13.13 - Attorneys' Fees and Costs. The Association shall be entitled to collect from any Owner any attorneys' fees and related costs incurred in connection with enforcement action taken against an Owner or his Lot pursuant to provisions contained within this Declaration, and any such amount shall be a charge and a continuing lien upon the Lot of said Owner.

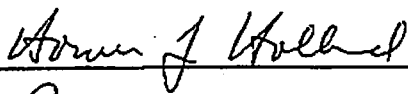
III

IN WITNESS WHEREOF, the undersigned has executed this Declaration this ____ day of March, 1998.


MONTEREY HOMES CONSTRUCTION, INC., an Arizona corporation

By 
Its Vice Pres.

BH II, LLC, a Delaware limited liability company

By 
Its PRESIDENT

STARDUST DEVELOPMENT, INC., an Arizona corporation

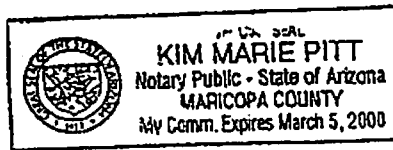
By 
Chris Heeter
Its President

STATE OF ARIZONA)
)ss
County of Maricopa)

On this 20th day of March, 1998, before me personally appeared Reene Carrall, the Vice President of Monterey Homes Construction, Inc., an Arizona corporation, known to me to be the person whose name is subscribed to the foregoing Covenants, Conditions and Restrictions, and being authorized to do so, acknowledged that he/she executed the same for the purposes contained therein.

Kim Marie Pitt
Notary Public

My Commission Expires:
March 5, 2000



STATE OF _____)
)ss
County of _____)

On this 20th day of March, 1998, before me personally appeared Homes Holland, the President of BH II, LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing Covenants, Conditions and Restrictions, and being authorized to do so, acknowledged that he/she executed the same for the purposes contained therein.

Kim Marie Pitt
Notary Public

My Commission Expires:
March 5, 2000



STATE OF ARIZONA)
)ss
County of Maricopa)

On this 24 day of March, 1998, before me personally appeared Chris Heeter, as President of Stardust Development, Inc., an Arizona corporation, known to me to be the person whose name is subscribed to the foregoing Covenants, Conditions and Restrictions, and being authorized to do so, acknowledged that he executed the same for the purposes contained therein.

Deborah S. Townsend
Notary Public

My Commission Expires:

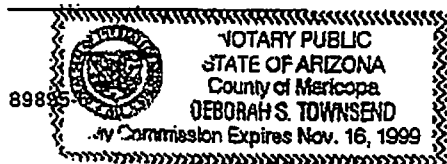


EXHIBIT "A"

ARCHITECTURAL AND LANDSCAPING DESIGN AND REVIEW STANDARDS AND PROCEDURES FOR DESERT SUMMIT

1. **Introduction.** The following Architectural and Landscaping Design and Review Standards and Procedures ("Architectural and Landscaping Standards") are established to provide standards and procedures to be used in the planning, design and construction of all Improvements on Lots within the Project, thus insuring the development and maintenance of the Project as an attractive, exclusive, harmoniously designed residential community. These Architectural and Landscaping Standards are part of the Declaration to which these Architectural and Landscaping Standards are attached and shall be binding upon each Owner who at any time wishes to construct, reconstruct, refinish, remodel or alter any Improvements on its Lot or install or modify Landscaping on its Lot or makes any changes to the natural or existing surface or drainage thereon. The Architectural and Landscaping Standards are supplemental to any standards, requirements and restrictions imposed by any applicable governmental authorities. The Association, acting by and through the Board, shall have the authority to take whatever steps are necessary to enforce these Architectural and Landscaping Standards. These Architectural and Landscaping Standards may be amended from time to time in accordance with Section 4.03 of the Declaration, and no recordation of an amendment to the Declaration shall be required for such amendment. It shall be the responsibility of each Owner or other interested party to obtain and review a copy of the most recently revised Architectural and Landscaping Standards.

2. **Definitions.** Capitalized words used herein shall have the same meanings designated for such words in Article 1 of the Declaration. In addition, the following words or phrases, when used herein, shall have the following meanings:

(a) "Architect" means a person appropriately licensed to practice architecture in Arizona.

(b) "Builder" means a person or entity engaged by an Owner for the purposes of constructing any Improvement within such Owner's Lot. All Builders must hold a current Arizona contractor's license in good standing.

(c) "Enclosed Area" means any fenced or screened rear yard area on a Lot or any areas of front entrance to a Living Unit which are not visible from the street which is located immediately adjacent to the front of the Lot.

(d) "Grading" means any disturbance of the surface of a Lot (except to the extent reasonably necessary for planting of approved vegetation), including any trenching

which results in the removal of earth, rock or other materials from a depth of more than twelve (12) inches below the natural surface of a Lot, or any grading of the surface of a Lot.

(e) "Indigenous Specie" means a specie of plant, whether ground cover, shrub, cactus or tree, which is listed on the Indigenous Plant List set forth in Appendix A hereto.

(f) "Natural Area" means that portion of the natural desert within a Lot which must remain undisturbed pursuant to the regulations of the City, and no Improvements (except driveways) are to be built within the Natural Area.

(g) "Prohibited Plants" means those plants and trees identified on Appendix B attached hereto.

(h) "Protected Plants" means those Indigenous Species of trees or cacti listed in the City's Native Plant Ordinance No. 455, Article 7, as may be amended from time to time, including, without limitation, those of four (4) inch caliper or six (6) foot height or greater, including: ironwood, mesquite, palo verde, saguaro, barrel cactus, ocotillo and yucca.

(i) "Unenclosed Area" means that part of any Lot excluding the Natural Area and any Enclosed Area.

3. **Architectural Design Standards.** The concept and design of all proposed Improvements to be constructed on each Owner's Lot must be approved by the Committee. It is recommended that each Owner retain competent professionals to plan and design Improvements. Only plans of professional quality will be accepted for review by the Committee. Each Owner must strictly comply with these Architectural and Landscaping Standards, the Declaration, the Rules and Regulations and any ordinances, laws and regulations of any governmental authority, in order to bring the design review process to a speedy and satisfactory conclusion. The following architectural standards must be followed in connection with any Improvements on any Lot:

(a) **Southwestern Design.** In order to create a unified theme, the exterior of all Improvements must be a design consistent with what is commonly known as "Southwestern Architecture".

(b) **Size.** Living Units to be constructed on the Custom Lots shall exceed the lesser of thirty-eight hundred (3800) square feet of living area or three hundred (300) square feet of livable area more than the largest model Monterey offers for sale within the Project.

(c) **Height and Siting of Structures.** Living Units shall be limited to a maximum height of (i) thirty (30) feet above the highest adjacent natural grade portion of the Lot or (ii) any lower height limitations imposed by the City. Sensitivity to height and relationship to other Living Units immediately surrounding the Lot must be taken into consideration and will play a role in the review process by the Committee.

(d) **Walls and Fencing.** Exterior walls with a stuccoed finish may be used for privacy. All fencing and walls built upon a Lot shall be of masonry and/or wrought iron material only and shall be meandering in configuration. Walls are required as screening to enclose all above-ground garbage and trash containers, heating and cooling equipment and other outdoor maintenance and service facilities, and such walls should be a visual extension of the architecture of the Living Unit. The maximum allowable height of walls shall be eight (8) feet measured from the top of the exterior side of the wall to the natural grade immediately adjacent to said wall, and a wall may not exceed an average of six (6) feet in height measured as herein provided. The color of walls must conform to the color standards set forth in Section 5 below. Walls may not be intended to delineate property lines. Acceptability of wall locations and heights shall be determined by the Committee.

(e) **Garages.** In order to establish a visually attractive residential streetscape and to encourage architectural creativity, side entry garages shall be encouraged on all Living Units, although it is contemplated that front-entry garages will be constructed by Monterey on certain of the Semi-Custom Lots. Also, BH II (or its affiliates) may construct front-entry garages on the Custom Lots where it will be impractical or difficult to construct a workable side-entry garage thereon. With the exception of front-entry garages constructed by Monterey on the Semi-Custom Lots and by BH II (or its affiliates) on the Custom Lots as permitted in the preceding sentences, no garage doors directly facing a residential street shall be permitted except in cases of extreme hardship as determined in the sole discretion of the Committee. Hardship shall be determined on the basis of safety, Lot grade and configuration, visibility from neighboring property and the architectural appropriateness and integrity of the proposed Living Unit as sited on the Lot as it relates to surrounding residences. With respect to any Lots for which a front-entry garage (garage doors facing the street) is permitted in accordance with this Section, the garage facade shall be stepped back or recessed from the primary face of the Living Unit so as to diminish its prominence, and in such event, the maximum number of street-facing doors shall be three (3). In the event that a 3-door front-entry garage is approved, the face of all three garage doors may not be on the same plane; at least one door must be stepped back or recessed from the others and further differentiated by its roof line and treatment. All garage stalls must be immediately adjacent to each other. No garage door shall be permitted to be more than two (2) feet higher than any other garage door or standardized garage doors and no such larger than normal garage doors shall be permitted on front entry garages.

(f) **Solar Application.** Passive solar application or the orientation and design of the Living Unit for winter solar gain will reduce winter heating needs and will be encouraged. Solar collectors, however, can result in excessive glare and reflection and will only be approved by the Committee if they are integrated into the structures or landscaping on a Lot and are not Visible from Neighboring Property. Rooftop solar collectors, however, are not allowed.

(g) **HVAC Facilities.** No heating, air conditioning, evaporative cooling or similar facilities may be installed, constructed or maintained upon any Living Unit unless (i) such facilities are installed in such a manner so they are not Visible from Neighboring Property and (ii) the Committee has approved the installation of such facilities.

(h) **Tennis/Sports Courts.** Tennis and sports courts shall not be permitted within the Project.

(i) **Lights.** Only low level, low intensity accent lights will be allowed at exterior locations on Lots and such lights must be used in a manner that softens the exterior character of the Living Unit. Spot lights or other lights shall not be installed, maintained or used in a manner which causes glare to neighboring property or an annoyance to the Occupant of neighboring property within the Project. Overhead swimming pool lights shall not be allowed except as approved by the Committee. All outside lights will be of a height, design and type approved by the Committee.

(j) **Roofs.** All roofs shall be of a material, color and texture approved by the Committee. The overall appearance of the Living Unit will be an important consideration. The Committee may approve pitched roofs up to a maximum pitch of 5 in 12. The color of roofs must conform to the color standards set forth in Section 5 below. Reflective roof surfaces which cause excessive glare are not allowed. Only roofs composed of clay, sandcast or concrete flat tiles or another material approved by the Committee shall be constructed on any Lot. No asbestos or shake shingle roofs shall be allowed.

(k) **Driveway Construction and Use.** The location of a driveway on all Lots is subject to the Committee's approval. All driveways shall be paved with concrete or other materials approved by the Committee. Each driveway shall be at least fifteen (15) feet in width. The use of special texturing, integral color, borders, etc. shall be encouraged to upgrade the appearance of driveways.

(l) **Setbacks.** The front, rear, left and right side yard setbacks shall conform with the Code of the City.

(m) **Porte Cochere.** A porte cochere shall be permitted on a Lot so long as (i) the side of the porte cochere closest to the street does not extend closer than forty (40) feet from the front yard property line; (ii) the porte cochere extends completely over the width of the driveway; (iii) the porte cochere is for the sole purpose of vehicular unloading and (iv) the design of the porte cochere is approved in writing by the Committee.

(n) **Antennas, Poles, Towers and Dishes.** Since television, radio, shortwave, microwave, satellite and other antennas, poles, towers, masts, dishes or other similar devices ("Transmission/Reception Devices") can be unsightly, intrusive and inconsistent with the desired character and appearance of the Project, it is essential that the installation within the Project of all such Transmission/Reception Devices be monitored and controlled by the Association to eliminate or minimize the visibility of such devices from all areas within the Project. Accordingly, each Owner, as essential consideration for the deed to its Lot, and except as may be limited by any applicable law, shall be deemed to have covenanted that no Transmission/Reception Devices shall be placed, constructed, installed or maintained upon its Lot (including, but not limited to, upon the roof or exterior walls of any Living Unit or other structure) unless the Transmission/Reception Device is fully screened and is not Visible From Neighboring Property due to a parapet wall or other structure which conforms architecturally with the structure of the Living Unit; or the Transmission/Reception Device is otherwise fully and attractively screened and not Visible From Neighboring Property.

Any means of screening or concealment shall be subject to the Architectural and Landscaping Standards adopted by the Committee and shall be subject to approval by the Committee in accordance with Article 4 of this Declaration.

4. Materials.

(a) **Exterior Surface Materials.** Exterior surfaces shall be generally of natural materials that blend and are compatible with the natural landscape. Masonry and stucco are to be the predominant exterior surfaces. These materials provide an outer surface to withstand the climatic extremes. Large expanses of wood surfaces will not weather well in desert conditions and will not be approved. No exposed metal or wood siding shall be allowed as an exterior construction material; provided, however, that wood beams shall be an acceptable construction material.

(b) **Reflective Finishes.** No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any of the following: roofs, all projections above roofs, retaining walls, doors, trim, walls, fences, pipes and equipment.

(c) **Windows.** All aluminum window frames must be anodized-bronzed or another color approved by the Committee or coated with an equivalent finish acceptable to the Committee, and no white or mill colored finishes will be allowed.

5. Color. The color of all of all external materials must generally be earth tones and muted to allow the natural colors of the desert to predominate, and in no event shall external materials with a light reflective value (LRV) in excess of fifty percent (50%) be used in the construction of any Improvements on any Lot. Approval of all colors of external materials used in construction of Improvements on any Lot must be obtained from the Committee prior to construction.

6. Miscellaneous Architectural Standards. In addition to other restrictions contained in the Declaration, the following restrictions shall apply to all Improvements constructed or installed on the Lots.

(a) **Mechanical Systems.** No rooftop mechanical units are allowed. All ground-based systems shall be screened by approved Landscaping, building configuration or walls.

(b) **Service Yard.** Walls are required as screening for a service yard, if any, to enclose all above-ground heating and cooling equipment, garbage and trash containers, clotheslines and other outdoor maintenance and service facilities.

(c) **Mailboxes.** The design and location of mailboxes and newspaper tubes must be approved by the Committee, and the Committee may require that mailboxes be grouped. In any event, mailboxes are to be located in conformance with U.S. Postal Service requirements.

(d) **Additions; Alterations; Reconstruction.** All additions, alterations or reconstruction to the Living Unit or to any other Improvement on a Lot shall be reviewed and approved by the Committee to ensure conformance with previously approved design and quality.

(e) **Utility and Irrigation Meters and Panels.** No utility or service equipment or lines may be installed or located on any Lot except as has been approved by the Committee. No utility meter or apparatus shall be located on any pole or attached to the outside of any Improvement which is exposed to view from any street within the Project. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls as necessary to comply with the requirements, requests, regulations, orders, commissions or specifications of any public, quasi-public or private utility or any governmental agency or body provided that reasonable efforts shall be made to avoid placing any such meter, panel or equipment on the outside front wall of any Living Unit or other building facing the street directly in front of or to the side of the Living Unit. All sprinkler and irrigation controls, valves, panels and equipment installed on any Lot shall be installed so as not to be visible from any street directly in front of or to the side of any Lot.

(f) **New Construction.** All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be moved from other locations onto any Lot.

7. **Site Development.** No excavation or Grading shall be performed on any Lot without the prior written approval of the Committee. No Owner shall erect, construct, maintain, permit or allow any fence, building pad or other Improvement which interrupts the normal drainage of the land within any Lot without the prior written approval of the Committee. On-Lot retention shall be maintained pursuant to the ordinances of the City. No Owner shall alter the elevation of natural grade without the prior written approval of the Committee, and any Grading must be performed with minimum disruption to the Lot and shall not cause water existing on the Lot to drain from different points, in greater quantities or at greater velocities than occurred in its natural condition. On-Lot retention shall be maintained pursuant to the ordinances of the City.

8. **Landscaping Standards.** Except as necessary in connection with the routine maintenance of Landscaping, no Landscaping shall be planted, installed or placed on or removed from any Lot unless and until a landscaping plan for such is submitted to and approved by the Committee, all in accordance with these Architectural and Landscaping Standards.

(a) **Landscaping Requirements.** Except as necessary in connection with the routine maintenance of Landscaping, no Landscaping shall be removed from or planted, placed or replaced on any Lot unless and until the plans and specifications for such Landscaping are submitted to and approved by the Committee, all in accordance with these Architectural and Landscaping Standards. If the front yard Landscaping on each Lot (including any side yard Landscaping visible from any street adjacent thereto) is not installed prior to the closing of the sale of a Lot improved with a Living Unit (a "Home") to a purchaser who will be the first occupant of the Home (the "Initial Homeowner"), Initial Homeowner shall cause the front yard Landscaping on its Lot to be fully installed in accordance with a landscaping plan approved

by the Committee. If the front yard Landscaping of a Lot is not installed prior to the closing of the sale of a Home to an Initial Homeowner, the Initial Homeowner shall pay to the Association at the closing for the purchase of its Lot a front yard Landscaping deposit in the amount of Three Thousand Five Hundred Dollars (\$3,500) (the "Landscaping Deposit"). The Landscaping Deposit, less any applicable review fee, shall, within ten (10) business days of the Committee's confirmation of the completion of the front yard Landscaping, be returned by the Association to the Owner who paid the Landscaping Deposit, provided that the front yard Landscaping is fully installed on that Owner's Lot within the sixty (60) days of the Initial Homeowner's closing of its purchase of the Lot, and provided, further, that such Landscaping is completed in conformance with plans and specifications approved by the Committee and otherwise fully complies with the criteria set forth in the Architectural and Landscaping Standards. In the event an Owner fails to comply with the requirements set forth in this Section, the Landscaping Deposit shall be forfeited by the non-complying Owner and the Association shall be entitled (although not obligated) to take all available action necessary to cause such Landscaping to be installed, including the initiation of legal proceedings against the non-complying Owner. In the event of such non-compliance, the Association shall also have the right to levy a fine against such Owner (in an amount up to \$100 per day, as determined by the Board) and suspend such Owner's rights under this Declaration and the Project Documents. The non-complying Owner shall be responsible for all fees and costs incurred by the Association in connection with the enforcement of this Section, including reasonable attorneys' fees, and such amounts shall be added to and become part of the Assessment for which the non-complying Owner's Lot is subject.

(b) **Protected Plants.** Protected plants are those existing desert plants which must be protected due to size and type pursuant to governmental standards. Improvements must be sited to avoid Protected Plants. If transplanting of Protected Plants is required in order to create a usable building pad, it is recommended that professionals be consulted.

(c) **Natural Area.** Each of the Lots is subject to City ordinances relating to the preservation of natural area open spaces and by accepting a deed to a Lot, an Owner agrees to leave the Natural Area in its undisturbed and natural state and to comply with all such ordinances. Each Owner shall also fully comply with City statutes and ordinances which (i) prohibit grass from being planted or maintained on certain parts of Lots, (ii) restrict the amount of grass which may be installed on Lots or (iii) restrict certain types of Landscaping from being installed on Lots. Owners understand that severe fines may be imposed for violation of any natural area open space and landscaping ordinances, and each Owner, by accepting a deed to a Lot, agrees to be responsible for any fines imposed by the City as a result of any violation of natural area open space and landscaping ordinances affecting such Owner's Lot.

(d) **Unenclosed Area.** The plant materials permitted to be used in the Unenclosed Area are listed on Appendix A, and no other plants or materials shall be used in the Unenclosed Area without the prior written consent of the Committee. Irrigation systems must be carefully designed to minimize overspray and runoff onto the Natural Area.

(e) **Enclosed Area.** Any plant materials except the Prohibited Plants may be used in the Enclosed Area, provided they are not Visible from Neighboring Property.

(f) **Prohibited Plants.** Under no circumstances shall any of the Prohibited Plants be planted on any Lot.

(g) **Fire Break.** Adequate precautions should be taken with Landscaping to protect from brush fires. Please consult with the City for current guidelines and requirements.

9. Design Review Procedures. The process for obtaining approval from the Committee of proposed Improvements and Landscaping is set forth in this Section.

(a) **Initial Consultation.** Prior to preparing preliminary plans for any proposed Improvement and Landscaping, it is mandatory that the Owner and/or its Architect meet with the Committee or a member thereof or its appointed consultant to discuss proposed plans and to explore and resolve any questions regarding architectural and Landscaping requirements in the Project. This informal review is intended to provide guidance prior to initiating the preliminary design. An appointment with the Committee for a pre-design meeting should be made at least one week in advance. Conceptual elevations and a site plan must be presented at the pre-design meeting.

(b) **Preliminary Review.** Subsequent to the initial consultation, Owner and/or its Architect must submit to the Committee the following documents:

i) Site plan (at no less than 1" = 30'), showing the location of all Improvements proposed to be constructed thereon; all driveway and parking areas; a grading plan, including existing and proposed topography; utility connections; and finished floor elevations. Also shown must be the area where building materials and debris will be confined during construction.

ii) Preliminary Plans and Specifications for all Improvements proposed to be constructed on the Lot, including the exterior elevations, with both existing and proposed grades shown; the roof plan; floor plans; wall sections; and details of exterior decks or patios.

iii) Samples of all exterior materials and colors under consideration. Samples must be presented on an 18" x 24" board (at least 1/8" thick) clearly marked with Owner's name, filing date and Lot number. All samples must be identified by the manufacturer's name, color and style number.

iv) Preliminary landscape plan, on same scale as the site plan, showing areas to be irrigated, if any; proposed plants and sizes thereof; driveway; retainage; decorative features; etc.

v) An approximate time schedule indicating starting and completion dates of construction, utility hook-up, completion of landscaping work and anticipated occupancy date.

(c) **Final Review.** Subsequent to the preliminary review, the Owner and/or its Architect and/or Landscaping consultant must submit to the Committee a full set of

detailed working drawings and specifications for all Improvements and Landscaping to be located on the Lot. The Committee shall not be deemed to have approved such plans until and unless it issues a written certificate of approval of such plans. All construction documents are to be in accordance with the final plans approved by the Committee. No construction shall commence until such final review is completed and such final approval is given by the Committee.

(d) **Review of Plans.** The Committee shall conduct reviews of plans during its regular meetings or at such other times as it deems appropriate. Owners, Architects and Builders shall have no right to attend any meeting of the Committee unless specifically requested by the Committee. The Committee shall have the right to disapprove any plans and specifications if they are not complete or are not suitable or desirable, in the Committee's opinion, for aesthetic or other reasons, in light of the general plan for the improvement and development of the Property as an attractive, exclusive, harmoniously designed residential development. In so passing upon the plans and specifications for any Improvements, including any Landscaping plans, and without limiting the foregoing rights of the Committee, the Committee shall have the right to take into consideration the character, color and design of the proposed Improvements, Landscaping, alterations, repair or change, the materials of which the proposed Improvements, Landscaping, alterations, repair or change is to be built or installed, the conformity of the proposed Improvements, Landscaping, alterations, repair or change with the standards contained in the schedules attached to the Architectural and Landscaping Standards, the site upon which the Improvements, Landscaping, alterations, repair or change is proposed to be erected, the extent to which natural growth and elevation would have to be altered, the harmony thereof with the surroundings and the effect of the proposed Improvements, Landscaping, alterations, repair or change on the adjacent or neighboring Lots. The Committee shall respond in writing within thirty (30) days after a submittal of all required documents is complete, provided that the plans are in accordance with the requirements outlined above. In the event the Committee fails to approve or disapprove in writing an application for an improvement, addition or alteration to a Lot within thirty (30) days after its receipt of a complete application, duly prepared in accordance with the rules promulgated by the Declarants or the Board, as the case may be, approval of the Committee will not be required for the Improvements, additions or alterations which were subject to the submitted application, provided such improvements, additions or alterations are carried out in precise conformity with such application. Results of reviews will not be discussed over the telephone by members of the Committee with an Owner or its Architect or Builder. Any responses an Owner may wish to make in reference to the Committee's notice following review of submitted plans must be addressed to the Committee in writing. An application fee of Two Hundred Fifty Dollars (\$250) per application, payable to the Association, may be required at the time the preliminary Plans are submitted if an outside architectural or Landscaping consultant is used by the Committee to review the submission.

(e) **Resubmittal of Plans.** In the event of any disapproval by the Committee of a submission, a resubmission of plans should follow the same procedure as an original submittal unless the Committee determines that the required revisions are minor in nature, in which case the Committee may, in its sole discretion, approve the plans with conditions and waive resubmission and/or payment of a new application fee.

(f) **Commencement of Construction.** Upon receipt of final approval from the Committee, the Owner shall diligently proceed with the commencement and completion of all construction pursuant to the approved plans. However, at least three days prior to commencement of construction or any other on-site work, Owner shall notify the Committee so that it can make a visual inspection of the Lot to insure that the final building layout and staking is in accordance with the final plans approved by the Committee. Owner shall satisfy all conditions and commence construction pursuant to the approved plans within six (6) months from the date of such approval. If Owner shall fail to comply with this paragraph, any approval given shall be deemed revoked unless, upon the written request of Owner made to the Committee prior to the expiration of such six (6) month period and upon a finding by the Committee that there has been no change in circumstances, the time for such commencement is extended in writing by the Committee. Owner shall in any event complete construction of the foundation and all exterior surfaces (including the roof, exterior walls, windows and doors) of any improvement on its Lot within one (1) year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to Owner due to strikes, fires, national emergencies or natural calamities.

(g) **Work in Progress - Inspection.** The Committee may inspect all work in progress and give notice of noncompliance. Absence of such inspection and notification during the construction period does not constitute either approval of the Committee of work in progress or compliance with these Architectural and Landscaping Standards or the Declaration.

(h) **Completed Work.**

i) Upon final completion of any Improvement or Landscaping for which final approval was given by the Committee, Owner shall give written notice of completion to the Committee.

ii) Within such reasonable time as the Committee may determine, but in no case exceeding ten (10) days from receipt of such written notice of completion from Owner or its duly authorized representative, the Committee may inspect the Improvements. If it is found that such work was not done in strict compliance with the final plan approved by the Committee, it shall notify Owner in writing of such noncompliance, specifying in reasonable detail the particulars of noncompliance, and shall require Owner to remedy the same.

iii) If, upon the expiration of thirty (30) days from the date of such notification by the Committee, Owner shall have failed to remedy such noncompliance, the Committee shall notify the Owner, and the Association may take such action as is necessary to remove the noncomplying Improvements or otherwise bring the noncomplying Improvements into compliance, including, without limitation, injunctive relief and/or the imposition of a fine.

(i) **Prior Approval.** The approval by the Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Committee under these Architectural and Landscaping Standards or the Declaration shall not be deemed to constitute a waiver of any right to withhold approval

as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

(j) **Right of Waiver.** The Committee reserves the right to waive or vary any of the procedures or standards set forth herein at its discretion for good cause shown if the Committee determines in its discretion that (i) the procedure or standard would create a substantial hardship or burden on an Owner or (ii) the waiver will not have any substantial adverse effect on the other Owners in the Project.

(k) **Subsequent Changes.** Any change, deletion or addition to the plans and specifications approved by the Committee must be approved in writing by the Committee. Additional Improvements or Landscaping to a Lot and/or any changes after completion of approved Improvements must be submitted to the Committee for approval prior to making such changes and/or additions.

(l) **Monterey's Exemption.** The design review procedures set forth herein shall not apply to Monterey with respect to any Improvements or Landscaping constructed or installed by Monterey or the Semi-Custom Lots, provided that such Improvements meet or exceed Monterey Standards.

10. Construction Regulations. In addition to any restrictions, regulations and requirements set forth in the Declaration, Builders, Owners and any subcontractors shall be bound by these regulations. Any violation by a Builder or subcontractor shall be deemed to be a violation by the Owner of the Lot.

(a) **Debris and Trash Removal.** Owners and Builders shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be removed from each construction site at least once a week to a dumping site located off the Project. Lightweight material, packaging and other items shall be covered or weighed down to prevent wind from blowing such materials off the construction site. Owners and Builders are prohibited from dumping, burying or burning trash anywhere on the Lot or in the Project, except in areas, if any, expressly designated by the Committee. During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore or affecting other Lots. Any clean-up costs incurred by the Association in enforcing these requirements will be billed to Owner. Dirt, mud or debris resulting from activity on each construction site shall be promptly removed from roads and driveways or other portions of the Project. In no event shall any dumpsters or trash collection facilities for construction debris or any sanitary facilities used during construction on any Custom Lots be situated within two hundred feet (200') of any Monterey Lot.

(b) **Sanitary Facilities.** Each Owner and Builder shall be responsible for providing adequate sanitary facilities for its construction workers. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Committee.

(c) **Conservation of Landscaping Materials.** Owners and Builders are advised of the fact that the Lots contain valuable native plants and other natural landscaping materials that should be protected during construction, including topsoil, rock outcroppings

and boulders and plant materials. Protected features of the landscape for which removal is prohibited should be marked and protected by flagging, fencing or barriers. The Committee may independently flag major terrain features or plants which are to be fenced off for protection. Any trees or branches removed during construction must be promptly cleaned up and removed immediately from the construction site.

(d) **Off-Site Materials.** Any rocks, plant material, topsoil or similar items shall not, without the prior written consent of the Committee, be removed from any Lot within the Project, including construction sites.

(e) **Restoration or Repair of Other Damaged Property.** Damage and scarring to adjacent Lots, streets and/or Improvements constructed thereon will not be permitted. If any such damage occurs, it must be repaired and/or restored promptly at the expense of the Owner of the Lot. Upon completion of construction, each Owner and Builder shall clean its construction site and repair all property which was damaged, including, but not limited to, restoring grades, plants, shrubs and trees as approved or required by the Committee and repair of streets, driveways, pathways, drains, culverts, ditches, signs, lighting and fencing.

(f) **Construction Access.** The only approved construction access during the time Improvements are being built will be over the approved driveways for the Lot unless the Committee approves an alternative access point.

(g) **Vehicles and Parking Areas.** Construction crews shall not park on, or otherwise use, other Lots. Private and construction vehicles and machinery shall be parked only in areas designated by the Committee. All vehicles shall be parked so as not to inhibit the flow of traffic and within the designated areas so as not to damage the Natural Areas.

(h) **Equipment Cleaning.** Changing oil on any vehicle or equipment or allowing concrete suppliers and contractors to clean their equipment on the site itself at other than a location designated for that purpose by the Committee is prohibited.

(i) **Dust and Noise.** Owner and his builder shall be responsible for controlling dust and noise from the construction site (including the use of radios by construction crews).

APPENDIX A

DESERT SUMMIT PLANT LIST

The Committee has found the plants included in the following list to be inherently compatible with the natural desert in the vicinity of the Project.

BOTANICAL NAME	COMMON NAME
GRASSES	
<i>Aristida purpurea</i>	Red Three Awn
<i>Bromus rubens</i>	Red Brome
<i>Eragostis atherstone</i>	Cochise Lovegrass
<i>Eriogonum fasciculatum</i>	Buckwheat
<i>Nolina microcarpa</i>	Beargrass
<i>Orthocarpus purpurascens</i>	Owls Clover
<i>Plantago insularis</i>	Indian Wheat
<i>Plantago patagonica</i>	Indian Wheat
<i>Shismus barbatus</i>	Schismus
ANNUALS	
<i>Abronia villosa</i>	Sand Verbena
<i>Aregmone pleicantha</i>	Prickley Poppy
<i>Baeria chrysostoma</i>	Goldfield
<i>Bahia absinthifolia</i>	Bahia
<i>Baileya multiradiata</i>	Desert Marigold
<i>Dyssodia pentachaeta</i>	Dyssodia
<i>Erodium texanum</i>	Fillaree
<i>Eschschotzia mexicana</i>	Mexican Gold Poppy

BOTANICAL NAME	COMMON NAME
<i>Kallstroemia grandiflora</i>	Arizona Poppy
<i>Lesquerella gordonii</i>	Gold Crucifer
<i>Lupinus sparciflora</i>	Lupine
<i>Melampodium leucanthum</i>	Blackfoot Daisy
<i>Pectis papposa</i>	Cinch Weed
CACTI	
<i>Carnegiea gigantea</i>	Saguaro
<i>Echinocereus englemannii</i>	Hedgehog
<i>Ferocactus wislizenii</i>	Barrel Cactus
<i>Fouquieria splendens</i>	Ocotillo
<i>Opuntia acanthocarpa</i>	Staghorn cholla
<i>Opuntia ficus indica</i>	Tree Opuntia
<i>Opuntia phaeacantha</i>	Engelman Prickly Pear
<i>Opuntia bogelovii</i>	Teddy Bear Cholla
GROUND COVER & HERBACEOUS PLANTS	
<i>Agave pacifica</i>	Pacific Agave
<i>Agave weberi</i>	Smooth Leaf Agave
<i>Agave boricornuta</i>	Colos Horn Agave
<i>Agave geminiflora</i>	Twin Flower Agave
<i>Agave attenuata</i>	Large Rosette Agave
<i>Agave americana</i>	Century plant
<i>Aloe species</i>	Aloe
<i>Ambrosia deltoidea</i>	Bur Sage
<i>Asclepias subulata</i>	Desert Milkweed
<i>Dalea greggii</i>	Trailing Indigo Bush
<i>Dasyliiron wheeleri</i>	Desert Spoon

BOTANICAL NAME	COMMON NAME
<i>Gazania rigens</i> 'Copper King'	Copper King Gazania
<i>Gazania rigens leucolaena</i> sp.	Trailing Gazania
<i>Haplopappus laricifolia</i>	Turpentine Bush
<i>Hesperaloe parviflora</i>	Pink Yucca
<i>Justicia spicigera</i>	Desert Honeysuckle
<i>Myoporum parvifolium</i>	Myoporum
<i>Oenothera berlandieri</i>	Mexican Primrose
<i>Penstemon species</i>	Penstemon
<i>Salvia chamydroides</i>	Mexican Blue Sage
<i>Salvia greggii</i>	Texas Red Salvia
<i>Santolina chamaecyparissus</i>	Lavender Cotton
<i>Sphaeralcea ambigua</i>	Desert Mallow
<i>Yucca aloifolia</i> 'Variegata'	Spanish Bayonet
<i>Verbena pulchella</i> 'Gracilior'	Rock Verbena
<i>Yucca baccata</i>	Banana Yucca
<i>Yucca elata</i>	Soaptree Yucca
<i>Yucca rostrata</i>	Beard Yucca
<i>Yucca schottii</i>	Mountain Yucca
<i>Zauschneria californica</i>	California Fuchsia
SHRUBS/VINES	
<i>Antigonon leptopus</i>	Queens Wreath
<i>Asclepias subulata</i>	Desert Milkweed
<i>Beleperone californica</i>	Chuparosa
<i>Bougainvillea</i> 'Barbara Karst'	Barbara Karst Bougainvillea
<i>Bougainvillea</i> b. 'Crimson Jewel'	Vivid magenta (container)
<i>Caesalpinia mexicana</i>	Yellow Bird of Paradise

BOTANICAL NAME	COMMON NAME
<i>Caesalpinia pulcherrima</i>	Red Bird of Paradise
<i>Calliandra californica</i>	Red Fairy Duster
<i>Calliandra eriophylla</i>	Pink Fairy Duster
<i>Cassia biflora</i> '	Sonoran Cassia
<i>Cassia covesii</i>	
<i>Cassia nemophylla</i>	Green Cassia
<i>Cassia phylodenia</i>	Silvery Cassia
<i>Cassia sturtii</i>	Sturt's Cassia
<i>Cassia wislizeni</i>	Shrubby Cassia
<i>Cordia parviflora</i>	Little Leaf Cordia
<i>Dalea pulchra</i>	Black Dalea
<i>Dodnoea viscosa</i>	Hopseed Bush
<i>Dodnoea viscosa</i> 'Purpurea'	Purple Hopseed Bush
<i>Ficus pumila</i>	Creeping Fig - shade
<i>Larrea tridentata</i>	Creosote Bush
<i>Leucophyllum frutescens</i> 'Green Cloud'	Green Cloud Texas Sage
<i>Leucophyllum laevigatum</i>	Chihuahuan Sage
<i>Macfadyena unguis-cati</i>	Cat's Claw Vine
<i>Mascagnea macroptera</i>	(yellow)
<i>Mimulus cardinalis</i>	Monkey Flower (red flower)
<i>Rhus ovata</i>	Sugar Bush
<i>Ruellia peninsularis</i>	Desert Ruellia
<i>Salvia leucantha</i>	Mexican Bush Sage
<i>Salvia olevelandii</i>	Chaparral Sage
<i>Simmondsia chinensis</i>	Jojoba
<i>Tagetes lemonii</i>	Mountain Lemon Marigold
<i>Tecoma stans</i>	Yellow Bells

BOTANICAL NAME	COMMON NAME
<i>Vauquelinia californica</i>	Arizona Rosewood
<i>Viguiera deltoidea</i>	Golden Eye
TREES	
<i>Acacia constricta</i>	White Thorn Acacia
<i>Acacia smallii</i>	Sweet Acacia
<i>Acacia schaffneri</i>	Twisten Acacia
<i>Acacia salicinn</i>	Weeping Wattle
<i>Acacia willardiana</i>	Palo Blanco
<i>Cercidium floridum</i>	Blue Palo Verde
<i>Cercidium microphyllum</i>	Foothills Palo Verde
<i>Cercidium praecox</i>	Palo Brea
<i>Chilopsis linearis</i>	Desert Willow
<i>Lysiloma thornberi</i>	Desert Fern
<i>Olneya tesota</i>	Ironwood
<i>Pithecellobium flexicaule</i>	Texas Ebony
<i>Pithecellobium mexicana</i>	Mexican Ebony
<i>Prosopis alba</i>	Argentine Mesquite
<i>Prosopis glandulosa torreyana</i>	Chilean Mesquite
<i>Prosopis juliflora</i>	Honey Mesquite
<i>Prosopis pubescens</i>	Screwbean Mesquite

APPENDIX B

DESERT SUMMIT PROHIBITED PLANT LIST

1. Any species of tree or shrub whose mature height may reasonably be expected to exceed twenty-five (25) feet, with the exception of those species specifically listed as approved by the Committee. Should any plant exceed twenty-five (25) feet, it must be pruned in a symmetrical manner.
2. All palm trees and pine trees with a mature height over ten (10) feet.
3. Olive trees.
4. Mexican palo verde trees (*Parkinsonia aculeata*).
5. Oleanders - except for dwarf varieties.
6. Fountain grass - except for *Pennisetum setceum* 'Cupreum'.
7. Common Bermuda Grass (*cynodon dactylon*).