



*First American Title*

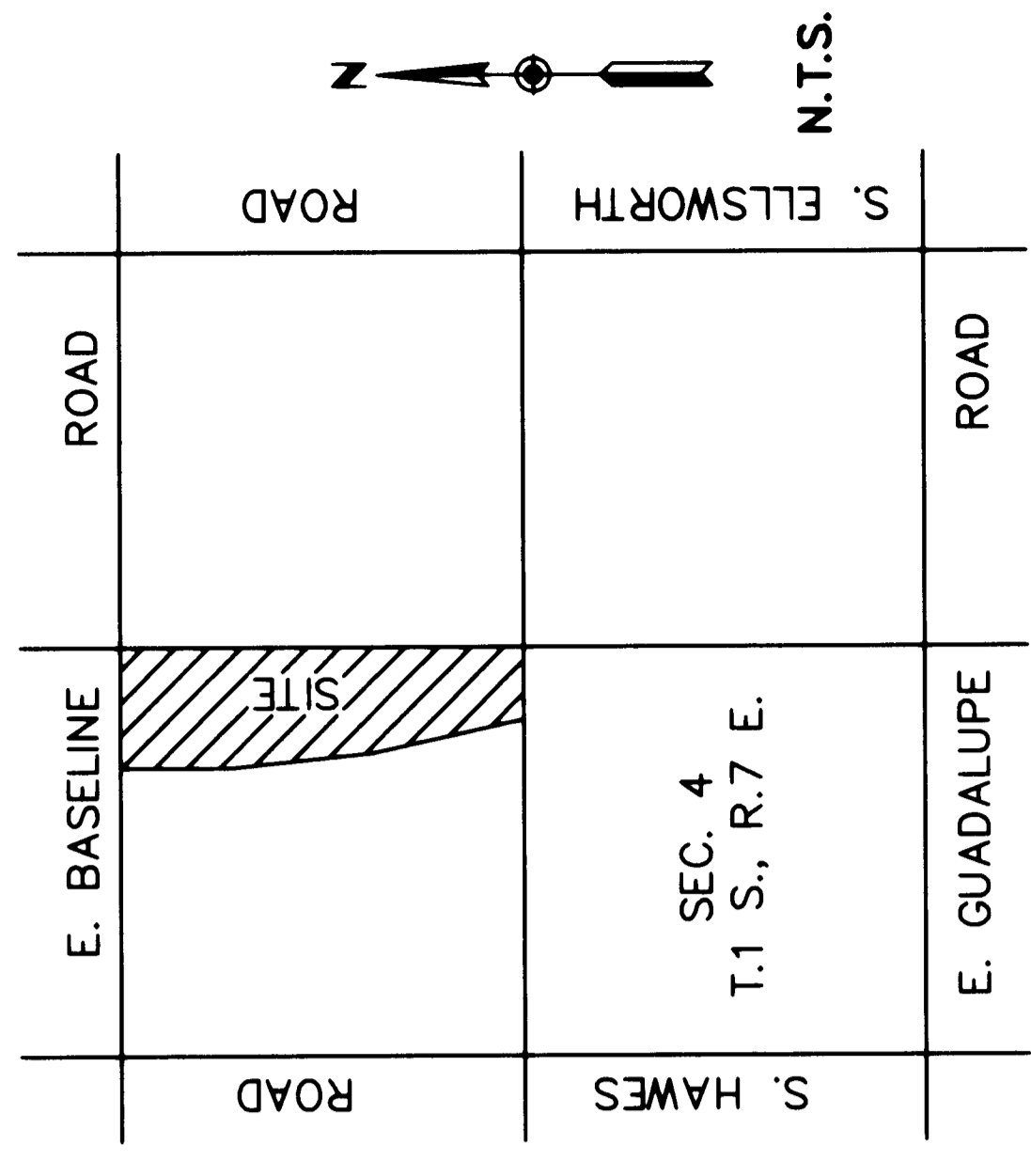
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# A FINAL PLAT OF BARRINGTON ESTATES AMENDED

A PORTION OF THE EAST 1/2, NW 1/4 OF SECTION 4  
T. 1 S., R. 7 E., GLA AND SALT RIVER MERIDIAN  
MARICOPA COUNTY, ARIZONA  
THIS PLAT IS GIVEN TO AMEND THE FINAL PLAT OF "BARRINGTON ESTATES"  
RECORDED IN BOOK 502, PAGE 49 MARICOPA COUNTY RECORDS



**VICINITY MAP**

### LOT AREAS

LOT1	3.737	0.0858	0.0775	3.376	0.0775	40.9531
LOT2	3.063	0.0703	0.0689	3.000	0.0689	
LOT3	3.523	0.0809	0.0817	3.751	0.0817	
LOT4	3.605	0.0828	0.0847	3.751	0.0847	
LOT5	3.319	0.0762	0.0798	3.841	0.0798	
LOT6	4.215	0.0968	0.0984	3.504	0.0984	
LOT7	3.353	0.0770	0.0804	3.781	0.0804	
LOT8	4.580	0.1047	0.1077	3.751	0.1077	
LOT9	3.269	0.0879	0.0917	3.001	0.0917	
LOT10	3.935	0.0954	0.0981	3.754	0.0981	
LOT11	3.866	0.0930	0.0976	4.232	0.0976	
LOT12	3.279	0.0753	0.0776	3.597	0.0776	
LOT13	4.070	0.0934	0.0975	5.646	0.0975	
LOT14	3.841	0.0892	0.0911	4.348	0.0911	
LOT15	4.053	0.0930	0.0961	3.766	0.0961	
LOT16	3.751	0.0861	0.0890	3.766	0.0890	
LOT17	3.001	0.0689	0.0719	3.766	0.0719	
LOT18	3.001	0.0689	0.0719	3.766	0.0719	
LOT19	3.001	0.0689	0.0719	3.766	0.0719	
LOT20	3.001	0.0689	0.0719	3.766	0.0719	
LOT21	3.001	0.0689	0.0719	3.766	0.0719	
LOT22	3.001	0.0689	0.0719	3.766	0.0719	
LOT23	3.001	0.0689	0.0719	3.766	0.0719	
LOT24	3.001	0.0689	0.0719	3.766	0.0719	
LOT25	3.001	0.0689	0.0719	3.766	0.0719	
LOT26	3.001	0.0689	0.0719	3.766	0.0719	
LOT27	3.001	0.0689	0.0719	3.766	0.0719	
LOT28	3.001	0.0689	0.0719	3.766	0.0719	
LOT29	3.001	0.0689	0.0719	3.766	0.0719	
LOT30	3.001	0.0689	0.0719	3.766	0.0719	
LOT31	3.001	0.0689	0.0719	3.766	0.0719	
LOT32	3.001	0.0689	0.0719	3.766	0.0719	
LOT33	3.001	0.0689	0.0719	3.766	0.0719	
LOT34	3.001	0.0689	0.0719	3.766	0.0719	
LOT35	3.001	0.0689	0.0719	3.766	0.0719	
LOT36	3.001	0.0689	0.0719	3.766	0.0719	
LOT37	3.001	0.0689	0.0719	3.766	0.0719	
LOT38	3.001	0.0689	0.0719	3.766	0.0719	
LOT39	3.001	0.0689	0.0719	3.766	0.0719	
LOT40	3.001	0.0689	0.0719	3.766	0.0719	
LOT41	3.001	0.0689	0.0719	3.766	0.0719	
LOT42	3.001	0.0689	0.0719	3.766	0.0719	
LOT43	3.001	0.0689	0.0719	3.766	0.0719	
LOT44	3.001	0.0689	0.0719	3.766	0.0719	
LOT45	3.001	0.0689	0.0719	3.766	0.0719	
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LOT58	3.001	0.0689	0.0719	3.766	0.0719	
LOT59	3.001	0.0689	0.0719	3.766	0.0719	
LOT60	3.001	0.0689	0.0719	3.766	0.0719	
LOT61	3.001	0.0689	0.0719	3.766	0.0719	
LOT62	3.001	0.0689	0.0719	3.766	0.0719	
LOT63	3.001	0.0689	0.0719	3.766	0.0719	
LOT64	3.001	0.0689	0.0719	3.766	0.0719	
LOT65	3.001	0.0689	0.0719	3.766	0.0719	
LOT66	3.001	0.0689	0.0719	3.766	0.0719	
LOT67	3.001	0.0689	0.0719	3.766	0.0719	
LOT68	3.001	0.0689	0.0719	3.766	0.0719	
LOT69	3.001	0.0689	0.0719	3.766	0.0719	
LOT70	3.001	0.0689	0.0719	3.766	0.0719	
LOT71	3.001	0.0689	0.0719	3.766	0.0719	
LOT72	3.001	0.0689	0.0719	3.766	0.0719	
LOT73	3.001	0.0689	0.0719	3.766	0.0719	
LOT74	3.001	0.0689	0.0719	3.766	0.0719	
LOT75	3.001	0.0689	0.0719	3.766	0.0719	
LOT76	3.001	0.0689	0.0719	3.766	0.0719	
LOT77	3.001	0.0689	0.0719	3.766	0.0719	
LOT78	3.001	0.0689	0.0719	3.766	0.0719	
LOT79	3.001	0.0689	0.0719	3.766	0.0719	
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LOT82	3.001	0.0689	0.0719	3.766	0.0719	
LOT83	3.001	0.0689	0.0719	3.766	0.0719	
LOT84	3.001	0.0689	0.0719	3.766	0.0719	
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LOT92	3.001	0.0689	0.0719	3.766	0.0719	
LOT93	3.001	0.0689	0.0719	3.766	0.0719	
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LOT95	3.001	0.0689	0.0719	3.766	0.0719	
LOT96	3.001	0.0689	0.0719	3.766	0.0719	
LOT97	3.001	0.0689	0.0719	3.766	0.0719	
LOT98	3.001	0.0689	0.0719	3.766	0.0719	
LOT99	3.001	0.0689	0.0719	3.766	0.0719	
LOT100	3.001	0.0689	0.0719	3.766	0.0719	

### DEDICATION

KNOW ALL MEN BY THESE PRESENTS: KEY CONSTRUCTION, INC., AN ARIZONA CORPORATION, DBA TREND HOMES, AS OWNER, HAS SUBDIVIDED UNDER THE NAME OF "BARRINGTON ESTATES AMENDED" A PORTION OF THE E 1/2 OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 7 EAST, GLA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN ON THE PLATTED HEREON, AND DOES HEREBY AMEND, AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATIONS AND GIVES THE DIMENSIONS OF EACH LOT, TRACT AND STREET, CONSTITUTING SAME, AND THAT EACH LOT, TRACT AND STREET SHALL BE KNOWN BY THE NUMBER AND/OR NAME GIVEN TO EACH, RESPECTIVELY ON SAID PLAT. KEY CONSTRUCTION, INC., AN ARIZONA CORPORATION, DBA TREND HOMES, AS OWNER, HEREBY DEDICATES TO THE CITY OF MESA FOR USE AS SUCH THE RIGHT-OF-WAY, AS SHOWN ON SAID PLAT. THE PUBLIC UTILITY AND FACILITY EASEMENTS AND DRAINAGE EASEMENTS AS SHOWN HEREON ARE HEREBY DEDICATED TO THE CITY OF MESA. THE BARRINGTON ESTATES AMENDED, AS SHOWN ON SAID PLAT, IS A NON-EXCLUSIVE EASEMENT FOR THE ENTIRE AREA OF TRACT H, A NON-EXCLUSIVE EASEMENT FOR STORM DRAINAGE AND RETENTION IS HEREBY GRANTED TO THE OWNERS AND THE ASSOCIATION, THROUGH E FOR THE BENEFIT OF ALL LOT OWNERS WHICH NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS, FOR REFUSE AND EMERGENCY VEHICLES AND STORM DRAINAGE ARE HEREBY GRANTED. A NON-EXCLUSIVE PEDESTRIAN ACCESS EASEMENT IS HEREBY GRANTED OVER THE ENTIRE AREA OF TRACTS A THROUGH H FOR THE BENEFIT OF ALL LOT OWNERS AND THE ASSOCIATION.

IN WITNESS WHEREOF, KEY CONSTRUCTION, INC., AN ARIZONA CORPORATION, AS OWNER, HAS HEREUNTO CAUSED ITS NAME TO BE SIGNED THIS 27<sup>th</sup> DAY OF August 1999.

KEY CONSTRUCTION, INC.,  
AN ARIZONA CORPORATION, AS OWNER

BY Reed Porter  
REED PORTER  
PRESIDENT

### ACKNOWLEDGMENT

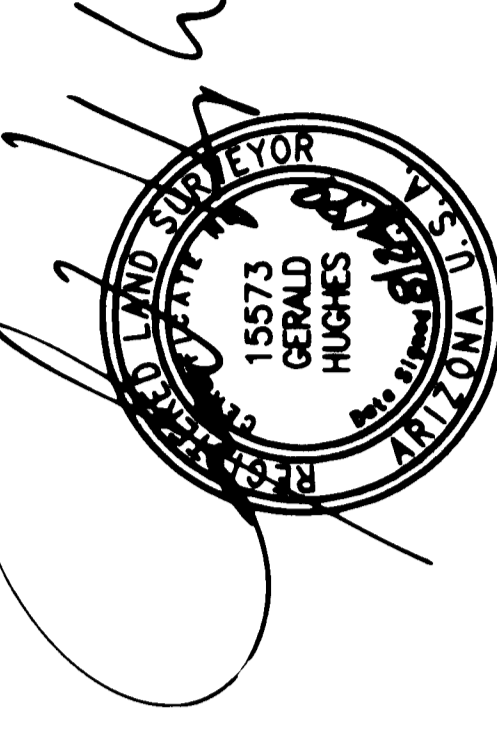
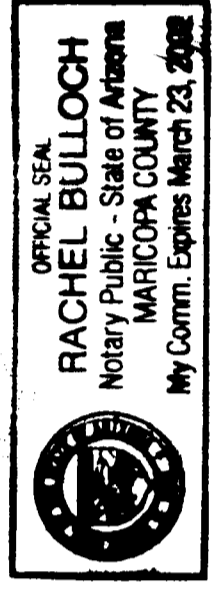
ACKNOWLEDGMENT:  
STATE OF ARIZONA  
COUNTY OF MARICOPA

ON THIS 27<sup>th</sup> DAY OF August 1999, BEFORE ME, REED PORTER, A NOTARY PUBLIC PERSONALLY APPEARED \_\_\_\_\_, THE PRESIDENT OF KEY CONSTRUCTION, INC., AN ARIZONA CORPORATION, THE LEGAL OWNER OF THE PROPERTY PLATTED HEREON, AND EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF: I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: 3-23-02

NOTARY PUBLIC Rachel Bulloch



GERALD HUGHES  
REGISTERED LAND SURVEYOR NO. 15573

### APPROVALS

APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA,  
ARIZONA ON THE 17<sup>th</sup> DAY OF August 1999

BY: Mayor Steve Brown ATTEST: Debra J. ...  
MAYOR CITY CLERK

THIS IS TO CERTIFY THAT THE AREA PLATTED HEREON IS APPROVED AND LIES WITHIN THE DOMESTIC WATER SERVICES AREA OF THE CITY OF MESA WHICH IS DESIGNATED AS HAVING AN ASSURED WATER SUPPLY IN ACCORDANCE WITH ARS 45-576.

BY: Keith Nott 9-16-99  
CITY ENGINEER DATE

### GENERAL NOTES

- CONSTRUCTION WITHIN EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES, SHALL BE LIMITED TO UTILITIES AND EITHER WOOD, WIRE OR REMOVABLE-SECTION-TYPE FENCING, UNLESS APPROVED OTHERWISE BY THE CITY OF MESA.
- CITY OF MESA IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF ANY PRIVATE FACILITIES, STREETS, LANDSCAPED AREAS, ETC. WITHIN THIS PROJECT.
- AN AVIGATION EASEMENT AND RELEASE FOR THIS PLAT FOR WILLIAMS GATEWAY AIRPORT IS RECORDED WITH THE MARICOPA COUNTY RECORDER. THE SUBDIVISION IS WITHIN (4) FOUR MILES OF WILLIAMS GATEWAY AIRPORT. ADDITIONAL INFORMATION PERTAINING TO OPERATION AND AIRPORT DEVELOPMENT MAY BE OBTAINED BY CONTACTING THE WILLIAMS GATEWAY ADMINISTRATION OFFICE.
- NOISE ATTENUATION MEASURES ARE TO BE INCORPORATED INTO THE DESIGN AND CONSTRUCTION OF THE HOMES TO ACHIEVE A NOISE LEVEL REDUCTION OF 25 DB.

### CERTIFICATION

I, GERALD HUGHES, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA; THAT THIS PLAT CORRECTLY REPRESENTS A SURVEY MADE UNDER MY DIRECTION DURING THE MONTH OF JUNE, 1998; THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN; THAT ALL MONUMENTS ACTUALLY EXIST OR WILL BE SET AS SHOWN; THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

BOOK 512 PAGE 36  
OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

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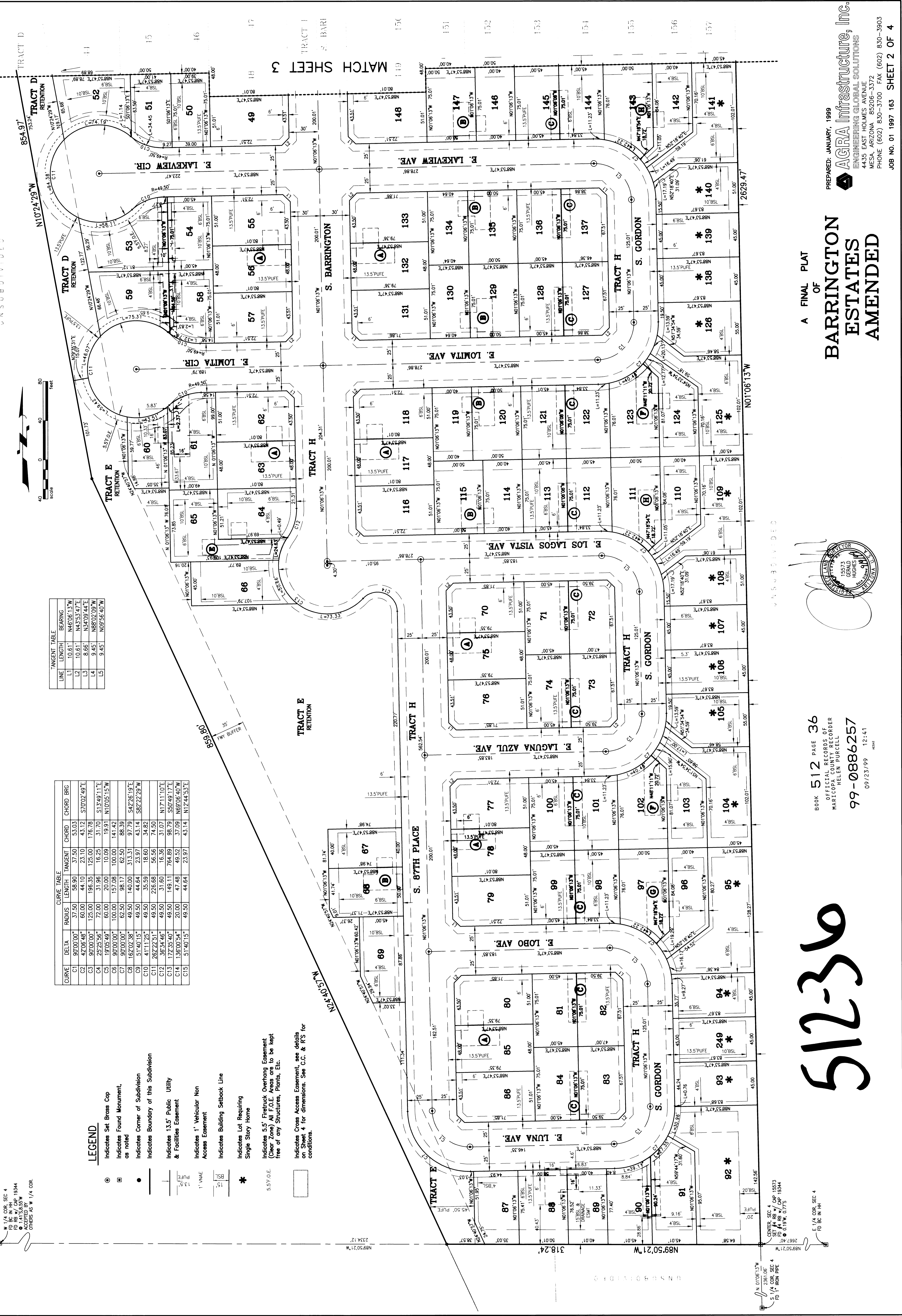
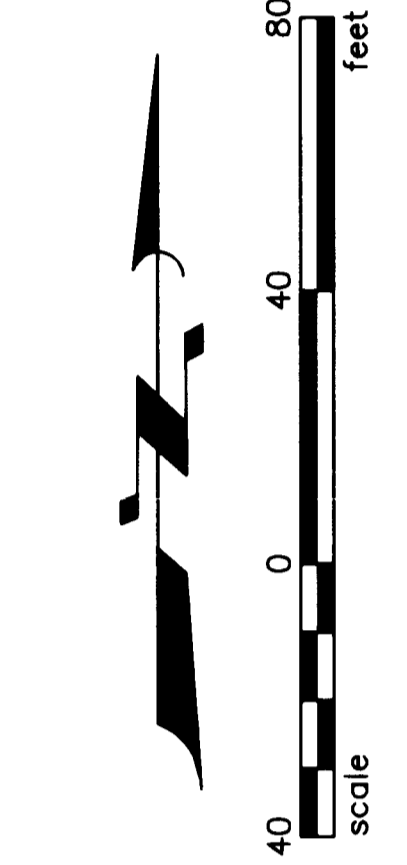
W 1/4 COR., SEC. 4  
 FD 10" W/7" CAP 19344  
 1.415, 55.55"  
 OTHERS AS W 1/4 COR.

**LEGEND**

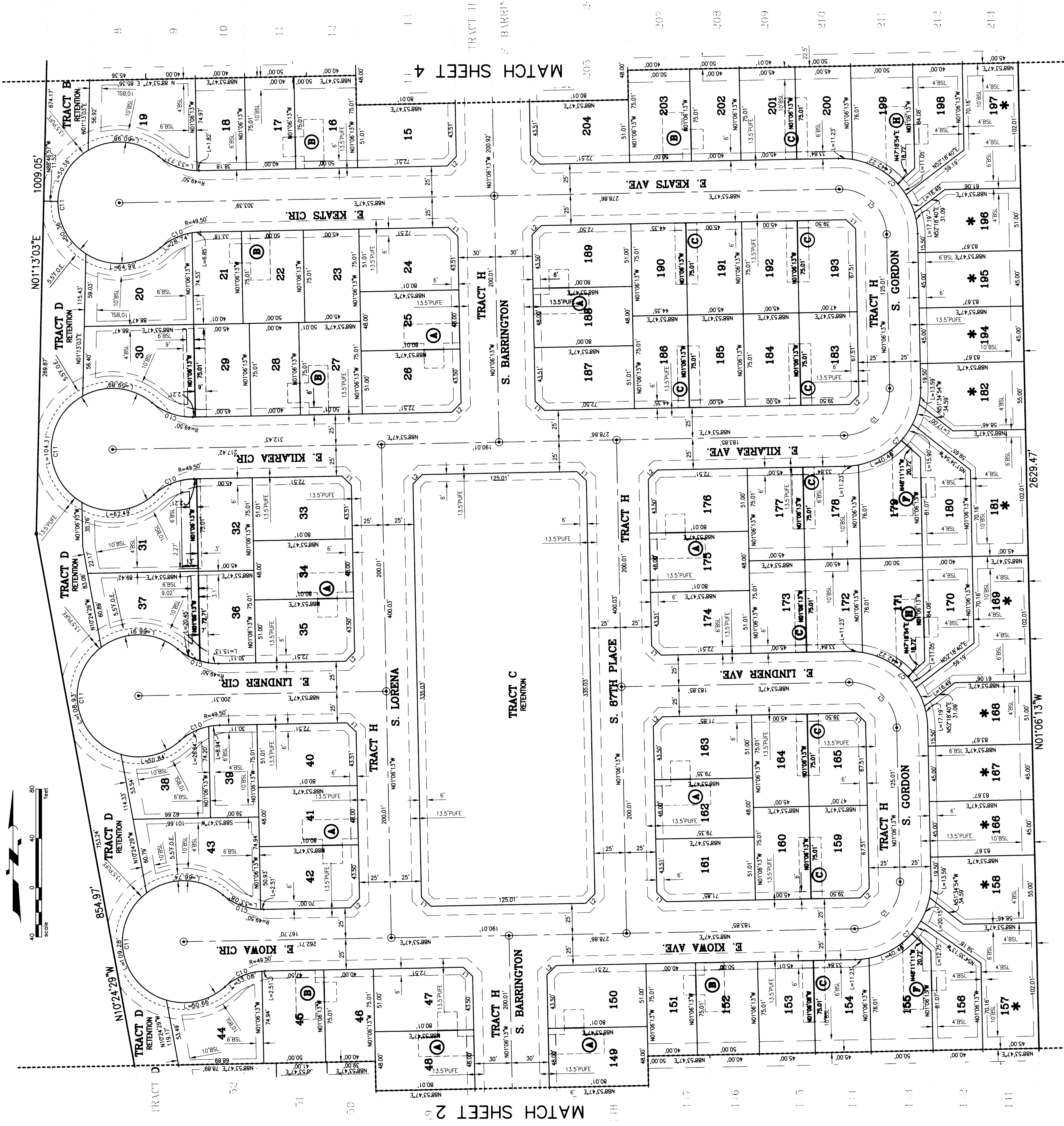
- ⊙ Indicates Set Brass Cap
- ⊠ Indicates Found Monument, as noted
- Indicates Corner of Subdivision
- Indicates Boundary of this Subdivision
- Indicates 13.5' Public Utility & Facilities Easement
- Indicates 1' Vehicular Non Access Easement
- Indicates Building Setback Line
- Indicates Lot Requiring Single Story Home
- S.F.O.E.
- Indicates Cross Access Easement, see details on Sheet 4 for dimensions. See C.C. & R.S. for conditions.

CURVE TABLE		TANGENT TABLE		CHORD BRG	
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD
C1	90°00'00"	37.50	58.90	37.50	53.03
C2	42°08'48"	60.00	44.10	43.12	57.02
C3	90°00'00"	125.00	196.35	125.00	176.78
C4	25°25'56"	70.00	31.96	16.25	31.70
C5	19°05'49"	60.00	20.00	10.89	19.91
C6	90°00'00"	100.00	157.08	100.00	141.42
C7	90°00'00"	62.50	98.17	62.50	86.39
C8	162°02'38"	49.50	140.00	313.31	97.79
C9	51°40'15"	49.50	44.64	23.97	43.14
C10	41°11'25"	49.50	35.59	18.60	34.82
C11	262°22'51"	49.50	226.68	56.56	74.50
C12	36°34'46"	49.50	31.60	16.36	31.07
C13	172°35'40"	49.50	148.11	78.49	98.79
C14	136°00'54"	20.00	47.48	49.52	37.09
C15	51°40'15"	49.50	44.64	23.97	43.14

TANGENT TABLE		BEARING	
LINE	LENGTH	L1	L2
L1	10.61	N45°06'13"W	
L2	10.61	N43°53'47"E	
L3	8.66	N34°09'44"E	
L4	9.45	N88°02'09"W	
L5	9.45	N09°56'40"W	



UNSUBDIVIDED



CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD BRG
C1	90°00'00"	37.50	58.90	37.50	53.03	53.03
C2	42°06'48"	60.00	44.10	23.10	43.12	57°02'49"E
C3	90°00'00"	125.00	196.35	125.00	176.78	176.78
C4	23°25'56"	72.00	31.96	16.25	31.70	S13°49'11"E
C5	19°05'49"	100.00	20.00	10.09	19.91	N17°05'15"W
C6	90°00'00"	60.00	157.08	100.00	141.42	141.42
C7	90°00'00"	62.50	98.17	62.50	88.39	88.39
C8	16°02'38"	49.50	140.00	31.33	97.79	S42°26'19"E
C9	51°40'15"	49.50	44.64	23.97	43.14	S92°22'29"W
C10	41°11'25"	49.50	35.59	18.60	34.82	34.82
C11	26°22'51"	49.50	226.68	56.56	74.50	74.50
C12	36°34'46"	49.50	31.60	16.36	31.07	N17°11'10"E
C13	17°35'40"	49.50	149.11	76.89	98.79	S50°49'17"E
C14	136°00'54"	20.00	47.48	49.52	37.09	N69°04'40"W
C15	51°40'15"	49.50	44.64	23.97	43.14	N12°44'53"E

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LINE	LENGTH	BEARING
L1	10.61	N46°06'13"W
L2	10.61	N43°53'47"E
L3	8.66	N34°08'44"E
L4	9.45	N85°02'09"W
L5	9.45	N09°56'40"W

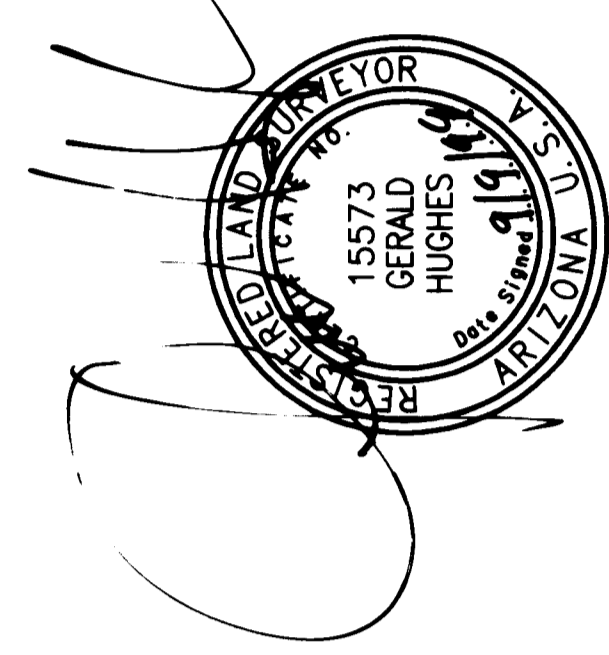
LEGEND

- Indicates Set Brass Cap
- Indicates Found Monument, as noted
- Indicates Corner of Subdivision
- Indicates Boundary of this Subdivision
- Indicates 13.5' Public Utility & Facilities Easement
- Indicates 1' Vehicular Non Access Easement
- Indicates Building Setback Line
- \* Indicates Lot Requiring Single Story Home
- 5.5' P.O.E. Indicates 5.5' Firetruck Overhang Easement (Clear Zone) All F.O.E. Areas are to be kept free of any Structures, Plants, Etc.
- 5' L Indicates Landscape Easement
- Indicates Cross Access Easement, see details on Sheet 4 for dimensions. See C.C. & R.S. for conditions.

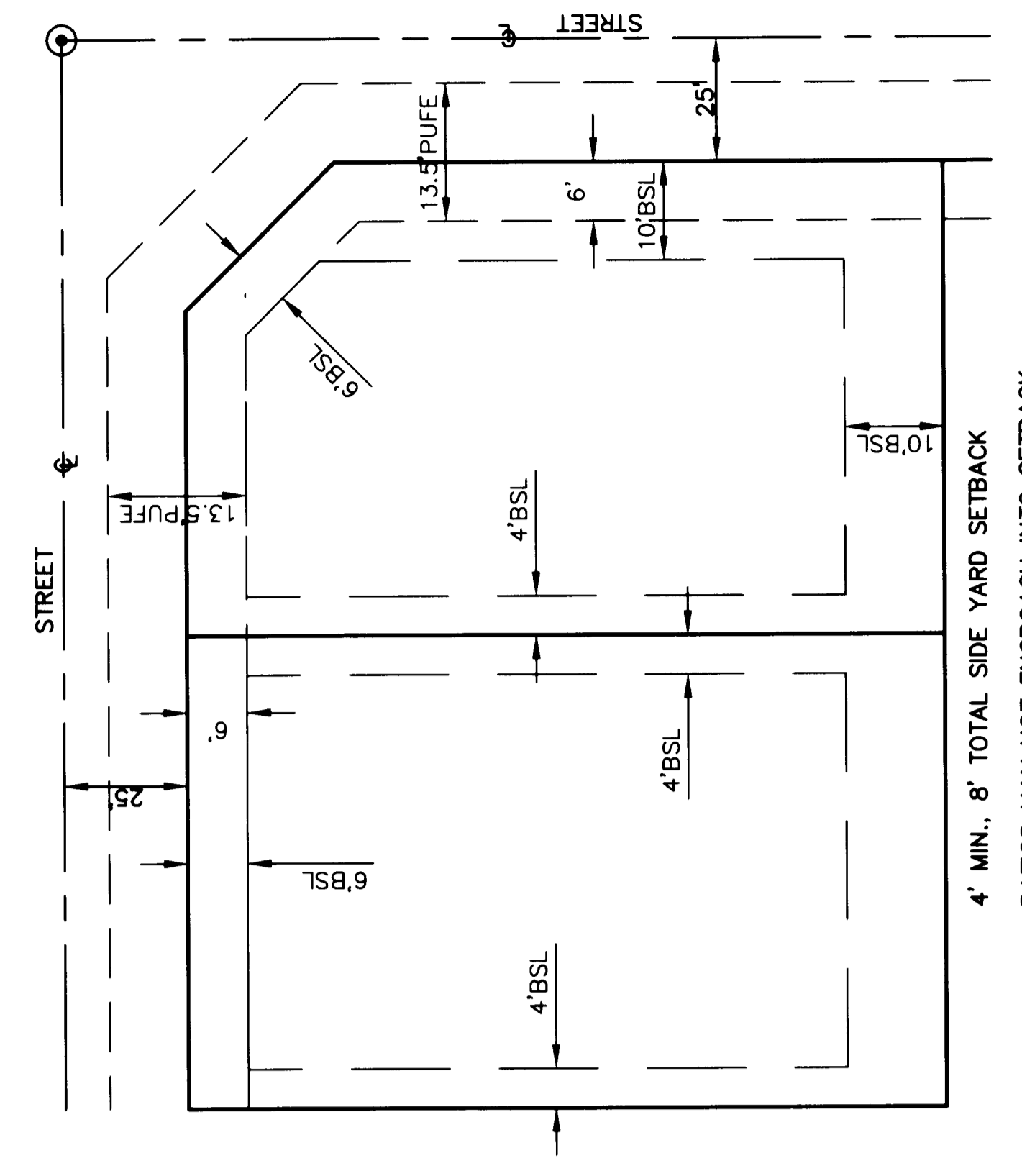
BOOK 512 PAGE 36  
 OFFICIAL RECORDS OF  
 MARICOPA COUNTY RECORDER  
 HELEN PORCELL  
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A FINAL PLAT  
 OF  
**BARRINGTON  
 ESTATES  
 AMENDED**

PREPARED: JANUARY, 1999  
**AGRA Infrastructure, Inc.**  
 ENGINEERING GLOBAL SOLUTIONS  
 4435 EAST HOLMES AVENUE  
 MESA, ARIZONA 85206-3372  
 PHONE (602) 830-3700 FAX (602) 830-3903  
 JOB NO. 01 1997 163 SHEET 3 OF 4



UNSUBDIVIDED



**TYPICAL SETBACKS**  
N.T.S.

CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD BRG
C1	90°00'00"	37.50	58.90	37.50	53.03	
C2	42°06'48"	60.00	44.10	23.10	43.12	S70°02'49"E
C3	90°00'00"	125.00	196.35	125.00	176.78	
C4	25°25'56"	72.00	31.96	16.25	31.70	S13°49'11"E
C5	19°05'48"	60.00	20.00	10.09	19.91	N10°05'15"W
C6	90°00'00"	100.00	157.08	100.00	141.42	
C7	90°00'00"	62.50	98.17	62.50	88.59	
C8	167°02'38"	45.50	140.00	313.31	97.79	S42°26'19"E
C9	51°40'15"	49.50	44.64	23.97	43.14	S87°22'29"W
C10	41°11'25"	49.50	35.99	18.60	34.82	
C11	26°22'51"	49.50	26.68	16.56	26.50	
C12	56°34'46"	49.50	31.60	16.36	31.07	N17°11'10"E
C13	172°35'40"	49.50	149.11	764.89	98.79	S50°49'17"E
C14	136°00'54"	20.00	47.48	49.52	37.09	N69°06'40"W
C15	51°40'15"	49.50	44.64	23.97	43.14	N12°44'53"E

LINE	LENGTH	BEARING
L1	10.61'	N46°06'13"W
L2	10.61'	N43°53'47"E
L3	8.66'	N34°09'44"E
L4	9.45'	N88°02'09"W
L5	9.45'	N09°56'40"W

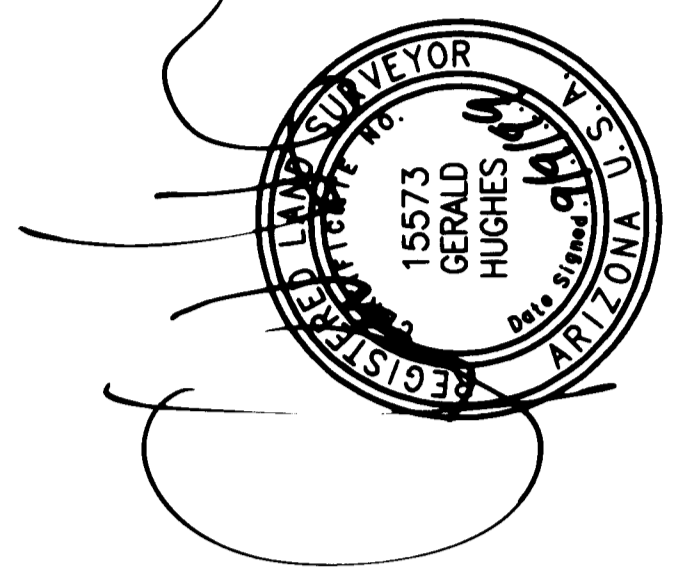
**LEGEND**

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- Indicates 1' Vehicular Non Access Easement
- Indicates Building Setback Line
- ★ Indicates Lot Requiring Single Story Home
- 5.5' F.O.E.
- 5' L.E.
- Indicates Cross Access Easement, see details on this sheet for dimensions. See C.C. & R'S for conditions.

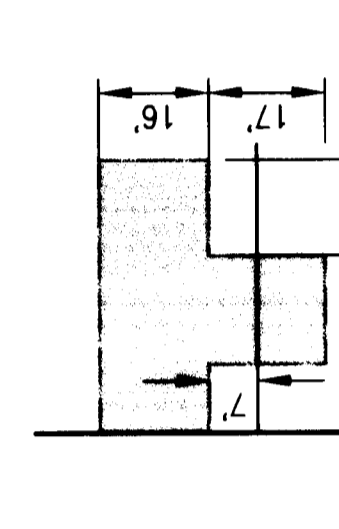
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OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
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A FINAL PLAT  
**BARRINGTON ESTATES AMENDED**

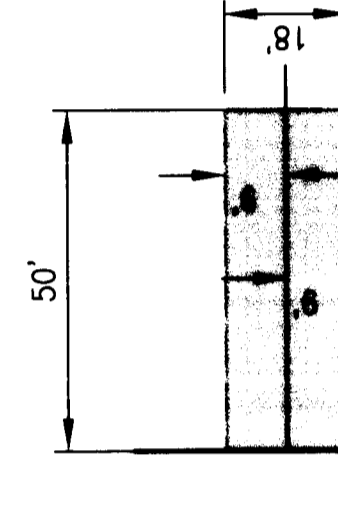
PREPARED: JANUARY, 1999  
**AGRA Infrastructure, Inc.**  
ENGINEERING GLOBAL SOLUTIONS  
4435 EAST HOLMES AVENUE  
MESA, ARIZONA 85206-3372  
PHONE (602) 830-3700 FAX (602) 830-3903  
JOB NO. 01 1997 163 SHEET 4 OF 4



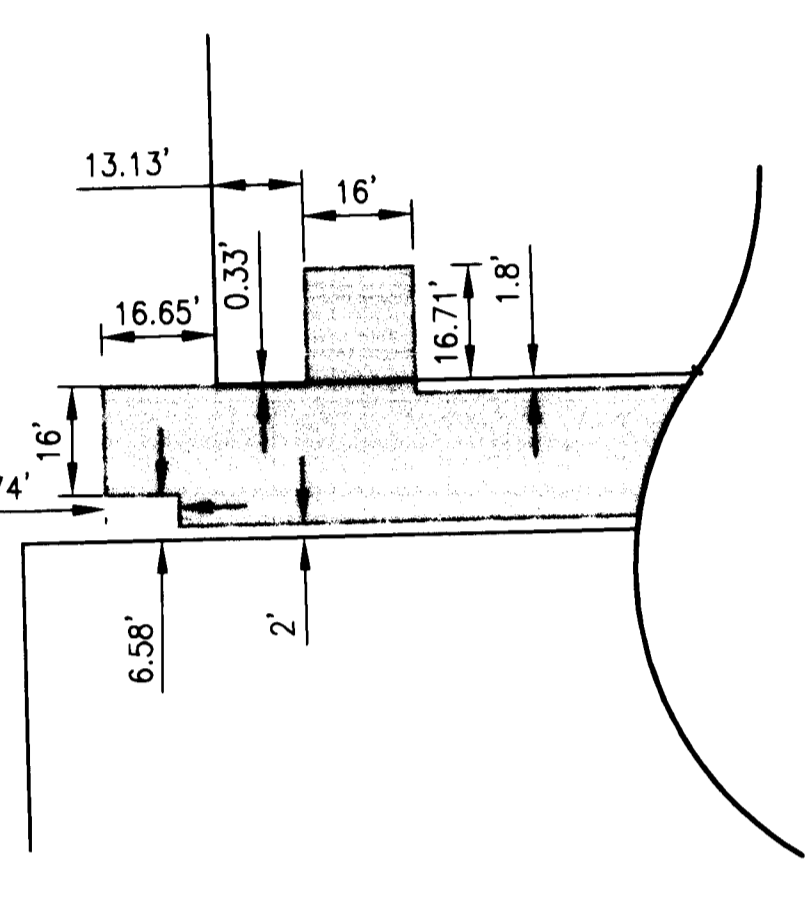
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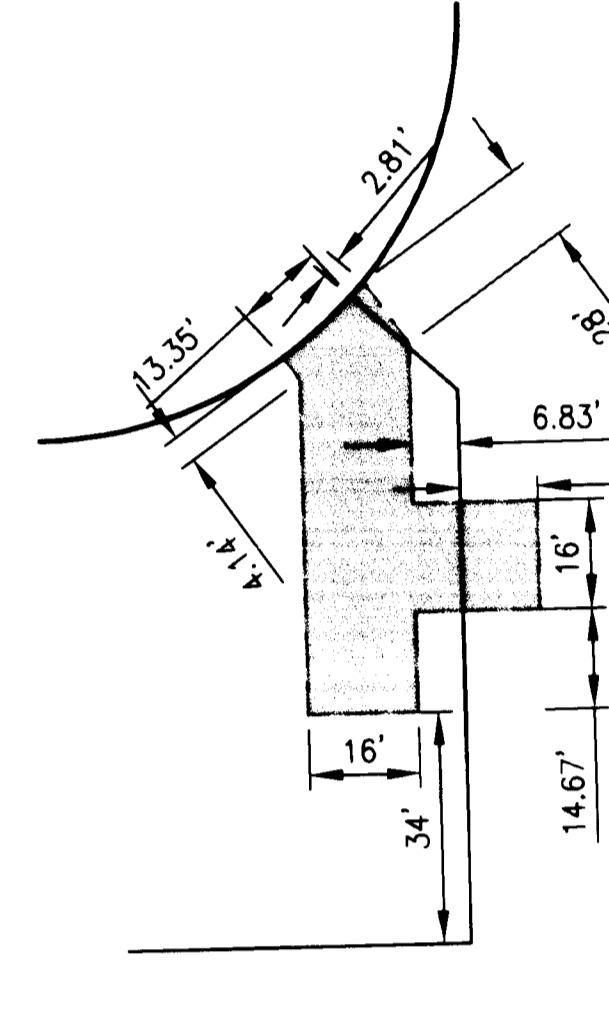
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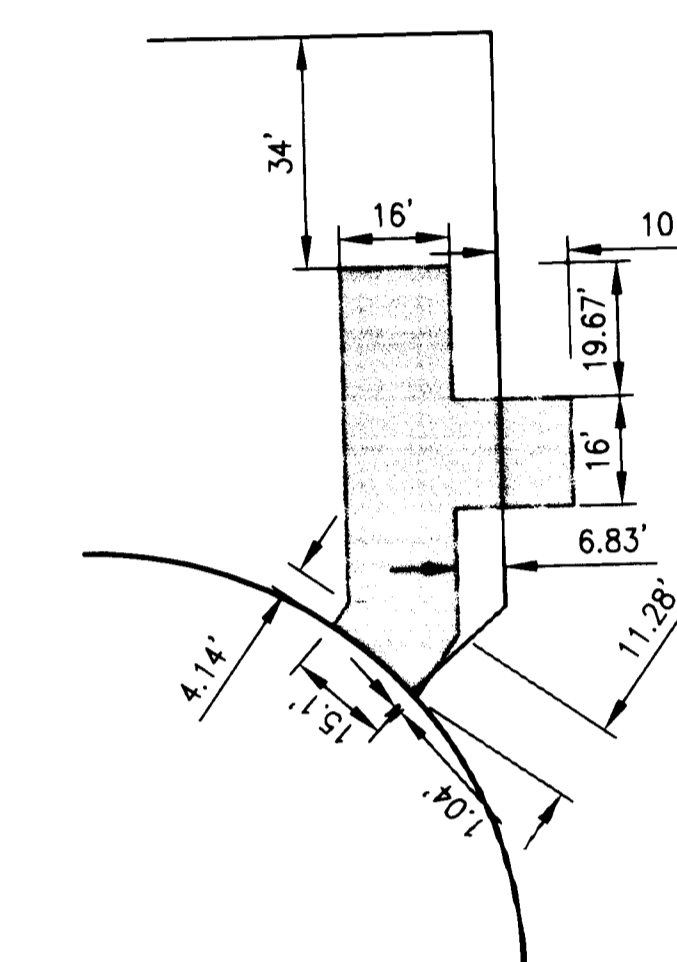
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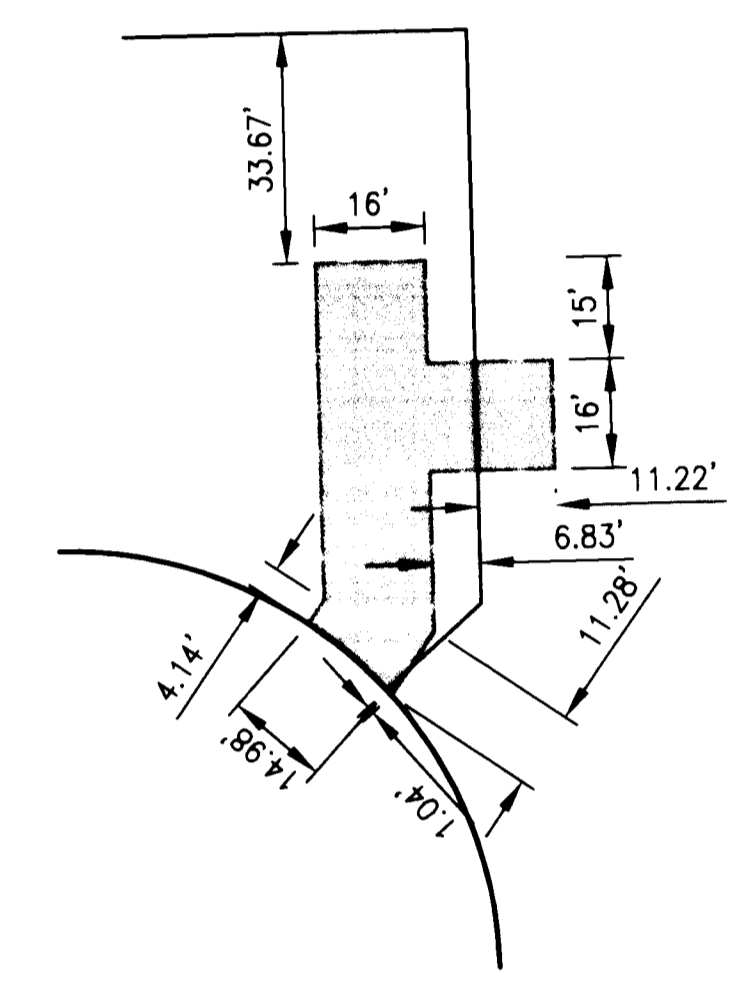
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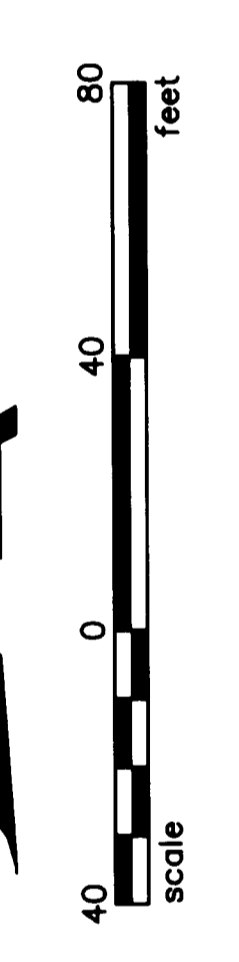
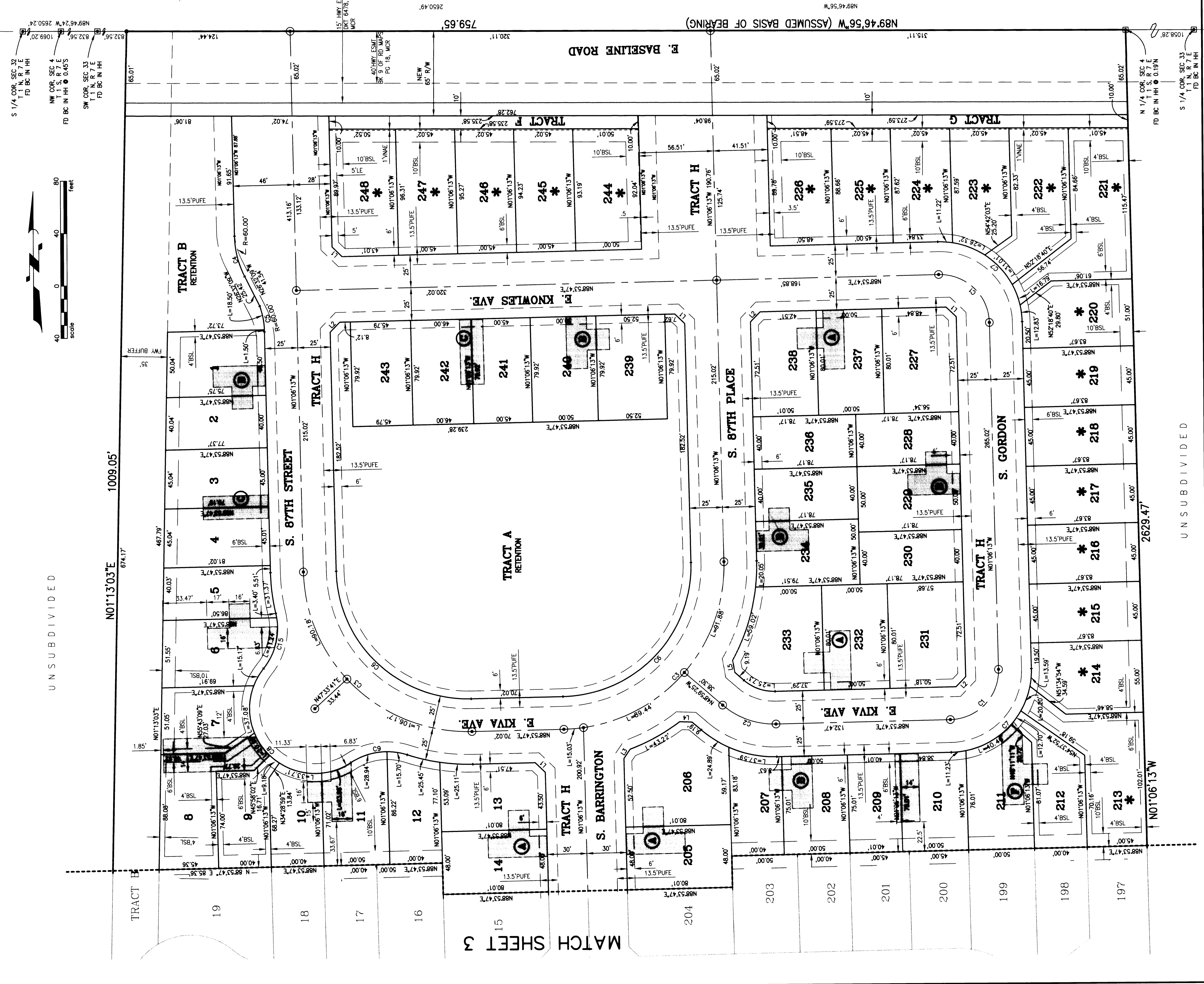
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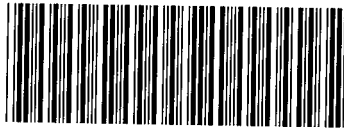
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MATCH SHEET 3



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

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JENNIFER 1 OF 1

**CHICAGO TITLE INSURANCE COMPANY**

WHEN RECORDED, RETURN TO:  
Gallagher & Kennedy, P.A.  
2600 North Central Ave., 19th Floor  
Phoenix, Arizona 85004-3020  
Attn: David A. Durfee, Esq.

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS, AND  
RESERVATION OF EASEMENTS FOR  
BARRINGTON ESTATES

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EXHIBITS

Exhibit A Legal Description

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS, AND  
RESERVATION OF EASEMENTS FOR  
BARRINGTON ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS is made this \_\_\_ day of September, 1999, by KEY CONSTRUCTION INC., an Arizona corporation, dba TREND HOMES (hereinafter referred to as "Declarant").

W I T N E S S E T H:

A. Declarant owns that certain real property located in Maricopa County, Arizona, more particularly described on Exhibit "A" attached hereto (hereinafter referred to as the "Land").

B. Declarant deems it desirable to impose a general plan for the development, maintenance, improvement, protection, use, occupancy and enjoyment of the Project, defined herein, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges (hereinafter referred to as the "Protective Covenants") upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

C. Declarant deems it desirable for the efficient enforcement, protection and preservation of the value, desirability and attractiveness of the Project to create a nonprofit corporation which shall be delegated and assigned the powers of administering and enforcing the Protective Covenants.

D. BARRINGTON ESTATES HOMEOWNERS ASSOCIATION, an Arizona nonprofit corporation, has been or will be incorporated under the laws of the State of Arizona for the purpose of exercising the aforesaid powers.

E. Declarant intends to convey the Project subject to the Protective Covenants set forth hereinbelow.

NOW, THEREFORE, Declarant declares that it does hereby establish a general plan for the development, maintenance, care, improvement, protection, use, occupancy, management and enjoyment of the Project, and that all or any portion of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved, subject to the Protective Covenants set forth herein. Each and all of the Protective Covenants shall run with the Project, and shall be binding upon all persons having any right, title or interest in the Project, or any portion

thereof, their heirs, successors and assigns, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, all subsequent owners of all or any portion of the Project, together with their grantees, heirs, executors, administrators, devisees, successors and assigns.

## ARTICLE I

### DEFINITIONS

1.1 "Architectural Control Committee" shall mean and refer to the committee created pursuant to the Article herein entitled "Architectural Control - Approval."

1.2 "Articles" shall mean and refer to the Articles of Incorporation of Barrington Estates Homeowners Association, as filed in the Office of the Secretary of State of the State of Arizona, as such Articles may be amended, from time to time.

1.3 "Assessments" shall be used as a generic term which shall mean and refer to the following:

(a) "Compliance Assessment" shall mean and refer to the personal charge against an Owner representing the costs incurred by the Association to repair any damage to the Common Elements (as defined below) for which such Owner (or any member of the Owner's family, or the Owner's guests, invitees, tenants or lessees) was responsible, the Costs incurred by the Association to bring each Owner and the Owner's Lot into compliance with this Declaration, and/or any amount due the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration, or any amount due the Association to reimburse the Association for administrative costs attributable to an Owner as provided herein;

(b) "Regular Assessment" shall mean and refer to the annual charge against each Owner and such Owner's respective Lot representing a portion of the Common Expenses of the Association;

(c) "Special Assessment" shall mean and refer to the charge against an Owner and the Owner's respective Lot representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Elements, of constructing or installing any capital improvements to the Common Elements, or of taking any extraordinary action for the benefit of the Common Elements or the membership of the Association, pursuant to the provisions of this Declaration; and

(d) "Special Benefit Assessment" shall mean and refer to a charge levied by the Association against an Owner and the Owner's respective Lot to cover the expenses incurred by the Association in the operation, maintenance repair and/or funding of reserves for a portion of the Project designated by Declarant or the Association as a "Special Benefit Area," which expenses are allocable only to the Owners and their Lots within such an Area.

1.4 "Association" shall mean and refer to Barrington Estates Homeowners Association, an Arizona nonprofit corporation, in which all Owners shall have a membership interest as more particularly described hereinbelow, provided that membership shall be limited to Owners. In the event the Association as a corporate entity is dissolved, a nonprofit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all of the rights and duties of said Association, as set forth herein. The affairs of such unincorporated association shall be governed by the By-Laws and this Declaration as if they were created for the purpose of governing the affairs of an unincorporated association.

1.5 "Board" shall mean and refer to the Board of Directors of the Association, elected in accordance with the By-Laws of the Association and this Declaration.

1.6 "By-Laws" shall mean and refer to the By-Laws of the Association which have been, or will be, adopted by the Board, as such By-Laws may be amended, from time to time.

1.7 "City" shall mean and refer to the City of Mesa, Arizona, and its various departments, divisions, employees and representatives. In the event any other geopolitical subdivision shall exercise jurisdiction for police power or other governmental purposes contemplated within this Declaration, then the term "City" shall include and refer to such other geopolitical subdivision.

1.8 "Common Elements" shall mean and refer collectively to that certain portion of the Project described as Tracts A through H, BARRINGTON ESTATES, according to the plat recorded at Book 512, Page 36, records of Maricopa County, Arizona, and to all personal property or other property now or hereafter owned by the Association in the Project. Common Elements include, but are not limited to, the Driveway and the front yard associated with each Lot. Any right-of-way, which by City ordinance, stipulation or otherwise the Association is obligated or authorized to maintain, shall also be deemed to be Common Elements for the purposes of enabling the Association to carry out maintenance functions thereon. The City of Mesa is not responsible for and will not accept maintenance of any private facilities, streets, landscape areas, etc., within the Project.

1.9 "Common Expenses" shall mean and refer to the actual and estimated costs to be paid by the Association for the common benefit of all Owners of Lots in the Project. Except as otherwise provided in this Declaration, the Common Expenses shall include all costs and expenses incurred by the Association in connection with the following: (a) owning, maintaining, managing, operating, repairing and replacing the Common Elements; (b) managing and administering the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, budget preparers, and any Association employees; (c) providing utilities and other services to the Common Elements; (d) providing insurance (and paying deductibles) as provided for herein; (e) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (f) paying taxes for the Association; and (g) paying for all other goods and services as reasonably required by the Association to perform its powers and duties as set forth herein. Additionally, the Common Expenses shall include adequate reserves, as the Board shall determine to be appropriate, for the repair and replacement of those elements of the Common Elements which must be repaired or replaced on a periodic basis, rather on a regular



annual basis.

1.10 "Declarant" shall mean and refer to Key Construction Inc., an Arizona corporation, dba Trend Homes, and to any person or entity acquiring all of Declarant's interest in the Project (including all of Declarant's rights and obligations as created and established herein) pursuant to a written assignment, deed or other instrument from Declarant which is recorded in the Office of the County Recorder. Any such instrument may include only certain specific rights and/or obligations of Declarant and may be subject to such conditions as Declarant may impose in its sole discretion.

1.11 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and to all amendments to this Declaration as may be recorded, from time to time, in the Office of the County Recorder of Maricopa County, Arizona.

1.12 "DRE" shall mean and refer to the Department of Real Estate of the State of Arizona.

1.13 "Driveway" shall mean and refer to that portion of the Common Elements that is appurtenant to a Lot, that is intended to be used for vehicular access to the garage portion of the Improvements on the Lot from a public street.

1.14 "FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) created by Title III of the Emergency Home Finance Act of 1970, as same may be amended, from time to time, including any successors thereto.

1.15 "FNMA" shall mean and refer to the Federal National Mortgage Corporation, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, as amended, from time to time, including any successors thereto.

1.16 "GNMA" shall mean and refer to the Government National Mortgage Corporation administered by the United States Department of Housing and Urban Development, including any successors thereto.

1.17 "Improvements" shall mean and refer to all structures and appurtenances thereto of every kind, including, but not limited to, houses, garages, carports, swimming pools, spas, cabanas, storage sheds and facilities, tennis courts, basketball standards, private streets, street lights, pavement, sidewalks, driveways, walls, fences, retaining walls, mail kiosks, trellises, television and radio antenna or dishes, common trash receptacles, if any, screens, landscaping and irrigation systems. Improvements shall also mean and refer to all additions and/or modifications to the exterior of any structure, including, but not limited to, (a) painting, (b) changing roofing material, and/or (c) building, constructing, installing, altering or planting, as the case may be, any spas, patio covers, patio slabs, balcony covers, decks, gazebos, stairs, screening wall or fences, shades, awnings, screen doors, exterior doors, skylights, solar heating panels, air conditioning and/or water softening or refining fixtures or systems, and all landscaping which left in its natural condition will

grow to a height in excess of twenty feet (20').

1.18 "Land" shall mean and refer to the land located in Maricopa County, Arizona, described in Exhibit "A."

1.19 "Lot" shall mean any numbered parcel of real property shown upon any recorded plat of the Project, together with any Improvements constructed thereon, with the exception of Common Elements and any areas dedicated to the public. Each Lot shall be a separate freehold estate.

1.20 "Member" shall mean and refer to every person or entity who holds membership in the Association, as more particularly set forth in the Article herein entitled "The Association," and shall be synonymous with the term "Owner."

1.21 "Mortgage" shall mean and include any mortgage or deed of trust, or other conveyance of a Lot (or other portion of the Project) to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance, including an installment land sales contract. The term "Deed of Trust," when used herein, shall be synonymous with the term "Mortgage."

1.22 "Mortgagee" shall mean and refer to a person or entity to whom a Mortgage is made, and shall include the beneficiary of a Deed of Trust or the vendor under an installment land sales contract, as the case may be, and the assignees of a Mortgagee, beneficiary or vendor.

1.23 "Mortgagor" shall mean and refer to a person or entity who mortgages their or its Lot to another, i.e., the maker of a Mortgage, and shall include a trustor of a Deed of Trust and the vendee under an installment land sales contract.

1.24 "Notice and Hearing" shall mean and refer to written notice and the opportunity for a hearing before the Board or the Architectural Control Committee of the Association, as applicable, or other tribunal appointed by the Board in the manner provided in the By-Laws, at which the affected Owner shall have an opportunity to be heard in the manner provided herein and in the By-Laws.

1.25 "Owner" shall mean and refer to one or more person or entities who alone or collectively are the record owner, or owners, of fee simple title to a Lot, excluding those persons or entities having any such interest merely as security for the performance of an obligation. If a Lot is leased by Declarant for a term of ten (10) or more years, including renewal period, and the lease or memorandum thereof is recorded, the lessee or transferee of the leasehold interest and not Declarant shall be deemed the Owner. If fee title to a Lot is owned other than by Declarant, the Owner of the fee title and not the lessee of such Lot shall be deemed the Owner regardless of the term of the lease.

1.26 "Project" shall mean and refer to the Land and all Improvements constructed thereon, together with all Common Elements.

1.27 "Rules and Regulations" shall mean and refer to the Rules and Regulations adopted by the Board pursuant to the By-Laws or this Declaration, as they may be amended, from time to time.

1.28 "VA/FHA" shall mean and refer to the United States Veterans Administration and/or Federal Housing Administration, including the department or agency of the United States government as shall succeed to the VA and/or FHA.

1.29 Application of Definitions. The aforesaid definitions shall be applicable throughout this Declaration, and to any supplements or amendments hereto filed or recorded pursuant to the provisions of this Declaration.

## ARTICLE II

### INTRODUCTION

2.1 General Plan of Development. The Project is presently planned as a project, which, if completed as planned, may consist of approximately two hundred forty-eight (248) Lots, Common Elements and various amenities. Such amenities may include passive recreation areas and open space landscaping. The Association will maintain the Common Elements and will be the management body for the Project, as provided herein. The Lots are more particularly described in the Article herein entitled "Description of the Lots." Each Owner in the Project will receive title to their respective Lot, various rights (as set forth in this Declaration), a non-exclusive right and easement of enjoyment in and to the Common Elements, and a membership in the Association.

2.2 Membership in Association. As more particularly set forth in this Declaration, each Owner of a Lot in the Project shall automatically become a Member of the Association, and shall be personally obligated for the payment of Assessments to the Association for the time period during which such Owner is or was the Owner of a Lot. In addition, except as otherwise provided herein, each Owner, and such Owner's family members, lessees, tenants, guests and invitees, will be entitled to the use and enjoyment of the Common Elements within the Project, in accordance with this Declaration, the By-Laws and Rules and Regulations adopted by the Board.

2.3 Development Control. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, Declarant's right to complete the planning, development, grading, construction, advertising, marketing, leasing and sale of the Lots, and all other property within the Project including, without limitation, the following specific rights, which may be exercised by Declarant, or by its agents and employees, in conjunction with such development and marketing of Lots in the Project. Therefore, Declarant shall have the right to: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise alter the style, size, color or appearance of any Improvements in any portion of the Project owned by Declarant and implement an Assessment schedule thereon consistent with such development; (c) subdivide, resubdivide, adjust Lot lines, grade or re-grade any portion of the Project owned by Declarant; and (d) otherwise control all aspects of designing, constructing, and phasing the Improvements in the

Project, and of marketing and conveying Lots in the Project. In furtherance thereof, Declarant hereby reserves, unto itself and its successors and assigns for so long as Declarant owns any interest in the Project:

(a) A nonexclusive easement for ingress and egress on, over and across the Project as necessary to construct the Lots and all Improvements;

(b) The exclusive right to maintain one (1) or more sales office(s), model complex(es), interior design and decorator center(s) and parking area for employees, agents and prospective buyers;

(c) The exclusive right to place reasonable signs, flags, banners, billboards or other forms of advertising on any portion of the Project owned or controlled by Declarant and/or Common Elements (specifically including the Project entry area), as Declarant deems necessary, irrespective of size, color, shape or materials of such item;

(d) The right to determine, so long as Declarant owns an interest in the Project, the hours of operation of the Project entry gates, if any;

(e) A nonexclusive right to utilize the Common Elements and any unassigned open parking spaces in connection with its program for the sale or leasing of Lots in the Project;

(f) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Lot owned by Declarant, as Declarant may, in its sole discretion, deem appropriate;

(g) The right to conduct any commercial activity upon any Lot owned by Declarant which reasonably relates to the development, marketing, leasing or sale of the Lots in the Project;

(h) The right to utilize the Common Elements in the Project, and exclude Owners and their guests, for marketing, sales and promotional activities; and

(i) The right to assign or transfer to one or more persons or entities, in whole or in part, its right, title or interest under this Declaration.

Each Owner hereby grants, upon acceptance of said Owner's deed to said Owner's Lot, an irrevocable special power of attorney to Declarant to execute and record all documents and materials necessary to allow Declarant to exercise its rights under this Declaration.

## ARTICLE III

### PROPERTY RIGHTS

3.1 Easement Over Common Elements. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the real property contained within the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the limitations contained herein. Declarant, for and on behalf of itself, and its successors, assigns and grantees, covenants and agrees that neither the Lot nor the respective easement in the Common Elements shall be separately conveyed or encumbered. An otherwise valid conveyance or encumbrance referring only to the Lot shall also convey or encumber the respective easement in the Common Elements. Any attempt to convey or encumber the undivided fractional fee interest in the Common Elements without the respective Lot shall be null and void.

3.2 Easements Over Driveways. Each Owner shall have an exclusive easement appurtenant to such Owner's Lot for ingress, egress, use and enjoyment on and over the portion of Driveway immediately appurtenant to and associated only with such Owner's Lot, subject only to the limited and inconsequential use by the Owner of a neighboring Lot when necessary for vehicular ingress or egress over such other Owner's exclusive Driveway easement, and subject further to the limitations contained in Section 9.12 of Article IX herein.

3.3 Guest Parking. Public street areas shall be used for guest or temporary resident parking. An Owner shall not permit a family member or guest to park a vehicle on a public street within the Project for more than twenty (20) consecutive hours.

## ARTICLE IV

### RESERVATION OF EASEMENTS AND OTHER PROPERTY RIGHTS IN THE COMMON ELEMENTS

4.1 Limitations on Owners' Easement Rights. The rights and easements of access, use and enjoyment set forth in Sections 3.1 and 3.2 of Article III hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

(a) The right of the Association to reasonably limit the number of guests of each Owner using the Common Elements (exclusive of exclusive Driveway easement and front yard associated with such Owner's Lot);

(b) The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Common Elements;

(c) The right of the Association, in accordance with its Articles, By-Laws and this Declaration, to borrow money with the assent of Declarant (so long as Declarant owns any Lots within the Project) and sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, and/or to Mortgage, pledge, or otherwise

hypothecate any or all of the Common Elements (exclusive of Driveways and front yards) as security for money borrowed or debts incurred, for the purpose of improving or repairing the Common Elements and related facilities;

(d) The right of the Association to suspend the voting rights and rights and easements (over Common Elements exclusive of the Driveway and front yard associated with a Member's Lot) of any Member (and the persons deriving such rights and easements from any Member) to use and enjoy any amenities on the Common Elements for the period during which any Assessment against such Member Lot remains unpaid and delinquent; and after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any noncontinuing violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such Rules shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

(e) Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Association to dedicate or transfer all or any part of the Common Elements (exclusive of Driveways and front yards) to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by two authorized officers of the Association attesting that Declarant (so long as Declarant owns any Lots within the Project) and Owners representing at least sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, approved such action and is recorded in the Office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the Common Elements shall not require the prior approval of the Members of the Association; and provided further that if ingress or egress to a Lot is through a portion of Common Elements that is dedicated, transformed or encumbered, any dedication, transfer or encumbrance of such Common Elements is subject to the easement rights of the Owners in Section 3.1 of Article III permitting such ingress and egress;

(f) The right of the Association to perform and exercise its duties and powers as set forth herein;

(g) Other rights of the Association, the Architectural Control Committee, the Board, the Owners and Declarant with respect to the Common Elements as may be provided for in this Declaration;

(h) The right of Declarant, so long as Declarant has an ownership in the Project, to control the access gates for the Project, if any; and

(i) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Elements imposed by the City or other governmental agency having jurisdiction to impose any such limitations, restriction or conditions, including, but not limited to, the rights of the City or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Common Elements deigned for vehicular movement to perform municipal functions or emergency or essential public services.

4.2 Delegation of Common Elements Use Rights. Any Owner who resides within the Project may delegate such Owner's rights of use and enjoyment to the Common Elements to the members of such Owner's immediate family and their guests and invitees. In the event an Owner has rented or leased such Owner's Lot, such Owner's right to use and enjoy common amenities on the Common Elements shall be deemed automatically delegated to such Owner's tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any common amenities on the Common Elements (except those portions reasonably necessary to access said Owner's Lot to perform normal functions of a landlord) for the duration of such tenancy. With respect to an installment land sales contract for a Lot by an Owner, the Owner shall be deemed to have delegated such Owner's right to use and enjoy any common amenities on the Common Elements to the purchaser under the contract.

4.3 Easements for Vehicular Traffic. In addition to the general right and easements for access, use and enjoyment granted herein, there shall be, and Declarant hereby reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, a nonexclusive appurtenant easement for vehicular ingress, egress and access over the private streets and drives (but not exclusive Driveway easements) within the Project.

4.4 Easements for Utilities. The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, water, electricity, gas, television cable and telephone lines, and other facilities, shall be governed by the following:

(a) Each respective utility company shall be permitted to maintain all utility facilities and connections on the Project owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon, within or servicing (e.g., sewer/water laterals) such Owner's Lot, and it shall be the obligation of the Association to maintain those facilities and connections located upon the Common Elements and which provide service to more than one (1) Lot (i.e., trunk/main line utilities). Additionally, the Association shall maintain, repair and replace any concrete, landscaping or other Common Elements that may be damaged, destroyed or altered in any manner as a result of repair or maintenance work to utility facilities or connections performed by a utility company.

(b) Wherever sanitary sewer, water or gas connection, television cables, electricity or telephone lines are installed within the Project and it becomes necessary to gain access to said connections, cables and/or lines through a Lot owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the

Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such other Lot or to have the utility companies enter upon such other Lot to repair, replace and generally maintain said connections, cables and/or lines.

(c) Whenever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project, and said connections, cables and/or lines serve more than one (1) Lot, the Owner of each Lot served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service said Owner's Lot.

(d) In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the cost thereof, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to the Board who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners.

(e) Easements over the Project for the installation and maintenance of electric and telephone lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, all as shown on any recorded plat of the Project and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant, together with the right to grant and transfer all or a portion of the same.

4.5 Easements for Maintenance of the Common Elements by the Association. There is hereby created, granted and reserved a nonexclusive easement in favor of the Association for ingress, egress and access on, over and across all portions of the Project as reasonably required by the Association to perform its maintenance obligations set forth in this Declaration. In the event it becomes necessary for the Association to enter upon any Lot for purpose of: (a) performing its maintenance obligations as set forth in this Declaration; or (b) bringing an Owner and/or said Owner's Lot into compliance with this Declaration, in accordance with the provisions set forth herein, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon or within such Owner's Lot for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same at its expense. Notwithstanding the foregoing, in the event of an emergency, such right of entry shall be immediate.

4.6 Easement for Drainage. There are hereby created, granted and reserved over the Common Elements easements for drainage according to the established patterns for drainage created by the approved grading plan for the Project, as well as according to the actual, natural or existing patterns for drainage. Each Owner shall maintain such Owner's Lot in such a manner to ensure that no water collects or ponds in any location adjacent to any walls or fences, if any, of the immediately adjacent Lot. Without limiting potential liability as a result of other activities or actions, each Owner shall be liable for any damage that occurs to an adjacent Lot as a result of modifications to such



Owner's respective Lot (e.g., yard area). Each Owner covenants and agrees that such Owner shall not obstruct or otherwise interfere with the drainage patterns of waters over the yard area of such Owner's Lot, or, in the alternative, that in the event it is necessary and essential to alter said drainage pattern, such Owner shall make adequate provisions for proper drainage and submit such plans for written approval by the Architectural Control Committee. Notwithstanding the foregoing, each Owner covenants and agrees that such Owner shall not alter, in any manner whatsoever, the grade of the yard area in such Owner's Lot.

4.7 Easement for Area Drains. Declarant hereby establishes and reserves nonexclusive reciprocal easements over the Lots and Common Elements for drainage purposes to accommodate the drainage system, including, but not limited to area drains and pipes, as installed or reasonably modified by Declarant (or a person or entity to whom Declarant assigns its rights as developer). Each Lot Owner served by said drainage system shall be responsible to maintain and preserve said system in an operating condition to ensure proper drainage on, over, under, across and through the yard area of such Owner's Lot in accordance with the established drainage patterns, and shall bear the cost of the maintenance, repair or replacement associated with the drainage system which affects such Owner's Lot. No Owner shall alter or remove the drainage system or modify the grade of the yard area in such Owner's Lot without the express written consent of the Architectural Control Committee. In the event any portion of the drainage system is damaged, destroyed or not properly maintained, any Lot Owner affected by such drainage system may cause said repair, restoration or maintenance work to be completed and shall be entitled to recover the appropriate expenses from the Lot Owner responsible for such repair, restoration or maintenance. Notwithstanding the foregoing, if any portion of the drainage system is damaged or destroyed as a proximate result of any act or omission of any Owner, or any member of such Owner's family, guests, tenants, lessees and/or invitees (without regard to fault), such Owner shall immediately repair and/or rebuild such drainage system, and shall bear all of the costs thereof, including any cost and/or expense related to personal injury or property damage to any person or Lot in the Project.

4.8 Easements for Construction and Sale. Declarant hereby reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, for so long as Declarant owns any interest in the Project: (a) nonexclusive easements for access, ingress and egress on and over the Project to carry on normal sale activity, including the operation of a models complex, sales office and parking area, and the display of promotional signs and exhibits in connection with the sale or lease of Lots in the Project; and (b) exclusive easements or, to the extent that an exclusive easement would not be necessary or appropriate or would prohibit an Owner from having vehicular access to said Owner's Lot, nonexclusive easements for access, ingress and egress on and over the Common Elements to construct or install Improvements thereon which are Declarant's obligation to so construct or install.

4.9 Reservation of Construction Rights by Declarant. In addition to the rights reserved by Declarant to control development of the Project as set forth in the Article hereinabove entitled "Introduction," nothing in this Declaration shall limit the right of Declarant to maintain temporary fences, limit access by Owners to portions of the Common Elements, establish, reserve and/or grant additional license, easements and rights-of-way in favor of Declarant, utility companies or others as may, from time to time, as may be reasonably necessary for the development of the

Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulation and requirements of the City, the DRE and the VA/FHA.

4.10 Easement for Public Service Uses. In addition to the foregoing easements over the Common Elements, there are hereby created, established and granted easements for public services, including, but not limited to, the right of police, fire, ambulance and other public services to enter upon any part of the Common Elements for purposes of serving the health and welfare of all Owners in the Project.

4.11 Control of Common Elements. Control and/or title of the Common Elements (excluding those portions of the Common Elements which are subject to the various easement and other rights reserved by Declarant as set forth in this Declaration) shall be turned over by Declarant to the Association prior to or simultaneously with the first close of escrow for the sale of a Lot in the Project. Without limiting the generality of the foregoing, Declarant shall convey title to the Common Elements to the Association free and clear of all encumbrances and liens, except easements and other property rights in and to the Common Elements which are of record or created herein, and any current real property taxes, which shall be prorated to the date of transfer. The Association shall be obligated to undertake all maintenance responsibilities for each portion of the Common Elements as and when title and/or easement rights are conveyed or maintenance responsibilities are tendered by Declarant for such portion of the Common Elements, or as and when the City approves the Improvements as installed by Declarant in such portion of the Common Elements, whichever is first to occur. Declarant is not obligated to install any Common Elements Improvements other than those required pursuant to the Project approval requirements. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept control over the Common Elements and undertake maintenance responsibilities pending resolution of the dispute.

4.12 Easements for Encroachments. Declarant reserves for its benefit and the benefit of the Owners, and hereby creates, establishes and grants to the Owners a reciprocal easement appurtenant to each Lot over the Lot and Common Elements for the purpose of (a) accommodating any existing encroachment of any fence, wall, eave, overhangs, wing walls and/or chimneys of any Improvement existing as of the date the escrow initially closed for the sale of the Lot from Declarant to an Owner, and (b) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement, or natural settling of such encroachments or Improvements. Declarant further reserves reciprocal easements for utility services and repairs, replacement and maintenance of the same over the Common Elements for the benefit of the Owners. Use of the foregoing easement may not unreasonably interfere with each Owner's use and enjoyment of Owner's respective Lot.

4.123 Avigation Easement. The Project is within four (4) miles of Williams Gateway Airport, and is subject to a recorded avigation easement and release for Williams Gateway Airport. Additional information pertaining to aircraft operation and airport development may be obtained by contacting the Williams Gateway administration office.

## ARTICLE V

### THE ASSOCIATION

5.1 Membership. Every person or entity who or which is an Owner, as defined hereinabove, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot in the Project merely as security for the performance of an obligation.

5.2 Voting Rights. The Association shall have two (2) classes of voting membership, as follows:

Class A. Class A Members shall be all Owners, with the initial exception of Declarant until the conversion of the Class B Members, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earliest:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;
- (b) December 31, 2005; or
- (c) When Declarant gives written notification to the Board that the Class B membership has ceased.

Any action by the Association which must have the approval of the membership of the Association before being undertaken shall require the vote or written assent of both a majority of the Class B membership as well as a majority of the Class A membership, so long as there are two (2) outstanding classes of membership, unless a specific provision of this Declaration or the By-Laws or Articles of the Association requires the approval of a greater percentage of the voting membership.

5.3 Special Voting Procedures For Election to the Board. Declarant shall be entitled to solely elect a majority of the members of the Board until the first to occur of the following events:

- (a) The election of the Board immediately following the date on which the total votes outstanding in the Class A membership equal the total votes outstanding in

the Class B membership;

(b) December 31, 2005; or

(c) When Declarant gives written notification to the Board that the Class B membership has ceased.

5.4 Vesting of Voting Rights. The voting rights attributable to any given Lot in the Project, as provided for herein, shall not vest until the Assessments provided for hereinbelow have been levied by the Association against said Lot.

5.5 Suspension of Voting Rights. As more particularly set forth in the Article entitled "General Provisions," the Board shall have the authority, among other thing, to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

5.6 Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Lot. In the event of such sale, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Lot, or to the Mortgagee (or third party purchaser) of such Lot upon a foreclosure sale. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the actual administrative cost of transferring the memberships to the new Owners on the records of the Association.

5.7 Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) the conveyance by the Owner of such Owner's Lot; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in the proxy. A proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall be cast in accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

5.8 Record Dates. For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights in respect of any lawful action, the Board may fix in advance record dates as provided in the By-Laws.

## ARTICLE VI

### POWERS AND DUTIES OF THE ASSOCIATION

6.1 Management Body. The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project as provided herein and the affairs of the Association shall be managed by a Board of Directors, as more particularly set forth in the By-Laws. The initial Board shall be appointed by the incorporator(s) or its/their successor(s). Thereafter, the Directors shall be elected as provided in the By-Laws.

6.2 Powers. The Board, for and on behalf of the Association, shall have the right and power to do all things necessary to conduct, manage and control the affairs and business of the Association. Subject to the provisions of the Articles, the By-Laws and this Declaration, the Board shall have all general powers authorized under Arizona law regarding nonprofit corporations, and shall have the following specific powers:

(a) Enforce the provisions of this Declaration (including but not limited to the ability to record a notice of noncompliance or violation), including any amendment thereto, and all contracts or any agreements to which the Association is a party;

(b) Acquire, manage, maintain, repair and replace all Common Elements and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, gardening and other necessary services for the Common Elements, all as more specifically set forth in the Article herein entitled "Repair and Maintenance";

(c) Maintain fire, casualty, liability and fidelity bond coverage, and other insurance coverage pursuant to the terms of the Article herein entitled "Insurance";

(d) Obtain, for the benefit of the Common Elements, all commonly metered water, gas and electric services, refuse collection and cable (or master antenna) television service, if any;

(e) Employ and retain a professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board and engage such other personnel (including attorneys, budget preparers and accountants) as necessary for the operation of the Project and administration of the Association;

(f) Pay all taxes and special agreements which would be a lien upon the entire Project or the Common Elements, and to discharge any lien or encumbrance levied against the entire Project or the Common Elements;

(g) Pay for reconstruction of any portion of the Common Elements damaged or destroyed;

- (h) Delegate its powers;
- (i) Adopt reasonable Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of the Project;
- (j) Enter into any Lot when necessary in connection with maintenance or construction for which the Association is responsible;
- (k) Execute Lot line adjustments (and corresponding deeds), enter into a maintenance and/or other agreement with Declarant or a third party, grant fee title to or easement over the Common Elements to Declarant or a third party, and/or receive fee title to or an easement over real property owned by Declarant or a third party as reasonably necessary due to those conditions in the field where it is not readily apparent where Lot lines are located and the respective party's maintenance responsibilities commence and end, and such adjustment, deed and/or agreement will promote a clearly defined and uniform maintenance plan by the respective parties;
- (l) Levy and collect Assessments on all Lots in the Project for which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Nonpayment of Assessment: Remedies of the Association";
- (m) Institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (i) enforcement of the Declaration, Rules and Regulations and By-Laws; (ii) damage to the Common Elements; (iii) damage to a Lot which arises out of, or is integrally related to, damage to the Common Elements that the Association is obligated to maintain or repair; and
- (n) Perform any and all other act and thing that a nonprofit corporation organized under the laws of the State of Arizona is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration.

6.3 Duties. The Board shall perform and execute the following duties for and on behalf of the Association:

- (a) Provide, water, sewer, gas, electricity, garbage and trash collection, and other necessary utility services for the Common Elements, if any, and, if not separately metered or provided, for the Lots;
- (b) Provide insurance for the Association in accordance with the provisions of the Article hereinbelow entitled "Insurance";
- (c) Acquire, own, maintain and repair all portions of the Common

Elements in a neat, clean, safe, attractive, sanitary and orderly condition at all times. Without limiting the generality of the foregoing, the Association shall be responsible for maintaining the private streets, entry gate and related systems, if any, sidewalks, if any, storm drains, drainage channels, debris basins and/or other similar drainage facilities, if any, in a condition acceptable to the City;

(d) Contract for any other material, supplies, furniture, labor, service, maintenance, repairs, structural alterations and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;

(e) Pay all real and personal property taxes and Assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners;

(f) Accept, as part of the Project, all property included in the Project, in accordance with the terms and provisions of this Declaration, and accept all Owners as Members of the Association. In addition, the Association shall accept all Common Elements, conveyed, leased or otherwise transferred to it, if any, by Declarant, its successors or assigns, or appropriate governmental agency;

(g) Cause reasonable and appropriate financial statements for the Association to be regularly prepared and copies distributed to each Member of the Association, regardless of the number of Members or the amount of assets of the Association;

(h) Review on a quarterly basis, the following:

i) A current reconciliation of the Association's operating accounts;

ii) A current reconciliation of amounts collected as reserves;

iii) The current year's actual amounts collected as reserves and expenses compared to the current year's budget;

iv) An income and expense statement for the Association's operating and reserve account; and

v) The most current account statement prepared by the financial institutions where the Association maintains its operating and reserve accounts.

Withdrawal of funds from the Association's reserve account shall require the signature of either: (i) two (2) members of the Board; or (ii) one (1) member of the Board and an officer of the Association who is not also a member of its Board. As used in this Section, "reserve account" means moneys that the Board has identified from its annual budget for use to

defray the future repair or replacement of, or additions to, those major components of the Common Elements which the Association is obligated to repair or replace on a periodic basis, rather than on a regular annual basis;

(i) Assume and pay out of the Assessments provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume as provided for in Section 6.4 hereinbelow;

(j) Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Common Elements, as more particularly described below. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member and shall be on file with the records of the Association. In the event of any conflict between such Rule and Regulation and this Declaration, this Declaration shall prevail;

(k) Enforce for the benefit of the Project all applicable provisions of this Declaration, the Article, By-Laws and such Rules and Regulations of the Association, and of all other documents pertaining to the ownership, use, management and control of the Project;

(l) Give notices in writing to FHLMC, FNMA and GNMA, and other lenders and investors participating in the financing of the sale of Lot in the Project, as required herein; and

(m) Within ten (10) days of receipt of a written request from an Owner, provide said Owner with a copy of this Declaration and the By-Laws and Articles for the Association, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges therein as provided by this Declaration or other management documents of the Board as of the date of such request. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. In addition, the Board shall make available during normal working business hours or upon request under reasonable circumstances to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee and the holders, insurer(s) and guarantor(s) of the first Mortgage on any Lot, current copies of this Declaration, the Articles, the By-Laws, the Rules and Regulations, the membership register, including mailing addresses and telephone numbers, and all other books, records and financial statements of the Association.

6.4 Discretionary Powers. The Board, at its option, may assume, perform and execute the following powers and duties for and on behalf of the Association:

(a) Retain the services of a manager for the Project and provide such other personnel as the Association deems necessary and proper to assist in the operation of the Association and/or management of the Common Elements, regardless of whether such



other personnel are employed directly by the Association or otherwise;

(b) Remove or replace any Improvement that extends into the Common Elements under authority of an easement when access to a utility line underneath such Improvement is requested by any utility company; provided, however, that the cost shall be assessed against the Owner of the Lot involved as a Compliance Assessment if said Owner caused the Improvement to be so placed in the Common Elements without legal right to do so;

(c) Incur any liability or pay any costs or expenses for a single Lot or Owner thereof; provided, however, that in the event the Association does incur any such liability or pay any such costs or expenses, the amount thereof shall be specially assessed against the Owner of such Lot as a Compliance Assessment; provided further, however, that nothing herein shall permit the Association to assess the Owner for any new Improvements to the Common Elements except as otherwise provided in this Declaration;

(d) Subject to the limitations set forth in this Article, contract for any other material, furniture, labor, services, maintenance, repairs, structural alteration or insurance, or pay any taxes or Assessments which, in the opinion of the Board, shall be necessary or proper for the operation of the Common Elements for the benefit of the Owners or for the enforcement of this Declaration; and

(e) Enter into a maintenance or subsidy agreement with Declarant, at Declarant's sole discretion, to temporarily reduce the financial obligations of the Owners for Assessment.

6.5 Notification by Association of Defects. In the event of any alleged defect in any improved Common Elements for which the Association believes Declarant may be responsible, the Board shall provide Declarant with written notice of such defect. Declarant shall have a reasonable opportunity to inspect such alleged defect, and, if Declarant agrees with the Board (or otherwise elects to perform the work), to repair, replace or otherwise cure any defect in workmanship and/or material. The Association acknowledges and agrees that Declarant (or its authorized agents) shall be entitled at its sole discretion to determine the material and method to be used in affecting such repair, replacement or cure. In no event shall Declarant have any liability for, and the Association shall indemnify, defend and hold harmless Declarant from and against, any consequential, punitive or exemplary damages or legal or attorneys fees claimed by the Association or any Owner in connection with any such defect.

6.6 Delegations of Duties. In the event that the Association shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated.

6.7 Right of Entry for Emergency. The Board, any person authorized by the Board or any Owner may enter any Lot in the event of any emergency involving illness or potential danger

to life or property. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

6.8 Right of Entry for Repairs. The Board, or any person authorized by the Board, shall have the right to enter, upon reasonable notice, any Lot to effect necessary repairs which the Owner has failed to perform or which are necessary in connection with the repairs to the Common Elements or an adjoining Lot. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

6.9 Limitations on Board Action. The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the Members, other than Declarant, constituting a quorum consisting of more than fifty percent of the voting power of the Association residing in the Members, other than Declarant:

(a) Entering into a contract with a third person, wherein the third person will furnish goods or services for the Common Elements or the Association for a term longer than one (1) year, with the following exceptions:

(1) A management contract, the terms of which have been approved by the VA/FHA and are consistent with provisions herein;

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by a governmental entity; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short-rate cancellation by the insured;

(4) Agreements for cable television services and equipment or satellite dish television service and equipment of not to exceed five (5) years duration, provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect interest of ten percent (10%) or more; and

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment installation and services of not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Incurring aggregate expenditures for capital improvement to the Common Elements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(c) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(d) Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or

(e) Filling a vacancy on the Board created by the removal of a Director.

6.10 Licenses, Easements and Rights-of-Way. The Board, for and on behalf of the Association, is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, roadways, and other public utility purposes over those portions of the Common Elements upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Elements or for the preservation of the health, safety, convenience and welfare of the Owner. Such license, easements and rights-of-way may be granted at any time prior to twenty-one (21) years after the death of the individuals who have signed this Declaration and their issue who are in being as of the date hereof, and the right to grant such licenses, easements and rights-of-way is hereby expressly reserved.

6.11 New Improvements. Except as otherwise provided in this Declaration, the Association may construct new Improvements or additions to the Common Elements, or demolish existing Improvements, provided that in the case of any Improvement, addition or demolition involving a total expenditure in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the written consent or vote of a majority of the Owners (other than Declarant) in the Project as to the maximum total cost therefor shall first be obtained, and provided that no Lot shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof. The Board shall levy a Special Assessment against all Owners in the Project for the cost of such work.

6.12 Association Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assessments. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Elements, Driveways, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Control Committee, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws; and provided further that the Rules and Regulations shall not be binding on Declarant so long as Declarant owns an interest in the Project. A copy of the Rules and Regulations as they may, from time to time, be

adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be made available to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded.

#### 6.13 Nonliability and Indemnification.

(a) General Limitation. Except as specifically provided in this Declaration, or as required by law, no right, power or responsibility conferred on the Board or the Architectural Control Committee by this Declaration, the Articles or the By-Laws, shall be construed as a duty or obligation charged upon the Board, the Architectural Control Committee, any member of the Board or the Architectural Control Committee, or any other officer, employee or agent of the Association. No such person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such person's acts or omissions within what such person reasonably believed to be the scope of such person's Association duties ("Official Acts"), except to the extent that such injuries or damages result from such person's willful or malicious misconduct. No such person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damages resulting from such person's Official Act, except to the extent that such injuries or damages result from such person's negligence or willful or malicious misconduct;

(b) Personal Liability Limitation. No person who suffers injury, including, but not limited to, bodily injury including, without limitation, emotional distress or wrongful death) or property damage or loss as a result of the tortious act or omission of a volunteer Board member or volunteer Association officer shall recover damages from such Board member or officer if all the following conditions are satisfied:

(1) At the time the act or omission occurred, the Board member or officer resided in the Project as either a tenant or an Owner of two (2) or fewer Lots;

(2) The act or omission was performed within the scope of the Board member's or officer's Association duties;

(3) The act or omission was performed in good faith;

(4) The act or omission was not willful, wanton or grossly negligent; and

(5) The Association maintained and had in effect at the time the

act or omission occurred, and at the time a claim was made, one (1) or more policies of insurance which included coverage for general liability for the Association and individual liability of officers and Directors of the Association for negligent acts or omissions in such capacity, and both types of coverage were in the amount of at least One Million Dollars (\$1,000,000.00).

(c) Indemnification. The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for such person's official act, provided that:

(1) The Board determines that such person acted in good faith and in the manner such person reasonably believed to be in the best interest of the Association; and

(2) In the case of an action or threatened action by or in the right of the Association, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of majority of a quorum of the Members of the Association, provided that the person to be indemnified shall not be entitled to vote. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs or devisees of any person entitled to such indemnification.

6.14 Declarant's Right to Cure Alleged Defects. The Association and all Owners shall comply with the following:

(a) Declarant's Right to Cure. If the Association or any Owner or Owners (collectively, "Claimant") claims, contends or alleges that any portion of the Common Elements and/or any Improvements thereon are defective, or that Declarant or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading or construction thereof (collectively, an "Alleged Defect"), Declarant may inspect, repair and/or replace such Alleged Defect as set forth herein.

(b) Notice to Declarant. If a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at such address at which Declarant maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable

time after Declarant receives a Notice of Alleged Defect or Declarant's independent discovery of any Alleged Defect, Declarant may, upon reasonable notice to Claimant and during normal business hours, enter onto or into the Common Elements and/or any Improvements thereon to inspect and, if Declarant deems necessary, repair and/or replace such Alleged Defect. In conducting such inspection, repairs and/or replacement Declarant may take any actions it deems reasonable and necessary under the circumstances.

(d) No Additional Obligation. Nothing set forth in this Section imposes any obligation on Declarant to inspect, repair or replace any items or Alleged Defect for which Declarant is not otherwise obligated under applicable State and federal law.

## ARTICLE VII

### ASSESSMENTS

7.1 Creation of the Lien and Personal Obligation of Assessment. Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments; (b) Special Assessments; (c) Compliance Assessments; (d) Special Benefit Assessment, and (e) such other assessments as the Association may periodically establish. The Regular and Special Assessments, together with a reasonable late charge as may, from time to time, be established by the Board, interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge against and a continuing lien upon the Lot against which each such Assessment is levied, and shall also be the personal obligation of the Owner of such property at the time when the Assessment came due. Each Compliance Assessment levied against a Lot, together with interest, costs, reasonable late charges and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to the successors in title unless expressly assumed by them.

7.2 Purpose of Regular Assessments: Levy and Collection. The Regular Assessment levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Project and, except as otherwise provided in this Declaration, to maintain, repair, replace and improve the Common Elements, and any other Improvements or areas which the Association is obligated to maintain, as provided herein. The Association by and through its Board, shall levy and collect Assessments from the Owner of each Lot in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of the powers and duties set forth in this Declaration, the By-Laws and Articles. In connection therewith, the Association shall not impose or collect Assessments, penalties or fees that exceed the amount reasonably necessary for the purpose or purposes for which they were levied. Nothing in this Declaration shall be construed in such a way as to prohibit the use of Association Assessments or funds to abate any annoyance or nuisance emanating from outside the boundaries of the Project. Regular Assessments may be collected on a monthly installment basis.

7.3 Regular Assessments - Basis. Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots. Each Owner's proportionate share of the Common Expense for any fiscal year of the Association shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the total number of Lots in the Project which are subject to Assessment. Until the first day of the fiscal year of the Association immediately following the first close of an escrow for the sale of a Lot in the Project to an Owner, the maximum Regular Assessment shall be \_\_\_\_\_ Dollars (\$\_\_\_\_.00) per year (or \_\_\_\_\_ Dollars (\$\_\_\_\_.00) per month). Declarant and any Owner shall be exempted from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Elements facilities that are not complete at the time Assessments commence. This latter exemption shall only be in effect as to a particular Common Elements facility until the earlier of: (a) the recordation of a notice of completion for such Common Elements facility; or (b) the placement into use of the particular Common Elements facility. From time to time, from and after the first day of the fiscal year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Assessment may be increased subject to the following limitations:

(a) Increases in Regular Assessment for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Regular Assessment for the immediately preceding fiscal year may be approved by the Board.

(b) Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the approval of Members, constituting a quorum, casting a majority of affirmative votes at a meeting or election of the Association. For purposes of this entire Section 7.3, a quorum means more than fifty percent (50%) of the Members of the Association.

(c) To the extent permitted by law, the Assessment increase limitation set forth in Subsection (b) above does not apply to increases in Assessments related to emergency situations, which shall be deemed to include the following:

(1) Extraordinary expenses required by an order by a court of competent jurisdiction;

(2) Extraordinary expenses for the maintenance or repair of Common Elements that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

(3) Extraordinary expenses necessary to repair or maintain the Common Elements that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, in the event that the Board increases the Regular Assessment above twenty percent (20%) pursuant to this Subparagraph (3), the Board shall distribute written notice concerning said increase to all Owners and a copy of a resolution

adopted by the Board setting forth the necessity of the extraordinary expense; and (ii) the justification why said expenses were not reasonably foreseeable at the time the most recent budget was prepared. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Lot by the Association as a Regular Assessment, plus any amount contributed to reserves by first time buyers of Lots pursuant to Section 7.13, to the extent such contributions offset an amount which would otherwise be paid by Owners as Regular Assessments.

The Board may fix the Regular Assessment at an amount not in excess of the maximum Regular Assessment. So long as Declarant is offering Lots for sale, the Regular Assessment may not be decreased by ten percent (10%) or more without the express prior written consent of Declarant. The Association may, upon ratification by a majority of the Board, enter into an agreement with Declarant, its successors or assigns, to reduce or abate Assessments, upon such terms and conditions as may be agreed to by the parties.

7.4 Special Assessments for Capital Improvements. In addition to the Regular Assessments authorized above, the Board may not, without the vote or written approval of Members constituting a quorum (which shall mean more than fifty percent (50%) of Owners of the Association) casting a majority of affirmative votes at a meeting or election of the Association, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The five percent (5%) limitation shall not apply to increase in Special Assessments related to an emergency situation which shall be deemed to include the following:

(a) Extraordinary expenses required by an order by a court of competent jurisdiction;

(b) Extraordinary expense for the maintenance or repair of Common Elements that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

(c) Extraordinary expenses necessary to repair or maintain the Common Elements that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, in the event the Board levies any Special Assessment that exceeds the five percent (5%) limitation pursuant to this Subparagraph (4), the Board shall distribute written notice concerning said Special Assessment to all Owners and a copy of a resolution adopted by the Board setting forth (1) the necessity of said Special Assessment; and (2) the justification why said Special Assessment was not reasonably foreseeable at the time the most recent budget was prepared. Every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments.

7.5 Compliance Assessments. A Compliance Assessment may not be characterized



nor treated as an assessment which may become a lien against the Owner's Lot enforceable by a sale; provided, however, the foregoing shall not apply to any Compliance Assessment imposed against an Owner consisting of a reasonable late payment penalty for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys fees in its efforts to collect delinquent Assessments.

7.6 Special Benefit Assessments. Special Benefit Assessments shall mean and refer to a charge levied by the Association against an Owner and such Owner's respective Lot to cover the expenses incurred by the Association in the operation, maintenance, repair and/or funding of reserves as to a portion of the Project designated as a "Special Benefit Area," which expenses are allocable only to Owners within such an Area. These expenses chargeable to Owners in a Special Benefit Area may include, without limitation, the following:

- (a) Maintenance, management, operation, repair and replacement of particular Improvements within the Special Benefit Area;
- (b) Utilities or services for the benefit of Owners within the Special Benefit Area;
- (c) Reasonable reserves, as deemed appropriate by the Board, for repair and replacement of any Improvements maintained by the Association within a Special Benefit Area; and
- (d) Unpaid Special Benefit Assessments.

The Association shall distribute to Owners within any Special Benefit Area a pro forma operating statement and budget for the upcoming fiscal year which shall estimate the expenses attributable to the Special Benefit Area, the allocation of such expenses among the affected Owners, and shall set forth the amount and payment schedule of the Special Benefit Assessments. Increases in Special Benefit Area Assessments for any fiscal year which are greater than twenty percent (20%) above the maximum Special Benefit Area Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall obtain the approval of Members affected by such Assessment, constituting a quorum, casting a majority of affirmative votes. For purpose of this Section, a quorum means more than fifty percent (50%) of the Members of the Association affected by the Assessment. The Assessment increase limitation set forth hereinabove does not apply to increases in Special Benefit Area Assessments related to emergency situations that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared which determined the amount of the Special Benefit Area Assessment.

7.7 Notice of Increase in Assessments. The Board shall provide to the Owners, by first class mail to the address on file with the Association, notice of any increase in Regular, Special and/or Special Benefit Assessments not less than thirty (30) days prior to such increase becoming due.

7.8 Date of Commencement of Regular Assessments: Due Dates. The Regular

Assessments provided for herein shall commence on the first day of the month following the first close of escrow for the sale of a Lot, or on the first day of the month following the first occupancy of a Lot pursuant to a rental or lease agreement with Declarant, or its authorized agent, whichever occurs first. The first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the By-Laws. The Board shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject to the provisions hereinabove.

7.9 Collection of Assessments. Notwithstanding anything herein to the contrary, Declarant shall pay 25% of the Regular, Special and Special Benefit Assessments for each Lot which Declarant owns, except that Declarant shall pay and be liable for the full Assessment amount for any lots owned by Declarant which are being used by Declarant as Model Homes (but not sooner than the closing of the first Lot to a residential homebuyer). Except as otherwise provided herein, Regular and Special Assessments shall be levied at a uniform rate for all Lots and may be collected on a monthly basis. Compliance and Special Benefit Assessments shall be due thirty (30) days after such Assessment has been levied.

7.10 Certification of Payment. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

7.11 Delivery by Owner. Each Owner of a Lot shall, as soon as practicable prior to the transfer of title to the Lot, give to the prospective purchaser a copy of this Declaration and copies of the By-Laws and Articles of the Association, and a true statement, in writing, from the Board as to the amount of the Association's current Regular, Special and Special Benefit Assessments and fees, as well as any delinquent Assessments and information relating to penalties, attorneys' fees and other charges authorized by this Declaration on the Lot as of the date the statement is issued.

7.12 Delivery of Statement. Upon written request, the Board shall provide the Owner of a Lot with a copy of this Declaration, and copies of the By-Laws and Articles of the Association, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges authorized by this Declaration on the Lot as of the date of the request, the most recent financial statement, the Association's current Regular, Special and Special Benefit Assessments, and any change in the Association's current Assessments and fees which have been approved by the Board but have not become due and payable as of the date disclosure is provided pursuant to this Section. The Board may impose a fee for providing such documents and statements, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

7.13 Reserves. The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Elements, or any such other purpose determined by

the Board. There shall additionally be added to such reserves such amounts as Declarant may in its discretion cause to be contributed by each first time buyer of a Lot upon closing of the Lot (which Declarant intends initially to be an amount equal to one-sixth of the Regular Assessment that would otherwise be applicable to such Lot), which amount shall be in addition to and shall not be credited against the Regular Assessment otherwise applicable to the Lot.

7.14 Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Common Elements or abandonment of such Owner's Lot, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Association.

7.15 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

- (a) All property dedicated to and accepted by a public authority;
- (b) All property owned by a charitable or nonprofit organization exempt from taxation by the law of the State of Arizona, however, no land or Improvement devoted to dwelling use shall be exempt from said Assessment; and
- (c) Any Common Elements owned in fee by the Association.

## ARTICLE VIII

### EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

8.1 Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner shall be personally obligated for all Regular, Special, Special Benefit and Compliance Assessments assessed against such Owner's Lot at any and all times that such Owner is the Owner of such Lot. Once assessed and until paid in full, such Assessments shall remain the personal obligation of the persons or entities originally comprising such Owner regardless of whether such persons or entities sell or transfer the Lot or are no longer the Owner of the Lot. Any Regular, Special, Special Benefit or Compliance Assessment not paid within fifteen (15) days after the due date shall be deemed delinquent and the Owner shall be required to pay: (a) reasonable costs of collection, including reasonable attorneys' fees; (b) a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Fifteen Dollars (\$15.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with Arizona law; and (c) interest on all sums imposed under this Section at an annual percentage rate not to exceed twelve percent (12%) commencing thirty (30) days after the Assessment was due. The Board, for and on behalf of the Association, may commence legal action against the Owner or former Owner personally obligated (as provided above) to pay the same, or, in the case of a Regular, Special or Special Benefit Assessment, may foreclose the lien against such Owner's Lot. Such lien may also

be foreclosed by a power of sale or other nonjudicial procedure provided for by the law of the State of Arizona. In furtherance thereof, each Owner hereby vests in the Association, its successors or assigns, the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such delinquent Assessments.

8.2 Notice of Delinquent Assessments. No action shall be brought to foreclose a lien for delinquent Assessments or to proceed under the power of sale herein, unless at least thirty (30) days has expired following the date a Notice of Delinquent Assessments is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Recorder. Said Notice of Delinquent Assessments must recite a good and sufficient legal description and street address of any such Lot, the record Owner or reputed Owner thereof, the total amount due and payable as provided herein, a statement that the claim of lien is made by the Association pursuant to this Declaration, and a statement that a lien is claimed against such Lot in an amount equal to the amount stated. The Notice shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

8.3 Foreclosure Sale. Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board, in accordance with the provisions of Arizona law applicable to the exercise of power of sale in Mortgages and deeds of trust, as the same may be amended, from time to time, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

8.4 Curing of Default. Upon the timely curing of any default for which a Notice of Delinquent Assessments or lien was filed by the Association, the officers thereof are hereby authorized to file or record, as the case may be, an appropriate release of such Notice upon receipt of payment from the defaulting Owner of a reasonable fee to be determined by the Association to cover the costs of preparing and filing or recording such release.

8.5 Cumulative Remedies. The Association's remedies for nonpayment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of any other rights and remedies which the Association and its assigns may have hereunder or at law.

8.6 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created hereunder nor any breach of the terms and provisions of this Declaration, nor the enforcement of any term or provision hereof, shall defeat or render invalid the rights of any Mortgagee under any recorded first Mortgage or deed of trust upon a Lot made in good faith and for value; provided, that after such Mortgagee or other person or entity obtains title to such Lot by judicial or nonjudicial foreclosure, such Lot shall remain subject to this Declaration and the payment of Assessments which fall due subsequent to the date of taking title.

## ARTICLE IX

### USE RESTRICTIONS

The Lots and Common Elements shall be occupied and used only as set forth hereinbelow.

9.1 Private Dwelling. Each Lot shall be used for residential purposes, except such temporary uses as shall be permitted by Declarant while the Project is being developed and Lots are being sold by Declarant; provided, however, that Declarant reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, for so long as Declarant owns any interest in the Project, the right to carry on normal sales activity on the Project, including the operation of models, sales office, design center and parking area.

9.2 Common Elements Use. Use of the Common Elements shall be subject to the provisions of this Declaration, the Rules and Regulations and to any additional limitations imposed by the Association.

9.3 Conduct Affecting Insurance. Nothing shall be done or kept in any Lot or in the Common Elements which will increase the rate of insurance on the Common Elements without the approval of the Association. No Owner shall permit anything to be done or kept in such Owner's Lot or in the Common Elements which will result in the cancellation of insurance on the Common Elements or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance to the Common Elements shall be increased, the Owner shall become personally liable for the additional insurance premiums.

9.4 Liability for Damage to the Common Elements. Each Owner shall be liable to the Association for any and all costs and expenses which may be incurred by the Association to repair any damage to the Common Elements which may be sustained by reason of the negligent acts or omissions or the willful misconduct of said Owner or any member of such Owner's family, guests, tenants, lessees, or their respective guests or invitees, whether minor or adult. Subject to Notice and Hearing and approval by a majority of the Board, any such costs and expenses shall be levied by the Board as a Compliance Assessment against such Owner.

9.5 Signs. No sign of any kind shall be displayed to the public view on or from any Lot or the Common Elements without the approval of the Association, except such signs as may be used by Declarant for as long as Declarant owns an interest in the Project, in connection with the development of the Project and sale of Lots, and except one (1) "for sale," "for lease" or "for exchange" sign of reasonable size on any Lot. Only professional signs shall be allowed and an Owner or Owner's agent may not post any signs or advertising at an entrance to the Project or in the Common Elements. In addition to the foregoing, all signs permitted under this Section shall conform with the City's sign ordinance, if any, and with all applicable governmental regulations.

9.6 Maintenance of Animals. No animals of any kind shall be raised, bred, maintained or kept in any Lot or in the Common Elements, except that up to a total of two (2)

common domesticated dogs, cats, birds or other household pets (other than small household pets such as fish, which may be kept in reasonable numbers so long as there is no external evidence thereof) may be kept in each Lot; provided, however, that no animal shall be raised, kept, bred or maintained for any commercial purpose and shall not exceed any weight limitations, if any, established by the Board. Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by said animal in the Project. While walking or exercising an animal in the Project, the Owner thereof shall, at all times, have readily available means to clean up any excrement or other unclean or unsanitary conditions caused by said animal. Any permissible pet belonging to an Owner, tenant, lessee or guest must be kept within an enclosed area, or on a leash being held by a person capable of controlling the animal. The Association, upon the approval of two-thirds (2/3) of the Board, shall have the right to prohibit maintenance of any animal within the Project which constitutes a private nuisance to any other person. Every person bringing an animal upon or keeping an animal in the Project shall be liable pursuant to all applicable laws to each and all persons for any injury or damage to persons or property caused by such animal.

9.7 Quiet Enjoyment. No Owner shall permit or suffer anything to be done in the Project or kept upon such Owner's Lot which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. Notwithstanding the foregoing, for as long as Declarant owns any interest in the Project, Declarant's efforts in selling the Lots may interfere with the Owners' quiet enjoyment of the Lots, however, each Owner acknowledges this and waives any claim against Declarant or nuisance due to any activity related to constructing, selling or marketing the Lot. Each Owner shall comply with all of the requirements of the City and of all other governmental authorities with respect to said premises, and shall remove all rubbish, trash and garbage from such Owner's Lot. All clotheslines, refuse containers, woodpiles, storage boxes, tools and equipment shall be prohibited from any Lot unless obscured from view by a fence or appropriate screen approved by the Architectural Control Committee provided for hereinbelow.

9.8 Structural Changes. There shall be no structural alteration, modification or construction to the exterior of a Lot, fence or other structure whatsoever in the Project without the prior written approval of the Board or its designated Architectural Control Committee, as required herein, except works of construction by Declarant during the development of the Project.

9.9 Improvements. There shall be no construction, alteration or removal of any Improvement in the Project (other than those repairs or rebuilding permitted under the Article entitled "Repair and Maintenance") without the approval of the Architectural Control Committee, as set forth hereinbelow. No Improvement shall be constructed upon any portion of any Common Elements, other than such Improvements as shall be constructed: (a) by Declarant (or a person or entity to whom Declarant assigns its rights as developer) or (b) by the Association as provided herein, as may be permitted by the Architectural Control Committee in accordance with the Article herein entitled "Architectural Control - Approval." Each Owner assumes all risks which may result from Improvements such Owner makes to such Owner's Lot, and each Owner indemnifies and holds harmless the Association, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorneys' fees and other obligations which arise out of or are incurred in

connection with the installation, existence or removal of such Improvements.

9.10 Windows. No window in any Lot shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, tint or any similar material any other material reasonably deemed inappropriate for such use by the Architectural Control Committee; provided, however, an Owner may use plain white sheets to cover window for a period not to exceed three (3) months after the close of escrow pending the installation of drapes, curtains, shutters or other appropriate interior window covering. Subject to review and approval by the Architectural Control Committee, an extension of three (3) months may be provided. In the event an Owner has installed appropriate window coverings for all windows facing the street, the Architectural Control Committee shall automatically grant such Owner a three (3) month extension to obtain necessary window coverings for the back window of such Owner's Lot.

9.11 Commercial Activity. No business, commercial, manufacturing, mercantile, storage, vending or industrial operations of any kind shall be conducted in or upon any Lot or the Common Elements, except such temporary use as shall be permitted by Declarant while the Project is being constructed and Lots are being sold by Declarant. Notwithstanding the foregoing, this Section shall not preclude an Owner from maintaining a home-office and conducting business activities therefrom on the following conditions: (a) there is no external evidence of such activity; (b) such activities are conducted in conformance with all applicable government ordinances; (c) the patrons or clientele of such activities do not visit the Lot or park automobiles or other vehicles within the Project; (d) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Lot; (e) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (f) such activities are consistent with the residential character of the Project and conform with the provisions of this Declaration. In no event, however, shall any Owner or the Association use a Lot as an office for the rental, resale or leasing of Lots without the prior written consent of Declarant.

9.12 Parking. All vehicles in the Project shall be parked in accordance with the following:

(a) No vehicle may be temporarily parked on a public street within the Project for more than twenty (20) continuous hours.

(b) Except as may be otherwise expressly permitted by the Association pursuant to duly adopted Rules and Regulations, parking in the Common Elements (including private streets) is prohibited.

(c) Except as otherwise permitted by the Association, as set forth herein, no Owner shall park or permit such Owner's family, guests or invitees to park any vehicle on any portion of the Project, except wholly within such Owner's respective garage or on the exclusive Driveway easement associated with such Owner's Lot (if, and only if, such exclusive Driveway easement exceeds eighteen feet (18') in length), provided such automobile does not extend onto the sidewalk, if any, or private street. It is specifically intended that certain exclusive Driveway easements in the Project shall be shorter than

eighteen feet (18') in length and that vehicles shall not be parked on such exclusive Driveway easements. No garage or Driveway easement rights may be sold or assigned to, or retained in the ownership of, any person not an Owner of the Lot associated with such garage or Driveway, and no garage or Driveway easement rights may be rented or leased to a non-Owner of the Lot associated with such garage or Driveway except in connection with the rental or lease of the Lot. Without limiting the generality of the foregoing, no Owner shall park any large commercial type vehicle or any size truck, van or recreational vehicle (including, but not limited to, campers, motorhomes, trailers, boat trailers, mobile homes, recreational/utility vehicles or other similar vehicles) in such Owner's garage, unless wholly enclosed within said garage, nor on any portion of the Project, including the exclusive Driveway easement associated with such Owner's Lot; provided, however, trucks, camper trucks, recreational/utility vehicles, vans and similar vehicles, up to and including one-quarter (1/4) ton (as commonly designated), may be allowed when used for everyday transportation if prior approval by the Board is obtained.

(d) Each Owner shall keep such Owner's garage readily available for parking of such Owner's respective vehicle, and shall not store any goods or materials therein, nor use any portion thereof for a workshop or other use, if such storage or use would prevent said Owner from parking the number of vehicles therein for which said garage was originally designed and constructed to accommodate. Garage doors shall remain closed at all times, except as reasonably required for entry to and exit from the garage. Each Owner shall ensure that such Owner's garage door opener is in proper working order at all times.

(e) No Owner shall conduct any repairs to any motor vehicle of any kind whatsoever in such Owner's Lot (other than within an enclosed garage), exclusive Driveway easement or upon any portion of the Common Elements, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility.

9.13 Regulation of Parking. Subject to the rights of the Association, through its officers, committees and agents, the Board is hereby empowered to enforce the foregoing parking limitations by all means lawful for such enforcement, including, but not limited to, the levying of fines and the citing and towing of vehicles. The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above limitations whether the same shall belong to any Owner or a member of such Owner's family or to any tenant, lessee, guest or invitee of any Owner. Charges for such towing and storing shall be assessed against the Owner of the Lot which is responsible for the violation of such restrictions, and such assessment may be enforced as a Compliance Assessment.

9.14 Solar Heating. Each Owner shall have the right to place and maintain equipment and facilities related to the installation and maintenance of individual solar heating systems within such Owner's Lot. The installation and maintenance of any solar system by an individual Owner shall be subject to all applicable zoning regulations, building codes and City associated ordinances, and reasonable review by the Architectural Control Committee for compliance with the architectural standards adopted by the Association.



9.15 Appurtenances. No Owner shall install, or cause to be installed, or maintain any television, radio, or other antenna, satellite dish or other similar electronic receiving or broadcasting device in the Project, unless approved by the Architectural Control Committee and in compliance with all applicable ordinances of the City and all applicable Arizona statutes. No basketball backboard or other fixed sports apparatus may be constructed or maintained in the Project without the Architectural Control Committee's prior approval. No fence or wall (other than as originally constructed) may be erected, altered or maintained on any Lot except with the Architectural Control Committee's prior approval. No patio cover, wiring or air conditioning fixture, water softener, solar water heater or other device may be installed on the exterior of the residential structure in a Lot or be allowed to protrude through the walls or roof of the residential structure, except one (1) or more chimneys and vent stacks originally installed, if at all, in a Lot, and with the exception of those items installed during the original construction of the residential structure in a Lot, unless the Architectural Control Committee's prior written approval is obtained.

9.16 Water Softeners. No Owner shall install any on-site regenerative water softener within any portion of the Project (other than within Owner's enclosed garage), unless approved in writing by the Board and applicable governmental agency.

9.17 Leasing. No Owner shall be permitted to rent or lease such Owner's Lot for transient or hotel purposes or for a period of less than seven (7) days. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, By-Laws, Articles, and Rules and Regulations, and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement. Other than the foregoing, there shall be no restrictions on the right of an Owner to rent or lease such Owner's Lot.

9.18 Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the Common Elements, nor shall oil wells, tanks, tunnels or mineral excavation be permitted upon the Common Elements. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted within the Project.

9.19 Trash. Each Owner shall place all rubbish, trash, garbage or other waste material in garbage cans, garbage bags or other closed containers approved by the City or other appropriate agency. All such garbage cans and other containers shall be stored in an area on the Lot which is obscured from view from outside the Owner's Lot and each Owner shall use best efforts to assure that no odor shall arise therefrom so as to be unreasonably offensive to any adjacent Lot or other portion of the Project, or to otherwise be unsanitary, unsightly, offensive or detrimental to any other residents in the Project. Appropriate sanitary containers may be exposed to the view of neighboring Lots only when set out in designated locations in the Common Elements, as designated by the Board, no earlier than 5:00 p.m. the night prior to the trash pick-up day and removed from that location within ten (10) hours after pickup.

9.20 Exemption of Declarant. Nothing in this Article or elsewhere in this

Declaration shall limit, restrict, abridge or control, in any manner whatsoever, the rights of Declarant to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Lots and all other property within the Project, including, without limitation, the following specific rights, which may be exercised by Declarant, its successors and assigns, or by its agents and employees, in conjunction with such development and marketing, so long as Declarant owns an interest in the Project:

(a) The right to maintain and operate one (1) or more advertising, sales or leasing office(s) located upon any Lot owned by Declarant without payment of rent or approval of the Association;

(b) The right to post on and display from any Lot owned by Declarant or the Common Elements any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate irrespective of size, color, shape or materials of such items;

(c) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from the Project, as Declarant may, in its sole discretion, deem appropriate; provided that in the event Declarant removes any Association owned Improvement from the Common Elements without the express prior written consent of the Board, Declarant shall replace such Improvement with an Improvement of substantially similar value, appearance and utility within a reasonable period following completion of any work necessitating the removal of the Improvement;

(d) The right to conduct any commercial activity upon any Lot owned by Declarant or the Common Elements which reasonably relates to the development, marketing, leasing or sales of the Lots in the Project;

(e) The right to park (and to permit to be parked) vehicles upon any Lot owned by Declarant or the Common Elements; and

(f) The right to use Driveways within the Project, which right shall also extend to prospective purchasers or lessees of the Lots or of other property within the Project.

All or any portion of the rights of Declarant herein and elsewhere in this Declaration may be assigned by Declarant to any successor-in-interest in the Project by an express written assignment recorded in the Office of the County Recorder.

9.21 No Easements For View Purposes; Disclaimer. Neither the City, Declarant nor the Architectural Control Committee, nor the members, representatives, employees or consultants of any of the foregoing, have made any representations whatsoever concerning the view, if any, that a particular Lot or other Improvement thereon will enjoy. There are no express or implied easements whatsoever appurtenant to any Lot for view purposes or for the passage of light and air across any other Lot or any property not within the Project, regardless of whether such Lot is

owned by Declarant. Each Owner accepting a deed to a Lot hereby expressly acknowledges and agrees that the Lots, walls and fences constructed by Declarant, and further construction, both within the Project and in the immediate vicinity of the Project, may impair the view from such Owner's Lot, and each Owner hereby expressly consents to any such impairment. Each Owner further acknowledges and understands that property surrounding the Project may be developed or redeveloped in accordance with applicable City standards. Concerns pertaining to the future development of surrounding property should be addressed with the City.

9.22 Landscaping and Yard Improvements. All portions of the rear yard area in a particular Owner's Lot shall be fully landscaped by the Owner thereof within 180 days after such Owner acquires ownership of such Lot. Such yard area and landscaping shall be maintained by the Owner in a clean, safe and attractive condition, free of debris and unsightly materials of any kind, and in compliance with any Rules and Regulations promulgated by the Association with respect to yard area and landscaping appearance. In particular, such Rules and Regulations may require complete screening of any materials allowed to be stored in the yard area. The front yard landscaping on the Common Elements adjacent to a Lot may not be altered without the Board's prior written approval, which approval may be withheld in its sole and absolute discretion.

9.23 Screens. No Owner shall install any screen door, window screen or any other exterior appendage used to cover doors or windows in any portion of the Lot unless such Owner has written approval from the Architectural Control Committee.

9.24 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenant contained in this Article or elsewhere in this Declaration. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risk of the validity and enforceability thereof, and, by acquiring the Lot, agrees to indemnify and hold harmless Declarant from any injury or damage therefrom.

## ARTICLE X

### REPAIR AND MAINTENANCE

10.1 Repair and Maintenance by Association. Without limiting the generality of the Article herein entitled "Powers and Duties of the Association," and except as otherwise provided in this Declaration, the Association shall have the duty to maintain the Common Elements (including, but not limited to, the front yard landscaping on the Common Elements adjacent to a Lot, but not the front yard walkway, entrance feature (if any) or front-facing portion of the privacy wall or fence separating the front yard from the rear yard) in a neat, clean, safe, sanitary, attractive and orderly condition at all times. Without limiting the generality of the foregoing, such maintenance shall include, but not be limited to, painting, maintaining, repairing, restoring, replacing and landscaping (as the case may be) the same. Except as otherwise provided herein, all costs and expenses for such maintenance above shall be a Common Expense, and shall be paid out of the general operating fund of the Association. Notwithstanding anything in this Declaration to the contrary, all references in this Declaration to management, maintenance, repair or replacement

(or similar terms) of the Common Elements shall (unless the Association elects otherwise in any instance) additionally be deemed to mean and include any area within a Lot which is not designated as being within a Common Elements tract on the recorded plat for the Project, but which adjoins and reasonably appears (as a result of the actual placement of a fence or wall) to be part of the front yard associated with the Lot.

10.2 Maintenance Manual. Declarant may deliver to the Board a "Maintenance Manual" which sets forth Declarant's and its consultants' recommended frequency of inspections and maintenance of various components of the Common Elements. The Board shall, during its meetings, determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspection and maintenance of the Common Elements. The Board shall keep a record of such determinations in the Board's minutes. The Board shall, from time to time, make appropriate revisions to the Maintenance Manual. The Board shall review the Maintenance Manual for appropriate revisions at least on an annual basis.

In the absence of a Maintenance Manual, the Board shall have the Common Elements inspected at least once every three (3) years to (a) determine whether the Common Elements are being maintained adequately in accordance with the standards of maintenance established herein, (b) identify the condition of the Common Elements and any Improvements thereon, including the existence of any hazard or defects, and the need for performing additional maintenance, refurbishment, replacement or repair, and (c) recommend preventative actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board may employ such experts and consultants as are necessary to perform such inspection.

10.3 Maintenance Subject to Construction Easement. Notwithstanding anything stated to the contrary in this Declaration, the Association shall have no obligation to maintain or repair any portion of the Project until commencement of the Association's Assessments against the Lots.

10.4 Repair and Maintenance by Owner. Except as otherwise provided in Section 10.1 above regarding the Association's maintenance obligations affecting an Owner's Lot (e.g., the front yard landscaping), every Owner shall have the duty to maintain, repair and replace, at such Owner's sole cost and expense, all Improvements within such Owner's Lot or which represent an integral part thereof (including the front yard walkway, entrance feature (if any) and front-facing portion of the privacy wall or fence separating the front yard from the rear yard), in a neat, clean, safe, sanitary, attractive and orderly condition at all times. Since the Lot is a detached product, each Owner is responsible for adopting an inspection and preventive program with regard to wood destroying pests and other organisms for such Owner's Lot.

10.5 Boundary Walls. A fence or wall ("Boundary Wall") may be situated on the boundary between two (2) Lots. For each such Lot and its Owner, Declarant reserves an easement to enable such Owner, at reasonable times and upon reasonable notice to the Owner of the Lot adjacent to the Boundary Wall ("Adjacent Owner"), and in a reasonable manner, to enter the yard areas of the Adjacent Owner's Lot to maintain, repair, paint or restore the Boundary Wall, the

structure of which it is a part, and any gutter or downspout attached to such structure. The structural integrity of any Boundary Wall shall be jointly maintained by the Owners of Lots which share such Boundary Wall as a common boundary.

10.6 Damage and Destruction Affecting a Residence.

(a) Duty to Rebuild. In the event any Improvements on a Lot are damaged or destroyed by fire or other casualty, it shall be the duty of the Owner to repair or reconstruct the Improvements in a manner which will restore them to their condition and appearance immediately prior in time to such damage or destruction, or as otherwise approved by the Architectural Control Committee. The affected Owner shall be obligated to proceed with all due diligence hereunder, and shall promptly commence reconstruction within a reasonable time after the damage occurs, and shall complete such reconstruction as soon as reasonably possible thereafter.

(b) Approval of Restoration Plans: Design and Variance. In connection with the restoration and repair of any Improvements, the Owner thereof may apply for approval to the Architectural Control Committee to reconstruct and rebuild in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing, together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructing and the end result thereof. The Architectural Control Committee may grant such approval only if the design proposed by the Owner would result in finished Improvements in harmony of exterior design with the other Improvements in the Project. Failure of the Architectural Control Committee to act within thirty (30) days after receipt of such a request in writing, coupled with full and complete plan and specifications, drawings and elevations shall constitute approval thereof. The Owner shall also obtain all necessary approvals from the City.

10.7 Levy of Compliance Assessments. In the event the Association shall incur any costs or expenses due to the failure of any Owner to perform such Owner's maintenance obligations as set forth herein, or in order to repair any damage to the Common Elements due to any negligent acts or omissions or willful misconduct on the part of an Owner, or any member of such Owner's family, such Owner's guests, invitees, tenants or lessees, or their guests or invitees, the Association shall have the right, but not the duty, to cause such maintenance or repairs to be performed. If the Board elects to cause such maintenance or repair work to be performed, after Notice and Hearing as provided in the By-Laws, the cost thereof shall be assessed against said Owner as a Compliance Assessment.

10.8 Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities or public utilities which are located within easements in the Common Elements owned by such public utilities. However, the Association may take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

## ARTICLE XI

### ARCHITECTURAL CONTROL - APPROVAL

11.1 Exemptions From Architectural Control. Except as otherwise provided herein, all Improvements shall be subject to architectural approval by the Association in accordance with the provision of this Declaration. Notwithstanding the foregoing, Declarant shall be exempt from compliance with any of the provisions of this Article as they may relate to the original construction and development of the Project by Declarant; provided, however, if Declarant shall retain a Lot for personal use, any Improvements to such Lot shall be subject to architectural approval pursuant to this Article.

11.2 Architectural Control. Except for the purposes of proper maintenance and repair, and except as otherwise permitted hereunder (but in addition to any provisions that may apply in Article IX hereunder), no Owner shall build, construct, erect or install any exterior Improvement, or modify the exterior appearance of such Owner's Lot until all conditions which may be imposed by the City have been satisfied and until any and all plans and specifications required pursuant to this Article shall have been submitted to and approved in writing by the Architectural Control Committee. For the purposes of this Section, the term "exterior" shall mean any outside wall, outside surface, roof, outside door, balcony or other outside structure, or yard, or portion of any of the foregoing, which is Visible from Neighboring Lots. Something shall be deemed "Visible from Neighboring Lots" if it would be visible to a man of average height located anywhere in the Project (including, but not limited to, the second story of the residential Improvements on an adjoining Lot).

11.3 Architectural Control Committee. The Architectural Control Committee shall have the rights and powers set forth in this Article. Said Committee shall consist of three (3) members, and each initial member shall serve until the first election of the Board. In the event of the failure or inability of any member of the Architectural Control Committee to act, the remaining members shall designate a successor who shall serve for the remainder of the term of the member replaced. Declarant shall appoint all of the original members of the Architectural Control Committee, and replacements thereto. Further, Declarant reserves the power to appoint a majority of the members of the Architectural Control Committee until ninety percent (90%) of the Lots in the Project have been sold and escrows closed. After one (1) year from the date of the first sale by Declarant of a Lot, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of the Lots in the Project have been sold. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. All members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Control Committee by Declarant, however, need not be members of the Association. No member of the Architectural Control Committee shall be liable to any person for such member's decisions or failure to act in making decisions as a member of the Architectural Control Committee. Declarant may, in its discretion and at any time, assign to the Association by written assignment its powers of removal and appointment with respect to the Architectural Control Committee, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

11.4 Meetings of the Architectural Control Committee. The Architectural Control Committee shall meet, from time to time, as necessary to perform its duties hereunder. The Architectural Control Committee may, by a majority vote of the members thereof and the Board, delegate any of the Committee's rights and responsibilities hereunder to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Control Committee on all matters so delegated.

11.5 Architectural Approval - Review of Plans and Specifications. The Architectural Control Committee shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans are in conformance with and are harmonious to the exterior design and existing materials of the Lots in the Project. The Architectural Control Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration, and perform such other duties as, from time to time, shall be assigned to it by the Board, including the inspection of construction and progress to ensure its conformance with the plans approved by the Architectural Control Committee. No construction, alteration, grading, addition, excavation, demolition, modification, decoration, redecoration or reconstruction of an Improvement shall be commenced or maintained by or on behalf of any Owner until the plans and specifications therefor showing the nature, kind, shape, height, width, color, material and location of the same shall have been submitted to the Architectural Control Committee and approved in writing by the Architectural Control Committee. The address for submission by an Owner of such plans and specifications, until changed by the Architectural Control Committee, shall be the address given to the Owner upon purchase by the Owner of such Owner's Lot.

The Architectural Control Committee shall approve the plans and specifications submitted for its approval only if it deems that: (a) the construction, alterations or additions contemplated thereby and the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole; (b) the appearance of any structure affected thereby will be in harmony with surrounding structures; (c) the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Elements, or the enjoyment thereof by the Owners; (d) the upkeep and maintenance thereof will not become a burden on the Association; and (e) the proposed Improvements are in substantial compliance with the adopted architectural guidelines, if any. In addition to the foregoing, in its review of plans and specifications, the Architectural Control Committee may take into consideration, among other things, the scale of site dimensions; conformity and harmony of external design with neighboring Improvements; affect of location and use of Improvements (including landscaping) on neighboring Lots; relation of topography, grade and finish grade elevation to neighboring Lots; proper facing of all elevations; aesthetic beauty; and conformity of the plans and specifications to the purpose and general plan and intent of the Protective Covenants of this Declaration. The Architectural Control Committee may withhold approval of the plans and specifications for any proposed Improvement because of noncompliance with any of the specific Protective Covenants set forth in this Declaration; because of the dissatisfaction of the Architectural Control Committee with the proposed nature, kind, plan, design, shape, height, dimensions, proportion, architectural style, color, finish or materials to be used therein, the pitch of type of any proposed roof, or the size, type or location of any proposed

tree or the landscaping to be planted; or because of the dissatisfaction of the Architectural Control Committee with any aspect of the proposed Improvement which could cause the proposed Improvement to be inappropriate, inharmonious or out-of-keeping with the general plan of improvement for the Project, or with the Improvements on or topography of the surrounding property.

The Architectural Control Committee may condition its approval of proposals of plans and specifications for any Improvement: (a) on such changes therein as it deems appropriate, (b) upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for the maintenance of the Improvements or (c) upon the agreement of the Owner submitting the same to reimburse the Association for the cost of such maintenance, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving the submission.

The Architectural Control Committee may also issue rules or guidelines setting forth procedures for submission of plans for approval, requiring a payment of a fee to the Association to accompany each submission of plans and specifications, or additional factors which it will take into consideration in reviewing submissions.

The Architectural Control Committee may require such details in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and descriptions or samples of exterior material and colors.

11.6 Decisions of the Architectural Control Committee. Until receipt by the Architectural Control Committee of any required plans and specifications, and such other information as may be required in Section 11.5 above, the Architectural Control Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Control Committee and the reasons therefor should be transmitted by the Architectural Control Committee to the applicant, at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Control Committee of all plans, specifications and materials required. Any application submitted pursuant to the provisions of Section 11.5 above shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Control Committee shall have been transmitted to the applicant within forty-five (45) days after the receipt by the Architectural Control Committee of all required materials.

11.7 Submittal to Public Agencies; Right of Architectural Control Committee to Review. Upon obtaining the written approval of the Architectural Control Committee for the proposed Improvement, if such Improvement requires a building permit, the Owner shall thereafter submit the plans and specifications to all appropriate governmental agencies in accordance with their respective requirements. In the event that all approvals by the governmental agencies necessary for the issuance of a building permit are not obtained within six (6) months after the date of approval by the Architectural Control Committee, the Architectural Control Committee shall have the right, but not the obligation, to review all previously approved plans and specifications. In addition, in the event that the governmental agencies require modification to the plans and



specifications previously approved by the Architectural Control Committee, the Owner shall submit to the Architectural Control Committee all modifications to the plans and specifications previously approved by the Architectural Control Committee, which shall have the right to review and to impose further conditions on any such modifications.

11.8 Conflicts Between Governmental Agencies and Architectural Control Committee. In the event of any conflict in the conditions of approval of any proposed Improvement imposed by the governmental agencies and the Architectural Control Committee, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Architectural Control Committee from imposing conditions of approval of any proposed Improvements which are more restrictive than conditions that may be imposed by the appropriate governmental agencies.

11.9 No Waiver of Future Approvals. The approval of the Architectural Control Committee of any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent of any similar or other proposals plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

11.10 Compensation of Members. The members of the Architectural Control Committee shall receive no compensation for services rendered other than reimbursement by the Association, pursuant to Board approval, for expenses incurred in the performance of such members' duties hereunder. This Section shall not be interpreted or construed to prohibit the Association from compensating any duly licensed architect who has been delegated rights and duties as provided in this Article.

11.11 Variances. Where circumstances such as topography, location of buildings, location of landscaping or other matters require, the Architectural Control Committee, by the vote or written assent of a majority of the members thereof and the Board, may allow reasonable variance as to any of the Protective Covenants contained in this Declaration or provisions under the rules and regulations promulgated by the Architectural Control Committee, on such terms and conditions as it shall require. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to the particular Lot and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of such Owner's Lot, including, but not limited to, zoning ordinances, lot setback lines or requirements imposed by the City or other governmental authority.

11.12 Inspection of Work. Upon consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Architectural Control Committee may, at any reasonable hour and upon reasonable notice, enter and inspect any Lot which has been the subject matter of an approval of a submission for an Improvement to the Lot. Such entry shall be made with as little inconvenience to the Owner as reasonably possible, and any damage caused thereby shall be repaired by the Association. If the Architectural Control Committee

finds that such work was not done in substantial compliance with the approved plans and specifications, it shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If a noncompliance exists, the Board, after Notice and Hearing, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance.

11.13 Non-Liability of Architectural Control Committee Members. Neither Declarant, the Association, the Board or the Architectural Control Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Architectural Control Committee. The Architectural Control Committee's approval or disapproval of a submission shall be based solely on the consideration set forth in this Article, and in such rules and regulations as may be promulgated by the Architectural Control Committee, and the Architectural Control Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety and conformance with building or other codes.

11.14 Appeal. In the event plans and specifications submitted to the Architectural Control Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Control Committee. The Board shall submit such request to the Architectural Control Committee for review, and the written recommendations of the Architectural Control Committee will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure by the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the party making such submission.

11.15 Approval of City. Approval of any proposed or existing Improvement by the Architectural Control Committee or the Board, or the completion of any Improvement, shall not be construed to warrant or represent in any way that the Improvement was approved by or complied with the minimum standards of the City or any other governmental entity. Similarly, approval of any proposed or existing Improvement by the City or any other governmental entity shall not be construed to constitute approval of such Improvement by the Architectural Control Committee or the Board.

## ARTICLE XII

### DAMAGE OR DESTRUCTION TO THE COMMON ELEMENTS

12.1 Election to Restore Common Elements. Except as otherwise provided in Section 12.2 hereinbelow, damage to or destruction of all or any portion of the Common Elements shall be handled in the following manner:

(a) In the event of damage to or destruction of the Common Elements and the insurance proceeds are sufficient to effect total restoration, the Association shall, as promptly as is practical, cause the Common Elements to be repaired and reconstructed in a good workmanlike manner to its condition prior to such damage or destruction.

(b) If the insurance proceeds available are at least ninety percent (90%) of the estimated cost of total repair and reconstruction to the Common Elements, the Association shall, as promptly as practical, cause such Common Elements to be repaired and reconstructed in a good workmanlike manner to its condition prior to the damage or destruction, and the difference between the insurance proceeds and the actual cost shall be levied by the Association as a Special Assessment against each Lot on an equal basis.

(c) If the insurance proceeds available are less than ninety percent (90%) of the estimated cost of total repair and reconstruction to the Common Elements, the Owners shall, by the written consent or vote of a majority of the Owners, determine whether (1) to restore the Common Elements as promptly as practical to its condition prior to the damage or destruction, and to raise the necessary funds over and above the insurance proceeds available by levying assessments against each Lot on an equal basis; or (2) to restore the Common Elements in a way which utilizes all available proceeds and an additional amount not in excess of ten percent (10%) of the estimated cost of total reconstruction and repair to the Common Elements, and which is assessable as provided above to all Lots, but which is less expensive than restoring the Common Elements to its condition prior to the damage or destruction.

## 12.2 Election Not to Restore Common Elements.

(a) Notwithstanding the provisions set forth in Section 12.1 hereinabove, in the event sixty-seven percent (67%) of the Owners, other than Declarant, have given their prior written approval, the Owners may elect not to rebuild or restore the Common Elements and to disburse the available insurance proceeds to the general fund of the Association.

(b) In the event the Owners shall have so voted to not rebuild the Common Elements, the Common Elements shall be cleared and landscaped and the cost thereof shall be paid for out of the available insurance proceeds prior to their distribution to the general fund of the Association.

(c) In the event the Owners shall have so voted to not rebuild the Common Elements, unless the City shall agree to the contrary, it shall be the obligation of the Association and each of the Owners to rebuild the private streets, if any, utilities and open spaces, which comprise the Common Elements, if any, at least to the extent said streets, utilities and open space were accepted initially by the City in lieu of payment of fees due pursuant to law.

## 12.3 Excess Insurance Proceeds. All insurance proceeds shall be payable to the

Association for the benefit of the Owners and their respective Mortgagees. In the event any excess insurance proceeds remain after restoring the destroyed Common Elements pursuant to this Article, the Board of Directors shall retain such sums in the general fund of the Association. Any distribution of funds in connection with the termination of the Project shall be allocated equally among all of the Lots in the Project. Any such distribution shall be subject to the prior right of Mortgagees.

### ARTICLE XIII

#### CONDEMNATION

13.1 Distribution of Awards. Subject to the limitations set forth in the Article herein entitled "Mortgagee Protection," a condemnation award affecting all or any portion of the Common Elements of the Project which is not apportioned among the Owners by court judgment shall be distributed to the Association and deposited in the general fund of the Association.

13.2 Board of Directors as Attorney-in-Fact. All Owners, to the extent applicable, if at all, hereby appoint the Board of the Association as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Common Elements. The special power of attorney shall not apply to the Secretary of the Department of Veterans Affairs, an officer of the United States of America. No Owner may participate as a party, or otherwise, in any proceedings related to such condemnation.

### ARTICLE XIV

#### INSURANCE

14.1 Required Insurance Coverage. The Association, acting by and through the Board, shall obtain for the Association, and shall maintain and pay the premiums for the following insurance coverage:

(a) Casualty and Fire Insurance. A policy or policies of casualty and fire insurance, with extended coverage endorsement in an amount equal to one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance) of the Common Property, together with all Improvements located therein. Said policies shall be primary and maintained for the benefit of the Association, the Owners and the Mortgagees, as their interests shall appear, and shall waive the right of subrogation against Owners, if obtainable. The coverage does not need to include land, foundations, excavations, or other items normally excluded from such coverage.

(b) Public Liability Insurance. A policy or policies of comprehensive public liability insurance (with cross liability endorsement, if obtainable) insuring the Association, the Board, the Owners, and Declarant, and the agents and employees of each of the foregoing, against any liability to the public or to any Owner, such Owner's family, tenants, lessees and their respective guests and invitees, arising from or incident to the

ownership, occupation, use, maintenance and/or repair of the Common Property, and from lawsuits related to employment contracts in which the Association is a party. The limits of liability under this Section shall be set by the Board and shall be reviewed at least annually by the Board, and increased or decreased at the discretion of the Board; provided, however, that said limit shall not be less than One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence.

(c) Worker's Compensation Insurance. Worker's compensation insurance to the extent necessary to comply with any applicable laws.

(d) Fidelity Bonds. Officers' and Directors' errors and omissions insurance, and fidelity bonds naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Association, including, but not limited to, officers, directors, the Board, trustees and employees of the Association, and officers, employees and agents of any management company employed by the Association who handles or are responsible for the administration of Association funds, if obtainable. Such coverage shall be in an amount deemed reasonably appropriate by the Board.

14.2 Optional Insurance Coverage. The Association, acting at its option and by and through the Board, may purchase such other insurance as it may deem necessary or appropriate, including, but not limited to earthquake insurance or flood insurance.

14.3 Notice of Cancellation of Insurance. All policies of insurance including fidelity bonds maintained by the Association, pursuant to this Article, shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms or be substantially modified by any party without at least thirty (30) days prior written notice to the Board and to each Owner, and such first Mortgagees (or servicers) who are named in the mortgage clause and/or have filed a written request with the Association for such notice. A list of the Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

14.4 Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practices in the area in which the Project is located, and all other factors which may indicate that either additional insurance coverage or increased coverage under existing policies is necessary or desirable to protect the interests of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

14.5 Waiver by Owners. As to all policies of insurance maintained by the Association which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Association, the Board and Declarant, and the agents and employees of each of the foregoing, and all other Owners with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said person, but only to the

extent of the insurance proceeds received in compensation for such loss.

14.6 Premiums, Proceeds and Settlement. Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Association. All insurance proceeds paid to the Association shall be disbursed as follows: (a) in the event of any damage or destruction to the Common Property, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Common Property"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set forth in the Article herein entitled "Mortgagee Protection." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. A majority of the Board must sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its Members.

14.7 Rights and Duties of Owners to Insure. Each Owner shall obtain fire and casualty insurance on such Owner's Lot and all Improvements therein and on such Owner's personal property in amounts such Owner deems appropriate, and shall obtain such public liability insurance as such Owner may deem desirable to cover such Owner's individual liability for damage to person or property occurring on or within such Owner's individual Lot or elsewhere upon the Project. The Association shall have no responsibility to obtain or carry the foregoing coverage on behalf of the Owner. If obtainable, the liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against Declarant, the Association and the Board, and their agents and employees, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by such Owner to the Association to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied.

14.8 Trustee for Policies. The Association is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds under such policies shall be paid to the Board, as trustee, and the Board shall have full power to receive such funds on behalf of the Association, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

14.9 Mortgage Clause. All insurance policies should have the "standard mortgage clause," or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Project is located, unless such coverage is prohibited by applicable law. Mortgages owned by FNMA must name as a Mortgagee either FNMA or the servicers for the Mortgages held by FNMA encumbering the Lots. When a servicer is named as the Mortgagee, its name should be followed by the phrase "its successors and assigns." If the Mortgage is owned in whole by FHLMC, the name of the servicer of

the Mortgage followed by the phrase "its successor and assigns, beneficiary" should be named as Mortgagee instead of FHLMC. The mortgage clause should be endorsed to fully protect FHLMC's interests or the interest of FHLMC and the servicer where applicable. If FHLMC must be named as Mortgagee, the endorsement should show the servicer's address in lieu of FHLMC's address. A mortgage clause in favor of Mortgagees holding Mortgages on Lots is not required on a policy insuring the Common Property.

14.10 Compliance With Requirements of FHLMC, FNMA and VA/FHA.

Notwithstanding the provisions of this Article, the Association shall obtain and maintain in effect such policies of insurance meeting all requirements of FHLMC, FNMA and VA/FHA established by those entities for condominium projects for so long as any of such agencies continue to be a Mortgagee, Owner, insurer or guarantor of a Mortgage in the Project, except to the extent such coverage is not available or has been waived, in writing, by such agencies.

ARTICLE XV

GENERAL PROVISIONS

15.1 Enforcement.

(a) The Association or the Owner of any Lot in the Project, including Declarant, shall have the right to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the By-Laws, respectively (and the Rules and Regulations duly adopted by the Association), including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation.

(b) The result of every act or omission whereby any of the Protective Covenants contained in this Declaration or the provisions of the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest.

(c) The remedies herein provided for breach of the Protective Covenants contained in this Declaration or the provisions of the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association or any Owner to enforce any of the Protective Covenants contained in this Declaration, the provisions of the By-Laws or any Rules or Regulations shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the Protective Covenants contained in this Declaration or of the provisions of the By-Laws shall not affect or impair the lien or charge of any bona

vide Mortgage or deed of trust made in good faith and for value on any Lot; provided, however, that any subsequent Owner of such property shall be bound by said Protective Covenants and the provisions of the By-Laws, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise.

(f) The Board, for and on behalf of the Association, may assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend said Owner's voting rights and right to use the recreational facilities, if any, for the period during which any Assessment against said Owner's Lot remains unpaid; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose a penalty is reached.

(g) The Board, for and on behalf of the Association, may temporarily suspend an Owner's voting rights and right to use the recreational facilities, if any, for a period not to exceed thirty (30) days for any infraction of the Association's Rules and Regulations; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose a penalty is reached.

15.2 Severability. Invalidation of any one of these Protective Covenants by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect.

15.3 Term. The Protective Covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of the Association and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners agreeing to terminate said Protective Covenant, in whole or in part, has been recorded within one (1) year prior to the termination of the initial thirty (30) year term, or within one (1) year prior to the termination of any successive ten (10) year period.

15.4 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of the Project. The Article and Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

15.5 Singular Includes Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

15.6 Amendments.



(a) Amendments by Declarant. Prior to the sale of a Lot to a member of the public, this Declaration may be amended, restated or terminated by an instrument executed by Declarant and recorded in the Office of the County Recorder of Maricopa County. Declarant may amend this Declaration without the consent of the Members at any time after the close of escrow for the first sale of a Lot in the Project by recording a written instrument setting forth the amendment, provided that the amendment is necessary to cause this Declaration to comply with the requirements or guidelines of the DRE, FHA/VA, FHLMC, FNMA, GNMA or any other governmental agency whose approval is required by law or requested by Declarant, or is otherwise necessary to correct any errors or inconsistencies so long as such amendment shall not materially and adversely affect the rights of Owners.

(b) Amendments by Association. Except as provided above, this Declaration may be amended only by an affirmative vote or written agreement of Owners representing not less than sixty-seven percent (67%) of the total votes of the Association; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision.

(c) Recordation of Amendments. An amendment made in accordance with the provisions set forth in Subsection (b) above shall be effective when executed by the President and Secretary of the Association, who shall certify that the amendment has been approved by the membership, in the percentage set forth hereinabove, and recorded in the Office of the County Recorder of Maricopa County. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether all such Owners or Mortgagees consented to such amendment.

15.7 Encroachments. None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

15.8 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by registered or certified mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United State mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Lot of such person if no address has been given to the Association. If such notice is not sent by regular or certified mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Association.

15.9 Attorneys' Fees. If any Owner defaults in making a payment of Assessment or in the performance or observance of any provision of this Declaration, and the Association has

obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorneys' fees, regardless of whether legal proceedings are instituted. In case a suit is instituted, the prevailing party shall recover the cost of the suit, in addition to the aforesaid costs and fees.

15.10 Additional Covenants in Favor of the VA/FHA. So long as there shall be a Class B membership, then if this Declaration has previously been approved by the VA/FHA, the following actions will require the prior approval of the VA/FHA: annexation of additional properties, dedication of Common Elements, and amendment of this Declaration.

15.11 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the Protective Covenants established by this Declaration governing the Project, together with the covenants and restrictions established upon any other property as one plan.

15.12 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees, in connection with the Project or any portion thereof, its physical condition, zoning, compliance with applicable law, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration.

15.13 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or By-Laws of the Association, the terms and provisions of this Declaration shall prevail.

IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first above written.

"DECLARANT"

KEY CONSTRUCTION INC., an Arizona corporation, dba  
Trend Homes

BY: 

Its: PRESIDENT

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

On Sept. 24, 1999, the foregoing instrument was acknowledged before me by KEY CONSTRUCTION INC., an Arizona corporation, dba Trend Homes, by Reed Porter, its President, on behalf of the corporation.

Rachel Bulloch  
Notary Public

My Commission Expires:

3-23-02

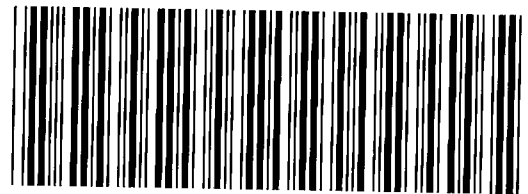


EXHIBIT "A"

LEGAL DESCRIPTION

The Project shall mean and refer to that certain real property located in Maricopa County, Arizona, more particularly described as:

BARRINGTON ESTATES, according to the plat recorded at Book 512, Page 36, records of Maricopa County, Arizona.



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

2001-0172821 03/06/2001 02:37

JOANN 1 OF 1

**WHEN RECORDED, RETURN TO:**  
Mr. Mark Funk, Vice President  
Trend Homes  
2020 N. Arizona Avenue, Suite G-62  
Chandler, Arizona 85225

**FIRST AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS, AND  
RESERVATION OF EASEMENTS  
FOR  
BARRINGTON ESTATES**

This First Amendment to Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Barrington Estates (**this "Amendment"**) is entered into this 6<sup>th</sup> day of February, 2001 by **Key Construction, Inc., an Arizona corporation doing business as Trend Homes ("Declarant")** and **Barrington Estates Homeowners Association, an Arizona non-profit corporation (the "Association")**, with reference to the following:

A. Declarant is the owner of certain Lots and Common Elements described in that certain Declaration of Covenants, Conditions and Restrictions, and Reservation for Easements for Barrington Estates recorded on October 6, 1999 as Document No. 99-0927692 in the Official Records of Maricopa County, Arizona (**the "Declaration"**).

B. The Association is the owner of certain of the Common Elements described in the Declaration.

C. Pursuant to Section 15.6 of the Declaration, the undersigned desire and have the authority to amend the Declaration.

NOW, THEREFORE, Declarant and Association hereby amend and supplement the Declaration as follows:

1. **Defined Terms.** Defined terms appear in this Amendment with the first letter of each word in the term capitalized. If not otherwise defined herein, defined terms shall have the meanings given to them in the Declaration.

2. **Common Elements.** Section 1.8 of the Declaration is hereby deleted and replaced with the following new Section 1.8:

*1.8 "Common Elements" shall mean and refer to (a) all common area tracts shown on the Plat together with all Improvements thereon, (b) any other portion of the Project, together with the Improvements thereon which the Association may, from time to time, own in fee or in which it may have an easement interest, for as long as the Association holds such fee title or easement interest and (c) any land*

*within, adjacent to or near the Project which the City may at any time require to be owned and/or maintained by the Association. The City is not responsible for and will not accept maintenance of the Roadway, gates, landscape areas and other Common Elements within the Project. Notwithstanding any other provision contained in the Declaration, driveways (including Shared Driveways [as defined in Section 3.2] and exclusive driveways situated on Lots) and front yards of Lots are not Common Elements. The Common Elements, whether or not owned by the Association, shall be maintained by the Association.*

3. **Land.** Section 1.18 of the Declaration is hereby deleted and replaced with the following new Section 1.18:

1.18 *"Land" shall mean and refer to the real property shown in the Plat.*

4. **Lot.** Section 1.19 of the Declaration is hereby deleted and replaced with the following new Section 1.19:

1.19 *"Lot" shall mean and refer to each parcel designated as a lot on the Plat with the exception of the Common Elements, and where the context requires, "Lot" shall also mean and refer to Improvements situated thereon.*

5. **Roadway.** "Roadway" shall mean the private roadway, curbs, gutters, entry gates, street lights, street signs and other improvements to be constructed by Declarant or Declarant's Affiliate within Tract "H" as shown on the Plat. All references in the Declaration to "private street", "private streets", "public street" or "public streets" within the Project shall hereafter refer to the Roadway.

6. **Plat.** All references in the Declaration to the plat for the Project shall refer to the plat for Barrington Estates Amended recorded in Book 512 of Maps, Page 36, of the Official Records of Maricopa County, Arizona (the "Initial Plat"), as such Initial Plat will hereafter be amended by the Replat (as defined below) and as such Replat may hereafter be amended. Due to demands made by the Arizona Department of Transportation ("**ADOT**") regarding the acquisition or condemnation by ADOT of certain real property shown on the Initial Plat which is to be acquired by ADOT to be included within the Santan Freeway right-of-way, Declarant is, as of the date of this Amendment, processing with the City a replat of the Project (the "Replat") which will result in the loss of up to six (6) Lots and certain Common Elements within the Project and the reconfiguration of other Lots and other Common Elements within the Project. Upon recordation of the Replat, all of the real property conveyed by Declarant to ADOT pursuant to the ADOT acquisition or condemnation action shall automatically, without further action, be deemed to be de-annexed from the Project and such de-annexed property shall no longer be part of the Land and the Project. Declarant shall be solely responsible for all fees and costs associated with the Replat and for all costs necessary to reconfigure the Common Elements (including the Roadway) and the Lots affected by the Replat and, in consideration therefor, Declarant shall, notwithstanding any other provision contained in the Declaration, be solely entitled to all amounts paid by ADOT in connection with the ADOT acquisition or condemnation action. Notwithstanding any other provision contained in the Declaration, the Common Elements shall be conveyed by Declarant to the Association on or before the earlier to occur of (a) the sixtieth (60<sup>th</sup>) day following completion by Declarant of the reconfiguration and reconstruction of the Lots and Common Elements consistent with the Replat and (b) December 31, 2001.

7. Sections 1.13 and 3.2 of the Declaration are hereby deleted and replaced with the following new Section 3.2:

3.2 Shared Driveway Easements. *Where a driveway is constructed by Declarant (or by any affiliate of Declarant [a "**Declarant's Affiliate**"]) on adjacent Lots in such a manner so that such driveway is to be shared by the adjacent Lots (a "**Shared Driveway**"), a perpetual non-exclusive easement (the "**Driveway Easement**") shall exist over the Shared Driveway for the purpose of providing the Owners of the adjacent Lots served by the Shared Driveway and their respective occupants, lessees, guests, invitees and agents (collectively, the "**Benefitted Parties**") with the right to use the Shared Driveway for all permitted driveway purposes. The initial anticipated locations of the Driveway Easements are shown on the Plat as "cross access easements". Notwithstanding the locations or dimensions of any "cross access easements" or driveway easements shown on the Plat, the actual location and dimensions of each such cross access easement or driveway easement shall, upon completion of construction of the Shared Driveway applicable to a Lot, be deemed to be modified to conform to the actual as-constructed location and dimensions of such Shared Driveway, and all portions of the cross access easements identified on the Plat which are not improved by Declarant with a Shared Driveway shall be terminated and shall be of no further force or effect. Also, in the event a cross access easement is shown on the Plat but a Shared Driveway is not actually constructed thereon as part of Declarant's development of the Project, such cross access easement shown on the Plat shall be deemed to be terminated and of no force or effect. Each Driveway Easement shall be subject to the following provisions:*

(a) *A Shared Driveway may not be used in any fashion which impedes or interferes with any Benefitted Parties' permitted use or enjoyment of the Shared Driveway. Furthermore, no use shall be made of a Shared Driveway which could reasonably be deemed to be an annoyance or nuisance to the Owner or occupants of the adjacent Lot with whom the Shared Driveway is shared.*

(b) *Subject to the provisions of Section 9.12 of this Declaration, a Benefitted Party may not park on any part of a Shared Driveway which is not located on the Lot owned or occupied by the Benefitted Party or which is not on the Lot which the Benefitted Party is visiting. Notwithstanding the foregoing, if the portion of a Shared Driveway which is situated on a Benefitted Party's Lot is not sufficient in width or depth to permit the parking of a Benefitted Owner's vehicle thereon, then the Benefitted Owner may park on such portion of the Shared Driveway situated on the adjacent Lot as is minimally necessary to accommodate the parking of the Benefitted Owner's vehicle(s); provided, however, such parking must comply with Subsection (a) of this Section 3.2.*

(c) *The cost of routine repair and maintenance of a Shared Driveway shall be shared equally by the Owners whose Lots share the Shared Driveway. However, in the event a Shared Driveway is damaged or destroyed through the negligent or willful act of an Owner (the "**Responsible Owner**") or through the neglect or willful acts of an occupant, guests, invitees or agents of such Responsible Owner, it shall be the obligation of the Responsible Owner to promptly repair or rebuild the Shared Driveway at its sole cost and without cost to the other adjoining Lot Owner. Any disputes between Owners involving the payment of costs*

associated with the maintenance, repair and replacement of Shared Driveways shall be resolved by the Board.

(d) Any modifications and replacements of any Shared Driveway shall be subject to the requirements of Article 11 of the Declaration, and any Owner proposing to modify or replace any Shared Driveway shall first obtain the written consent of the Owner of the adjacent Lot which shares the Shared Driveway.

(e) Except as provided below, an Owner of a Lot who shares a Shared Driveway shall not be liable for any loss, cost, damage or expense arising out of any accident or occurrence causing death of or injury to any Person and/or damage to any property which arises as a result of the use of the Shared Driveway by the Owner of the adjacent Lot or by such adjacent Lot Owner's guests, occupants, invitees or agents. Notwithstanding the preceding sentence, the Owner of any Lot who causes or whose occupants, guests, invitees or agents cause damage or an accident, event or occurrence to occur on a Shared Driveway agrees to indemnify and hold harmless the Owner of the adjacent Lot which shares the Shared Driveway and such adjacent Owner's occupants, guests, invitees, heirs, successors and assigns for, from and against each and every claim, demand, loss, cost, damage and expense (including attorneys' fees) arising from any such accident, event or occurrence. Furthermore, each Owner and Occupant of a Lot which shares a Shared Driveway hereby releases Declarant and any Declarant's Affiliate from any and all obligations and liability related to any accidents, acts or occurrences which may occur on any Shared Driveway, and each such Owner and Occupant shall indemnify, protect, defend and hold harmless Declarant and any Declarant's Affiliate from any and all claims, demands, obligations, losses, damages, costs and liabilities which may at any time arise or be imposed as a result of the use of a Shared Driveway.

(f) Each Driveway Easement shall be appurtenant to the applicable Lots which share a Shared Driveway, shall run with the ownership of such Lots and shall inure to the benefit of the Owners of such Lots and their respective occupants, guests, invitees, heirs, successors and assigns.

(g) Neither the Association, Declarant nor any Declarant's Affiliate shall have any obligation to administer or enforce the provisions contained in this Section 3.2, and none of the foregoing parties shall have any liability for the failure of any person to enforce them.

(h) The Board may promulgate such other reasonable rules and regulations to govern the use and maintenance of Shared Driveways.

8. **Parking.** Sections 9.12 is hereby deleted and replaced with the following new Section 9.12:

9.12 Parking. All vehicles in the Project shall be parked in accordance with the following:

(a) Except as provided in Section 3.3, no parking shall be permitted on any Common Element. No vehicle may be parked on the Roadway for more than twenty (20) continuous hours.



(b) No mobile home, boat, jet ski or wave runner, boat, motor home, recreational vehicle, all-terrain vehicle, off-road vehicle, trailer, horse trailer, camper, camper shell, snowmobile, bus, commercial vehicle or any motor vehicle classed by manufacturing rating as exceeding one (1) ton or any vehicles designed for commercial purposes shall be parked, kept, placed, maintained, constructed, reconstructed or repaired on any Lot or within the Project so as to be visible from any adjacent Lot or Common Element; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs and provided, further, that, for a period not to exceed twenty-four (24) consecutive hours, such items may, subject to the provisions of Section 3.2 of the Declaration, be parked on paved driveways on the applicable Owner's Lot for the purpose of loading, unloading and preparing such items for offsite usage. All other motor vehicles shall be permitted to park only in garages or on paved driveways on Lots and may not be parked so as to obstruct any sidewalks, and no motor vehicle may park on the Roadway; provided, however, vehicles of guests and invitees may park on the Roadway for a temporary period of time not to exceed twenty (20) consecutive hours provided that such parking is done in a fashion so as not to obstruct driveways on other Lots, the use of any Shared Driveway or traffic within the Project. All motor vehicles of Owners, occupants, guests and invitees shall be kept in garages whenever such facilities are sufficient to accommodate the number of motor vehicles on a Lot. The Board may adopt additional parking restrictions including the establishment of fines and assessments for their violation.

(c) Except as otherwise permitted by the Association, as set forth herein, no Owner shall park or permit such Owner's family, guests or invitees to park any vehicle on any portion of the Project, except wholly within such Owner's garage or on the driveway on such Owner's Lot or with respect to a Shared Driveway as permitted in Section 3.2 of the Declaration; provided however, in no event shall any vehicle be parked in a fashion which extends onto the sidewalk, if any, or the Roadway. No Driveway Easement rights may be sold or assigned to, or retained in the ownership of, any person not an Owner of the Lot associated with such Shared Driveway, and no garage or Driveway Easement rights may be rented or leased to a non-Owner of the Lot associated with such garage or driveway, except in connection with the rental or lease of the Lot.

(d) Each Owner shall keep such Owner's garage readily available for parking of such Owner's respective vehicles, and shall not store any goods or materials therein, nor use any portion thereof for a workshop or other use, if such storage or use would prevent said Owner from parking the number of vehicles therein for which said garage was originally designed and constructed to accommodate. Garage doors shall remain closed at all times, except as reasonably required for entry to and exist from the garage. Each Owner shall ensure that such Owner's garage door opener is in proper working order at all times.

(e) No Owner shall conduct any repairs to any motor vehicle of any kind whatsoever on such Owner's Lot other than within an enclosed garage or upon any portion of the Common Elements, except for emergency repairs thereto and then only to the shortest time necessary (not to exceed twenty-four [24] hours) to enable the vehicle to be moved to a proper repair facility.

(f) *No portion of a garage shall be converted for living or recreational purposes. All garages must be kept in a neat and tidy manner at all times.*

(g) *Parking on Lots with Shared Driveways shall also be governed by the provisions of Section 3.2(a) and (b), and in the event of any conflict between those provisions and this Section 9.12, the provisions of Section 3.2(a) and (b) shall prevail.*

9. The following provisions are deleted from the Declaration:

- (a) The phrase "and drives (but not exclusive Driveway easements)" in Section 4.3 of the Declaration;
- (b) 7.5 of the Declaration; and
- (c) The phrase "(including, but not limited to, the front yard landscaping on the Common Elements adjacent to a Lot, but not the front yard walkway, entrance feature (if any) or front-facing portion of the privacy wall or fence separating the front yard from the rear yard)" in Section 10.1 of the Declaration.

10. **Control of Common Elements.** Notwithstanding any other provision contained in the Declaration, the Association shall be solely responsible for maintaining the Common Elements, whether or not then owned by the Association. Declarant shall convey title to the Common Elements to the Association on or before the sixtieth (60th) day following the completion of the Improvements on the Common Elements, including, without limitation, any modification or restoration required as a result of the Replat.

11. **Assessments.** The second and third sentences in Section 7.1 of the Declaration are deleted and replaced with the following sentence:

*The Regular, Special and Compliance Assessments, together with a reasonable late charge as may, from time to time, be established by the Board, interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge against and a continuing lien upon the Lot against which each such Assessment is levied, and shall also be the personal obligation of the Owner of such Lot at the time when the Assessment came due. The personal obligation for delinquent Assessments shall not pass to the successors in title to a Lot unless expressly assumed by them.*

12. **Appurtenances.** The phrase "and the Rules and Regulations of the Association" is hereby added to the end of the first sentence in Section 9.15 of the Declaration.

13. **Exemption of Declarant.** Section 9.20(f) of the Declaration is hereby deleted and replaced with the following new Section 9.20(f):

(f) *The right to use driveways (including Shared Driveways) within the Project, which right shall also extend to Declarant's prospective purchasers and lessees of Lots.*

14. **Landscaping Requirements.** Section 9.22 of the Declaration is hereby deleted and replaced with the following new Section 9.22:

9.22 Landscaping. To the extent that the landscaping including installation of an automated irrigation system (**the "Landscaping"**) is not, prior to closing of the sale of a Lot by Declarant to a purchaser of the Lot, installed on any portion of a Lot which is visible from adjacent Lots or Common Elements through view fencing, such Landscaping must, within 180 days following the closing of the sale of such Lot by Declarant to the initial homeowner (**the "Purchaser"**), be installed in accordance with guidelines and requirements established by the Architectural Control Committee or by Declarant (**the "Landscaping Guidelines"**). A Purchaser's failure to complete such Landscaping in accordance with the Landscaping Guidelines within 180 days after the Purchaser's closing of the purchase of its Lot shall result in the sending of a reminder letter of this requirement. A Purchaser's failure to complete such Landscaping in accordance with the Landscaping Guidelines within 210 days after closing the purchase of its Lot shall result in a fine by the Board in the amount of \$250. A Purchaser's failure to complete such Landscaping in accordance with the Landscaping Guidelines within 240 days after closing the purchase of its Lot shall result in a fine by the Board in the amount of fifty dollars (\$50) for each day after 240 days after such closing. The non-complying Owner shall also be responsible for all fees and costs incurred by the Association and/or the Declarant in connection with the enforcement of this Section, including reasonable attorneys' fees, and such amounts shall be added to and become part of the Compliance Assessment for which the non-complying Owner's Lot is subject. All Landscaping installed on a Lot shall comply with the Landscaping Guidelines adopted by the Association. Each Owner of a Lot with grass in the front and/or side yards of its Lot which is visible from the Roadway (**a "Front Yard Lawn"**) must, on or before October 31 of each year, overseed such Front Yard Lawn with rye grass or another grass approved by the Architectural Control Committee, and each such Owner shall water, fertilize and maintain such Front Yard Lawn throughout its natural growing period. If an Owner fails to comply with its obligations in the preceding sentence, the Association may, in its sole discretion, cause such Front Yard Lawn to be planted and/or maintained and assess the costs thereof in the form of a Compliance Assessment against the non-complying Owner's Lot.

15. **Repair and Maintenance by Association.** Section 10.1 of the Declaration is hereby deleted and replaced with the following new Section 10.1:

10.1 Maintenance of Common Elements. The Association, or its duly delegated representative, shall be responsible for the maintenance and repair of the Common Elements. The Association shall also have the right, but not the obligation to undertake any maintenance within the Project as the Board may from time to time determine to be in the best interest of the Association and the members of the Association. The Board shall endeavor to use a high standard of care in providing any maintenance, management and repair, so that the Project will reflect a high pride of ownership.

16. **Repair and Maintenance by Owner.** Section 10.4 of the Declaration is hereby deleted and replaced with the following new Section 10.4:

10.4 Repair and Maintenance by Owner.

(a) Repair and Maintenance of Lots. No Improvement upon any Lot shall be permitted to fall into disrepair, and all Improvements shall at all times be kept in good condition and repair, adequately painted and otherwise finished. Each Owner shall maintain in good repair the exterior surfaces of each Improvement on said Owner's Lot, including but not limited to walls, roofs, porches, patios and appurtenances. Nothing shall be done in or to any Improvement which will impair the structural integrity of any Improvement except in connection with any alterations and repairs permitted or required by the Architectural Control Committee. In the event of damage or destruction from any cause whatsoever to all or any portion of an Improvement, the Owner of the Lot shall promptly repair, reconstruct or restore the same, or cause the same to be repaired, reconstructed or restored, to the condition existing prior to such damage or destruction. Each Owner shall also maintain in good condition and repair all paved, concrete and other artificially surfaced areas, including driveways and walkways located on the Owner's Lot except sidewalks (but not walkways to any home) which are to be maintained by the Association. Maintenance of Shared Driveways is governed by Section 3.2 of the Declaration.

(b) Repair and Maintenance of Landscaping. All lawn areas shall be kept mowed as needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds. In addition, each Owner of a Lot shall keep all other Landscaping of every kind located on his or her Lot neatly groomed and trimmed (including the pruning of dead wood) according to their plant culture and landscape design, and each Owner shall keep all such Landscaping watered and fertilized at such times and in such quantities as required to keep them alive and attractive and each Owner shall keep all such areas properly cultivated and free of trash, weeds and other unsightly materials. Each Owner shall immediately remove and replace any dead tree, shrub, plant, ground cover or other dead Landscaping on its Lot. Each Owner's landscaping obligations and requirements shall include all Landscaping within areas between the sidewalk on such Owner's Lot and the Roadway.

17. **Roadway and Gates.** The following provision is hereby added as Article 15 to the Declaration:

**ARTICLE 15  
ROADWAY AND GATES**

15.1 The Roadway. The Roadway shall be a private Roadway constructed for the exclusive use of Owners and their guests, occupants, lessees and other invitees, and an affirmative easement for ingress and egress over and across the Roadway is hereby granted to each Owner for such purposes. The Association and not the City shall be solely responsible for the upkeep, maintenance and repair of the Roadway.

15.2 Access Gates. Access gates for the Project have been installed on the Roadway located near the entrance(s) to the Project for the intended purpose of

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limiting access to the Project to Owners, occupants, lessees and their guests and other invitees. The access gates shall be part of the Common Elements, and the Association shall be solely responsible for the maintenance of the access gates. It is contemplated that the access gates will be operated by remote openers. Each Owner which purchases a Lot from Declarant shall be provided with two (2) remote units. Additional or replacement remote units may be purchased only through the Association at a charge to be established by the Board. Each Owner shall also be responsible for payment of any programming fees charged by the supplier or the programmer of the remote units.

15.3 Access Gate Limitations. While the access gates are intended to restrict access to the Project, such gates shall be unmanned and are not intended to make the Project a secured community. Each Owner, occupant, lessee and their respective family members, guests and other invitees further acknowledge and hereby agree to assume the risks that the access gates may restrict or delay entry into the Project by police, fire, ambulances and other emergency vehicles or personnel and neither the Declarant, any Declarant Affiliate nor the Association or any director, officer, agent or employee of Declarant, any Declarant Affiliate or the Association shall be liable to any Owner, lessee or other occupant, family members, guests or other invitees for any claims or damages resulting directly or indirectly from (a) the construction, existence, maintenance or adequacy of the access gates for the Project or (b) any loss, damage, injury or theft occurring within the Project. Each Owner has been informed and understands that, in accordance with the requirements of the local school district, the gates for the Project must remain open during such times as the school designates as necessary to allow school bus service within the Project.

17. **Full Force and Effect.** As amended hereby, the Declaration remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

**DECLARANT:** KEY CONSTRUCTION, INC., an Arizona corporation  
doing business as TREND HOMES

By: Mark J. Fink

Its: Vice President

**ASSOCIATION:** BARRINGTON ESTATES OWNERS' ASSOCIATION,  
an Arizona non-profit corporation

By: Mark J. Fink

Its: Vice President

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

This instrument was acknowledged before me this 14<sup>th</sup> day February, 2001, by Mark J. Funk as Vice President of Key Construction, Inc., an Arizona corporation dba Trend Homes, on behalf of the corporation for the purposes contained therein.

Teri W. Black  
Notary Public

My Commission Expires:



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

This instrument was acknowledged before me this 14<sup>th</sup> day February, 2001, by Mark J. Funk as Vice President of Barrington Estates Owners' Association, an Arizona non-profit corporation, on behalf of the association for the purposes contained therein.

Teri W. Black  
Notary Public

My Commission Expires:



**RATIFICATION BY LIENHOLDER**

The foregoing Amendment to Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Barrington Estates is hereby ratified and approved by Bank One, AZ, NA a national banking association, the Beneficiary under that certain Deed of Trust recorded on 1/23/01 as Document No. 20010047809 in the Official Records of Maricopa County, Arizona.

DATED this 26 day of FEBRUARY, 2001.

BANK ONE, AZ  
a national banking association

By Gary Spore  
Its FIRST VICE PRESIDENT

STATE OF ARIZONA     )  
  )ss  
County of Maricopa     )

On this 26<sup>th</sup> day of February, 2001, before me personally appeared Gary Spore, the First Vice President of Bank One, Arizona, a national banking association, known to me to be the person whose name is subscribed to the foregoing Ratification by Lienholder of the Amendment to Declaration of Covenants, Conditions and Restrictions, and Reservations of Easements for Barrington Estates, and being authorized to do so, acknowledged that he/she executed the same for the purposes contained therein.

[Signature]  
Notary Public

My Commission Expires:  
1/14/04

