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Phoenix, AZ 85016
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR POWER RANCH NEIGHBORHOOD 9 COMMUNITY ASSOCIATION

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR POWER RANCH NEIGHBORHOOD 9

THIS DECLARATION is made on the date hereinafter set forth by Trend Homes, Inc. an Arizona Corporation (**"Declarant"**).

WITNESSETH:

A. WHEREAS, Project Owner is the owner of certain real property located in the County of Maricopa, State of Arizona, commonly known as Power Ranch Neighborhood 9, Parcel 1 as shown on the Final Plat recorded at Book 795, Page 49 in the official records of Maricopa County (Recording #2005-1816962), and Power Ranch Neighborhood 9, Parcel 2, as shown on the Final Plat recorded at Book 795, Page 50 in the official records of Maricopa County (Recording #2005-1816925) and all associated Common Areas (collectively the **"Property"** or the **"Parcels"**); and

B. WHEREAS, Declarant has the right to purchase certain real property consisting of lots or blocks as shown on the Plats recorded on the Parcels from Project Owner pursuant to that certain Lease and Purchase Agreement by and between Project Owner as optionor and Declarant as optionee dated on or about December 29, 2004 (the **"Option Agreement"**). Project Owner has granted its consent to the terms and provisions of the Declaration and the recording thereof subject to the provisions and conditions contained within the "Consent of Project Owner" attached hereto.

C. WHEREAS, the purpose of this Declaration is to create the Power Ranch 9 Community Association that shall govern the Parcels; and

D. WHEREAS, on or about October 1, 1999 the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Power Ranch were recorded (**"Master Declaration"**) (Recording #99-0916566), which Master Declaration created the Power Ranch Community Association (**"Master Association"**) and governs the entire Power Ranch development, including Power Ranch Neighborhood 9 and has consented to this Declaration by the attached Consent of Master Association; and

E. WHEREAS, the Power Ranch Neighborhood 9 Community Association shall be subservient to the Master Association; and

F. WHEREAS, the Declarant will create a Condominium Association for a portion of Parcel 1, which shall be subservient to both the Power Ranch Neighborhood 9 Community Association and the Master Association respectively and shall have limited areas of responsibility within Parcel 1; and

F. WHEREAS, Declarant desires to provide for the development of single family detached homes, single family attached homes and single family residential condominium units within the Parcels as further described herein:

NOW, THEREFORE, Declarant hereby declares that the Property described herein shall be subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "Covenants and Restrictions" or "Declaration") which are for the purpose of protecting the value and desirability of

the Property, and which shall run with the land, and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any portion of the Property.

ARTICLE I
DEFINITIONS

Section 1.1 "Areas of Association Responsibility" shall mean (i) all Common Areas and Improvements situated thereon not the responsibility of the Master Association; (ii) all real property and the Improvements situated thereon, if any, within the Project located within and improved as dedicated public rights-of-way with respect to which the Master Association or the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or a county, city or town has accepted the responsibility for the maintenance, repair and replacement of such areas; (iii) any Project entry features constructed within the Project; (iv) all perimeter fences or walls for the Project and all perimeter fences or walls located adjacent to any Common Area tract; (v) any property adjacent to or near the Project which the Town may require the Association to maintain; (vi) any Common Areas and Improvements within any Condominium Development within the Project which are specifically designated on any plat or site plan or other document for a Condominium Development or in any other separate instrument executed by Declarant to be maintained by the Association for the benefit of all Members within the Project (including, without limitation, any improvements and Landscaping from time to time situated therein). Declarant shall prepare an exhibit which depicts Areas of Association Responsibility and the Association and the management company retained by the Association shall update such exhibit from time to time and make such updated exhibit available for inspection by the Owners.

Section 1.2 "Articles" shall mean the Articles of Incorporation of the Association which have been or will be filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 1.3 "Assessment Lien" shall mean the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable to the Association under the Association Project Documents.

Section 1.4 "Assessments" shall mean and refer to the annual, special, reserve, and neighborhood assessments levied and assessed against each Lot or Unit pursuant to Article VIII of the Declaration.

Section 1.5 "Association" shall mean the Arizona nonprofit corporation organized or to be organized by the Declarant to administer and enforce the Association Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant has organized the Association under the name of "Power Ranch Neighborhood 9 Community Association".

Section 1.6 "Association Project Documents" shall mean this Declaration and the Articles, Bylaws, and Association Rules.

Section 1.7 "Board" shall mean the Board of Directors of the Association or its duly authorized designee.

Section 1.8 "Builder" shall mean a person or entity in the business of, or a person or entity which has an affiliate in the business of, constructing and selling Lots and/or Units or in the business of acting as a land banker that sells vacant lots or blocks to persons or entities who construct and sell Lots and/or Units, which purchases a lot or block(s) without Lots and/or Units constructed thereon for the purpose of constructing Lots and/or Units thereon and selling such Lots and/or Units.

Section 1.9 "Budget" shall mean the operating budget for Power Ranch Neighborhood 9, in the amount of the Assessments for each year.

Section 1.10 "Bylaws" shall mean the bylaws of the Association, as such bylaws may be amended from time to time.

Section 1.11 "Commercial Vehicle" shall mean any vehicle (1) one ton or greater in overall weight; (2) commercially licensed in the State of Arizona; (3) in excess of seven (7) feet in height from ground level; and (4) having a sign or other commercial logo or designation indicating that the vehicle is of a commercial nature. Commercial Vehicles are subject to the limitations contained in **Section 3.6.4** of this Declaration.

Section 1.12 "Common Area(s)" shall mean all areas on the Parcels that are not Master Common Areas, Lots, Common Elements, Limited Common Elements or Units, including but not limited to: (i) those portions of the Project, together with the 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 (a) each of the Tracts shown on the Plats but excluding Common Elements and Limited Common Elements, as defined herein or as defined in the Condominium Declarations for Parcel 1; (b) all pool, recreational areas and facilities and retention tracts; and (c) the private streets and parking areas within Parcels 1, and 2; (ii) all land within The Project which Declarant, by this Declaration or in any other recorded instrument, makes available for use by all Members of the Association or otherwise designates as Common Areas for purposes of this Declaration; (iii) all Mailbox Clusters; (iv) any Project entry features constructed within the Project, including access gates for pedestrians and vehicles and (v) any land within, adjacent to or near the Project which the Town may at any time require be owned by the Association.

Section 1.13 "Common Elements" shall mean all portions of the Condominium Developments other than the Units, Limited Common Elements and Common Areas. An undivided ownership interest in the Common Elements shall be vested in the Unit Owners.

Section 1.14 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

Section 1.15 "Condominium Developments" shall mean the residential condominiums intended to be established and developed on Parcel 1, which shall, if and when constructed, be referred to herein as the "Condominium Development".

Section 1.16 "Condominium Plat" shall refer to the Final Condominium Plat for Power Ranch Neighborhood 9, as may be recorded in the records of Maricopa County, Arizona and any replats, amendments, supplements and corrections thereto.

Section 1.17 "Common Open Space Easements" shall mean the pedestrian ingress and egress easements of varying widths for the Lots as shown on the Plats of Parcels 1, and 2.

Section 1.18 "Declarant" shall mean Trend Homes, Inc. an Arizona Corporation, and its successors and assigns, and any assignee of Declarant's rights. A Declarant may assign its rights by express recorded instrument to a subsequent Owner of all or part of the Property. At any time when there is more than one Declarant, except as otherwise expressly provided in this Declaration, any approval or other action required or permitted by the "Declarant" under this Declaration shall require the written consent of the Declarant owning a majority of all Units then owned by all Declarant. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successive Declarant, in which event the preceding Declarant shall be released from liability. If there is more than one Declarant, the obligations and liabilities of each Declarant under this Declaration shall be limited to the obligations that relate to the areas within the Project then owned by such Declarant at the time liabilities or obligations arose, such liability shall not be joint or joint and several, and a Declarant shall not be liable for the actions or inactions or another Declarant.

Section 1.19 "Declaration" shall mean the provisions of this document and any amendments hereto.

Section 1.20 "Designated Builder" shall mean any Builder that is designated by Declarant as a "Designated Builder" in a supplemental declaration or in a written notice given by Declarant to the Association and by such designation receives certain rights as expressly provided in this Declaration.

Section 1.21 "Design Guidelines" shall mean the rules and guidelines adopted by the Design Review Committee pursuant to Section 11.1 of the Master Declaration, as they may be amended or supplemented, which shall govern the procedures of the Design Review Committee and the design, placement, color schemes, exterior finishes, selection, and use of materials and similar features for all Improvements within Power Ranch Neighborhood 9 and the design, installation and placement of Landscaping within Power Ranch Neighborhood 9.

Section 1.22 "Design Review Committee" shall mean the committee established by the Master Association pursuant to Article 11 of the Master Declaration.

Section 1.23 "Dwelling" shall mean any building, or portion of a building, situated upon a Lot or contained within a Condominium Development, designed and intended for use and occupancy as a residence. All references to a Dwelling shall be deemed to refer also to the underlying Lot, if any and all permanent Improvements thereon.

Section 1.24 "Exempt Areas" shall mean the following parts of the Project:

Section 1.24.1 Any Common Areas within the Project, any Common Elements and Limited Common Elements within any Condominium Development, and all Parcels, to the extent owned by the Declarant;

Section 1.24.2 All land and improvements owned by or dedicated to and accepted by the United States of America, the State of Arizona, Maricopa County, Town of Gilbert or any other political subdivision for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;

Section 1.24.3 All Common Areas for as long as the Association is the owner thereof.

Section 1.24.4 All Master Common areas that are owned and maintained by the Master Association.

Section 1.25 "First Mortgage" shall mean any mortgage, deed of trust, or contract for deed on a Lot or Unit which has priority over all other mortgages, deeds of trust and contracts for deed on the same Lot or Unit. A contract for deed is a recorded agreement whereby the purchaser of a Lot or Unit acquires possession of the Lot or Unit but does not acquire legal title to the Lot or Unit until a deferred portion of the purchase price for the Lot or Unit has been paid to the seller.

Section 1.26 "First Mortgagee" shall mean the holder of any First Mortgage.

Section 1.27 "Improvement" shall be inclusive of all physical improvements upon the Parcels including, but not limited to buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, lakes, amenities, access gates and associated structures, and all other structures or landscaping improvements of every type and kind.

Section 1.28 INTENTIONALLY OMITTED

Section 1.29 "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 landscaping within the Project.

Section 1.30 "Limited Common Elements" shall mean a portion of the Common Elements specifically designated in this Declaration or any of the Condominium Declarations as a Limited Common Element and allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more but fewer than all of the Units. Each Limited Common Element shall be limited to a maximum vertical height of eight (8) feet.

Section 1.31 "Lot" shall mean (a) any area of real property within Parcels 1 and 2 of the Project designated as a lot on any of the Plats for such Parcels intended for independent ownership and the construction of a single family residence. Where the context indicates or requires, the term "Lot" shall include any dwelling and other Improvements situated thereon.

Section 1.32 "Master Common Areas" shall mean those areas within the Parcels that are owned and maintained by the Master Association for the benefit of the Members of the Master Association.

Section 1.33 "Member" shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association as provided in Article VII herein.

Section 1.34 "Mailbox Clusters" shall mean common mailbox structures for the Lots or Units within the Parcels, which are constructed by the Declarant in clusters and are located on Common Areas intended to serve as a common mailbox structure serving more than one Lot or Unit.

Section 1.35 "Parcels" shall mean each of the three (3) parcels of real property covered by and described as follows: Power Ranch Neighborhood 9, Parcel 1 as shown on the Final Plat recorded at Book 740, Page 32 in the official records of Maricopa County (Recording #2005-1816962), Power Ranch Neighborhood 9, Parcel 2, as shown on the Final Plat recorded at Book 740, Page 33 in the official records of Maricopa County (Recording #2005-1816925) and any "Supplement to Plat" applicable to any of the Parcels. Each of the Parcels shall be referred to individually as a "Parcel".

Section 1.36 "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 1.37 "Permittee" shall mean a Member's family members, agents, and invitees, and the Tenants, Lessees, Residents or other Residents of such Member's Lot or Unit and their respective family members, agents, and invitees, individually or collectively as the context may require.

Section 1.38 "Plans" shall mean and refer to Power Ranch Neighborhood 9 Master Plans prepared by M2 Group and approved by the Town, as such may hereafter be modified from time to time by a Declarant.

Section 1.39 "Plat" or "Plats" shall mean any recorded subdivision plat of any portion of the Property and all amendments thereto.

Section 1.40 "Private Shared Driveway Easement" shall mean the approximately twenty five (25) foot wide vehicular and pedestrian access ingress and egress easement throughout portions of the Project as depicted as Tracts S1 through S8 on the Plat for Parcels 1, and depicted as Tracts S1 through S7, S22 and S23 on the Plat for Parcel 2.

Section 1.41 "Project" shall mean the Property together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

Section 1.42 "Project Documents" shall mean this Declaration, the Articles, the Bylaws, any Rules and Regulations, any Design Review Guidelines and all other documents or instruments pertaining to and affecting the entire Project, as the same may be amended from time to time.

Section 1.43 "Project Owner" shall mean Taro Properties Arizona, LLC an Arizona Limited Liability company, who has consented to this Declaration in the attached Consent by Project Owner.

Section 1.44 "Property" shall mean the Parcels, which are situated in the Town of Gilbert, State of Arizona, and such Additional Property, if any, as may hereafter become subject to this

Declaration and be brought within the jurisdiction of the Association pursuant to the provisions of this Declaration.

Section 1.45 "Purchaser" shall mean any person other than a Declarant or a Designated Builder who, by means of a voluntary transfer becomes the Owner of a Lot or Unit, except for an Owner who purchases a Lot or Unit and then leases it to a Declarant for use as a model in connection with the sale of other Lots or Units.

Section 1.46 "Recording", "Recordation" and "Recorded" shall mean placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and "Recorded" shall mean having been so placed of public record.

Section 1.47 "Resident" shall mean any person, other than the Declarant and any Owners, who occupies or is in possession of a Lot or Unit for a period of forty five (45) days or more in a calendar year, whether as a lessee under a lease, or otherwise.

Section 1.48 "Rules and Regulations" shall mean any rules and regulations adopted and/or amended from time to time by the Association.

Section 1.49 "Single Family" shall mean an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 1.50 "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 applicable laws.

Section 1.51 "Town" shall mean the Town of Gilbert, Arizona.

Section 1.52 "Tract Declaration" shall mean any declaration Recorded pursuant to **Section 2.9**, and **Section 17.4** of this Declaration.

Section 1.53 "Unit" shall mean a condominium unit within the Condominium Development as discussed in **Section 2.1.2** of this Declaration, together with any appurtenant interest in Common Elements and Limited Common Elements within the Condominium Development.

Section 1.54 "Use and Benefit Easements" shall mean and refer to all areas within the Lots within Parcels 1 and 2 as shown on the Plats thereof except (a) that part of a Lot on which the foundation (which shall be construed to mean the slab, driveway and front porch of a home) of a Dwelling is situated and (b) any Private Use and Benefit Easement Areas as shown and/or described on the Plat for Parcel and as further described in **Section 7.5** of this Declaration.

Section 1.55 "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 Power Ranch Neighborhood 9 adjacent to the Lot or Unit on which the object or matter is situated at an elevation no higher than the elevation of the base of the object or matter being viewed.

ARTICLE II
PLAN OF DEVELOPMENT

Section 2.1 General Declaration Creating Power Ranch Neighborhood 9. Declarant intends to develop the Project by subdividing the Property into various, Common Areas, Master Common Areas, Single Family Lots, a Condominium Development as follows:

Section 2.1.1 Single Family Lots: There shall be two types of Single Family Lots within the Project.

Section 2.1.1.1 Type A Lots: Lots 67 through 114 as shown on the Plat for Parcel 1 and Lots 615 through 642 as shown on the Plat for Parcel 2 shall be an average of 8,220 square feet and shall contain Single Family detached houses (**"Type A Lots"**).

Section 2.1.1.2 Type B Lots: Lots 1 through 66, and 115 through 280 as shown on the Plat for Parcel 1 and Lots 293 through 614 as shown on the Plat for Parcel 2 shall be an average of 2,496 square feet and shall contain Single Family detached houses (**"Type B Lots"**).

Section 2.1.2 Condominium Development: Declarant intends, but shall not be obligated to Record a Condominium Plat over parcels 281 through 292 as shown on the Plat for Parcel 1, which Condominium Plat shall incorporate this Declaration by reference. The Condominium Development shall be comprised of Units, Common Elements and Common Areas and shall be governed by a Condominium Declaration, which shall be recorded after this Declaration and shall be subordinate to this Declaration. An easement is hereby created over the Condominium Common Elements in favor of the Association and its agents, employees and contractors as may be necessary or appropriate for the Association to maintain the Common Elements and any street lights on the Common Elements and for the purpose of exercising all rights of the Association and discharging its obligations under this Declaration.

Section 2.2 Declaration: Declarant hereby declares that all of the real property within the Project is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Recorded Plat applicable thereto, as amended or modified from time to time; provided, however, that such portions of the Property as are dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration while owned by the public or the governmental entity, although any restrictions imposed in this Declaration upon the Owners or the Residents concerning the use and maintenance of such portion or portions of the Property shall at all times apply to the Owners and Residents. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Project and is established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and every part thereof. All of this Declaration shall run with the ownership of all Parcels, Lots and Units for all purposes and shall be binding upon and inure to the benefit of the Declarant, the Association, the Condominium Association, all Owners, Residents and their successors in interest and Permittees. The Lots and Units and the membership in the Association and the other rights created by this Declaration shall not be encumbered with its respective Lot or Unit, even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Unit.

Section 2.3 Association. This Declaration shall govern the community known as Power Ranch Neighborhood 9, which is a part of the master planned community known as Power Ranch. The Declarant will form a Condominium Association to govern the Condominium Development within the Project. Each Owner of a Type A or Type B Lot and each Unit Owner within the Condominium Association shall be a Member (as defined herein) of the Association pursuant to and in accordance with the terms of the Association Project Documents and shall remain a Member of the Association for so long as such Person continues to be a Lot or Unit Owner. Each Owner of a Type A or Type B Lot and each Unit Owner will be obligated to pay Assessments and other charges to the Association in accordance with the Association Project Documents. All Common Expense Assessments and other charges applicable to the Units under the Condominium Documents shall be in addition to the Assessments and other charges payable to the Association pursuant to the Association Project Documents. All consents or approvals of the Board of Directors, Design Review Committee or Declarant under the Condominium Documents shall be in addition to any consents or approvals required under the terms of the Association Project Documents. In the event of any conflict or inconsistency between the restrictions with respect to the Condominium and/or use or occupancy of the Units, Common Elements, or Common Areas set forth in this Declaration and the restrictions set forth in this Declaration, the more restrictive provision shall control. In the event of any conflict or inconsistency between any other term or provision of the Condominium Declaration and this Declaration, the term or provision of this Declaration shall supersede and control. In the event that the Condominium Association fails to fulfill its duties, including but not limited to the maintenance of Common Elements and enforcement of any rules applicable thereto, the Association shall have the right, but not the obligation, to fulfill the duties of the Condominium Association. Any costs associated with the Association's fulfillment of the obligations of the Condominium Association shall be charged to the Condominium Association and its members.

Section 2.4 Common Areas within the Project:

Section 2.4.1 Association Member Rights. Each Member of the Association and the Residents of any Lot or Unit subject to this Declaration shall have the right and privilege to use all Common Areas within the Project, unless such rights have been suspended pursuant to **Section 5.1.2**.

Section 2.4.2 Transfer of Common Areas. The Common Areas shall be transferred by Declarant, by special warranty deeds, to the Association pursuant to the terms of this Declaration. Such transfers shall be subject to all plats, easements and matters of record affecting the Common Areas. Once the Common Areas are conveyed to the Association, the Common Areas may not be mortgaged or conveyed without the consent of at least sixty-seven percent (67%) of the Owners (other than Declarant). In the event of any actual or threatened condemnation of any portion of the Common Areas prior to the conveyance of the Common Areas to the Association, and so long as the actual or threatened condemnation of such Common Areas does not materially and adversely affect the Project, Declarant shall have the right and authority to convey the affected Common Areas to the applicable authority which has commenced or threatened condemnation proceedings and the Declarant which so conveys such Common Areas shall be entitled to retain all condemnation awards and/or sale proceeds received from any such authority.

Section 2.5 Power Ranch Master Association:

Section 2.5.1 Master Declaration. On or about October 1, 1999 the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Power Ranch were recorded (**"Master Declaration"**) (Recording #99-0916566), which Master Declaration created the Power Ranch Community Association (**"Master Association"**) and governs the entire Power Ranch development, including Power Ranch Neighborhood 9. Pursuant to Section 5.5 of the Master Declaration, the Association, this Declaration, the Condominium Association, the Condominium Declaration and all of the respective Members, and Owners shall be subordinate to the Master Association, the articles and bylaws of the Master Association, the tract declaration applicable to Power Ranch Neighborhood 9 and the Power Ranch Rules as defined in Section 1.41 of the Master Declaration.

Section 2.5.2 Master Common Areas. Pursuant to Section 6.1 of the Master Declaration, each Member of the Association shall have the right and privilege to use all Master Common Areas. As a result, the streets, pool and recreation facilities and other Master Common Areas both within Power Ranch Neighborhood 9 and throughout the Power Ranch development are not for the exclusive use of Association Members, but instead are for the use and benefit of all members of the Master Association. Each Owner, and Resident acknowledges that there are Master Common Areas within the Project that may be used by members of the Master Association.

Section 2.6 Associations Bound. This Declaration shall be binding upon and shall benefit the Association. In addition, the Condominium Association within the Project shall be bound by this Declaration.

Section 2.7 Right to Resubdivide and Replat. Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to modify any plans, declarations and Plats for the Project or any part thereof and to resubdivide and replat their respective Parcels or any other part of the Project which such Declarant then owns and has not sold.

Section 2.8 Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project or any Parcel 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 Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are, or may be, invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Unit 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 or Unit, agrees that Declarant shall have no liability with respect thereto.

Section 2.9 Supplemental Declarations. To the extent consistent with the Master Declaration and the tract declaration applicable to Power Ranch Neighborhood 9, Declarant shall

have the right and authority to subject any of their respective Parcels to such Tract Declarations and any other supplemental declarations, covenants, restrictions and easements which such Declarant shall deem appropriate, including, without limitation, a Condominium Declaration and similar instruments which such Declarant may cause to be Recorded with respect to the Condominium Development. Any such other Tract Declarations, Condominium Declarations or other declarations, covenants, restrictions and easements shall be deemed to be supplemental to (and not in lieu of) this Declaration and the other Project Documents. To the extent the covenants, restrictions, easements and other provisions contained in any such Supplemental Declaration are more restrictive than those contained in this Declaration, the more restrictive provisions in the Supplemental Declaration shall control but only with respect to the Owners, and Residents covered by such Supplemental Declarations.

ARTICLE III
COVENANTS AND RESTRICTIONS

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

Section 3.1 Residential Use. Each Lot and Unit in the Project shall be improved and used exclusively for Single Family Residential Use. No trade or business may be conducted in or from any Lot or Unit, except that an Owner or other Resident of a Lot or Unit may conduct a business activity within a Lot or 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 Lot or Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project, (iii) the business activity does not involve persons coming into the Lot or Unit (other than for incidental and minimal pick-ups, deliveries and visits) or the door-to-door solicitation of Owners or Residents, (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 the security or safety of other residents within the Project, and (v) the business actually conducted in or from a Lot or Unit does not involve any employees routinely coming into the Lot or Unit, other than family members residing in the Lot or Unit, all as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade", as used in this **Section 3.1**, 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 Lot or Unit by the Owner thereof shall not be considered a "trade" or "business" within the meaning of this **Section 3.1**. Notwithstanding the foregoing provisions, Declarant, and their duly authorized agents and employees, may use any part of the Project owned by such Declarant and not owned by a Purchaser for a model site or sites, display and sales offices, business offices and construction offices during the construction and sales periods.

Section 3.2 Temporary Occupancy and Buildings. No trailer, bus, mobile home, tent, shack, garage, barn or other building of a temporary nature shall be installed, located or used on any Lot or Common Area at any time as a residence, either temporarily or permanently.

Notwithstanding the foregoing, Declarant shall have the right, until the Project is fully developed and improved, to maintain construction facilities and storage areas incident to the development and improvement of the Project.

Section 3.3 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate within or adjacent to any Lot or Unit, Common Element, or Limited Common Element or any other portion of the Project. In addition, a Lot, 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 Lot or Unit or the Project or any part thereof to appear in an unclean or untidy condition or that will be unsightly, offensive, obnoxious or detrimental to any other Owner or Resident. No substance, thing or material shall be kept or used within any Lot, Unit, Common Element, or Limited Common Element 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 Owners and/or Residents 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, Unit, Common Element, or Limited Common Element. 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 within any Lot or Unit so as to be offensive, unsanitary, unsightly or detrimental to the Owners or Residents 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.

Section 3.4 Trash and Recycling Containers and Collection.

Section 3.4.1 The requirements of this **Section 3.4** shall be in addition to the requirements contained in Section 4.3.10 of the Master Declaration.

Section 3.4.2 Except as provided in this **Section 3.4**, all trash containers must be stored in a manner that such containers are not Visible from Neighboring Properties except to make such containers available for collection and then only for the shortest period of time (not to exceed twenty-four [24] consecutive hours) reasonably necessary to effect such collection. During collection periods trash and recycling containers may only be placed in the areas designated in this **Section 3.4** or as authorized by the Board. The Board shall have the right to subscribe to a trash service for the use and benefit of the Association and all Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection; provided, however, that any such rules must be consistent with this Declaration. No incinerators shall be kept or maintained on any Lot or in any Unit.

Section 3.4.3 Storage of Trash and Recycling Containers:

Section 3.4.3.1 Type A Lots: Except as necessary for collection, Owners or Residents of Type A Lots shall store trash containers within backyard areas or the garage serving the Lot; provided, however, that such containers shall not be Visible from Neighboring Properties when stored.

Section 3.4.3.2 Type B Lots: Except as necessary for collection, Owners or Residents of Type B Lots shall store trash containers within the Use and Benefit Easement area or the garage serving the Lot; provided, however, that such containers shall not be Visible from Neighboring Properties when stored.

Section 3.4.3.3 Condominium Units: Except as necessary for collection, Owners or Residents of Units shall store trash containers within the garage serving the Unit in such a manner to ensure that such containers are not Visible from Neighboring Properties when stored.

Section 3.5 Animals. No animals, fish, fowl, poultry, swine, horses, reptiles or livestock shall be raised, bred or kept on or within any Lot or Unit, except that a reasonable number of dogs, cats or other generally recognized and commonly accepted household pets may be kept within a Lot or Unit; provided, however, such household pets may not be kept, bred or maintained thereon for any commercial purposes, or in unreasonable numbers. Except where specifically approved by the Board to the contrary, and except as may be further limited in any Condominium Declaration for any Condominium Development, "reasonable number" shall mean no more than two (2) of any single specie of household pet (e.g., two (2) dogs, two (2) cats, etc.) and no more than six (6) total household pets; provided, however, offspring of such household pets will be permitted for a period not to exceed sixteen (16) weeks following the birth of such offspring. No household pets may be kept within a Lot or Unit which result in an annoyance to or which are obnoxious to other Owners or Residents. 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 on any Lot, Unit, Common Area, Common Element or Limited Common Element. The owner of each pet is responsible for cleaning any waste, dirt and soilage and repairing any damage 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 3.5**, 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 upon any Lot or Unit is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.

Section 3.6 Motor Vehicle Parking. Subject to the restrictions of ARS § 33-1809 the parking of motor vehicles within the Project shall be in accordance with the following:

Section 3.6.1 General Provisions. No mobile or motor home, boat, jet ski or wave runner, boat, recreational vehicle, all-terrain vehicle, off-road vehicle, trailer, horse trailer, camper, camper shell, snowmobile, bus or any commercial vehicle (other than a "Family Vehicle" as defined below) or any vehicles designed for commercial purposes shall be parked, 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 3.6** shall not apply to emergency vehicle repairs and provided, further, that such items may, for a period not to exceed twenty-four (24) consecutive hours, be parked on paved driveways on Lots for the purpose of loading, unloading and preparing such items for offsite usage. All other motor vehicles shall be permitted to park only in garages on Lots and may not park so as to obstruct any sidewalks, and no motor vehicle may park on the private streets within the Project except as specifically permitted by signage.

Section 3.6.2 Guest Parking. Vehicles of guests and invitees of a Owner may only park in designated parking spaces within the Project or in the garage of the Dwelling they are visiting. Guests may park in the designated visitor parking spaces for a maximum of five (5) days, after which time Guests may contact the either the Board or the parking service, if one is retained by the Board, to determine whether any extended Guest parking is available.

Section 3.6.3 Enforcement. Any persons who violate any parking restrictions set forth herein will be subject to having their vehicle immobilized or towed at their expense.

Section 3.6.4 Commercial Vehicles. Notwithstanding the forgoing, Commercial Vehicles, as defined in **Section 1.11** may park on the public or private streets in the Project when such parking is: (i) for the temporary parking for loading and unloading for a period of not more than two (2) hours; (ii) for temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement by Declarant or the Board. In no case shall any Commercial Vehicle park in alleyways or driveways within the Project.

Section 3.6.5 Family Vehicles. A "Family Vehicle" means any domestic or foreign car, station wagon, sport wagon, pickup truck of less than one (1) ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle and similar non-commercial and non-recreational vehicles that are used by a Resident for family and domestic purposes and which are used on a regular and recurring basis for basic transportation. The Board of Directors may, acting in good faith, designate a commercial vehicle as a Family Vehicle if, prior to use, the Resident petitions the Board to classify the same as a Family Vehicle and the parking of such Vehicle will not adversely affect the Project or the Owners or Residents.

Section 3.7 Garages. Any part of a Lot or Unit constructed as a garage shall only 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 or when the garage is being used for access to and from the Lot or Unit. Owners must maintain garage doors in good condition at all times and must promptly repair all noticeable damage or deterioration to the exterior of garage doors including dents, scratches, chipped or peeling paint, and any damage that prevents the garage doors from properly operating within thirty (30) days of damage. In addition, garage doors shall not be physically changed from the original state as installed by the Declarant. If painting is required, Owners shall use the original paint color or obtain Design Review Committee approval if another color is to be used.

Section 3.8 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) such signs as may be erected by a Declarant in connection with the development of any Parcel or the Project or the sale by Declarant of any Lots or Units; (iii) signage for the Project at such locations designated or installed by a Declarant; (iv) political signs which are required by applicable law to be permitted, subject to approval by the Board as to the time and manner of posting such signs and as to the number, location and size thereof to the extent the requirement for such approval is not prohibited by applicable law.

Section 3.9 Flags. Except as otherwise expressly provided in the immediately following sentence with respect to the American flag, no flag shall be displayed within the Project except in accordance with any flag policy set forth in the Association Rules, which may regulate the location, mounting, pole height, lighting, maintenance and other responsibilities of displaying a flag. The Association Rules may regulate the placement and manner of display of the American flag, including the location and size of flagpoles (but shall not prohibit the installation of a conforming flagpole).

Section 3.10 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Unit 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 or the maintenance of Improvements.

Section 3.11 Clotheslines. No clotheslines of any sort or other device for drying or airing of clothes shall be erected, placed or maintained in any Lot, Common Area, Common Element, or Limited Common Element.

Section 3.12 Sidewalk and Roadway Encroachments. No Improvement of any kind shall be permitted to overhang or otherwise encroach upon any Common Area, Roadway or sidewalk within the Project; provided, however, Landscaping approved by the Design Review Committee and properly cultivated and maintained may overhang Common Areas provided such Landscaping does not create a nuisance to Owners or Residents within the Project.

Section 3.13 HVAC and Solar Panels. Except as may be installed by a Declarant during the original construction of any Lot or Unit, no heating, air conditioning, evaporative cooling facilities or solar collector panels may be installed, constructed or maintained upon any Lot or Unit unless the Design Review Committee has approved such facilities or panels.

Section 3.14 Fencing. All fencing constructed by a Declarant may only be replaced with fencing of the same type, style and construction.

Section 3.15 Storage and Tool Sheds and Structures. Except as constructed by the Declarant, or allowable as stated herein, no storage or tool sheds or similar structures shall be placed, erected or maintained upon any part of the Project. Type A Lots shall be permitted to have storage or tool sheds on their property with the written approval of the Design Review Committee. Such approval can be withheld in the Design Review Committee's sole discretion.

Section 3.16 Window Materials. Within sixty (60) days of closing of escrow on a Lot or Unit, the Owner shall install draperies or suitable window treatments on all windows facing the private or public streets and Common Areas adjacent to its Lot or Unit. However, no external window covering may be placed, or permitted to remain, on any window of any Lot or Unit or other Improvement without the prior written approval by the Design Review Committee in accordance with Article IV. No reflective coating, materials or covering may be placed on any window of any Lot or Unit or other Improvement. Further, the portions of all curtains, blinds, interior shutters, screens and window coverings or window treatments which are visible from outside the Lot or Unit must be neutral in color. No bedsheets, blankets, bedspreads or other items not designed for use as

curtains or other window coverings may be used for such purposes except during a period not to exceed thirty (30) days following the conveyance of a Lot or Unit from a Declarant or a Builder to a Purchaser.

Section 3.17 Mineral Exploration. No portion of the Project 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 3.18 Conveyance. No portion less than all of a Lot or Unit 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 Unit affected shall, for the purpose of this Declaration, be considered a whole Lot or Unit.

Section 3.19 Further Subdivision. As long as the Class "B" Membership is in existence Declarant, without the consent of any other Member, shall have the right to plat and replat the respective Parcels in any manner it deems appropriate, including, without limitation, changing the size, location, configuration and number of Lots and/or Units, Easements, and Common Areas within the Project. In the event of any such replat, the Declarant 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 or any Parcel(s).

Section 3.20 Violation of Statutes, Ordinances and Regulations. No Lot or Unit 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, Maricopa County, the Town of Gilbert or any other governmental agency or subdivision authority having jurisdiction over the Lot or Units or the use or occupation thereof.

Section 3.21 Rental. Only entire Lots or Units may be rented, and if so rented, the occupancy thereof shall be limited to the lessee or tenant under the lease and his family and guests. No Owner shall be permitted to lease a Lot or Unit for transient or hotel purposes. No Owner may lease less than his entire Lot or Unit. 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 Association 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 Lot or Unit. Upon leasing his Lot or Unit, an Owner shall promptly notify the Association and the Master 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 Lot or Unit during the term of the lease. No lease shall be for a term of less than one year.

Section 3.22 Drainage. No Lot or Unit or 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 as shown on the drainage plan on file with the Town of Gilbert.

Section 3.23 Antennas and Satellite Dishes.

Section 3.23.1 No antenna, satellite dish or other device for the transmission or reception of television or radio (including amateur or ham radio) signals or any other form of electromagnetic radiation, including satellite television or radio discs, antennas or equipment, and including the mast or other structure used or required for the installation, erection, use or maintenance of such device, shall be installed, erected, used or maintained within Common Areas, Common Elements, whether attached to a building or structure or otherwise. Provided; however, that those devices ("Permitted Devices") whose installation and use is protected under federal law or regulations (generally, at the time of Recordation of this Declaration, certain antennas under one meter in diameter and antennas used to receive broadcast television signals) may be installed within Lots or upon the Limited Common Elements of Units in full compliance with this **Section 3.23**. The purpose of this regulation is to protect the integrity of the design of the Power Ranch Neighborhood 9 community and to ensure that such installation and operation do not endanger the safety of persons or property. Permitted Devices must be installed in a manner that ensures the safe operation of the device and the protection of Owners, Residents their Permittees and all other Persons and all property from the risk of exposure to radiofrequency radiation, lightning strikes and other safety related concerns. Permitted Devices shall not be installed, attached or otherwise affixed to any Common Area or Common Element. A Permitted Device can only be installed if:

Section 3.23.1.1 placement of the Permitted Device is in a location on the Lot or Limited Common Area that minimizes to the greatest extent feasible its visibility from neighboring property while still providing an acceptable quality signal, without imposing unreasonable costs;

Section 3.23.1.2 with respect to any Permitted Device that, after application of the first criterion specified in **Section 3.23.1.1**. above, is to any extent Visible from Neighboring Property, the Permitted Device shall be screened from view in a manner that is architecturally integrated into the Lot or Limited Common Element in terms of design, size, materials, location, means of attachment, color and other aesthetic considerations;

Section 3.23.1.3 the Owner complies in all respects with any applicable rules or guidelines of the Design Review Committee or other such rules established in the applicable Condominium Declaration;

Section 3.23.1.4 with respect to antennas used to transmit fixed wireless signals, such antenna is labeled in a clearly visible manner regarding potential radiofrequency safety and exposure hazards, for example, warning of the minimum separation distance required between persons and transceiver antennas, with such labeling being contained on both the antenna and outside the range of any possible safety exposure zone, and specifically referencing the applicable exposure limits adopted by the Federal Communications Commission ("FCC") in 47 C.F.R. § 1.1310 or any applicable subsequent regulation;

Section 3.23.1.5 the installation of the Permitted Device is performed in a manner to provide for the adequate and safe arresting of lightning strikes, placement a safe distance

from any electrical wiring according to the National Electric Safety Code ("NESC"), placement and lighting sufficient to prevent accidental contact with airborne objects such as kites and children's toys, and with consideration of any other safety requirements appropriate for the installation;

Section 3.23.1.6 the installation complies with any applicable FCC and FAA location, lighting and marking regulations;

Section 3.23.1.7 the installation is performed and operation is conducted in a manner that minimizes interference with other pre-existing signal reception and transmission devices and with any operations licensed by the FCC; and

Section 3.23.1.8 the installation is performed by a professional licensed in the applicable jurisdiction qualified to make such installation; and

Section 3.23.1.9 the Owner is responsible for any and all damage caused by such installation, including but not limited to, the costs of restoration of Limited Common Elements or other such areas if any such damage is caused by the installation.

Section 3.23.2 Enforcement. The Association shall have the primary authority to enforce the regulations regarding Antennas in all areas of the Project, including the Condominium Development.

Section 3.23.3 Review Authority. The Design Review Committee will review applications for antennas meeting the above criteria on an expedited basis to avoid undue delay in installation. Applications must designate the qualified and licensed Person performing the installation, and must include evidence of adequate insurance or bonding to meet all safety concerns. Applications not demonstrating compliance with or meeting criteria above may be considered incomplete and will be returned to the Owner for correction and resubmission in a prompt manner. By acceptance of a Deed or otherwise acquiring any interest in a Lot or Unit, each Owner is deemed to have agreed to comply with the above restrictions as well as any applicable rules or other installation restrictions applicable thereto.

Section 3.24 Basketball Goals and Play Structures. No basketball goal, backboard or similar structure or device and no swing set, trampoline, batting cage or other play structure shall be placed or constructed on any Lot or Limited Common Element without the prior approval of the Design Review Committee. In no event shall basketball goals be permitted to be attached to any Common Element or Limited Common Element.

Section 3.25 Miscellaneous Outdoor Items. Unless such items can be erected, used, maintained or kept in such a manner that they are not Visible from a Neighborhood Property, the following shall not be erected, used, maintained or kept on a Lot or Limited Common Element except as permitted herein: air conditioners, barbeques (except during use), coolers, pool filters, pool heaters, lawn and yard tools, storage tanks for water, gas, gasoline, oil or other fuel. Type A Lots shall be permitted to erect outdoor items with the written approval of the Design Review Committee. Such approval may be withheld in the Design Review Committee's sole discretion.

Section 3.26 Drywells. All drywells shown on the Plats shall be maintained by the Association and are to be repaired or replaced by the Association when they cease to drain the surface water in a 36-hour period.

Section 3.27 Lights. Except for lights installed by a Declarant, no spot lights or other lights shall be installed within the Project. The Declarant has installed exterior lights on the front and rear of each building containing Units for the purpose of providing light in the Common Areas. The power that operates these lights comes from the individual Units and will be reflected on a Unit Owner's power bill. These lights cannot be eliminated and shall be replaced if damaged. Said light fixtures, light bulbs and photo cells installed within the Condominium Development are Common Elements to be maintained by the Condominium Association. Owners of Type A and Type B Lots are not subject to this regulation, but must have any changes to exterior lighting fixtures approved by the Design Review Committee.

Section 3.28 Reflective Materials. Reflective materials or articles, including reflective house sidings and roofing material, shall not be maintained on any Lot or Unit. No glass used in the construction of any exterior Improvement on any Lot or Unit shall have a light reflective value in excess of twenty five percent (25%).

Section 3.29 Roofs and Flashings. Except as installed by a Declarant, no asbestos shingle roofs, light-reflective roofs or flat roofs (unless fully concealed by a parapet wall so as not to be visible from neighboring property) shall be constructed or maintained on any Lot or Unit. No standing water shall be permitted to exist on any flat roof. Only roofs composed of concrete or clay tile or another material approved by the Design Review Committee shall be constructed on any Lot or Unit.

ARTICLE IV
MASTER DESIGN REVIEW COMMITTEE

Section 4.1 Purpose and Intent. Pursuant to Section 11.2 of the Master Declaration the purpose of the Design Review Committee is to maintain uniformity of architectural and landscaping standards throughout Power Ranch and thereby enhance the aesthetic and economic value of Power Ranch. This purpose extends to Power Ranch Neighborhood 9.

Section 4.2 Design Review Committee. Article 11 of the Master Declaration establishing the Design Review Committee and setting forth it's authority and review procedures shall govern the Project. The Design Review Committee shall have the authority to oversee any proposed changes to Lots, Improvements, Common Areas, Common Elements or Limited Common Elements. Generally there should be no physical changes to Common Areas, Common Elements or Limited Common Elements as constructed or installed by the Declarant. Any proposed changes to Common Areas, Common Elements or Limited Common Elements should be of a comprehensive nature and shall be proposed only by the Board of the Condominium Association.

Section 4.3 Governmental Approvals. The approval of the Design Review Committee required by this **Article IV** or Article 11 of the Master Declaration shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Project.

ARTICLE V
EASEMENTS

Section 5.1 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:

Section 5.1.1 The right of the Association to limit the number of guests of Members;

Section 5.1.2 The right of the Association to suspend the right of any Member to use the facilities situated upon the Common Areas for any period during which an Assessment against the Member's Lot or Unit remains unpaid or for any violation of Association Project Documents;

Section 5.1.3 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;

Section 5.1.4 The right of the Association to promulgate Rules and Regulations concerning the use of any Common Areas and all facilities located thereon; and

Section 5.1.5 All existing easements of record.

Section 5.2 Blanket Utility Easement. There is hereby created in the Association and all providers to the Project of public utilities a blanket easement upon, across, over and under the Property for ingress and egress for the installation, replacing, repairing 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 and to trim any tree, shrubbery and other Landscaping which interfere with any such utility facilities. Notwithstanding anything to the contrary contained in this Article, no sewer facilities, electrical lines, water lines or other utility or service lines may be installed or relocated on the Property, except as approved by Declarant, as long as Declarant owns any interest in any Lot or Unit or in the Project and, thereafter, except as approved by the Board.

Section 5.3 Easement for Encroachments. In the event a wall, Landscaping, or other Improvement on a Lot or the Common Area encroaches upon another Lot or the Common Area, and such encroachment is inadvertent and has no significant adverse impact on the adjacent property, an easement for such encroachment is hereby given and the right to determine whether such encroachment causes a significant adverse impact shall be determined by the Design Review Committee upon request by either of the parties. When such determination is made by the Design Review Committee, that determination shall be binding on all parties. Also, in the event that a Declarant at any time determines that any Improvements within The Project were constructed so as to create an encroachment upon a Lot which causes a significant adverse impact upon the encroached-upon Lot, Declarant shall have the right but not the obligation to cause such

encroachment to be eliminated or minimized, and an easement is hereby created in favor of Declarants and their employees, contractors and agents to enter upon the affected Lots to eliminate or minimize such encroachment.

Section 5.4 Drainage Easements Among Owners. The Lots are subject to all drainage easements shown on the Plat, if any, and all drainage easements as the Town may hereafter require. In addition, to the extent that storm runoff flows from any Lot(s) or Common Areas under or through one or more other Lots, drainage easements shall exist over such Lot(s) and any such drainage flow shall not be impeded, diverted, or otherwise changed. Such drainage easements shall include, but are not limited to, receiving the runoff from roofs and drainage under and through walls.

Section 5.5 Association's Easement for Performing Maintenance and Inspections. The Association shall have an easement upon, across, over and under the Common Areas and Limited Common Elements for the purpose of repairing, maintaining and replacing Areas of Association Responsibility and for performing all of the Association's other rights, duties and obligations hereunder. In addition, during reasonable hours, the Association or any authorized representative of the Association shall have the right to enter upon and inspect any Lot or Unit, excluding the interior of any Improvement located thereon, for the purpose of making inspections to determine whether the provisions of Association Project Documents are being complied with by the Owner or Residents of said Lot or Unit.

Section 5.6 Temporary Easements. Declarant, their agents, employees and contractors shall have a temporary easement upon the Common Areas as is necessary for development of adjacent Lots, Units and Common Areas and completion of improvements in public rights-of-way, public utility easements, drainage easements and Common Areas. In addition, Declarant, their agents, employees and contractors shall have a temporary easement 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.

Section 5.7 Public Easements. Each Owner who accepts a deed to or any interest in a Lot or Unit agrees to recognize and be bound by any open space easements, drainage easements and other easements shown in the Plat or which otherwise exist with respect to the Lot or Unit purchased by such Owner or the Common Areas, all in accordance with applicable ordinances and regulations.

Section 5.8 Perimeter Wall Easements and Maintenance. Each Owner who accepts a deed to a Lot which borders or is adjacent to South Fenceline Parkway and South Power Road, or any other major arterial street which borders the Project and/or which borders or is adjacent to 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 such roadways and/or any other major arterial street and any Common Area tract, 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 5.9 Avigation Easement. The Property is within two (2) miles of Williams Gateway Airport and is subject to a recorded Avigation Easement and Release for Williams Gateway Airport. Additional information pertaining to aircraft operation and airport development may be obtained by contacting the Williams Gateway Administration Office.

Section 5.10 Parcel Specific Easements. The Tract Declarations and any other supplemental declarations which may hereafter be recorded with respect to any of the Parcels may also create additional easements and restrictions relative to any Parcel(s) which may become subject to such Tract Declarations or other supplemental declarations.

ARTICLE VI
MAINTENANCE

Section 6.1 Maintenance of Areas of Association Responsibility. The Association, or its duly delegated representative, shall be responsible for the maintenance and repair of (i) the Common Areas and (ii) all other Areas of Association Responsibility. The Association shall also 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. All Common Areas shall be maintained as initially constructed and improved and in conformance with all maintenance and ownership manuals and applicable guidelines and, except as determined by Declarant, the Common Areas shall not be materially altered without the consent of two-thirds (2/3) of the Owners. Notwithstanding the prior sentence, as long as Declarant owns one or more Lots or Units, the Common Areas shall not be materially altered without Declarant's consent, which may be withheld in the Declarant's sole discretion.

Section 6.2 Maintenance of Lots. 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 Design Review 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. Notwithstanding the foregoing or any other provision contained in this Declaration, an Owner shall not be responsible for maintenance of any Areas of Association Responsibility.

Section 6.3 Maintenance of Porches, Patios and Balconies. All porches, patios, balconies and other exterior areas, whether classified as Limited Common Areas or not, shall be kept clean, neat and free of debris. These areas shall be further regulated by the Association Rules.

Section 6.4 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 or Unit shall keep all other Landscaping of every kind located on his or its Lot or on the Limited Common Area attributable to a Unit 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 times 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 or Limited Common Area. All lawn areas on Lots which are visible from adjacent Lots, Private Shared Driveway Easement or Common Areas must be watered, and fertilized by the Owner of the Lot as and when necessary in order to maintain a green lawn at all times. If an Owner or Resident of a Lot or Unit fails to comply with this provision, the Association may levy a fine against the violating Lot or Unit and its Owner in an amount to be established by the Board. To the extent the Association does not otherwise accept maintenance responsibility, the Landscaping obligations and requirements of each Owner of a Lot shall include all Landscaping within areas between the sidewalks and curbs within the right-of-way on or adjacent to such Owner's Lot (a "Park Strip"). Each Owner shall be required to replace any Landscaping including, without limitation, trees within the Park Strip on its Lot or Landscaping with trees of the same species, and the minimum permissible size of any such replacement trees shall be fifteen (15) gallons. No grass may be planted within any of the Park Strips, and all such Park Strips shall be maintained by the Owner of the Lot on which it is located in a grass and weed-free manner. Notwithstanding the foregoing, Owners shall not be responsible for maintenance of any Area of Association Responsibility.

Section 6.5 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, in addition to any other rights available under this Declaration or at law or in equity, 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 6.6 Assessment for Damage or Destruction. In the event that any Lot, Common Areas, Common Elements or Limited Common Elements are damaged or destroyed through the willful or negligent act or omission of any Owner, Resident or their pets, guests, 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 6.7 Maintenance of Fences and Walls other than Common Fences and Walls. Fences and Walls (other than common fences and walls and 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 fence or wall which faces the Common Area. Common fences and walls are to be maintained in accordance with Article 10 below.

Notwithstanding the foregoing or Article 10 below, the maintenance, repair and replacement of fences and walls within any Condominium Development shall be governed by any Condominium Declaration or similar instrument Recorded by Declarants for any such Condominium Development.

ARTICLE VII
PARCEL SPECIFIC COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

Section 7.1 Access Easement. The Lots and Units within The Parcels are hereby made subject to and there is hereby created, granted and conveyed to the Owners, their heirs and assigns a series of perpetual, appurtenant Access Easements over portions of the Parcels for the benefit of the Owners. The locations of the Access Easements are shown on each of the Plats. The purpose of the Access Easements is to provide vehicular and pedestrian ingress and egress, utility services, drainage conveyance and maintenance access for all Lot or Units within the Plats. Declarant specifically reserves the right to enter upon the Access Easements for any purpose whatsoever.

Section 7.2 Grant of Utility Easement for Town. An easement is hereby created, granted and conveyed to the Town and all applicable utility providers and their respective contractors, agents and employees upon, over, across and through those areas designated on the Plats for utility easements.

Section 7.3 Private Shared Driveway Easements. The Lots and Units within the Project are hereby made subject to and there is hereby created, granted and conveyed to the Owners of the Lots, their heirs and assigns a series of perpetual, appurtenant Private Shared Driveway Easements over portions of the Parcels for the benefit of the Lot(s) and Lot Owners. The locations of the Private Shared Driveway Easements are shown on each of the Plats. The purpose of the Private Shared Driveway Easements is to provide vehicular and pedestrian ingress and egress, utility services, drainage conveyance and maintenance access for all Lots and Units within the Project. Declarant specifically reserves the right to enter upon the Private Shared Driveway Easements for any purpose whatsoever.

Section 7.4 Common Open Space Easement.

Section 7.4.1 Creation of Open Space Easements. The Lots and Units the Project are hereby made subject to and there is hereby created, granted and conveyed to the Owners of the Lots, Units, their heirs and assigns a series of perpetual Common Open Space Easements over portions of the Project for the benefit of the Lot(s), and Units and their respective Owners. The location of the Common Open Space Easements shall be as shown on the Plats.

Section 7.4.2 Purpose of Open Space Easements. The purpose of the Common Open Space Easements is to provide pedestrian ingress and egress to and from all Lots and Units within the Project, drainage conveyance, and landscape and maintenance access.

Section 7.5 Private Use and Benefit Easements.

Section 7.5.1 Creation of Private Use and Benefit Easements. The Lots, but not the Units, within the Project are hereby made subject to and there is hereby created, granted and conveyed to the Owners of the Lots, their heirs and assigns a series of perpetual Private Use and Benefit Easements over portions of the Lots for the benefit of the adjacent Lot(s) and Lot Owners. ("**Use and Benefit Easements**") The Plats for the Parcels shows the general and approximate location of the Use and Benefit Easements and, therefore, are shown on the Plats for illustrative purposes only.

Section 7.5.2 Purpose and Scope of Use and Benefit Easements. The length and width of each Use and Benefit Easement Area will be determined by the type and the location of the Dwelling constructed or to be constructed on the adjoining Lot(s), their setbacks and the placement of the respective Dwellings and side yard and return fence walls. The initial location and dimensions of each Use and Benefit Easement Area will be as shown on the building permit plans submitted to the Town for the construction of a Dwelling on the Lot; provided, however, the final location and dimensions of each Use and Benefit Easement Area will be determined by the as-built location of (a) the walls of the Dwellings on adjoining Lots and (b) the side yard and return fence walls, although Declarants shall have no obligation to prepare, obtain or record any as-built surveys of the Parcel Lots. The effect of the Use and Benefit Easements is to subject a portion of each Lot to easement(s) in favor of the adjacent Lot(s), but most Lots also benefit from similar easement(s) over portions of the adjacent Lot(s).

Section 7.5.3 Definitions Relevant to Use and Benefit Easements. Lots benefited by a particular Use and Benefit Easement are referred to herein as a "**Benefited Lot**" with respect to such Use and Benefit Easement only. Lots subject to a particular Use and Benefit Easement in favor of another Lot, are referred to herein as a "**Burdened Lot**" with respect to such Use and Benefit Easement.

Section 7.5.4 Example of Use and Benefit Easement. By way of illustration, a copy of a drawing depicting fictitious lots 97, 98 and 99 is attached hereto as **Exhibit "B"**. As shown on **Exhibit "B"**, portions of lot 98 are subject to a Use and Benefit Easement which are created for the benefit of lot 99, but the Owner of lot 98 is entitled to the use of the adjoining Use and Benefit Easement Area on lot 97 as shown on the drawing. Thus, lot 98 is a Burdened Lot with respect to some areas depicted on **Exhibit "B"** and a Benefited Lot with respect to other areas depicted on **Exhibit "B".**

Section 7.5.5 Rights and Obligations of Benefited Lot Owner with Respect to Use and Benefit Easement Areas.

Section 7.5.5.1 The Owner of a Benefited Lot shall have the right, subject to Design Review Committee approval where required, to enter onto the Use and Benefit Easement Area of a Burdened Lot and use the Use and Benefit Easement Area for garden, back yard and drainage purposes. Landscaping (including flowers, plants, lawn and sprinklers) may be installed, kept and maintained in the Use and Benefit Easement Area; provided, however, no

Landscaping shall be planted within three feet (3') of the foundation of the Dwelling on the Burdened Lot. The Use and Benefit Easement Area may also be used by the Owner of the Benefited Lot to locate readily movable outdoor furniture, portable barbecue equipment and other portable items. Except as provided in **Subsections 7.5.5.2** and **7.5.6** below, the Owner of a Benefited Lot shall have the exclusive right to use the Use and Benefit Easement Area on the adjacent Burdened Lot and the Owner of a Burdened Lot shall not use such area or interfere with the use of the Use and Benefit Easement Area by the Owner of the adjacent Benefited Lot. Thus, in the example attached hereto as **Exhibit "B"**, the owner of fictitious lot 98 would have the right to use the Use and Benefit Easement Areas depicted on **Exhibit "B"** as being for the benefit of fictitious lot 98 even though such Use and Benefit Easement Area is located within the boundaries of lot 97. The Owner of a Benefited Lot shall be responsible for the upkeep and repair of the Use and Benefit Easement Area created for its benefit on the adjoining Burdened Lot.

Section 7.5.5.2 Except as provided in **Subsection 7.5.5.1** above, without the prior consent of the Design Review Committee, a Use and Benefit Easement Area shall not be used for (a) any permanent installation of any kind, including, but not limited to a patio, barbecue structure, swimming pool, swimming pool heating or filtering equipment, spa or plumbing fixtures or equipment other than sprinklers or other permanent improvements constructed by the Declarant or a Builder with the permission of the Declarant; or (b) erection or maintenance of any structure or landscaping which may impede or interfere with any necessary maintenance, repair or restoration of any common or party wall. No use shall be made of a Use and Benefit Easement Area which will become an annoyance or nuisance to the Owner of the adjacent Burdened Lot. The Owner of a Benefited Lot shall not construct a fireplace, planter box, barbecue, wall, fence, fountain or other structure which is to attach or connect to the wall of the Dwelling on a Burdened Lot. Without the prior written approval of the Design Review Committee, no Landscaping, walls or other Improvements shall be constructed within any Use and Benefit Easement Area before the Dwelling on the adjoining Burdened Lot has been constructed. Any improvements which are permitted to be constructed, installed or located on or in a Use and Benefit Easement Area must be constructed or installed in a manner that will not impede drainage from the Burdened Lot. Each Benefited Lot Owner, as part of its obligation to maintain, repair and paint its Dwelling, shall be responsible for the maintenance, repair and painting of the house wall and other components of the Benefited Lot Owner's Dwelling which adjoins the Use and Benefit Easement Area. However, in no event shall the Owner of the Benefited Lot perform any repair, maintenance or painting of the house wall or other components of the Dwelling on the Burdened Lot which adjoins the Use and Benefit Easement Area. Without the consent of the Design Review Committee, no doors, windows or openings of any kind shall be constructed, kept or maintained in any Dwelling wall which adjoins a Use and Benefit Easement Area.

Section 7.5.5.3 Each Benefited Lot Owner shall indemnify, protect, defend and hold harmless the Owner of the adjoining Burdened Lot for, from and against any and all claims, demands, obligations, losses, damages, costs and liabilities (including, but not limited to, court costs and reasonable attorneys' fees) which may at any time arise or be imposed upon or incurred by such Owner of the adjoining Burdened Lot as a result of the entry by the Owner of the Benefited Lot or by an entry made for the benefit of or on behalf of the Benefited Lot Owner onto the adjacent Burdened Lot or the Use and Benefit Easement Area on its Lot pursuant to this **Section 7.5.5.3**.

Section 7.5.6 Rights and Obligations of Burdened Lot Owner with Respect to Use and Benefit Easement Areas.

Section 7.5.6.1 The grant of each Use and Benefit Easement is subject to the right of the Burdened Lot Owner to utilize the Use and Benefit Easement Area for (a) locating any fireplace chimney which is attached to the Dwelling located on the Burdened Lot, (b) drainage from the roof of the Dwelling constructed on the Burdened Lot onto the Use and Benefit Easement Area; (c) maintenance, repair and replacement of the wall, roof eaves and any fireplace chimneys of the Dwelling constructed on the Burdened Lot and any authorized common or party wall constructed along or within the Use and Benefit Easement Area; and (d) drainage over, across and upon the Use and Benefit Easement Area for water resulting from the normal use of the Burdened Lot. Thus, in the example attached hereto as Exhibit "B", the owner of fictitious lot 98 would not have the right to use the Use and Benefit Easement Area depicted on Exhibit "B" as being for the benefit and use of lot 99 even though that Use and Benefit Easement Area is located within the boundary of fictitious lot 98, except for the uses set forth in this **Section 7.5.6.1**.

Section 7.5.6.2 Except in the event of an emergency, prior to entering a Use and Benefit Easement Area for permitted maintenance purposes, the Owner of the Burdened Lot shall notify the Owner of the Benefited Lot and shall schedule a mutually convenient time to perform said maintenance. The Owner of the Burdened Lot shall have no liability for damage to or removal of any decoration or Landscaping within the Use and Benefit Easement Area which is necessarily occasioned by such repair, maintenance or restoration, but the Owner of the Burdened Lot shall use reasonable care to avoid damage to any furniture, fixtures or equipment and Landscaping within the Use and Benefit Easement Area.

Section 7.5.6.3 Each Burdened Lot Owner shall also have the rights and privileges with respect to the installation and maintenance of utility lines and facilities within the Use and Benefit Easement Area on its Lot. Subject to the provisions of this Declaration and any other interest affecting title to any Lot, the Burdened Lot Owner, the Town and applicable utility providers and their respective contractors, agents and employees shall have the right to install and maintain utility lines and facilities for the benefit of a Burdened Lot within that part of the Use and Benefit Easement Area on the adjoining Benefited Lot which is situated within approximately five feet (5') of the Dwelling on the Burdened Lot and within approximately five feet (5') of the common wall which separates the side and rear yards of the Benefited Lot and the Burdened Lot (the "Easement Construction Area").

Section 7.5.6.4 Each Owner of a Burdened Lot shall have the right to enter onto the Use and Benefit Easement Area on its Lot and onto the immediately adjacent five (5) foot area on the adjacent Benefited Lot for the purpose of facilitating the installation, maintenance and repair of utility lines and facilities which serve its Lot and which are or will be situated within the Easement Construction Area granted to the Town (as defined below) on its Lot. Each Burdened Lot Owner shall immediately restore to its previous condition the Use and Benefit Easement Area on its Lot and any part of the adjoining Benefited Lot which may be disturbed or damaged in connection with any access made pursuant to this **Subsection 7.5.6.4** or in connection with the installation, maintenance and repair of utility lines and facilities within the Easement Construction Area by or for the benefit of such Burdened Lot Owner.

Section 7.5.6.5 Each Burdened Lot Owner shall indemnify, protect, defend and hold harmless the Owner of the adjoining Benefited Lot for, from and against any and all claims, demands, obligations, losses, damages, costs and liabilities (including, but not limited to, court costs and reasonable attorneys' fees) which may at any time arise or be imposed upon or incurred by such Owner of the adjoining Benefited Lot as a result of the entry by the Owner of the Burdened Lot or by an entry made for the benefit of or on behalf of the Owner of the Burdened Lot onto the adjacent Benefited Lot or the Use and Benefit Easement Area on its Lot pursuant to this **Section 7.5.6.5**.

Section 7.5.7 No Third Party Rights in Use and Benefit Easements. Except as provided herein, this grant of easement shall only bind, benefit and inure adjoining Benefited Lots and Burdened Lots to each Use and Benefit Easement. No third party rights for entry or use for non-adjoining Lot Owners are created, either expressly or impliedly, by this grant of easement to adjoining Lot Owners effected by the Use and Benefit Easement.

Section 7.6 Grant of Utility Easement to Town. An easement is hereby created, granted and conveyed to the Town and all applicable utility providers and their respective contractors, agents and employees upon, over, across and through the all of the Use and Benefit Easement Areas on all Burdened Lots and upon, over, across and through the immediately adjacent five (5) foot area of all adjoining Benefited Lots ("Easement Construction Area") for the sole purposes of permitting access by such parties to the Easement Construction Area to facilitate the installation, maintenance and repair of utility lines and facilities within the Easement Construction Area.

Section 7.7 Approvals and Consents. Notwithstanding anything contained herein to the contrary, the Owner of a Benefited Lot shall not construct any Improvements on, in or about the Use and Benefit Easement Area without the approval of the Design Review Committee. The Benefited Lot Owner shall also obtain whatever permits or other consents may be required by law to construct such Improvements. Without limiting the foregoing, Owners will need to obtain building permits from the Town in constructing various of the Improvements which are permitted in the Use and Benefit Easement Areas.

Section 7.8 Insurance for Use and Benefit Easement Areas. Each Owner of a Benefited Lot shall obtain and maintain in force at all times a comprehensive general liability insurance policy insuring against liability incident to the use and occupancy of the Use and Benefit Easement Area appurtenant to that Benefited Lot by that Owner and that Owner's Residents, family members, invitees, agents and contractors. Said policy shall designate as additional named insured(s) the Owner of the adjoining Burdened Lot. The limits of such insurance shall be not less than three hundred thousand dollars ($300,000) covering all claims for death of or injury to any person and/or property damage in any single occurrence, but the Board may from time to time, in its discretion, by written notice to all Owners of Lots, require that the amount of such insurance be increased.

Section 7.9 Appurtenant Easements. Each Use and Benefit Easement shall be appurtenant to the applicable Benefited Lot, shall run with the ownership of the applicable Benefited Lot and shall inure to the benefit of the Owner of the applicable Benefited Lot, its heirs, successors and assigns. The rights and obligations of the Owner of the applicable Burdened Lot shall run with the ownership of the applicable Burdened Lot.

Section 7.10 Enforcement. Notwithstanding any provisions of this Declaration to the contrary, and notwithstanding any provision of applicable law regarding the enforcement of this Declaration by Declarant or the Association, the terms and provisions of this **Section 7.10** shall not create, impose or imply any duty or obligation of either Declarant or the Association to enforce or compel compliance with the provisions of this **Section 7** by any Owner or group of Owners. Any Owner may seek to enforce or compel compliance with the provisions of this **Section 7** as its individual power or right. Declarant or the Association, as applicable, may enforce or compel compliance with the terms and provisions of this **Section 7** without any obligation to do so.

ARTICLE VIII
HOMEOWNERS ASSOCIATION

Section 8.1 Formation of Association. The Association has been 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 Association Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Rules and Regulations, Design Review and Landscaping Guidelines or any other Project Document, this Declaration shall control.

Section 8.2 Membership. Each Owner shall automatically be a Member of the Association, and upon subsequent transfers of the Owner's Lot or Unit, 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 or Unit and any attempt to transfer membership, other than upon the transfer of the Lot or Unit giving rise to the membership, shall be void. Each and every Owner, by accepting its ownership interest in a Lot or Unit, agrees to become a Member of the Association and to be bound by the provisions of Association Project Documents and this Declaration.

Section 8.3 Classes of Membership and Voting Rights. The Association shall have two (2) classes of voting membership designated as Class "A" and Class "B".

Section 8.3.1 Class "A" Members shall be all Owners, except a Declarant shall not be a Class "A" Member as long as such Declarant is a Class "B" Member. Each Class "A" Member, including Declarant with respect to any Lots or Units owned by Declarant following the termination or relinquishment of such Declarant's Class "B" membership, shall be entitled to one (1) vote for each Lot or Unit owned by it. If a Lot or Unit is owned by more than one individual Class "A" Member, the Members owning such Lot or Unit shall collectively be entitled to cast only one (1) vote for that Lot or Unit. The vote for such Lot or Unit 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 or Unit.

Section 8.3.2 The Class "B" Members shall be the Declarant. Each Class "B" Member shall be entitled to three (3) votes for each Lot or Unit owned by it. The Class "B" membership shall cease and be converted to Class "A" membership within one hundred twenty (120) days of the first to occur of the following:

Section 8.3.2.1 The date when seventy-five percent (75%) of the total Lots and Units within the Project are owned by Purchasers; or

Section 8.3.2.2 Such time as all Class "B" Members shall elect to convert their Class "B" membership to Class "A" membership and provide the Association with written notifications of such election.

Section 8.3.3 Upon the termination of the Class "B" membership, that membership shall be converted to Class "A" membership and each Declarant, upon the termination of its Class "B" membership, shall thereafter be entitled to one (1) vote for each Lot or Unit owned by such Declarant.

Section 8.4 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:

Section 8.4.1 Maintain, repair, replace, restore, operate and manage all Areas of Association Responsibility and all Improvements thereon, and all property that may be acquired by the Association;

Section 8.4.2 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;

Section 8.4.3 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;

Section 8.4.4 Grant and reserve easements where necessary for utilities and sewer facilities over the Common Area, Common Elements and Limited Common Elements;

Section 8.4.5 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;

Section 8.4.6 Pay real property taxes, assessments and other governmental charges attributable to the Common Areas and all other expenses of the Association;

Section 8.4.7 Fix, levy, collect and enforce Assessments and fines as set forth in this Declaration and the Rules and Regulations.

Section 8.4.8 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;

Section 8.4.9 Engage in activities which will actively foster, promote and enhance the common interests of the Members;

Section 8.4.10 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;

Section 8.4.11 Borrow money for any purpose as may be limited in the Bylaws;

Section 8.4.12 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;

Section 8.4.13 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);

Section 8.4.14 Exercise any and all powers, rights and privileges provided for in this Declaration; and

Section 8.4.15 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 8.5 Board. The affairs of the Association shall be conducted by the Board which shall be selected in the manner stated herein. The Board shall be made up of seven (7) Owners. A maximum of two (2) Board members shall be Owners of a Type A Lots. Except as provided below, at least one (1) Board member shall be a Unit Owner. In the event that no Unit Owner desires to serve on the Board, the Board of directors for the Condominium Association shall have the right, but not the obligation to appoint one (1) Condominium Association Board member to serve on the Board of the Association. If the Condominium Association does not elect to appoint a Condominium Association Board member to the Association Board, then the open director's position may be filled in accordance with this **Section 8.5**. Each of the directors shall have one vote each; provided, however, that the President of the Board may only vote in the event of a tie between the other members present at the time of a vote. If a Lot or Unit 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, subject to the limitations of this **Section 8.5**. 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 or Unit but instead shall be appointed by the Declarant in its sole discretion. Unless Association Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

Section 8.6 Rules and Regulations. The Association may 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 Residents of and visitors to The Project. Any such Rules and Regulations enacted by the Board shall be consistent with this Declaration.

Section 8.7 Availability of Documents. The Association shall make available to all Owners and prospective purchasers of Lots or Units current copies of Association Project Documents; provided, however, the Association may charge any requesting party a reasonable fee for such copies of Association Project Documents.

ARTICLE IX
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 9.1 Creation of Lien and Personal Obligation of Assessment. Declarant, for each Lot and Unit now or hereafter established within Power Ranch, hereby covenant and agree, and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following assessments, fees and charges:

Section 9.1.1 Annual Assessments established by this **Article IX**;

Section 9.1.2 Special Assessments for capital improvements or other extraordinary expenses or costs established by this **Article IX**;

Section 9.1.3 Special Service Area Assessments for expenses incurred in providing improvements or services that benefit Lots or Units in a Special Service Area as established by this **Article IX**; and

Section 9.1.4 General Service Area Assessments for expenses incurred in providing improvements or services that benefit Lots or Units in a General Service Area as established by this **Article IX**.

The Annual Assessments, Special Assessments, Special Service Area Assessments, General Service Area Assessements and Special Fees together with interest, late charges, incidental and taxable costs, and reasonable attorneys' fees, and all other sums which may become due and payable to the Association by an Owner (**"Assessments"**) shall be a charge on the Lot or Unit and shall be a continuing servitude and lien upon the Lot or Unit against which each such Assessments are made. The Assessments against each Lot or Unit shall be based on the number of Memberships appurtenant to the Lot or Unit (including, without limitation, Memberships attributable to a Lot, or Condominium Units). Each such Assessment shall also be the personal obligation of the person who was the Owner of the Lot or Unit at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. However, such exemption does not apply to the obligation of the successor in title of the Owner to correct any violation of the Declaration, or the Association Rules by the Declarant; however, the transfer of title shall not extinguish any Assessment Lien except a transfer pursuant to foreclosure of a superior lien in which the Assessment Lien has been extinguished by such foreclosure proceeding. No Assessment shall be levied against any portion of the Property until a Tract

Declaration establishing a Land Use Classification has been Recorded with respect to that portion of the Property.

Section 9.2 Annual Assessments. The Annual Assessments by the Association shall be used exclusively for the improvement and maintenance of the Areas of Association Responsibility, the promotion of the recreation, health safety and welfare of all the residents in the Project, the operation administration of the Association and for the common good of the Project. To further this purpose, the Board in each year, commencing with the year in which the first Dwelling or Unit is constructed, shall assess against each Lot and Unit an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of **Section 9.4** hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in this **Section 9.2**.

Section 9.3 Determination of Assessment. The amount of any Annual or Special Assessment to be levied against each Lot and Unit shall be determined as follows:

Section 9.3.1 For purposes of this **Section 9.3**, the term **"Membership Assessment"** shall mean the total amount of any Annual Assessment or Special Assessment to be levied against all Lots and Units divided by the total number of Memberships attributable to the Project.

Section 9.3.2 Except for Lots and Units owned by the Declarant which are exempt from Assessment under **Section 9.14**, each Lot and Unit shall be assessed an Annual Assessment or Special Assessment, as the case may be, in an amount equal to the number of Memberships attributable by the Board.

Section 9.3.3 For the purposes of this **Section 9.3**, a Dwelling or Unit or other building shall be deemed completed when, in the opinion of the Board, the building is ready for occupancy. If the rate of Assessment for a Lot or Unit increases during the period to which an Annual Assessment (or any Special Assessment) is attributable, the Assessment shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly or annual basis, and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

Section 9.4 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that Assessment Period 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, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses; provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by mail in ballot at a meeting duly called for such purpose. The provisions of this **Section 9.4** shall not preclude or limit the assessment, collection or use of the Annual Assessments for the aforesaid purposes.

Section 9.5 Special Service Area Assessments. The Owners within the Project acknowledge that there are three distinct types of housing within the Project. The Owners further acknowledge that this diversity of housing types creates different maintenance and, therefore, Assessment, obligations. Accordingly, the Board shall be entitled to assess special service area Assessments against the Memberships appurtenant to the Lots or Units benefited by such services as determined by this Board (**"Special Service Area Assessments"**).

Section 9.5.1 Special Service Areas: There shall be established the following areas wherein the Board shall have the express authority to impose Special Service Area Assessments ("**Special Service Areas**"):

Section 9.5.1.1 Type A Lot Special Service Area: The Type A Lot Special Service Area shall be comprised of the physical areas adjacent to the Type A Lots and shall include any areas specifically for the benefit of the Type A Lots.

Section 9.5.1.2 Type B Lot Special Service Area: The Type B Lot Special Service Area shall be comprised of the physical areas adjacent to the Type B Lots and shall include any areas specifically for the benefit of the Type B Lots, including but not limited to, private streets, and parking areas.

Section 9.5.1.3 Special Service Area for the Units: The Special Service Area for the Units shall be comprised of the physical areas adjacent to the Units and shall include any areas specifically for the benefit of the Units, including but not limited to mailbox clusters, building exteriors, private streets and parking areas. The authority of the Board to impose Special Service Area Assessments upon the Unit Owners, shall not include the authority to impose such Assessments upon the Unit Owners for the maintenance of Areas of Condominium Association Responsibility, as defined in the Section 1.2.2 of the Condominium Declaration.

Section 9.5.2 Special Service Area Assessments shall be levied against the Lots and Units located in the particular Special Service Area at a uniform amount per Membership determined in the sole discretion of the Board, with the objective of providing to the Association all funds required to pay all Special Service Area Expenses incurred by the Association in providing the operational, maintenance and other services to the particular Special Service Area. Special Service Area Assessments shall commence upon the date established by the Board. If the Board determines during any assessment period that Special Service Area Assessments with respect to any Special Service Area are, or will become, inadequate to pay for all Special Service Area Expenses pertaining to that Special Service Area for any reason, including, without limitation, nonpayment of Special Service Area Assessments by Members, the Board may increase that Special Service Area Assessment for the assessment period and the revised Special Service Area Assessment shall commence on the date designated by the Board. The amount of any Special Service Area Assessments shall be determined in a manner consistent with the Board's determination of the respective benefits each Parcel receives from such special services.

Section 9.6 General Service Area Assessments. Notwithstanding the preceding Sections of the Declaration, Owners receiving benefits in a disproportionate manner may be located in more than one Special Service Area and, thus, subject to more than one Special Service Area Assessment. The expenses incurred by the Association to deliver the special services to a Special Service Area

(the "Special Service Area Expenses") shall be assessed solely against the Lots and Units which are benefited by the special services provided to the Lots and Units located in that Special Service Area. In no event shall any expenses incurred by the Association to maintain Common Areas, including, without limitation, any pools and recreational facilities and Common Area tracts, be deemed to be Special Service Area Expenses. No Special Service Area Expense shall be used in computing the Annual Assessments to be levied pursuant to **Section 9.3** of this Declaration.

Section 9.7 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the **"Assessment Period"**), shall be the calendar year, except that the first Assessment Period shall commence upon the issuance of the first certificate of occupancy for the first Dwelling or Unit and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by giving notice thereof to the Members of the Association.

Section 9.8 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of Assessments imposed pursuant to this **Article IX**, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his 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 thirty (30) days' written notice, prior to such foreclose or enforcement at the address of the Member on the records of the Association, 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 Membership changes during an Assessment Period; successor Owners of Lots or Units shall be given credit on a prorated basis for prepayments made by prior Owners. Members must notify the Association and the Master Association of a change in mailing address when applicable.

Section 9.9 Collection of Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid within fifteen (15) days when-due (or such longer period as may be required by Arizona law) shall be deemed delinquent and shall bear interest from the due date until paid at a rate equal to the greater of (i) twelve percent (12%) per annum or (ii) the then prevailing interest rate on loans insured by the FHA, or (iii) the then prevailing interest rate on loans guaranteed by the VA, and the Member whose Assessment is delinquent shall be liable for all taxable and incidental costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The applicable interest rate on such delinquent amounts shall be determined on a daily basis. Late fees may be established by the Board, the amount of which shall be determined by the Board from time to time and which shall not exceed the maximum permitted under Arizona law, may be assessed for each late occurrence. The Board may also Record a Notice of Delinquent Assessment against any Lot or Unit as to which any such amount is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 9.10 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other interested person, the Association, within a reasonable period of time thereafter, subject to and in accordance with applicable law, shall issue to such Member or other interested person a written certificate stating (i) that all Assessments (including interest, costs and attorneys' fees, if any, as provided in **Section 9.8** above) have been paid with respect to any specified Lot or Unit as of the date of such certificate, or (ii) if all Assessments have not been paid, the amount of such Assessments (including interest, late charges, costs and attorneys' fees, if any) due and payable as of such date. Upon receipt of a written request therefor, the Association shall issue, or cause an appropriate officer to issue, to a lienholder, Member or Person designated by a Member, a statement setting forth the amount of any unpaid Assessment against the specified Lot or Unit. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Unit in question.

Section 9.11 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment services, each person or entity who purchases a Lot or Unit shall pay to the Association immediately upon becoming the Owner of the Lot or Unit an amount established from time to time by the Board. Funds paid to the Association pursuant to this **Section 9.11** may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this **Section 9.11** shall be nonrefundable and shall not be offset or credit against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

Section 9.12 Transfer Fee. Each person or entity who purchases a Lot or Unit shall pay to the Association immediately upon becoming the Owner of the Lot or Unit a transfer fee in such amount as is established from time to time by the Board.

Section 9.13 Enforcement Assessments. The Board shall also have the right to levy Assessments against an individual Lot or Unit and its Owner to reimburse the Association for costs incurred by the Association in connection with its efforts to require that Owner and his or her Lot or Unit to comply with the provisions of this Declaration and other Association Project Documents or costs incurred by the Association in connection with causing to be done such work as is necessary to bring a Lot or Unit into such compliance (an **"Enforcement Assessment"**), and such Enforcement Assessments shall not be subject to the limitations set forth above as to the amount of Special Assessments.

Section 9.14 Declarant's Assessments. Notwithstanding any other provision contained in this Declaration, as long as the Class "B" membership is in existence, no Assessments shall be levied against any Exempt Areas or any Lots or Units owned or leased by any Class "B" Member. In lieu thereof, each Class "B" Member agrees that so long as the Class "B" membership is in existence, such Class "B" Member(s) shall subsidize the Association by paying its pro rata share (based on number of Lots and/or Units owned) 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); provided, however, in no event shall a Class "B" Member's subsidy obligation exceed an amount calculated by multiplying the total number of Lots and Units owned or leased by such Class "B"

Member(s) by the per-Lot or per-Unit amount of Annual Assessments levied against the other Lots or Units within the Project, which amount is to be adjusted and prorated based upon the actual number of days such Units are owned or leased by such Class "B" Member(s). Such payments by the Class "B" Members shall be made at such times as the Class "B" Members and the Board shall agree.

Section 9.14.1 Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under the Association Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended for a period not to exceed ninety (90) days for each infraction of the Association Project Documents, and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

Section 9.14.2 Suspension of Access to Certain Common Areas. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under the Association Project Documents for a period of ninety (90) days, said Owner's right to access community swimming pools and other community recreational facilities shall be suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

Section 9.15 Reserves.

Section 9.15.1 Reserve Account: The Annual Assessments shall include reasonable amounts as determined by the Board of Directors to be collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas, or any other purpose as determined by the Board of Directors ("Reserve Account Assessments"). The Declarant shall establish the amount of the initial Reserve Account Assessment ("Initial Reserve Account Assessment"). Thereafter, the Board shall annually determine and fix the amount of the Reserve Account Assessment that will be included within the Annual Assessment; provided, however, that the Reserve Account Assessment fixed by the Board shall be increased from the amount of the Reserve Account Assessment in the previous year by a minimum amount of three percent (3%) per annum and shall in no event be an amount less than the Initial Reserve Account Assessment established by the Declarant. All amounts collected as reserves, whether as Reserve Account Assessments collected pursuant to this **Section 9.11** or otherwise, shall be deposited by the Board of Directors in a separate bank account to be held in trust for the purposes for which they are collected and which are to be segregated from and not commingled with any other funds of the Association ("Reserve Account"). Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected and except as authorized in a Resolution of the Board of Directors.

Section 9.15.2 Reserve Study: The Board of Directors shall obtain a reserve study, which study shall be prepared by an independent company experienced and qualified to prepare such studies and which study shall, at a minimum, include (a) reserves of the major components of the Common Areas identified on the Plats which the Association is obligated to repair, replace, restore or maintain; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration or maintenance of the identified major components during and at the end of

their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study ("**Reserve Study**"). The Board of Directors shall modify the Budget in accordance with the findings of the Reserve Study. The Reserve Study shall govern the funding of the Reserve Account and said Reserve Study. The Board shall retain a professional consultant to examine the Reserve Study no less than every three (3) years. The professional consultant must be approved by the management company retained pursuant to **Section 13.16.2** of this Declaration. If the professional consultant determines that the Reserve Study needs to be amended, then the Board shall amend the Reserve Study and the Budget accordingly; provided, however, that the Board may not reduce the Budget or the amounts to be held within the Reserve Account beyond the initial amount established by the Declarant. The Board of Directors covenants and agrees to indemnify, defend and hold the Declarant harmless for any and all expenditures made from the Reserve Account, or the failure to adequately fund the Reserve Account, or related matters, if the Board of Directors commissions a new Reserve Study in violation of this **Section 9.**15.

Section 9.16 Fines. The Association, acting through the Board, shall have the right to adopt a Schedule of Fines for the violation of any provision of Association Project Documents by any Owner or such Owner's Permittees. No fines shall be imposed without first providing a written warning to the Owner describing the violation and stating that failure to stop the violation at least ten (10) days or another re-occurrence of the same violation within six (6) months of the original violation shall make the Owner subject to the imposition of a fine. All fines shall constitute a lien on all Lots and/or Units owned by the Owner and shall be paid within thirty (30) days following imposition. The failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any Assessments under this **Article IX** pursuant to the Arizona Revised Statutes.

Section 9.17 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.

ARTICLE X
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. 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 performing such work, together with a fee in an amount equal to ten percent (10%) of such amount and any collection costs, attorneys' fees, court costs and other litigation related expenses which may be incurred by the Association in collecting such amounts and enforcing the Association's rights and remedies hereunder, shall constitute a lien on the Owner's Lot or Unit, 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 **Article X**.

ARTICLE XI
INSURANCE

Section 11.1 Scope of Coverage. Commencing not later than the first to occur of (a) the transfer to and acceptance for maintenance by the Association of any Common Area or (b) the conveyance of a Lot or Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

Section 11.1.1 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 may, at the discretion of the Board, 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.

Section 11.1.2 Property insurance on all Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, 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.

Section 11.1.3 Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

Section 11.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association and the Owners.

Section 11.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

Section 11.1.5.1 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;

Section 11.1.5.2 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;

Section 11.1.5.3 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;

Section 11.1.5.4 Statement of the name of the insured as the Association;

Section 11.1.5.5 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 11.1.6 If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other Property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended; and

Section 11.1.7 "Agreed Amount" and "Inflation Guard" endorsements.

Section 11.2 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 11.3 Fidelity Bonds.

Section 11.3.1 The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of the fidelity bond to be maintained by the Association shall be based upon the best business judgment of the Board and shall not be less than the greater of (i) the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, (iii) a sum equal to three (3) months assessments on all Lots or Units plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

Section 11.3.1.1 The fidelity bonds shall name the Association as an obligee;

Section 11.3.1.2 The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and

Section 11.3.1.3 The bonds shall provide that they may not be cancelled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

Section 11.3.2 The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to **Section 11.3.1**. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

Section 11.3.3 The requirements of this **Section 11.3** may be modified from time to time upon the unanimous written consent of all officers and Directors of the Association; provided, however, at all times the Association and/or the management agent for the Association shall maintain customary and reasonable forms and levels of fidelity bonds and/or insurance.

Section 11.3.4 Notwithstanding the provisions in this **Section 11.3**, no fidelity bonds shall be required to be maintained by the Association (i) as long as the Class "B" membership is in existence or (ii) the funds of the Association are maintained, handled and disbursed solely by a management agent for the Association which maintains a fidelity bond which conforms with the requirements set forth in this **Section 11.3**.

Section 11.4 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the Budget of the Association and shall be paid by the Association.

Section 11.5 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 11.6** of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

Section 11.6 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.

Section 11.7 Insurance Obtained by Owners. Each Owner shall be responsible for obtaining property insurance for its own benefit and at its own expense covering its Lot or Unit and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at its expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of its Lot or Unit.

ARTICLE XII
TERM AND ENFORCEMENT

This Declaration shall remain in full force and effect and shall run with and bind the Property for a term of thirty (30) years from the date hereof. After such thirty (30) year period, this Declaration shall be deemed to have been automatically 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 eighty percent (80%) of the Lots and the Units, or such higher percentage as required by applicable law, which amendment, once executed, must, within sixty (60) days prior to the expiration of the initial period hereof or any ten (10) year extension, be recorded in the Official Records of the county in which the Property is located. Upon the expiration, revocation, termination or cancellation 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 or town within which the Property is located, and if any other Owner or the city or town 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 or Unit, impose a lien upon and enforce such lien upon the delinquent Owner's Lot or Unit 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 XIII
GENERAL PROVISIONS

Section 13.1 Amendments.

Section 13.1.1 Except for amendments made pursuant to **Sections 3.19, 9.3, 9.4, 13.1.2** and **14** 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 are allocated.

Section 13.1.2 Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the recording by Declarant of a Certificate of Amendment duly signed by or on behalf of Declarant, specifying the federal, state or local governmental agency or the federally or state charted lending institution requesting the amendment and setting forth the amendatory language requested or required by such agency or institution.

Section 13.1.3 So long as a Declarant owns any Lot, any amendment to this Declaration must be approved in writing by each Declarant.

Section 13.1.4 Any amendment approved pursuant to **Section 13.1.1** of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded in the Official Records of the county in which the Property is located. Any such amendment shall certify that the amendment has been approved as required by this **Section 13.1.4**. Any amendment made by the Declarant pursuant to **Section 13.1.2** of this Declaration shall be executed by the Declarant and shall be recorded in the Official Records of the county in which the Property is located.

Section 13.1.5 Notwithstanding anything in this Declaration to the contrary, Declarant shall, for so long as it possesses the Class "B" Membership, be entitled to unilaterally, without the consent or approval of any other Member or party, amend the Declaration to correct minor errors or omissions.

Section 13.1.6 Notwithstanding anything in this Declaration to the contrary, this Declaration shall not be amended without the express written consent of the Master Association.

Section 13.2 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 Design Review and Landscaping Guidelines, the Rules and Regulations and Association Project Documents shall be final, conclusive and binding upon all Owners, Residents and their Permittees.

Section 13.3 Severability. Any determination by any court of competent jurisdiction that any provision 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 13.4 References to This Declaration. Any and all instruments of conveyance or lease of any interest in any Lot or Unit 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 13.5 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 13.6 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 or Unit 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 13.7 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 13.8 Remedies Cumulative. Each remedy provided by this Declaration is cumulative and non-exclusive.

Section 13.9 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 13.10 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 13.11 Waiver of Damages. Declarant 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 a 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 or Unit, thereby agrees to indemnify and hold harmless the Declarant 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.

Section 13.12 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent or materially impair the erection, operation, maintenance, replacement and repair by a Declarant, or its 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. Without limiting the generality of the preceding sentence, Declarant is expressly exempted from the provisions hereof requiring submittals to or authorizations by the Design Review Committee, including but not limited to Article 4 hereof. Any provisions of this Declaration which prohibit non-residential use of Lots or Units and regulate parking and vehicles shall not apply to Persons engaged in the construction of homes in the Project or the operation by a Declarant of model homes and a sales office within the Project.

Section 13.13 Indemnification from Common Area Liability. THE OWNERS ACKNOWLEDGE THAT: (1) THE PROPERTY SUBJECT TO THIS DECLARATION CONTAINS COMMON AREAS; (2) THE COMMON AREAS ARE INTENDED SOLELY FOR AESTHETIC PURPOSES AND LIMITED RECREATIONAL USE; (3) THE COMMON AREAS POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR PERMITTEES AND OTHERS; (4) NO SAFETY PERSONNEL WILL PATROL THE COMMON AREAS AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR PERMITTEES AND OTHERS; AND (5) THE OWNERS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT, THE OFFICERS AND DIRECTORS OF DECLARANT AND THE ASSOCIATION AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FOR, FROM AND AGAINST ANY CLAIMS, DEMANDS, OBLIGATIONS, LIABILITIES, INJURIES, DAMAGES, EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES INCURRED BY OR CLAIMED AGAINST THE DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS WHICH IN ANY WAY AROSE FROM OR IN CONNECTION WITH THE USE, OPERATION OR MAINTENANCE OF THE COMMON AREAS.

Section 13.14 Joint and Several Liability. In the case of joint ownership of a Lot or Unit, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, this Declaration, shall be joint and several.

Section 13.15 Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration, or to collect any assessments or other amounts due from an Owner, or to enforce compliance with or recover damages for any violation or noncompliance with Association Project Documents, the offending Owner or other person or entity shall pay to the Association, upon demand, all attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the assessment lien.

Section 13.16 Management Contracts.

Section 13.16.1 Any agreement for professional management of the Association or any other Association contract or lease executed by a Declarant or any member, agent or representative of Declarant during the Period of Declarant Control must allow for termination by either party without cause and without payment of a termination fee upon thirty (30) days or less written notice.

Section 13.16.2 General Management Contracts. The Association shall enter into a management agreement with a professional management company to manage the operation and affairs of the Association, and in no event shall the Association be self-managed unless a self-management agreement program is approved by at least two-thirds (2/3) of the Owners. The management company must (1) have a minimum of 10 years of experience in managing community Associations similar to the Project (such experience to be possessed by either the company or its principal owners); (2) be bonded and maintain insurance in amounts acceptable to the Association, which at a minimum shall include general liability insurance with coverage equal to or exceeding $1,000,000 per occurrence and $2,000,000 in the aggregate; (3) require its financial accounting

services be completed by a degreed accountant and be overseen by a Certified Public Accountant; and (4) provide a minimum of five references of similar properties with addresses and contacts for which the company has regularly preformed management services; and (5) possess such qualifications as deemed necessary and appropriate by the Association.

Section 13.16.3 Landscaping Maintenance Contracts. The Association shall also enter into a landscaping agreement with a professional landscape company to provide all landscaping services for the Common Elements. The landscape company must (1) be a licensed Arizona contractor; and (2) must maintain insurance acceptable to the Association, including general liability insurance with coverage equal to or exceeding $1,000,000 per occurrence and $2,000,000 in the aggregate and proof of Worker's Compensation insurance; (3) employ an Arizona Certified Landscape Professional and an Arborist certified by the International Society of Arboriculture; and (4) shall possess such other qualifications and certifications as the Association shall deem necessary and appropriate; and (5) provide a minimum of five references of similar properties with addresses and contacts for which the company has regularly preformed maintenance services, unless the Board determines that the applicant's personal qualifications do not warrant the submission of such references; and (6) be certified to maintain and operate the irrigation system for the entire Project; and (7) have a structural pest control license if pesticide application is part of the responsibility of the Landscape contractor.

ARTICLE XIV
GOVERNMENTAL APPROVALS

If certification of the Project is sought by Declarant from the Federal Housing Administration (FHA) or the United States Veterans Administration (VA), the following actions will require the prior approval of the FHA and VA, unless such agencies have waived such requirements or unless the next sentence of this **Article XIV** applies: (i) annexation of additional properties into The Project; (ii) mergers and consolidations; (iii) mortgaging or otherwise encumbering Common Area; (iv) dedication or other transfer of Common Areas; (v) dissolution of the Association; and (vi) amendment of provisions of this Declaration or other Association Project Documents to the extent required to be approved by the FHA or VA pursuant to their rules and regulations. Consent of the FHA and VA to the foregoing will not be required if the FHA and VA have elected not to approve The Project for certification or if such approval has been revoked, withdrawn, cancelled or suspended. So long as there is a Class "B" Membership, the Declarant, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration or any of the other Association Project Documents in order to conform such documents to the requirements or guidelines of the FHA, VA or any other federal, state or local agency whose approval of The Project, the Plat or Association Project Documents is required or is requested by a Declarant.

ARTICLE XV
ANNEXATION OR DE-ANNEXATION

Section 15.1 Annexation. Without the consent of any Member or any other party, a Declarant shall have the right to annex all or any portion of the Additional Property into The Project by recording one or more Supplemental Declarations describing the property being annexed. Until the date that is the tenth (10^{th}) anniversary of the recording of this Declaration, a Declarant may annex all or any portion of the Additional Property into The Project without the vote of the Members

and without notice to or approval of any other Person. Although a Declarant shall have the ability to annex the Additional Property as provided in this Article, a Declarant shall not be obligated to annex any property. No Additional Property shall become subject to this Declaration unless and until a Supplemental Declaration is recorded as provided in this Article and takes effect. A Supplemental Declaration shall be a writing in recordable form that annexes some or all of the Additional Property to the plan of this Declaration and that incorporates by reference all of the provisions of this Declaration. It shall contain such other provisions as may be appropriate to the property being annexed so long as any such additional provisions are not in conflict with the existing provisions of this Declaration. Recordation of a Supplemental Declaration, as provided for in this **Section 15.1**, shall constitute and effectuate the annexation of the property described in the Supplemental Declaration (unless a later effective date is specified in the Supplemental Declaration) making the property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association and, thereafter, the property described on any Supplemental Declaration shall be part of the Property for all intents and purposes of this Declaration and all of the Owners of Lots or Units in the annexed property shall automatically be Owners under this Declaration.

Section 15.2 De-Annexation. Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time, at their sole option and without the consent of any other person, except as provided in this **Section 15.2**, to delete from the Property and remove from the effect of this Declaration one or more Parcels or other portions of the Property; provided, however, that (a) a Parcel or portion of the Property may not be so deleted and removed unless at the time of such deletion and removal such portion is owned by a Declarant or a Declarant executes and records an instrument approving such deletion and removal; (b) a Parcel or portion of the Property may not be so deleted and removed unless at the time of such deletion and removal no Dwelling, Unit or Common Area recreational facilities have been constructed thereon; and (c) a portion of the Property may not be so deleted and removed if such deletion and removal would deprive Owners and Residents of other parts of the Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Property (unless a Declarant at the same time provides for reasonably adequate replacement easements or rights-of-way). Declarant may exercise their rights under this **Section 15.2** in each case by executing and causing to be recorded an instrument which identifies the portion of the Property to be so deleted and removed and which is executed by each Owner of such portion (if other than a Declarant), and the deletion and removal of such portion of the Property shall be effective upon the later of (i) the date such instrument is recorded and (ii) the effective date specified in such instrument, if any, whereupon, except as otherwise expressly provided in this **Section 15.2**. The portion of the Property so deleted and removed shall thereafter for all purposes be deemed not to be a part of the Property and not subject to this Declaration, and the owner(s) thereof or of interest therein shall not be deemed to be Owners or Members or have any other rights or obligations hereunder, except as members of the general public. No such deletion and removal of a portion of the Property shall act to relieve such portion from the lien for Assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal, and no Assessments or other charges shall thereafter accrue hereunder with respect to the portion of the Property so deleted and removed.

ARTICLE XVI
CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

Section 16.1 Purpose and Intent. It is the Declarant's intent that all Improvements constructed by any builder who may construct a Dwelling on a Lot or a Unit within the Condominium including the Declarant (each, a "Builder" and, collectively, the "Builders") shall be built in compliance with all applicable building codes and ordinances and will be of a quality that is consistent with good construction and development practices. Nevertheless, disputes may arise as to whether a defect exists with respect to the construction by a Builder of any of the Improvements constructed within the Condominium and a Builder's responsibility therefore. It is the intent of the Builders that all disputes and claims regarding Alleged Defects (as defined below) be resolved amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, the Board of Directors, the Builders and all Owners shall be bound by the claim resolution procedures, provisions and limitations set forth or described in this Article 16.

Section 16.2 Limitation on Owners' Remedies. In the event that the Association, the Board of Directors or any Owner (collectively, "Claimant") claims, contends or alleges that any portion of a Lot, Dwelling, Unit, Limited Common Element, Common Element or any other part of any the Project, including the Condominium Development, is defective or that one or more of the Builders, their agents, consultants, contractors or subcontractors (collectively, "Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), the only right or remedy that any Claimant shall have with regard to any such Alleged Defect is the right to have the Alleged Defect repaired and/or replaced by the Builder which was responsible for the construction of the Improvement which is the subject of the Alleged Defect, but such right or remedy shall only be available if and to the extent such Builder is, at that time, still obligated to repair such Alleged Defect pursuant to applicable statutes or common law or pursuant to any applicable rules, regulations and guidelines imposed by the Arizona Registrar of Contractors (the "Applicable Laws"). By accepting a deed to a Lot or Unit, each Owner shall, with respect to any Alleged Defect(s), be deemed to have waived the right to seek damages or other legal or equitable remedies from any Builder or from any affiliates, subcontractors, agents, vendors, suppliers, design professionals and materialmen of any Builder under any common law, statutes and other theories of liability, including, but not limited to, negligence, tort and strict liability. Under no circumstances will any Builder or Declarant be liable for any consequential, indirect, special, punitive or other damages, including, but not limited to, any damages based on a claim of diminution in the value of the Claimant's Lot or Unit and each Owner, by accepting a deed to a Lot or Unit, shall be deemed to have waived its right to pursue any such damages. It shall be a condition to a Claimant's rights and a Builder's obligations under this Article that the Claimant fully and timely abide by the requirements and conditions set forth in this Article. To accommodate the Builders' right to repair and/or replace an Alleged Defect, the Builders hereby reserve the right for themselves to be notified of all such Alleged Defects and to enter onto the Condominium, Common Elements Lots, Dwellings and Units to inspect, repair and/or replace such Alleged Defect(s) as set forth herein.

Section 16.3 Notice of Alleged Defect. In the event that a Claimant discovers any Alleged Defect, Claimant shall within fifteen (15) days of discovery of the Alleged Defect provide the Builder which constructed the Improvement which is the subject of the Alleged Defect with written notice of the Alleged Defect, and of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

Section 16.4 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by a Builder of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Builder, such Builder shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Lot, Dwelling, Unit, Limited Common Element, Common Element or other part of the Project, including the Condominium as may be necessary or appropriate for the purposes of inspecting and/or conducting testing and, if deemed necessary by the Builder, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacements, Builder shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances to repair or correct any such Alleged Defect.

Section 16.5 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this **Section 16.5** shall be construed to impose any obligation on Builders to inspect, test, repair or replace any item or Alleged Defect for which Builders are not otherwise obligated to do so under Applicable Laws or by contract. Specifically, a Builder's obligation to repair and/or replace an Alleged Defect shall expire upon the expiration of any applicable warranty provided by Builder for such item, if any, or on any later applicable date which the Applicable Laws specify or recognize as the date(s) through which a contractor is responsible for such Alleged Defect. The right of Builders to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Builders.

Section 16.6 Tolling of Statutes of Limitations. In no event shall any statutes of limitations be tolled during the period in which a Builder conducts any inspection or testing of any Alleged Defects.

Section 16.7 Binding Arbitration. In the event of a dispute between or among a Builder, its contractors, subcontractors or brokers or their agents or employees, on the one hand, and any Owner or the Association, on the other hand, regarding any controversy or claim between the parties, including any claim based on contract, tort, statute or any other theory of liability arising out of or relating to the rights or duties of the parties under this Declaration, the design or construction of the Condominium, any Unit, any Limited Common Element, Common Element or any part of the Condominium, or any Lot or Dwelling or an Alleged Defect, the matter shall be resolved by binding arbitration conducted in accordance with the requirements, terms and provisions set forth in this **Section 16.7**.

Section 16.7.1 Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

Section 16.7.2 Condition to Initiation of Arbitration. In the event a dispute arises regarding an Alleged Defect and the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any proceeding or arbitration against a Builder which notice shall (at a minimum) include (i) a description of the Alleged Defect; (ii) a description of the Builder's position related to such Alleged Defect and any attempts of the affected Builder to correct such Alleged Defect and the opportunities provided to the affected Builder to correct such

Alleged Defect; (iii) a certification from an engineer licensed in the State of Arizona, confirming its opinion of the existence of such Alleged Defect and a resume of such engineer; (iv) the estimated cost to repair such Alleged Defect; (v) the name and professional background of the attorney retained by the Association to pursue the claim against the Builder and a description of the relationship between such attorney and member(s) of the Board of Directors, if any; (vi) a thorough description of the fee arrangement or proposed fee arrangement between such attorney and the Association; (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Builder(s) and the source of the funds which will be used to pay such fees and expenses; (viii) the estimated time necessary to conclude the action against Builder; and (ix) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from Declarant(s) (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

Section 16.7.3 Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501 et seq. In the event of a conflict between the AAA Rules and this **Section 16.7**, the provisions of this **Section 16.7** shall govern.

Section 16.7.4 Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this **Subsection** is referred to in this **Section** 16.7 as the "Arbitrator".

Section 16.7.5 Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

Section 16.7.6 Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in **Subsection 16.7.4** above.

Section 16.7.7 Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

Section 16.7.8 Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Guidelines, the following: (i) definition of issues; (ii) scope, timing and

types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts and whether, if this is done, engagement of experts by the Parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious and cost-effective conduct of the proceeding.

Section 16.7.9 Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

Section 16.7.10 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties and the parties attorneys and expert witnesses (where applicable to their testimony), except that, upon the prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

Section 16.7.11 Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

Section 16.7.12 Final Award. The Arbitrator shall promptly, within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree, determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration and other relevant factors. The Arbitrator shall have absolutely no ability or authority to award any damages of any kind except for the actual cost to repair any defect for which a Builder is found to be responsible and which such Builder fails to correct. Accordingly, except for the actual damages referred to in the preceding sentence, the Arbitrator shall not award indirect, consequential, special, punitive or other damages. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

Section 16.7.13 Statute of Limitations. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this **Section 16.7** shall apply to the commencement of arbitration proceedings under this **Section 16.7**. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

Section 16.7.14 Approval of Legal Proceedings. The Association shall not incur attorneys' fees or other legal expenses in connection with any legal proceedings without the written approval of Owners holding more than two-thirds (2/3) of the total votes in the Association, excluding the vote of any Owner who would be a defendant in such proceedings. The Association must finance any such legal proceeding with monies that are specifically collected for same and may not borrow money or use working capital or reserve funds or other monies collected for specific

Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Owners must notify prospective purchasers of the existence of such legal proceedings and must provide such prospective purchasers with a copy of any applicable notice provided by the Association in accordance with **Subection 16.7.2** of this Declaration. This **Section 16.7** shall not apply to legal proceedings initiated by the Association to collect any unpaid Assessments levied pursuant to this Declaration or to enforce against any Owners (other than a Declarant or a Builder) any covenants, conditions, restrictions or easements contained in this Declaration.

Section 16.8 Repurchase Option for Alleged Defect Claims. Notwithstanding anything in this Declaration to the contrary, in the event any Owner, either directly or through the Association, shall commence an action against a Builder in connection with any Alleged Defects in such Owner's Dwelling, the Builder (or any assignee of such Builder) that constructed and/or sold such Lot, Dwelling or Unit shall have the option (but not the obligation) to purchase such Lot or Unit on the following terms and conditions:

Section 16.8.1 The purchase price shall be an amount equal to the sum of the following less any sums paid to such Owners under any homeowner's warranty in connection with the Alleged Defect:

Section 16.8.1.1 The purchase price paid to the Builder by the original Owner which purchased the Lot, Dwelling or Unit from a Builder;

Section 16.8.1.2 The value of any documented Improvements made to the Lot, Dwelling or Unit by third-party contractors or decorators that added an ascertainable value to the Lot, Dwelling or Unit;

Section 16.8.1.3 The Owner's reasonable moving costs; and

Section 16.8.1.4 Any reasonable and customary closing costs, including loan fees and/or "points" incurred by the Owner in connection with the purchase of another primary residence within ninety (90) days after the closing of the repurchase provided for herein.

Section 16.8.2 Close of escrow shall not occur later than forty-five (45) days after written notice from Builder to the Owner of Builder's intent to exercise the option herein.

Section 16.8.3 Title to the Lot or Unit shall be conveyed to the applicable Builder free and clear of all monetary liens and encumbrances other than non-delinquent real estate taxes.

Section 16.8.4 All closing costs in connection with the repurchase shall be paid by the applicable Builder.

Section 16.8.5 Exercise of the repurchase option as provided hereinabove shall constitute full and final satisfaction of all claims relating to the subject Lot or Unit, including claims relating to the Alleged Defect. The Owner (or Association, as applicable) shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction. As-Built Conditions Various engineering and architectural plans pertaining to the Condominium, including, but not limited to, the Plat, subdivision maps, grading plans, plot plans,

improvement plans and building plans (collectively, the "Plans"), contain dimensions regarding certain aspects of the Lots, Dwellings, Units, Limited Common Elements Common Elements and other parts and aspects of the Project, including the Condominium Development. By accepting a deed to a Lot or Unit, each Owner shall be deemed to have acknowledged and agreed that (a) if there is a discrepancy between the Plans and the actual as-built conditions of any Lot, Dwelling, Unit, Limited Common Element, Common Element or any other Improvement within the Condominium Development, the as-built conditions will control and be deemed to be accepted as-is by the Owner; (b) the usable or buildable area, location and configuration of the Lot, Dwelling, Unit, Limited Common Elements, Common Elements and any other Improvements located within the Project, including the Condominium Development may deviate from the Plans or from any other display or configuration related thereto; (c) the location, size, height and composition of all walls and fences to be constructed on or as part of a Lot or adjacent thereto shall be determined by Builders in their sole and absolute discretion. Despite the Plans or any other materials that may exist, Builders shall be deemed to have made no representations, warranties or assurances with respect to any such matters or with respect to the size, height, location or composition of any wall or fence to be constructed on or adjacent to any Lot; and (d) each Owner waives the right to make any demands of or claims against Builders as a result of any discrepancies between the Plans and any actual as-built conditions of any Lot or Unit.

Section 16.9 Limitation on Declarant's and Builders' Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot or Unit and becoming an Owner, and each other person, by acquiring any interest in a Lot or Unit, acknowledges and agrees, that neither Declarant nor Builders (including, but not limited to, any assignee of the interest of a Declarant or a Builder) nor any partner, shareholder, officer, director, employee or affiliate of a Declarant or a Builder shall have any personal liability to the Association, or to any Owner, Resident, 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 Design Review Committee except, in the case of Declarant and Builders (or their assignees), to the extent of their respective interests in the Condominium; and, in the event of a judgment against any such parties 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. Neither Declarant 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.

Section 16.10 Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with **Subsection 16.7.1** or **Subsection 16.7.2** above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Subsection **16.7.12** and any party to the Dispute thereafter fails to comply with such resolution or award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys fees and court costs.

ARTICLE XVII
GENERAL PROVISIONS

Section 17.1 Severability. Judicial invalidation of any part of this Declaration shall not affect the validity of any other provisions.

Section 17.2 Construction. The Article and Section headings have been inserted for convenience only and shall not be considered in resolving questions of interpretation or construction. All terms and words used in this Declaration regardless of the number and gender in which they are used shall be deemed and construed to include any other number, and any other gender, as the context or sense requires. In the event of any conflict or inconsistency between this Declaration, the Articles, and/or the Bylaws, the provisions of this Declaration shall control over the provision of the Articles and the Bylaws and the provisions of the Articles shall prevail over the provisions of the Bylaws.

Section 17.3 Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail, postage prepaid; if to an Owner, addressed to that Owner at the address of the Owner's Lot or Unit or if to the Master Design Review Committee, addressed to that Design Review Committee at the normal business address. If notice is sent by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage pre-paid. If personally delivered, notice shall be effective on receipt. Notwithstanding the foregoing, if application for approval, plans, specifications and any other communication or documents shall not be deemed to have been submitted to the Master Design Review Committee, unless actually received by said Design Review Committee or the managing agent. Any vote, election, consent or approval of any nature by the Owners or the Board of Directors, whether hereunder or for any other purpose, may, in the discretion of the Board of Directors and in lieu of a meeting of members, be held by a mail-in ballot process pursuant to such reasonable rules as the Board may specify.

Section 17.4 Tract Declaration. Any Owner of more than one Lot or Unit shall have the right to impose on any portion of the Property owned by such Owner a Tract Declaration ("Tract Declaration") in such form as may be approved in writing by Declarant. A Tract Declaration may modify the provisions of Article XVII of this Declaration and, to the extent that any Tract Declaration is inconsistent with such provisions of this Declaration, the provisions of such Tract Declaration shall take priority over and control over such provisions of this Declaration. A Tract Declaration may also impose other covenants, conditions, restrictions, easements or other matters to the extent not inconsistent with the provisions of this Declaration.

Section 17.5 Prices. Declarant shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for new Lot or Units.

Section 17.6 Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Lot or Unit in the Property, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Property, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Lot or Unit shall be deprived of access to a dedicated street adjacent to the Property.

Section 17.7 Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by applicable Arizona law, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under applicable Arizona law.

Section 17.8 Disclaimers and Releases. By acceptance of a deed to a Lot or Unit, each Purchaser or Owner, for itself the Residents and Permittees of such Owner's Lot or Unit and all persons claiming under such purchaser or Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant specifically disclaims any and all representations and warranties, express and implied, with regard to any of the disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) to fully and unconditionally release Declarant and the Association, and their respective officers, managers, agents, employees, suppliers and contractors, and their successors and assigns, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, occurrences described herein.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first written above as the Declarant. In addition, this Declaration has been consented to by the Lienholder pursuant to the attached Ratification of Lienholder and the Project Owner in the attached Consent of Project Owner.

TREND HOMES, INC., an Arizona corporation

By Reed Porter

Its President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 25th day of May, 2006, before me personally appeared Reed Porter, the President of Trend Homes, 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.

Linda S. Moore
Notary Public

OFFICIAL SEAL
LINDA S. MOORE
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Sept. 14, 2009

My Commission Expires:
9-14-2009

RATIFICATION BY LIENHOLDER

The foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Power Ranch Neighborhood 9 is hereby ratified and approved by Franklin Bank SSB, Texas State Savings Bank, the beneficiary under that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated 3-24-06 and recorded on 3-27-06, as Document No. 2006 - 0406055 in the Official Records of Maricopa County, Arizona, which modifies original Deed of Trust dated 8-29-05 recorded 8-31-05 as doc # 2005-1271341.

DATED this 8th day of June, 2006.

FRANKLIN BANK, SSB

By Susan Conrad

Its Senior vice president

STATE OF Arizona)
) ss.
County of Maricopa)

On this 8 day of June, 2006, before me personally appeared SUSAN CONRAD, the Sr. Vice President of Franklin Bank, a Texas State Savings Bank, known to me to be the person whose name is subscribed to the foregoing Ratification by Lienholder of the Declaration of Covenants, Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he/she executed the same for the purposes contained therein.

Cindy Laing
Notary Public

My Commission Expires:
9-29-2008

"OFFICIAL SEAL"
Cindy Laing
Notary Public-Arizona
Maricopa County
My Commission Expires 9/29/2008

CONSENT BY PROJECT OWNER

1. **Introduction**. The undersigned, TARO PROPERTIES ARIZONA I, LLC, an Arizona limited liability company ("Project Owner") is the owner of the Property, as described in **Section 1.44** of the Declaration, known as Power Ranch Neighborhood 9 (the "Project"). TREND HOMES, INC., an Arizona corporation ("Trend") has the right to purchase certain real property consisting of lots or blocks (the lots or blocks shall collectively be referred to as the "Lots" and individually as a "Lot") as shown on the Plats from Project Owner pursuant to that certain Lease and Purchase Agreement by and between Project Owner as optionor and Trend as optionee dated on or about December 29, 2004 (the "Option Agreement"). Project Owner hereby grants its consent to the terms and provisions of the Declaration (as defined below) and the recording thereof subject to the following provisions and conditions, which are deemed to modify the Declaration.

2. **Declaration**. Trend is the Declarant ("Declarant"),under that certain Declaration of Covenants, Conditions, Restrictions and Easements dated as of May 25, **2006** (the "Declaration"). Trend hereby assigns all of its Declarant rights to Project Owner so that Project Owner shall be deemed a Declarant with the understanding and intent that such assignment shall only become effective if (a) the Option Agreement is terminated prior to the purchase by Trend from Project Owner of all of the **Lots** (which may be conclusively evidenced by the recording of a Quit-Claim Deed by Project Owner), and (b) Project Owner elects to become the Declarant under the Declaration by delivering written notice to Trend and the other Declarant if any. If Project Owner becomes the Declarant in accordance with this Section, Trend shall nonetheless remain responsible for all of the Declarant's obligations and liabilities for all periods prior thereto. The Declarant declares that this Consent of Project Owner modifies and is a part of the Declaration. In the event of any conflict between this Consent by Project Owner and the Declaration, the terms of this Consent by Project Owner shall control.

3. **No Representations/Warranties**. Project Owner makes no warranties or representations whatsoever that the plans presently envisioned for the 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. Project Owner makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenant contained in the Declaration.

4. **Project Owner's Consent**. Notwithstanding anything contained in the Declaration, as long as the Option Agreement is in effect the following shall apply:

(a) Any amendment to the plat or any replat of the Project or any modification of any improvement plans for infrastructure for the Project shall require the prior written consent of Project Owner.

(b) Trend shall obtain Project Owner's written consent prior to voting to appoint any person other than an employee or member of Trend or removing any member of the Board and replacing such member with any person other than an employee or member of Trend. Trend shall obtain the written consent of Project Owner prior to voluntarily surrendering its right to appoint and remove members of any Design Review Committee pursuant to the Declaration.

(c) Trend shall obtain Project Owner's prior written consent before voting to adopt or amend any rules, regulations or requirements applicable to the Project including, without limitation, architectural guidelines.

(d) So long as Project Owner owns any Lot, any amendment to the Declaration must be approved in writing by Project Owner.

(e) Trend shall obtain Project Owner's written consent before voting to annex or de-annex additional Property to the Project to be encumbered by the Declaration.

(f) Trend shall obtain Project Owner's written consent before voting to cause or allow the Association (as defined in the Declaration) to merge or consolidate with another corporation or Association.

(g) Trend shall obtain Project Owner's written consent before assigning any of its Declarant rights to any other party.

5. **No Liability/Indemnifications.**

(a) Project Owner, its affiliates, officers, directors, members, employees and agents shall not have any liability to the Association, the Declarant, any Owner, Member or third party arising out of or related in any way to the Project or the Declaration or Project Owner's involvement therewith including, without limitation: (i) any decisions, approvals, disapprovals, actions or omissions of the Board, any Director, Declarant, any Design Review Committee member or any other third party (collectively, the "Other Parties"); or (ii) the Other Parties' actions or failures to act in performing or failing to perform their respective responsibilities and functions under the Declaration by reason of mistake in judgment, negligence, malfeasance or nonfeasance. Each and every Owner, by accepting a deed to or acquiring any ownership interest in a Lot, agrees to indemnify and hold harmless the Project Owner and its affiliates, officers, directors, members, employees and agents in respect to the foregoing, except where such indemnification is contrary to applicable law

(b) In addition to the foregoing, Project Owner shall be entitled to the benefit of (as though made directly to Project Owner) any and all releases, indemnifications, and limitations of liability, which are provided to any of the Declarant under the Declaration.

6. **Membership.** Notwithstanding anything to the contrary contained in the Declaration, as long as the Option Agreement is in effect and as long as Project Owner owns any Lot, Trend may not, without the prior written consent of Project Owner, elect to terminate the Class "B" Membership or to convert the Class "B" membership to Class "A" membership. Project Owner shall not have any voting rights in the Association until Project Owner becomes the Declarant or the Option Agreement is terminated or unless Project Owner still owns any Lot at the time the Class "B" Membership shall cease to exist in which event Project Owner may exercise its Class "A" voting rights. At no time shall Project Owner be liable for any Assessments, contributions to working capital, deficiencies or any transfer fees that arise during the term of the Option Agreement and the same shall not be levied against Lots owned or leased by Project Owner and Project Owner shall not be liable for any financial obligations for the cost of operating and administering the Association during the term of the Option Agreement.

[END OF AGREEMENT - SIGNATURES FOLLOW ON NEXT PAGE]

TREND HOMES, INC., an Arizona corporation

By: Reed PA

Its: President

TARO PROPERTIES ARIZONA I, LLC, an Arizona limited liability company

By: [signature]

Its: Authorized Agent

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this 25th day of May, 2006, personally appeared before me Reed Porter, the President of Trend Homes Inc., an Arizona corporation, known to me to be the person whose name is subscribed to the foregoing Consent of Project Owner, and acknowledged that he executed the same.

Linda Moore
Notary Public

My commission expires:
9-14-2009

OFFICIAL SEAL
LINDA S. MOORE
Notary Public State of Arizona
MARICOPA COUNTY
My Comm. Expires Sept.14, 2009

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On this 25 day of May, 2006, personally appeared before me William Southworth, the Authorized Agent of Taro Properties Arizona I, LLC, an Arizona limited liability company, known to me to be the person whose name is subscribed to the foregoing Consent of Project Owner, and acknowledged that he executed the same.

Kelly Peterson
Notary Public

My commission expires:
KELLY PETERSON
Notary Public, State of Arizona
Maricopa County
My Commission Expires
August 22, 2009

RATIFICATION BY LIENHOLDER

The foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Power Ranch Neighborhood 9 is hereby ratified and approved by Ohio Savings Bank, a Federal Savings Bank, the beneficiary under that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded on December 29, 2004 , as Document No. 2004-1540804 in the Official Records of Maricopa County, Arizona.

DATED this day of June 15, 2006.

OHIO SAVINGS BANK, a Federal Savings Bank

By Stephen F. Loran

Its Vice President

STATE OF Az)
) ss.
County of Maricopa

On this 15 day of June, 2006, before me personally appeared Stephen Loran, the Vice Pres of OHIO SAVINGS BANK a Federal Savings Bank, known to me to be the person whose name is subscribed to the foregoing Ratification by Lienholder of the Declaration of Covenants, Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he/she executed the same for the purposes contained therein.

Mary K. Warrington
Notary Public

My Commission Expires:

Mary K. Warrington
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
April 1, 2009

RATIFICATION BY MASTER ASSOCIATION

The foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Power Ranch Neighborhood 9 is hereby ratified and approved by the Power Ranch Community Association

DATED this day of May 24, 2006.

Power Ranch Community Association

By Sean Walters

Its President

STATE OF Arizona)
) ss.
County of Maricopa)

On this 23rd day of May, 2006, before me personally appeared Sean T. Walters, the President of Power Ranch Community Association, known to me to be the person whose name is subscribed to the foregoing Ratification by Lienholder of the Declaration of Covenants, Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he/she executed the same for the purposes contained therein.

Julie M. King
Notary Public

My Commission Expires:
3/14/2009

OFFICIAL SEAL
JULIE M. KING
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Mar. 14, 2009