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MARICOPA COUNTY RECORDER  
HELEN PURCELL  
Recording Number  
92-0215131  
  
04/23/92 08:45  
  
1 of 7 FRANK

AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR AVIARA  
(formerly, The Townes at Mountainview Ranch)

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This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Aviara (formerly, The Townes at Mountainview Ranch) is executed as of April 22, 1992 ("Restatement Date") by the Declarant and the undersigned officer of the Association for and on behalf of the Association and as attorney-in-fact for the Owners.

W I T N E S S E T H:

A. Pulte Home Corporation, a Michigan corporation ("Pulte"), as the original Declarant, caused to be recorded a Declaration of Covenants, Conditions and Restrictions for The Townes at Mountainview Ranch dated March 31, 1986, recorded on April 1, 1986, in Document No. 86 157757, Official Records of Maricopa County, Arizona ("Original Declaration").

B. The Original Declaration contemplated the development and sale of 202 lots as single family townhomes with maintenance to be performed by the Association on certain portions of the original lots, all as originally set forth in the Original Declaration.

C. On or about June 17, 1988, and July 14, 1989, Sunstate Savings & Loan Association, an Arizona corporation foreclosed the interest of Pulte in the Property (including all future phases of the Property). The Declarant, as the "Conveying Owner", has succeeded to all rights of Pulte under the Original Declaration.

D. Conveying Owner and the Owners in the Association desire to amend and restate the Original Declaration in its entirety to reflect among other things, the sale and occupancy of single family detached housing and townhome units on the Property and a correction and clarification of the Original Declaration and other Constituent Documents.

E. Conveying Owner and the Owners further desire to establish and confirm for its benefit and for the mutual benefit of all future owners or occupants of the Property or any part thereof, certain easements and rights in, over and upon said Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

F. Declarant and each Owner desire and intend that the Lot Owners, Mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth, all of which shall run with the land and be binding upon

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the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and which shall inure to the benefit of each owner thereof, and all of which are declared to be in furtherance of a plan to promote and protect the cooperative use, conduct, operation and maintenance of the Property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness thereof.

NOW, THEREFORE, Declarant and each Owner declare as follows:

1. Definitions. As used herein, unless the context otherwise requires, the following terms shall have the following definitions:

1.1 "Association" means Aviara Homeowners Association, an Arizona nonprofit corporation (formerly, The Townes at Mountainview Ranch Homeowners Association), its successors and assigns, and unless otherwise provided, shall mean and include its board of directors, officers and other authorized agents.

1.2 "Board" means the Board of Directors of the Association.

1.3 "Common Areas" means Tract E as depicted on the Old Plat and Tracts A, B, C, and D as depicted on the New Plat, together with all other real property now or hereafter owned by the Association, its successors and assigns for the common use and enjoyment of its members, including, but not limited to, the private drives and driveways (other than those on the Lots), landscaping, swimming pools (if any) and recreational areas and all appurtenances thereto which are necessary for the operation thereof, and all other areas of the Property except the Lots.

1.4 "Constituent Documents" shall include this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, any and all Association rules and regulations, and the Plats.

1.5 "Declarant" means Lawyers Title of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. 1530, and its successors and assigns in the ownership of the Property for the purpose of the development and sale thereof.

1.6 "Declaration" means this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Aviara, as from time to time amended.

1.7 "Improvement" means the buildings, roads, driveways, fences, walls, hedges, plantings, planted trees and shrubs and all other structures or landscaping improvements of every type and kind.

1.8 "Eligible Mortgage Holder" means the holder of a First Mortgage against a Lot who has in writing informed the Association of such Holder's address and requested notification of or the right to participate in (if applicable) certain matters including any action to be taken by the Association pursuant to Paragraphs 6, 21 and 27 hereof. "Eligible Mortgage" is a First Mortgage held by an Eligible Mortgage Holder.

1.9 "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage on a Lot which has informed the Association of such insurer's or guarantor's address and requested notification of or the right to participate in (if applicable) certain matters including actions to be taken by the Association pursuant to Paragraphs 6, 21 and 27 hereof.

1.10 "Lease" means any agreement for the leasing or rental of a Detached Unit or Townhome Unit constructed on a Lot.

1.11 "Lot" means any one of the Townhome Lots or Single Family Lots, and "Lots" means collectively the Townhome Lots and the Single Family Lots. "Townhome Lots" means Lots 83 through 89, inclusive, and Lots 186 through 194, inclusive, as depicted on the Old Plat. "Single Family Lots" means Lots 1 through 119, inclusive, as depicted on the New Plat, as these Single Family Lots may from time to time be annexed and included into this Declaration and the Project.

1.12 "Majority" or "Majority of Owners" means the Owners holding more than fifty percent (50%) of the votes entitled to be cast with respect to the affairs of the Association.

1.13 "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Arizona law) as security for the performance of an obligation, including without limitation a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means a person secured by a Mortgage, including a beneficiary under a deed of trust, and "Mortgagor" means the party executing a Mortgage, including a trustor under a deed of trust. "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon an applicable Lot.

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1.14 "Member" means a person entitled to membership in the Association as provided herein.

1.15 "Occupant" means a person or persons, other than an Owner, in rightful possession of a Lot.

1.16 "Owner" means the record owner, whether one or more persons, of the fee simple title, whether or not subject to any Mortgage, to any Lot, including a purchaser under an agreement for sale within the meaning of A.R.S. § 33-741 et seq., but excluding those having such interest merely as security for the performance of an obligation. In the case of Lots, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes § 33-801 et seq., the trustor shall be deemed to be the Owner thereof.

1.17 "Person" means: a natural individual, corporation, partnership, trustee or other entity capable of holding title to real property.

1.18 "Old Plat" means the subdivision plat for The Townes at Mountainview Ranch, recorded December 20, 1985, in Book 292 of Maps, page 15 in the office of the County Recorder of Maricopa County, Arizona. "New Plat" means the final subdivision plat for Aviara, recorded April 23, 1992, in Book 349 of Maps, Page 49, Official Records of Maricopa County, Arizona, as may be amended from time to time. The New Plat replats a portion of the Old Plat.

1.19 "Phase" means the real property described on Appendix Two attached hereto. Without limiting the foregoing, the phases of development set forth in Paragraph 31 are not subject to this Declaration except at the time and in the manner provided in Paragraph 31.

1.20 "Property" or "Project" means the Townhome Lots, Single Family Lots, and all Common Area, as the same may be expanded pursuant to Paragraph 31 hereof.

1.21 "Record" or "Recording" means to record or the act of recording, in the office of the County Recorder of Maricopa County, Arizona.

1.22 "Single Family" means a group of one or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than five persons not all so related, together with their domestic servants, who maintain a common household in a Single Family Residence.

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1.23 "Single Family Residential Use" means the use of a Single Family Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.24 "Structural Maintenance Area" means the roofs, gutters, downspouts and exterior building surfaces (structural walls only, excluding glass surfaces and doors) of all Townhome Units constructed on the Property. The term "Structural Maintenance Area" includes any "Party Structure" described in Paragraph 10 below.

1.25 "Townhome Unit" means a townhouse or similar shared wall dwelling unit located on the Townhome Lot. "Detached Unit" means a single family detached house located on a Single Family Lot.

1.26 "Inventory Lots" means only those Single Family Lots owned by Declarant upon which a Detached Unit has not been completed and constructed, as evidenced by the lack of a final Certificate of Occupancy from the City of Scottsdale. "Completed Inventory Lots" means only those Single Family Lots owned by Declarant upon which a Detached Unit has been completed, as evidenced by the issuance of a final Certificate of Occupancy from the City of Scottsdale.

1.27 "Plat" or "Plats" mean the Old Plat as amended and replatted in part by The New Plat.

1A. Amendment and Restatement.

1A.1 Restatement. This Declaration is intended to fully incorporate, amend, and restate the Original Declaration. From and after the Restatement Date, no reference need be made to the Original Declaration when dealing with any matters affecting the Property.

1A.2 Approval. This Declaration and the replatting described in Paragraph 1A.3 below has been approved by the Declarant, the Association, and the requisite number of Owners in a manner described in Paragraph 21 of the Original Declaration.

1A.3 Status. The Old Plat and the Original Declaration created a planned development comprised of two hundred two (202) lots for townhomes and five (5) tracts of common area. All lots and common area tracts described in the Old Plat, except for the Townhome Lots and Tract E, as depicted on the Old Plat, have been re-platted by the New Plat. The New Plat has created one hundred nineteen (119) single family lots and four (4) tracts of Common Area (i.e., Tracts A, B, C, and D) in place of various lots and various common area tracts which comprised the Old Plat.

1A.4 Clarification. To clarify any inconsistencies, errors, or confusions which may have resulted under the Old Plat and the Original Declaration, all prior conveyances described in the Original Declaration or the Old Plat shall be deemed to be abolished. As of the Restatement Date, all of the Townhome Lots, whether owned by Declarant or other Owners, shall be deemed to be irrevocably annexed into this Declaration. As of the Restatement Date, fee simple title to all Common Area shall be deemed to have been conveyed to the Association. As of the Restatement Date, only those Single Family Lots which are described on Appendix One attached to this Declaration are subject to and annexed into this Declaration. All Single Family Lots which are depicted on the New Plat but which are not listed on Appendix One will be deemed to be phases which may from time to time be annexed into this Declaration.

1A.5 New Common Area. Immediately after the recordation of this Declaration, Declarant shall convey to the Association fee simple title to Tracts A, B, C, and D as described in the New Plat and Tract E as described on the Old Plat.

1A.6 Plats. After recordation of this Declaration, the Project shall be subject to two plats. The Old Plat, with respect to the Townhome Lots and Tract E of the Common Area, and the New Plat, with respect to the Single Family Lots and Tracts A, B, C, and D of the Common Area.

1A.7 Subdivision Name. From and after the Restatement Date, the Project and subdivision shall be commonly known as "Aviara".

1A.8 Previous Warranty. By succeeding to the rights of the Declarant, Conveying Owner and each successor Declarant will not be deemed to have accepted any responsibility or liability for any warranty or for the completion of any warranty work made or promised by the previous Declarants (including Pulte).

1A.9 Membership. By the recordation of this Declaration, the Association, the Owners, and the Conveying Owner confirm that all of the Owners of Townhome Lots shall be deemed to be Class A members in the Association, whether the Townhome Lot is owned by an Owner or the Conveying Owner. After the recordation of this Declaration, the Association, the Owners, and the Conveying Owner confirm that the Declarant, as the owner of Single Family Lots, shall continue to be deemed a Class B member with respect to the Single Family Lots only. Upon the completed conveyances of ownership of the Single Family Lots to WH/Arizona, Inc., a California corporation, which is authorized to transact business in Arizona as WH/Arizona, Inc. of CA(FN) ("Watt"), Watt



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shall be deemed to be the Class B member in the Association with respect to the Single Family Lots, and Watt shall be deemed to have succeeded to all rights of the Declarant under the Constituent Documents. At such time as the Single Family Lots are conveyed to third-party purchasers, the Class B membership with respect to any conveyed Single Family Lots will be converted into Class A membership.

2. Association. The Association has been formed to serve as the governing body for all of the Owners for the protection, improvement, alteration, expansion, augmentation, disposal, divestment, redescription, maintenance, repair, replacement, administration and operation of the Common Areas, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds received by the Association, and other matters as provided in the Constituent Documents. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of the Constituent Documents. Each Owner shall be a Member of the Association as soon and so long as he shall be an Owner. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner, and the new Owner shall likewise automatically succeed to such membership in the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant (and then only to such purchaser) or by intestate succession, testamentary disposition, foreclosure of a Mortgage of record or other legal process transferring fee simple title to such Lot (and then only to the Person to whom such fee simple title is transferred). Any attempt to make a prohibited transfer of a membership will be void and will not be recognized by or reflected upon the books and records of the Association.

2.1 Classes of Membership; Voting Rights of Classes. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of Townhome Lots and Single Family Lots with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The voting for such Lot shall be exercised as such Persons among themselves determine, but in no event shall more than one vote be cast with respect to any Class A Lot. The vote of each Lot must be cast as a unit and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to

vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with with the authority and consent of all other Owners of the same Lot. In the event more than one vote is cast for a particular Lot during a particular vote of the Association, none of said votes shall be counted and said votes shall be deemed void.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Single Family Lot owned. The total votes which Declarant shall be entitled to cast may be cast in such proportion on any matter as Declarant may determine. Each Class B membership shall cease and be converted to Class A membership, without further act or deed, upon the happening of any of the following events:

2.1.1 Upon the conveyance by Declarant of any particular Lot to an Owner, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including a pledge or assignment by Declarant to any lender as security) as to some or all of the Lots owned by Declarant, any conversion under this subparagraph shall occur only with respect to the particular Lot or Lots so sold or otherwise disposed of; or

2.1.2 With respect to all remaining Class B memberships, upon the first to occur of the following:

(i) Upon the expiration of One Hundred Twenty (120) days following the first date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership (tripled as provided above), or

(ii) Five (5) years after the conveyance of the first Single Family Lot to an Owner other than Declarant.

Solely for purposes of determining the above conversion of Class B Membership to Class A Membership, the votes of the Members shall be calculated as though there were one hundred thirty-five (135) Lots in the Property, said one hundred thirty-five (135) Lots being the planned total for the Property as set forth in Paragraph 31, with the voting rights of all one hundred thirty-five (135) Lots allocated to Declarant except

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for the voting rights for Lots which vest or have vested in other Lot Owners.

If any lender to whom Declarant has assigned, as security, all or substantially all of its rights under this Declaration succeeds to the interest of Declarant by virtue of said assignment, the Class B Memberships shall not be terminated thereby, and such lender or other Person shall hold the Class B Membership on the same terms as such were held by Declarant pursuant hereto. Pursuant to the terms of this paragraph and Paragraph 31 hereof, the relative voting strength of the Declarant and the other Owners may change, and control, even though vested in other Owners, may nevertheless revert to the Declarant, by virtue of the provisions of such paragraphs if and to the extent the Property is expanded in accordance with Paragraph 31 hereof.

2.2 Qualifications of Directors. Each director of the Board shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of such Owner). If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director, and his place on the Board shall be deemed vacant. The requirements of this subparagraph shall not apply to directors elected as a result of any of the votes cast by the Class B Member.

2.3 Board's Determination Binding. Subject to the right of any Owner to institute an action at law or in equity pursuant to the provisions of Paragraph 20 hereof, the determination by the Board shall be final and binding on each and all of such Owners in the event of any dispute or disagreement between any Owners relating to the Property, or any question of interpretation or application of the provisions of the Constituent Documents.

2.4 Additional Provisions in Articles of Incorporation and Bylaws of the Association. The Articles and Bylaws may contain any provision not inconsistent with law or with this Declaration relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and Members.

3. Use of Common Areas. There shall be appurtenant to each Lot a non-exclusive right and easement to use the Common Areas in common with all other persons entitled to use the Common Areas as may be required for the purposes of access, ingress and egress to and from, and the use, occupancy and enjoyment of, the Lots and the Common Areas for their intended purposes as provided herein. Such right and easement shall extend to each Owner and

Occupant and the agents, servants, tenants, family members and invitees of each Owner and Occupant. Such right and easement shall be subject to such limitations, restrictions, rules and regulations as may from time to time be promulgated by the Board, and shall be subject to and governed by the provisions of the Constituent Documents. The Board shall have authority to lease, convey easements, or grant concessions consistent with the overall character and use of the Property with respect to parts of the Common Areas and to change the character, description and use thereof, subject to the provisions of the Constituent Documents. Any funds received by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe. Notwithstanding any other provision hereof to the contrary, Declarant shall be entitled to exclusive access to and occupancy of all or any portion of any Lot until such time as any construction thereupon has been completed and the particular Lot has been conveyed to an Owner by Declarant, and Declarant shall be entitled to non-exclusive access to and occupancy of all or any portion of the Common Areas until such time as all Lots have been conveyed to Owners other than Declarant. Notwithstanding any provision in the Constituent Documents, there shall be no restriction upon any Owner's right of ingress and egress to his or her Lot, which right shall be perpetual and appurtenant to the ownership of such Owner's Lot.

4. Mortgages. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages against his Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except to the extent of his Lot.

5. Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Arizona with a rating in Best's Insurance Guide (or any comparable publication) of at least A-AAA (or any comparable rating). All such insurance, to the extent possible, shall name the Association or its authorized representative or trustee as the Insured. The Board shall review all such insurance at least annually and shall increase the amounts thereof as it deems necessary or appropriate. To the extent possible, such insurance shall:

(1) Provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents and against each Owner and each Owner's employees, agents and invitees, and against

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each Mortgagee of all or any part of the Property or of any Lot, and any other person for whom the Association, any Owner or Mortgagee may be responsible and shall provide for recognition of any authorized representative or trustee of the Association, if applicable;

(2) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee of all or any part of the Property or any Lot and that the insurance policy shall not be brought into contribution with insurance maintained by an Owner or Mortgagee of all or any part of the Property or any Lot;

(3) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and all First Mortgagees;

(4) Contain a standard "without contribution" Mortgage clause endorsement in favor of any Mortgagee, its successors and assigns, of any Lot;

(5) Contain, if available, an "agreed amount" and "inflation guard endorsement";

(6) Contain a "severability of interest endorsement" which shall preclude the insurer from denying the claim of any Lot Owner or the Association due to the negligent acts of the Association or any Owner(s), respectively.

Under no circumstances shall any policies of insurance be obtained where (i) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, any Lot Owner or any Mortgagee; or (ii) under the terms of the insurance carrier's charter, bylaws or policy, loss payments are contingent upon action by the insurance carrier's board of directors, policy holders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent any Lot Owner or any Mortgagees from collecting insurance proceeds. Such public liability and property damage insurance may provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice. Certificates of insurance coverage or copies of insurance policies shall be issued to and at the expense of each Owner and each Mortgagee who make or on whose behalf written request is made to the Association for any such certificate or copy. The cost and expense of all insurance

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obtained by the Association, except insurance covering additions, alterations or improvements made to a Lot by an Owner or other insurance obtained at the request of and specifically benefiting any particular Owner, shall be a Common Expense under Paragraph 30.

5.1 Casualty Insurance. The Association shall obtain and maintain a master policy or policies of casualty insurance covering: (i) the Common Areas and all Improvements located on the Common Areas, including any personal property situated upon the Common Areas, insuring against loss or damage by fire and such other hazards as are covered under standard extended coverage policies, for not less than one hundred percent (100%) of its replacement cost, as determined on an annual basis by the Board upon advice from an acceptable insurance company; and (ii) the Structural Maintenance Areas of Townhome Units only. Such master policy or policies of casualty insurance shall, to the extent available, contain a standard all-risk endorsement and shall insure against all other perils which are customarily covered with respect to similar projects. Each Owner shall insure the Owner's Lot and all Improvements located on the Lot including the Townhome Units and Detached Units. Except as provided above with respect to the Structural Maintenance Areas of Townhome Units, the Association shall not be obligated to obtain property insurance, liability insurance, flood insurance, or any type of insurance covering the Townhome Units, Detached Units, Townhome Lots, or Single Family Lots or any personal property or fixtures located within or attached to any of the foregoing.

5.2 Proceeds from Insurance. If any of the Improvements on the Common Areas or Structural Maintenance Areas are damaged by fire or other casualty, insurance proceeds payable to the Association shall be used to rebuild or repair such damage substantially in accordance with the condition before the damage. Any excess insurance proceeds shall be deposited with the general funds of the Association. In the event the proceeds of the Association's insurance policy are insufficient to rebuild or repair the damaged Improvements on the Common Areas, then the Association may use funds from its general account or, if necessary, from levying a special assessment on all Owners to restore or rebuild said Improvements. In the event the proceeds of the Association's insurance policy are insufficient to rebuild or repair the Structural Maintenance Areas, the Association may levy a special assessment on the Owners to Townhome Lots to rebuild the Structural Maintenance Area. The Association's use of funds from its general account or levy of a special assessment shall not constitute a waiver of the Association's or any Owner's right to institute a legal proceeding or suit against the Person or Persons responsible, purposely or negligently, for the damage.

5.2.A Total Destruction. In the event the Property subject to this Declaration is totally or substantially damaged or destroyed, the First Mortgagees shall receive timely notice thereof. The repair, reconstruction or disposition of the Property and the depositing of insurance proceeds shall be as provided by an agreement approved by not less than fifty-one percent (51%) of the votes of each class of membership and not less than seventy-five percent (75%) of all First Mortgagees (based on one (1) vote for each First Mortgage held).

5.3 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering liability for bodily injury, including death, and liability for property damage occurring in, upon or about the Common Areas. The Association and all Lot Owners shall be insured with respect to such liability arising out of the ownership, maintenance, repair or operation of the Property. The limits of liability for such coverage shall not be less than \$1,000,000.00 for each occurrence with respect to bodily injury and property damage.

5.4 Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable law.

5.5 Fidelity Bonds. The Association shall obtain and maintain bonds covering all persons or entities which handle funds of the Association, including without limitation any professional manager employed by the Association and any of such professional manager's employees, in amounts not less than the maximum funds that will at any time be in the possession of the Association or any professional manager employed by the Association but, in no event less than the sum of the total assessments for a three (3) month period on all Lots and all reserve funds maintained by the Association. With the exception of a fidelity bond obtained by a professional manager covering such professional manager's employees, all fidelity bonds shall name the Association as an obligee. In addition, all such bonds shall provide that the same shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

5.6 Other Insurance by the Association. The Association shall also have the power and authority to obtain and maintain other and additional insurance coverage, including, but not limited to, casualty insurance covering personal property of the Association, and fidelity bonds or insurance covering employees and agents of the Association. Notwithstanding any other provisions of this Declaration, the Association shall continuously maintain in effect such casualty, flood and

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liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements for planned lot development projects established by Federal National Mortgage Association ("FNMA"), so long as FNMA is a Mortgagee or Owner of a Lot, except to the extent that such coverage is not available or has been waived in writing by FNMA.

5.7 Insurance by the Declarant. So long as Declarant remains the Owner of more than one (1) lot or so long as may be required under the Veterans Administration, Declarant shall maintain one or more policies of liability insurance which in all respects comply with the requirements of the Veterans Administration.

5.8 Owner Insurance. Each Owner shall maintain property damage and liability insurance for the Owner's Lot and the Owner's Townhome Unit or Detached Unit.

6. Destruction, Condemnation and Restoration of the Common Areas. In the event of damage or destruction to or the condemnation of any portion of the Common Areas, restoration of the Common Areas shall be undertaken by the Association without a vote of the Owners. Such restoration shall be performed substantially in accordance with this Declaration and the original plans and specifications for the Common Areas unless other action is approved by Owners of Lots to which sixty-seven percent (67%) of the votes entitled to be cast with respect to the affairs of the Association are appurtenant and by Eligible Mortgage Holders holding First Mortgages on Lots to which at least seventy-five percent (75%) of the votes entitled to be cast with respect to the affairs of the Association are appurtenant.

6.1 Restoration by Lot Owners. Subject to other provisions of this Declaration, in the event of damage to or destruction of any part of a Lot or Townhome Unit or Detached Unit, the Owner shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications therefor. Each Owner shall have an easement of reasonable access into any adjacent Lot for purposes of this repair or reconstruction.

7. Maintenance, Repairs and Replacements; Right of Access. Except as otherwise provided herein, each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements for all Townhome Lots and Single Family Lots and all Improvements located upon the Owner's Lot, any air conditioning, electrical, plumbing and heating systems and lines which serve such Lot and the patio, rear yard and entry area, if any, behind any fence, entry gain or gateway. The Association shall furnish and shall be responsible for, as a Common Expense allocable among the Owners as described in the Constituent Documents, all of the maintenance, repairs and



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replacements to the Common Areas, the front yard areas of all Townhome Lots, and any Structural Maintenance Area located on a Townhome Lot.

7.1 Landscaping. Except for the front yard area of Townhome Lots (which will be maintained by the Association), all landscaping located on any Lot shall be kept adequately weeded and watered and neatly trimmed by such Owner. No plant material shall be installed by an Owner which will exceed a height, at maturity, in excess of six (6) feet, without the prior written consent of the Board.

7.2 Damage by Owner. If, due to the willful or negligent act of an Owner or a member of his family or guest or other occupant or visitor of such Owner, or other person for whom such Owner may be responsible, damage shall be caused to the Common Areas or to a Lot or Lots or any structure(s) erected on the Lots, or, maintenance, repairs or replacements shall be required which would otherwise be a Common Expense (as hereinafter defined), then such Owner, if liable for such damage under local law, upon receipt of a statement from the Board, shall pay for such damage and for such maintenance, repairs or replacements as may be determined by the Board. The amount payable for such maintenance, repairs or replacements, together with interest at the rate of twelve percent (12%) per annum from the date such amount is due, costs and attorneys' fees, shall be secured by a lien against such Owner's Lot as provided in Paragraph 30.1 hereof. An authorized representative of the Board, or of the manager or managing agent employed by the Association, and all contractors and repairmen employed or engaged by the Association or such manager or managing agent, shall be entitled to access at any time to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any Lots or any structures erected on the Lots.

7.3 Single Family Lots. The Association shall not be responsible for the maintenance of the Detached Units located on any Single Family Lots. It shall be the sole responsibility of the Owner of a Single Family Lot to maintain the exterior of the Detached Unit and all landscaping located on the Single Family Lot in a neat and attractive condition..

7.4 Front Yard Area. As used in the Declaration, the "front yard area" of a Townhome Lot shall mean the area of a Townhome Lot located between the Townhome Unit (or the front fence of a Townhome Unit) and an adjacent street. The front yard area will be maintained by the Association as a Common Expense allocable to the Owners of Townhome Units.

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8. Alterations, Additions or Improvements. No alterations of any Common Areas or any additions or Improvements thereto or any alterations to any exterior portion of any Townhome Unit or Detached Unit shall be made by any Owner, except Declarant, without the prior written approval of the Board. Any Owner may make non-structural alterations, additions or Improvements within the interior of any Townhome Unit without the prior written approval of the Board, but such Owner shall be responsible for any damage to any portion of any adjacent Townhome Unit which may result from such alteration, addition or Improvement.

9. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all of the interior decorating within any Townhome Unit or Detached Unit constructed upon his Lot, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating.

10. Party Walls of Townhome Units. Any wall, column or other structure constructed upon the boundary line between two Townhome Lots shall be a "Party Structure". The rights and duties of Owners of Townhome Lots with respect to any Party Structure shall be as follows:

(1) The Owners of contiguous Townhome Lots upon which a Party Structure has been constructed shall have the right to use such wall equally; provided that such use by one Owner does not interfere with the use and enjoyment of such by the other Owner.

(2) In the event that any Party Structure is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair such Party Structure without cost to the other adjoining Townhome Lot Owner or Owners.

(3) In the event any such Party Structure is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests or family, it shall be the obligation of the Association to rebuild and repair such Party Structure with all available insurance proceeds from the Association's or the respective Owner's property damage insurance policies, and the costs incurred in connection therewith shall be a Common Expense allocable to the Owners of Townhome Lots.

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(4) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Structure without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(5) In the event of a dispute between Owners of Townhome Lots with respect to the construction, repair or rebuilding of a Party Structure, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(6) Each Owner of Townhome Lots shall permit other Owners and the Association or their representatives, when so required, to enter his Townhome Lot for the purpose of repairing or maintaining a Party Structure, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services; provided, that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate with no advance notice required.

10A. Fences on Single Family Lots. Except as may be installed by the Declarant, no side or rear fence and no side or rear wall, other than the Party Structure of a Townhome Unit constructed on a Townhome Lot, shall be more than six (6) feet in height. For the purposes of this Paragraph 10A, the side or rear fence or wall shall be called a "Fence". Notwithstanding the foregoing, any prevailing governmental regulations shall take precedent over these restrictions if the governmental regulations are more restrictive. Unless otherwise approved by the Board, all Fences and any materials used for Fences dividing Single Family Lots or dividing a Single Family Lot and an adjacent Townhome Lot or dividing a Single Family Lot and adjacent Common Area must be a block construction and of new materials. The color of the Fences will be selected by the Declarant, and neither the color nor design may be changed without the prior approval of the adjacent Owners, the Declarant, and the Board. All Fences shall be maintained in good condition or repair. Subject to the following provisions of this Paragraph 10A, in the event any Fence installed by Declarant is wholly or partially damaged by any cause, the damaged portion must be promptly restored to its original condition by the Owners of the adjacent Lots. Declarant will endeavor to construct all Fences upon the dividing line between the Lots. By virtue of becoming an Owner, each Owner acknowledges and accepts that the Fences installed by the Declarant may not be exactly upon the dividing line because of minor encroachments, engineering errors, or physical conditions. All Fences will be maintained at the joint cost and expense of the adjoining Lot Owners. If a Single Family Lot

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adjoins Common Areas, the Fence will be maintained at the joint cost of the Owner of the Single Family Lot and the Association. Each adjoining Owner shall be solely responsible for all damage and destruction to the Fence caused by the acts or omissions of that Owner or that Owner's family, agents, guests, invitees, licensees, or tenants. For the purposes of maintaining and repairing a Fence located on or near a dividing line between Single Family Lots or between a Single Family Lot and a Townhome Lot, an easement not to exceed five (5) feet in width is created over the portion of every adjacent Single Family Lot, Townhome Lot, or Common Area, as applicable, to allow the adjoining Owner access for the purposes of maintenance set forth in this Declaration. With respect to any Fence not located exactly on a dividing line between the Lots, but located near or adjacent to the dividing line, each affected Owner is granted a permanent easement over any property adjoining the Owner's Lot up to the center line of the Fence for the use and enjoyment of that Owner.

11. Encroachment. If any structure constructed on the Common Areas shall actually encroach upon any Lot, or if any structure constructed upon any Lot shall actually encroach upon any portion of the Common Areas, or if any structure constructed upon any Townhome Lot shall actually encroach upon any other Townhome Lot, whether such encroachment results from the initial construction or from subsequent repair, reconstruction, settlement or shifting, there shall be deemed to be mutual easements in favor of the Association as Owner of the Common Areas and the respective Lot Owners involved to the extent of such encroachment so long as the same shall exist provided, however, that such easement shall not result from any alteration, addition or improvement made by an Owner, except Declarant, without the prior written approval of the Board. The Association shall at all times have the right to maintain any structures on any Common Areas now existing or hereafter constructed, regardless of any encroachment now or hereafter existing of any such Common Areas on any Lot.

12. Purchase of Lot by Association. Upon the consent or approval of a Majority of Owners present and voting at a general or special meeting of the Members of the Association or in such other manner as may be deemed by the Board to be necessary or expedient, the Board shall have the power and authority to bid for and purchase any Lot at a sale pursuant to a Mortgage foreclosure, trustee's sale under a trust deed, or a foreclosure of any lien for assessments provided for in this Declaration, or at a sale pursuant to an order or direction of a court, or other involuntary sale, and the Board shall have the power and authority to finance such purchase of a Lot by Mortgage, special assessment or any other financing arrangement that the Board may deem necessary or expedient.

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13. Use and Occupancy Restrictions.

(1) No part of the Property shall be used other than for Single Family Residential Use and the related common purposes for which the Property was designed, except that Declarant shall have the right to maintain sales and any other offices, models, and signs on the Property, together with rights of ingress and egress therefrom, and to do such other acts and maintain such other facilities as are incidental to the development and sale of the Lots. Each Lot shall be used for Single Family Residential Use or for such purposes as are permitted by this Declaration and for no other purpose. The foregoing restrictions shall not, however, be construed in any manner as to prohibit an Owner from maintaining his personal and/or a reasonable professional library therein and keeping his personal business records therein.

(2) Without limiting the foregoing, no Owner shall permit his Lot to be used for transient or hotel purposes or shall enter into any Lease for less than the entire Lot. Any Lease shall be in writing, shall be for a period of not less than one (1) year, shall in all respects be subject to and in compliance with the provisions of the Constituent Documents and shall expressly provide that a violation of any such provisions shall be a default under such Lease. A copy of any such Lease shall be delivered to the Association prior to the commencement of the term of such Lease.

(3) The Common Areas shall be used only for access, ingress and egress to and from the respective Lots by the Owners thereof, their agents, servants, tenants, family members, licensees and invitees and for such other purposes as are incidental to the residential use of the Lots. The use, maintenance and operation of the Common Areas shall not be obstructed, damaged or unreasonably interfered with by any Owner or Occupant.

(4) No Owner or Occupant shall keep or maintain any thing or shall permit any condition to exist upon his Lot or cause any other condition on the Property which materially impairs any easement or right of any other Owner or otherwise materially impairs or interferes with the use and enjoyment by other Owners of their Lots and the Common Areas.

(5) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure on a Lot; however, an Owner may keep up to two (2) dogs or two (2) cats or two (2) other household pets or two (2) of any combination of common household pets on or within

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the rear yard portion of the Lot or in the Townhome Unit or Detached Unit. These permitted types and numbers of pets shall be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on any Lot which results in an annoyance to, or which are obnoxious to, other Owners in their reasonable opinion. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets. The Owner shall not leave any pet unattended for any unreasonably length of time and shall not allow its pet to move about the Property or Common Area unrestrained. Owners shall be liable for all damage caused by their pets. The Association, in its rules and regulations, may establish a system of fines or charges for any infraction of this Paragraph.

(6) No commercial truck, wagon, trailer, camper, mobile home, motor home, boat, or similar equipment or vehicles shall be kept, placed, maintained, constructed, reconstructed, or repaired upon any Lot or upon any street (public or private) unless: (i) the equipment or vehicles is not visible from neighboring property; or (ii) the equipment or vehicle is kept, placed, etc., on a nonrecurring, temporary basis less than twenty-four (24) hours.

(7) No temporary structure, mobile home, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be temporarily or permanently placed, maintained, or used on any Lot at any time, unless the item or building is not visible from neighboring property. No buildings or structures shall be moved from other locations onto any Lot, and all improvements erected on a Lot shall be of new construction. The restrictions contained in this Paragraph shall not prohibit additions to the Detached Unit which have been approved under the terms of this Declaration.

(8) No barbeque or other incendiary and/or smoke producing cooking devices shall be used or operated except upon the patio or rear yard area of any Lot (unless the Association provides a designated area therefor) and in no case shall such devices be operated in such a manner as to create a nuisance for other Owners or Occupants of any adjoining Lots.

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

(i) Signs used by Declarant to advertise the Lots or living units on the Lots for sale or lease;

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(ii) Signs on the Common Area as may be placed and approved by the Declarant or the Board;

(iii) One sign not more than twenty-four (24) inches by twenty-four (24) inches in size, advertising a Lot and Townhome Unit or Detached Unit for sale or rent placed in a location designated by the Board for such signs;

(iv) Any signs as may be required by legal proceedings; and

(v) Signs as may be approved in advance by the Board in terms of number, type, and style.

(10) Except as initially installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other Lot or the Common Areas, or any part thereof without the prior written consent of the Board.

(11) No window air conditioners or portable air conditioning units of any kind shall be installed in any Townhome Unit or Detached Unit or any other permitted structure constructed upon any Lot. No exterior window treatments, including without limitation, shutters, shade screens, mirrors and stained glass, shall be permitted without the prior written consent of the Board. Enclosures, shades, screens, foil or darkening material or other items affecting the exterior appearance of any patio or rear yard area of a Townhome Unit shall not be permitted without the prior written consent of the Board and shall be subject at all times to the rules and regulations of the Board and to the provisions of Paragraph 14 hereof.

(12) No radios, televisions or other antennas of any kind or nature shall be placed or maintained upon any Lot which are visible from any other Lot or the Common Areas or which may impair or affect any Structural Maintenance Area.

(13) No clotheslines shall be installed on any Lot and no Owner shall permit any personal property to be stored on any Lot which is visible from any other Lot or the Common Areas.

(14) Without limiting the foregoing, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and shall repair and correct any condition or refrain from any activity which might

interfere with the reasonable enjoyment by other Owners of their respective Lots or of the Common Areas. No Owner shall place or permit to be placed or accumulate any personal property, garbage, debris or refuse to be placed or to accumulate in the visible areas in or adjacent to any Lot. All garbage, debris and refuse shall be kept in suitable containers which must be stored within an area which is not visible from any other Lot or the Common Areas.

(15) Pursuant to the right of entry provided for in Paragraph 16 hereof, the Board or its authorized agents may enter upon any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expense shall be secured by a lien against such Lot as provided in Paragraph 30.1 hereof.

(16) The Association may modify the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Common Areas by reasonable rules and regulations of general application adopted by the Board from time to time.

While Declarant has no reason to believe that any of the restrictive covenants contained in this Paragraph 13 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

14. Architectural Control. Without the prior written consent of the Board or an architectural control committee appointed by the Board (the "Committee"), no improvement (including buildings, fences, walls, patio covers, balconies, ramadas, antennas, solar collectors or other solar devices, towers, awnings, signs or other structures) of any kind or character shall be constructed, erected, placed or maintained upon the Property, and no exterior addition, deletion, change or alteration shall be made to any Improvement, whether or not part of any Lot, which is visible from any other Lot or the Common Areas, or which consists of or would affect any Structural Maintenance Area or Party Structure. Without limiting the generality of the foregoing, no television antennas may be installed on the exterior of any Townhome Unit or Detached Unit if sufficient space is available to install the same in the attic or other interior areas of the Townhome Units or Detached Units. All Townhome Units or Detached Units shall have tile roofs of a type approved by the Board or Committee. No additions



to, changes in, or alterations of visible landscaping, grade or drainage shall be made, until plans and specifications showing the nature, kind, color, shape, height, materials, location and other physical attributes of the same shall have been submitted to and approved in writing as to harmony of external design, consistency and aesthetic integrity and location in relation to surrounding structures and topography by the Board or the Committee, and all such work shall be accomplished strictly in accordance with plans and specifications approved by the Board or the Committee. In the event the Board, or such Committee, if one has been appointed, fails to approve or disapprove such proposal at its next meeting occurring more than forty-five (45) days after proper plans and specifications have been received by it, such approval will not be required, and this paragraph will be deemed to have been fully complied with. The restrictions contained in this paragraph shall not apply to the Declarant in any manner. Approval by the Board or any Committee shall not be deemed or interpreted to be a warranty or confirmation of any kind concerning the engineering or structural integrity, or quality or safety of construction of the proposed Improvement or modification and the Owner proposing the same, and his agents and contractors, shall be solely responsible therefor.

15. Exemption of Declarant from Restrictions. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents, and subcontractors, or parties designated by it in connection with the construction, completion, sale or leasing of the Lots.

16. Entry by Board or its Agent. The Board or its authorized agents may enter upon any Lot or any Townhome Unit constructed thereon at any time, when any two (2) members of the Board deem it necessary or advisable for the enforcement of any restriction hereinabove set forth, to effect emergency or other necessary repairs or otherwise for the protection and preservation of that Lot or other Lots, provided, however, that except in the event of an emergency, the Board shall give the Owner of such Lot reasonable notice prior to such entry. In addition, the Board or its authorized agents may enter upon any Lot or any Townhome Unit constructed thereon at any time when any member of the Board or its authorized agent believes in his discretion that an emergency exists and that such entry is necessary in order to protect any Person or property on such Lot or adjoining Lots or for other good cause and such member of the Board or its authorized agent shall not be liable for any damage to such Townhome Unit as the result of the exercise of such right of entry. The party exercising this right of entry shall see that reasonable measures are taken to secure the Townhome Unit until either the Occupant or Owner shall be notified that the Townhome Unit has been entered.

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→ 17. Maintenance and Repair of Structural Maintenance Areas. The Association shall repair all leaks or other damage to the Structural Maintenance Areas of the Townhome Units of which the Association has notice in writing, provided, however, that the costs of repairing leaks or damage due to the willful or negligent act of any Owner or member of his family or guests or other Occupant or visitor of such Owner or other Owner or other Person for whom such owner may be responsible shall be the obligation of such Owner as provided in Paragraph 7 hereof. Under no circumstances will the Association be responsible for any damage to the interior of any Townhome Unit resulting from any leaks through the roof of such Townhome Unit or any other Structural Maintenance Area.

18. Public Dedication. Nothing contained in this Declaration shall be deemed to constitute a dedication for public use or to create any rights in the general public. Nothing contained in this Declaration shall be construed as creating an obligation on the part of the City of Scottsdale or any other governmental authority having jurisdiction over the Property and the Common Areas to maintain, repair or replace any portion of the Property, the Common Areas or the appurtenances thereto.

19. Copy of Declaration to New Members. The Board shall give each new Owner of a Lot a copy of this Declaration and any and all amendments hereto within sixty (60) days' written notice of the conveyance of a Lot to such new Owner. However, the failure of the Board to provide such copy shall not relieve the new Owner from complying with this Declaration nor waive any of the rights, conditions or restrictions stated herein or create any liability on the part of the Association, the Board or their agents.

20. Remedies. In the event that any Owner or the Association shall fail to comply with the provisions of the Constituent Documents or the rules and regulations of the Association, the Association or any Owner shall have each and all of the rights and remedies provided for in the Constituent Documents or said rules and regulations, or which may be available at law or in equity and may prosecute any action or other proceedings against such Owner or the Association for enforcement of such provisions and to obtain damages, injunctive relief or specific performance, or any combination of such remedies or any other and further relief which may be available at law or in equity, all without notice and without regard to the value of the defaulting Owner's Lot or the solvency of such Owner, together with a recovery of costs and reasonable attorneys' fees incurred in such action. In addition (and not in lieu of the foregoing remedies), the Association may seek and obtain foreclosure of its lien created pursuant to Paragraph 30 and the appointment of a receiver for the Lot of the defaulting

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Owner and/or an order to sell the Lot as hereinafter provided, or any combination of such remedies or any other and further relief which may be available at law or in equity, all without notice and without regard to the value of such Lot or the solvency of such Owner. The proceeds of any rental or sale shall, subject to applicable law, first be applied to discharge court costs, other litigation costs, including without limitation, reasonable attorneys' fees, and all other expenses of the proceeding and sale. The remainder of such proceeds shall be applied first to the payment of any unpaid assessments or other charges owed to the Association and the satisfaction of any other damages, and any balance shall be held by the Association for the payment of any future assessments or other charges. Upon the confirmation of the sale, the purchaser of such Lot shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of possession for the purpose of acquiring such possession, subject to applicable law. The purchase at any such sale shall take the Lot sold subject to this Declaration. All expenses of the Association in connection with any such action or proceeding, including court costs and reasonable attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of twelve percent (12%) per annum from the date incurred, costs and reasonable attorneys' fees, until paid, shall be secured by a lien against the Lot of such defaulting owner as provided in Paragraph 30.1 hereof.

Notwithstanding any provision of this Declaration to the contrary, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien and/or rights of any mortgagee except as herein expressly provided, and each and all of such covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any leasee under any Lease or against any Owner of any Lot whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

21. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the Restatement Date, after which time they shall be automatically extended for successive periods of ten (10) years, unless sooner revoked in the manner provided herein. The provisions of this Declaration may be changed, modified or amended by an instrument in writing setting forth such change, modification or amendment, signed by Owners holding not less than seventy-five percent (75%) of the total voting power of the Association; provided, however, that as long as any Class B membership remains outstanding, the Veterans Administration shall have consented in writing to any such change, modification or amendment and provided further, that

fifty-one percent (51%) of all Eligible Mortgage Holders shall have consented to any change, modification or amendment which establishes, provides for, governs or regulates any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repairs and replacement of the Common Areas;
- (4) Responsibility for maintenance and repair of the Common Areas and the Structural Maintenance Areas;
- (5) Rights to use of the Common Areas;
- (6) Boundaries of any Lot (other than those Single Family Lots owned by Declarant);
- (7) Convertibility of Lots into Common Areas or of Common Areas into Lots;
- (8) Subject to the provisions of Paragraph 30, expansion or contraction of Aviara of the addition, annexation or withdrawal of property to or from Aviara;
- (9) Insurance or fidelity bonds;
- (10) Leasing of Townhome Units and Detached Units;
- (11) Imposition of any restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Lot;
- (12) Any decision by the Association to establish self management if professional management has been previously required by an Eligible Mortgage Holder;
- (13) Restoration or repair of the Common Areas after damage, destruction or condemnation in a manner other than as provided in Paragraph 6 hereof subject to any greater Mortgagee approval rights therein contained;
- (14) Any action to terminate the legal status of the Common Areas after substantial destruction or condemnation occurs;
- (15) Any provisions which are for the express benefit of holders of Mortgages, Eligible Mortgage Holders or Eligible Insurers or Guarantors of First Mortgages on any Lot.

Any Eligible Mortgage Holder who receives a written request to approve any such change, modification or amendment and who does not give notice of disapproval to the requesting party in the manner provided in Paragraph 22 hereof within thirty (30) days after receipt of such request shall be deemed to have approved such change, modification or amendment. Notwithstanding anything contained herein to the contrary, if Arizona law, this Declaration, the Articles or the Bylaws require the consent or agreement of the Owners holding a specified percentage of the voting power of the Association for any such amendment or for any action specified in Arizona law or this Declaration, then any instrument so amending this Declaration or any provision hereof or providing for such action shall be signed by the Owners holding not less than such specified percentage. Any such change, modification or amendment accomplished under any of the provisions of this Paragraph 21 shall be effective upon recording of the instrument providing therefor signed and acknowledged as provided herein.

22. Notices. Notices provided for in the Constituent Documents shall be in writing and shall be mailed postage prepaid, if to the Association or the Board, addressed to the address to which payments of assessments are then sent, and, if to an Owner, addressed to the street address of such Owner's Lot. The Association or the Board may designate a different address or addresses to which notices shall be sent from time to time by giving written notice of such change of address to all Owners. Any Owner may also designate a different address to which notices shall be sent by giving written notice of his change of address to the Association. Notices shall be deemed delivered seventy-two (72) hours after being deposited properly addressed in the United States mail, postage prepaid, or when delivered in person. Upon written request to the Board, which written request specifies an address to which notices may be sent, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners of the Lot subject to the Mortgage held by such Mortgagee.

23. Severability. If any provision of the Constituent Documents or the rules and regulations of the Association, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Constituent Documents or the rules and regulations of the Association and the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby, and the remainder of the Constituent Documents or the rules and regulations, shall remain in full force and effect as if such invalid part were never included therein, and such invalid part shall be promptly amended as herein provided or reformed by such court so as to implement the intent thereof to the maximum extent permitted by law.

24. Perpetuities and Restraints on Alienation. If any of the easements, privileges, covenants, interests or rights created by this Declaration would otherwise be unlawful, void or voidable for violation of the Rule against Perpetuities, then such provision shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States, Ronald W. Reagan and the Governor of Arizona, Bruce E. Babbitt.

25. Rights and Obligations. Each grantee of Declarant or of any Owner, by the acceptance of a deed of conveyance, each purchaser under any agreement of sale within the meaning of A.R.S. §33-741, by execution of such agreement for sale and each Mortgagee by the acceptance of any instrument conveying any interest in the Property as security for the performance of an obligation, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and equitable servitudes and shall be binding upon and shall inure to the benefit of any grantee, purchaser or any Person having at any time any interest or estate in the Property in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument of transfer, and each such grantee shall be entitled to bring, and shall be subject to, an action for the recovery of damages, or for injunctive relief, or both, resulting from any breach of any such provisions.

26. Waiver. Any right or remedy provided for in this Declaration shall not be deemed to have been waived by any act or omission, including without limitation, any acceptance of payment or partial performance or any forbearance, except by an instrument in writing specifying such right or remedy and executed by the Person against whom enforcement of such waiver is sought.

27. Protection of Eligible Mortgage Holders. All affected Eligible Mortgage Holders and affected Eligible Insurers and Guarantors shall be entitled to written notification by the Association upon the commencement of any eminent domain or condemnation proceedings against all or any part of the Property or of substantial damage to or destruction of any part of the Property. Upon written request, all Eligible Mortgage Holders and Eligible Insurers and Guarantors shall have the right (i) to examine all books and records of the Association during normal business hours; (ii) to receive an audited financial statement of the Association as soon as available and, in any event, within

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ninety (90) days following the end of any fiscal year of the Association; (iii) to receive written notice of all meetings of the Owners and to designate a representative to attend all such meetings; (iv) to receive written notice of any default by any Mortgagor of a Mortgage held or insured by such Eligible Mortgage Holder or Eligible Insurer or Guarantor in the performance of any obligation by such Mortgagor under this Declaration or the Articles and Bylaws of the Association which default is not cured by such Mortgagor within sixty (60) days of the occurrence of such default; and (v) to receive written notice of any proposed action which would require the consent of Eligible Mortgage Holders holding Mortgages upon a specified number or percentage of Lots as set forth in this Declaration. With respect to audited financial statements furnished pursuant to this paragraph, such statements shall be prepared at the cost of the Eligible Mortgage Holder, Insurer or Guarantor requesting the same until fifty (50) Lots are subject to this Declaration, at which time such statements shall be prepared at the cost of the Association.

28. Professional Management Agreement. Any agreement for professional management of the Property and the Common Areas or any contract providing for services to be performed by the Declarant for the Association shall provide for termination by the Association with or without cause and without payment of a termination fee or penalty on thirty (30) days' written notice, and no such contract or agreement shall be of a duration in excess of one (1) year, but may be renewable by agreement of the parties for successive one (1) year periods.

29. Common Areas Owned by the Association. Simultaneously with the recording of this Declaration, if not already completed, Declarant shall convey to the Association all of the Common Areas for the purpose of providing recreational and related facilities for the benefit of the Association and the Owners of Lots including, without limitation, utilities, a swimming pool, private drives, landscaping of Common Areas and related facilities, and all other Areas of the Property except the Lots. If additional phases are subjected to the Declaration as provided in Paragraph 31, the Common Areas included in such phases shall be deeded to the Association promptly thereafter. All Owners shall have the non-exclusive right to use any or all of the Common Areas owned by the Association in accordance with the rules and regulations promulgated by the Association. The Association shall own, operate, manage, maintain, repair, rebuild and restore all of the Common Areas for the benefit of the Association and the benefit of the Lot Owners. The Association shall have the authority to dedicate, convey easements and grant concessions relative to portions of the Common Areas consistent with the overall character and use of the Property, subject to limitations set forth in the Constituent Documents. Subject to the provisions of Paragraph 21 hereof, and further subject to the

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approval of Owners holding not less than fifty-one percent (51%) of the total voting power of the Association, the Association shall be entitled to encumber the Common Areas or any portion thereof for the purpose of securing repayment of a loan or loans to finance the repair, rebuilding and restoration of the Common Areas and the Improvements located thereon.

29.1 Easements Over Common Areas. Easements over and under the Common Areas for the installation, repair and maintenance of sanitary sewer, water, electric, gas, telephone lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping, as shown on the Plats and as may be required to service the Property are hereby reserved by Declarant and its successors and assigns, including the Association, together with the right to grant and transfer the same.

30. Common Areas Maintenance Expenses. Except as provided below with respect to the Declarant, each Lot and Owner shall be subject to an assessment for, and each Owner other than Declarant further agrees to pay, a proportionate share of the expenses of the administration and operation of the Property, including by way of illustration, but not of limitation: (i) real property taxes and assessments levied against the Common Areas; (ii) premiums for required insurance; (iii) the costs of maintenance and repair of the Common Areas, the front yard areas of the Townhome Lots maintained by the Association, and the Structural Maintenance Areas; and (iv) reasonable reserves for contingencies, replacements or other proper purposes, all as determined by the Board (herein referred to as "Common Expenses"). To the extent determinable, the cost for Common Expenses attributed to the additional maintenance and repair required of the Townhome Lots will be separately but uniformly assessed among the Owners of Townhome Lots. The Association shall maintain a reasonable reserve for taxes and assessments levied against the Common Areas, repair and replacement of the Common Areas and the Structural Maintenance Areas and the appurtenances thereto. Notwithstanding anything contained in this Paragraph 30 to the contrary, the Declarant, from and after the Restatement Date, shall pay a monthly assessment for each Inventory Lot and Completed Inventory Lot in an amount equal to twenty-five percent (25%) of the monthly assessments otherwise assessable against a Single Family Lot provided, however, that so long as any Class B membership remains outstanding, Declarant shall reimburse the Association for any deficits resulting from these reduced assessments, up to an amount equal to the lesser of: (i) the deficiency; or (ii) the total amount of assessments which would otherwise have been charged to Owners of Single Family Lots for the applicable period. Under no circumstances shall Declarant have any responsibility for any deficits incurred as a result of capital improvements, reconstruction or additions to the Common Areas or the Lots or for any expenses incurred at any time there is no Class B membership outstanding.



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Declarant shall collect from each Owner other than Declarant a working capital fund for the Association for the initial months of the operation of the Property equal to at least two (2) months' estimated monthly Assessments for each Single Family Lot and Townhome Lot. The working capital funds for the Townhome Lots and Single Family Lots will be maintained in separate accounts and will be collected and paid to the Association at the time that the sale of that Lot is closed. The working capital funds in the account for Townhome Lots shall be used by the Association as the Association, in its discretion, may determine for the benefit of the Owners of Townhome Lots. The working capital funds in the account for the Single Family Lots shall be used by the Association as the Association, in its discretion, may determine for the benefit of the Owners of the Single Family Lots. Under no circumstances shall any Owner be entitled to reimbursement of any amounts paid to the Association to establish such fund or to a credit against regular monthly assessments or special assessments as a result of the working capital fund payments.

30.1 Payment of Common Expenses. Payment of the Common Expenses, including any prepayment thereof required by any contract for the sale of a Lot, shall be in such amounts, at such times and in such manner as may be provided herein or in the Articles and Bylaws or as determined by the Board. Notwithstanding anything contained herein or in the Articles or Bylaws to the contrary, assessments for the Common Expenses attributable to Single Family Lots of which Declarant is the Owner shall commence upon the Restatement Date. Assessments for the Common Expenses shall commence as to Owners other than Declarant upon the first day of the first month immediately following the conveyance of such Lot to an Owner other than Declarant. Due dates of Assessments shall be established by the Board and notice shall be given to each Lot Owner at least forty-five (45) days prior to any due date, provided that if assessments are to be due on a monthly basis, no notice shall be required other than an annual notice setting forth the amount of the monthly assessment and the day of each month on which each assessment is due.

The Board shall have the power to suspend an Owner's voting rights as a Member of the Association and/or rights to use recreational Common Areas for failure to comply with the Constituent Documents or duly enacted rules and regulations of the Association, provided that any suspension, except that resulting from failure to pay assessments, shall not exceed sixty (60) days per violation, and further provided that the non-complying Owner shall be given reasonable notice and the opportunity to be heard by the Board with respect to the alleged violation before a decision to impose discipline is reached. If any Owner shall fail or refuse to make any such payment of Common

Expenses when due, the amount thereof, together with interest thereon at the rate of twelve percent (12%) per annum from the due date of such payment, a reasonable late charge not exceeding twenty five percent (25%) of the amount of such payment as determined by the Board, costs and reasonable attorneys' fees, shall constitute a lien on such Owner's Lot and on any rents or proceeds therefrom and shall also be the personal obligation of the Owner of the Lot at the time the assessment became due provided, however, that such personal obligation shall not pass to such Owner's successors in title unless assumed by them. Such lien may, but shall not be required to be, evidenced by a notice executed by a member of the Board or any authorized agent of the Board setting forth the amount of the assessment and the legal description of the Lot subject to the lien. Such lien shall be subordinate to the lien of a recorded First Mortgage against the applicable Lot, acquired in good faith and for value, except for the amount of the unpaid Common Expenses and other charges which accrue from and after the date on which the First Mortgagee acquires title to or comes into possession of the applicable Lot or on which any purchaser at any trustee's or foreclosure sale acquires title to the Lot, and any lien for unpaid assessments and other charges prior to such date shall upon such date automatically terminate and be extinguished and such First Mortgagee or other purchaser shall not be liable for such unpaid assessments and other charges, provided, however, that the extinguishment of such lien shall not in any way affect the personal obligation of the Owner of the Lot at the time the payment giving rise to such lien became due. Any such assessments that are extinguished pursuant to the foregoing provision shall be reallocated and assessed against all Lots as a Common Expense.

Any person acquiring an interest in any Lot shall, upon giving written notice to the Board, be entitled to a statement from the Association setting forth the amount of unpaid assessments and other charges, if any, and no lien shall attach to such Lot in excess of the amount set forth in such statement, except for assessments and other charges which accrue or become due after the date thereof. The lien provided for in this paragraph may be foreclosed by the Association in any manner provided or permitted for the foreclosure of real property mortgages or deeds of trust in the State of Arizona.

30.2 Maximum Assessment for Common Expenses.

After the Restatement Date, the maximum monthly payment for a Townhome Lot shall be Seventy-Five and No/100 Dollars (\$75.00) per Townhome Lot, and the maximum monthly assessment for a Single Family Lot shall be Twenty-Two and No/100 Dollars (\$22.00) per Single Family Lot. After the first fiscal year of the Association, the Board may increase the maximum monthly assessments to meet the Common Expenses by the greater of: (i) ten percent (10%); or (ii) the index percentage described

below. The Board shall ascertain an index number for the U.S. Cities - All Items Average (1967 = 100) set forth in the Consumer Price Index for All Urban Consumers of the Bureau of Labor Statistics, United States Department of Labor, for the most recent month for which such Index has been published (represented by the letter "C" in the formula hereinafter set forth). The maximum monthly payment for such Common Expenses, for purposes of calculating the index percentage, assessed for such fiscal year (represented by the letter "R" in the formula hereinafter set forth) shall be an amount equal to: (I) the then current index number ("C") divided by the U.S. Cities - All Items Average (1967 = 100) set forth in said Consumer Price Index for all Urban Consumers for the same month one (1) year prior (represented by the letter "M" in the formula hereinafter set forth); and multiplied by: (II) the maximum monthly payment for the immediately preceding fiscal year.

$$R = \frac{C}{M} \times \text{maximum annual assessment for the immediately preceding fiscal year}$$

If the Consumer Price Index is no longer be published, then another index published by the Bureau of Labor Statistics or any other federal agency shall be substituted by the Board. Notwithstanding anything contained herein to the contrary, the maximum monthly assessment may be increased above that established by said Consumer Price Index formula provided that such increase shall have the assent of sixty-seven percent (67%) of each Class of Members who are voting in person or by proxy at a meeting called for such purpose. The provisions of this Paragraph 30 shall be deemed to be covenants running with the land and shall be binding upon each Owner and shall inure to the benefit of any person having any interest in the Property.

30.3 Special Assessments. In addition to the annual assessments for Common Expenses, the Association may levy, in any assessment year, a special assessment on all Lots for the cost of any construction, reconstruction, repair or replacement of a capital improvement in the Common Areas, and the Association may levy, in any assessment year, a special assessment on all Townhome Lots for the cost of maintaining or repairing any Structural Maintenance Area or front yard area located on the Townhome Lot which was unanticipated or underestimated expense normally covered by a regular assessment on Townhome Lots and, where necessary, the Association may levy, in any assessment year, a special assessment on all Lots assessed against the Common Areas; provided that any special assessment described above shall have the assent of Owners holding sixty-seven percent (67%) of the total voting power of the Association. Special assessments may be levied against an individual Lot and its Owner for reasonable monetary penalties for the violation or breach of any of the restrictions or conditions, the breach of any of the covenants or agreements

contained herein or the breach of any rules and regulations promulgated by the Board, all without the vote of any Owners.

30.4 Notice and Quorum For Any Action Authorized Under Paragraphs 30.2 and 30.3. Written notice of any meeting called for the purpose of taking any action authorized under Paragraphs 30.2 or 30.3 shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, Owners holding fifty percent (50%) of the total voting power of the Association shall constitute a quorum. In the event there are not enough Owners present or represented by proxy at the first meeting to constitute a quorum, a subsequent meeting or meetings may be called subject to the same notice requirement, and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum at the immediately preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting.

30.5 Past Assessments. Prior to the Restatement Date, the Declarant and all Owners shall remain liable for all assessments payable under the Original Declaration in the amount described in the Original Declaration. Nothing contained in this Declaration shall be deemed a waiver, credit, or forgiveness of any assessment due under the Original Declaration prior to the Restatement Date, and any delinquent amounts shall continue to be the personal obligations of the delinquent Owners and shall continue to be liens on the respective Townhome Lots. It is the intent of this Declaration merely to clarify and amend all various obligations of the Owners and any Declarant for the payment of assessments on and after the Restatement Date. As of the Restatement Date, Declarant and each Owner confirm that all assessments due with respect to the Single Family Lots are paid in full.

31. Phased Plan of Development; Changes to Units in Subsequent Phases. Declarant currently owns all of the Single Family Lots depicted on the New Plat but intends to develop the Single Family Lots in phases. Only the first Phase of Single Family Lots, consisting of the Single Family Lots described on Appendix One is currently part of Aviara, notwithstanding any other terms or provisions of this Declaration, and the remainder of the Single Family Lots described on the New Plat will be subject to this Declaration in the manner and at the times set forth in this Paragraph 31.

By recordation of a Supplemental Declaration of Annexation, the Declarant may from time to time conditionally annex into the Project and this Declaration the phases of Single Family Lots described on Exhibit "A". The Owner or other approvals (i.e., FHA, VA, of FNMA) will be necessary to annex the Single Family Lots as described on the New Plat.

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After seven years from the Restatement Date, the provisions of this Paragraph 31 shall be ineffective and inapplicable to effectuate the annexation of any phases of Aviara not yet then annexed through the procedures set forth herein. The foregoing sentence shall not effect any phases already annexed into Aviara as provided above on the date seven years from the recordation of this Declaration.

32. Annexable Property. The Property subject to this Declaration is also described as "Annexable Property" pursuant to the terms of that certain Declaration of Covenants, Conditions and Restrictions for Mountainview Ranch (the "Mountainview Declaration") recorded July 12, 1985, as Document No. 85-324423 in the Official Records of the Maricopa County, Arizona Recorder. Each Owner of a Lot acknowledges and agrees that by accepting a deed therefor, each said Lot shall be subject to the terms and provisions of the Mountainview Declaration if, and to the extent, the Property subject to this Declaration is annexed pursuant to the terms of the Mountainview Declaration. In said event, the terms of the Mountainview Declaration and the Project Documents described therein shall govern in the event of any inconsistency or conflict with this Declaration or the Constituent Documents. Subject to the foregoing, all requirements in this Declaration or the Constituent Documents shall be deemed additional to those in the Mountainview Declaration and the Project Documents described therein and the fact that certain provisions hereof or in the Constituent Documents may be more restrictive than those in the Mountainview Declaration shall not be deemed to create a conflict or inconsistency therewith.

This Declaration is executed as of the Restatement Date.

Lawyers Title of Arizona, Inc., an  
Arizona corporation, as Trustee under  
Trust No. 1530

By: David J. Wright  
David J. Wright, Trust Officer

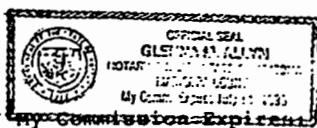
Aviara Homeowners Association (formerly  
The Townes at Mountainview Ranch  
Homeowners Association)

By: William J. Jones  
PRESIDENT

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STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

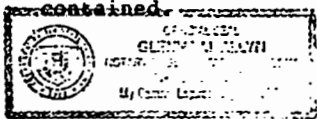
The foregoing instrument was acknowledged before me this 27th day of April, 1992, by David J. Wright, the Trust Officer of Lawyers Title of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. 1530, who executed the foregoing on behalf of the association, being authorized so to do for the purposes therein contained.



Glenn M. Allen  
Notary Public

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 27th day of April, 1992, by David J. Wright, the Trust Officer of Avlara Homeowners Association (formerly The Townes at Mountainview Ranch Homeowners Association), who executed the foregoing on behalf of the association, being authorized so to do for the purposes therein contained.



Glenn M. Allen  
Notary Public

My Commission Expires:  
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APPENDIX ONE

(Single Family Lots - Initial Phase)

Lots 26 through 28, inclusive, Lots 92 through 96, inclusive, and  
Lots 115 and 116, AVIARA, according to the New Plat.

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APPENDIX TWO

(Additional Phases of Single Family Lots)

Aviara I, Phase II

Lots 117 through 119, inclusive, AVIARA, according to the New Plat.

Aviara I, Phase III

Lots 97 through 103, inclusive, AVIARA, according to the New Plat.

Aviara II, Phase I

Lots 1 through 4, inclusive, and Lots 13 through 16, inclusive, AVIARA, according to the New Plat.

Aviara II, Phase II

Lots 5 through 12, inclusive, and Lots 17 through 19, inclusive, AVIARA, according to the New Plat.

Aviara II, Phase III

Lots 39 through 44, inclusive, Lots 54 through 56, inclusive, and Lots 79 through 84, inclusive, AVIARA, according to the New Plat.

Aviara II, Phase IV

Lots 45 through 51, inclusive, Lots 57 through 60, inclusive, and Lots 75 through 78, inclusive, AVIARA, according to the New Plat.

Aviara II, Phase V

Lot 29 and Lots 61 through 74, inclusive, AVIARA, according to the New Plat.

Aviara II, Phase VI

Lots 20 through 25, inclusive, Lots 34 through 38, inclusive, Lot 52, and Lot 53, AVIARA, according to the New Plat.

Declarant reserves the right to change this phasing schedule for, among other reasons, compliance with any financing requirements.