

**DECLARATION OF COVENANTS
CONDITIONS, RESTRICTIONS AND
GRANT OF EASEMENTS
FOR
PASIÓN EN LA COLINA DEL CASCABEL**

THIS DECLARATION is executed this ____ day of _____ 2000, by Kings Ranch 42, LLC, as Declarant, and provides for an extensive degree of control in Declarant, including but not limited to (1) control of the Association, (1t) control of the type, design and location of Improvements which may be built upon the Property, and the use, and limitations on use, of the Lots and the Common Areas, (111) substantial flexibility in developing the Property, and (iv) substantial flexibility in excluding property from or subjecting additional property to this Declaration Each Owner, by accepting title to any portion of the Property, acknowledges, agrees to and accepts Declarant's control of the Property and the limited liability of Declarant as provided in this Declaration. Such control is an integral part of this Declaration and the general scheme of development and operation of the Property Capitalized terms used in this paragraph and the following Recitals are defined below in this Declaration.

RECITALS:

A Declarant is the owner of the property in Pinal County, Arizona shown on the Plat, as may be reduced or expanded in size as provided in this Declaration ("Property").

B Declarant desires to develop the Property as an exclusive residential community known as Pasión En La Colina Del Cascabel. Declarant further desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property, and to establish a flexible and reasonable procedure for its overall development, administration, maintenance and preservation

C Declarant intends that the Property shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions in this Declaration, all of which: (1) are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property; (ii) shall run with all of the real property comprising the Property; and (iii) shall be binding on and inure to the benefit of all Persons having any right, title or interest in the Property, or any part thereof, and their successors and assigns.

D An Arizona nonprofit corporation to be known as the "Pasión En La Colina Del Cascabel Homeowners Association", shall be the community association for purposes of, among other things (1) holding title in fee to or otherwise controlling the Common Area and maintaining the Common Area; (ii) preserving the values and amenities of the Property; (in) establishing, collecting, disbursing and enforcing the Assessments created herein; and (iv) entering into agreements, covenants, and contracts with adjacent owners of real property to address issues concerning the overall development, administration, governance and maintenance of the Property.

NOW THEREFORE, Declarant hereby declares, covenants and agrees as follows.

1. **DEFINITIONS.** The following capitalized words, phrases or terms used in this Declaration shall have the following meanings.

1.1 **"Additional Property"** means (1) the real property, together with all Improvements located thereon, described on Exhibit "A", and (11) any other real property, together with all Improvements thereon, located not more than Fifteen Hundred feet (1500 feet) from the real property shown on the initial Plat or described on Exhibit "A".

1.2 **"Annual Assessment"** means the charge levied and assessed each year against each Lot or Owner pursuant to Section 7 hereof.

1.3 **"Articles"** means the Articles of Incorporation of the Association as the same may from time to time be amended, restated or supplemented.

1.4 **"Assessable Property"** means any portion of the Property, except for Exempt Property.

1.5 **"Assessment"** means an Annual Assessment, Special Assessment and/or Reimbursement Assessment as provided in Section 7.

1.6 **"Assessment Lien"** means the lien created and imposed by Section 7.1.

1.7 **"Assessment Period"** shall have the meaning set forth in Section 7.9.

1.8 **"Association"** means Pasión En La Colina Del Cascabel Homeowners Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

1.9 **"Board"** means the Board of Directors of the Association.

1.10 **"Bylaws"** means the Bylaws of the Association, as the same may from time to time be amended, restated or supplemented.

1.11 **"Common Area"** means all real property and the Improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which (i) the Association owns or controls for the common use and enjoyment of all Owners, including, without limitation, roads, entryways and gates, access control equipment (security system), signs for the Property, landscaping, lighting, flood control, drainageways and retention areas (and pipes, conduits, walls, embankments and related facilities), paths, recreational areas, open space, walkways, and other areas intended for pedestrian and vehicular ingress and egress, or (ii) are otherwise designated in this Declaration as Common Area to be maintained, managed and/or supervised by the Association, or (111) are designated as "Tracts" on a Plat, including Tracts A, B, C, D, E, F, G, H, I and J on the Plat.

1.12 **"Common Expenses"** means all expenditures made by or financial liabilities of the Association made or incurred pursuant to this Declaration, together with any allocations to reserves in the discretion of the Board.

1.13 **"Declaration"** means this Declaration of Covenants, Conditions, Restrictions and Grant of Easements, as amended, supplemented or restated from time to time as permitted herein.

1.14 **"Declarant"** means Kings Ranch 42, LLC, and any Person owning any portion of the Property to whom is expressly assigned any or all of the rights of Declaration by a Recorded instrument executed by Kings Ranch 42, LLC, and any successor to whom the rights of Declarant are assigned pursuant to this Section.

1.15 **"Design Guidelines"** means the rules and design guidelines adopted by the Design Review Committee pursuant to Section 421, as amended or supplemented from time to time.

1.16 **"Design Review Committee"** means the committee of the Association to be created pursuant to Section 42.1 of this Declaration.

1.17 **"Developer"** means any Owner (other than Declarant) who is in the business of developing, selling or leasing real property and who acquires one or more Lots in connection with, and in the ordinary course of, such business for the purpose of developing Improvements on such Lots for the sale of Residences. Declarant shall make the determination of whether an Owner qualifies as a Developer for purposes of this Declaration.

1.18 **"Exempt Property"** means. (1) All land and improvements owned by, dedicated to and accepted by, or upon which easement rights have been granted to, the United States, the State of Arizona, Pinal County, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective, and (11) all Common Area, for as long as the Association is the owner or lessee thereof.

1.19 **"First Mortgage"** means a Mortgage which is the first and most senior of all Mortgages upon the same Property.

1.20 **"Improvement"** means any and all buildings, fences, walls, lighting, chimneys, decks, patios, utilities, barriers, poles, recreational facilities and equipment or other structures or equipment, any swimming pools, jacuzzis or other water features, any roads, walkways, driveways or parking areas, any trees, plants, shrubs, cacti, grass or other vegetation or landscaping improvements of every type and kind (including sprinkler and irrigation systems, and any inert material used as ground cover and any rocks or similar materials used in connection with landscaping), any alteration of the natural desert vegetation on a Lot, all grading, excavation and drainage work, and other structures or improvements of any kind.

1.21 **"Land Use Classification"** means the classification established or to be established pursuant to Sections 2.2.1 or 4, which designates the type of Improvements which may be constructed on the applicable portion of the Property, and the purposes for which such Improvements and surrounding land may be utilized.

1.22 **"Lot"** means any portion of Pasi3n designated as a Lot on any Plat and limited to Single Family Residential Use by the terms of this Declaration.

1.23 **"Member"** means any person holding a Membership in the Association pursuant to this Declaration, including Class A and Class B Memberships described in Section 6.

1.24 **"Membership"** means a membership in the Association and the rights granted to the Owners and Declarant, pursuant to Section 6, to participate in the Association.

1.25 **"Mortgage"** means any Recorded or otherwise perfected mortgage or deed of trust instrument which is not a fraudulent conveyance under Arizona law, and is given in good faith and for valuable consideration as security for the performance of a financial obligation, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.26 **"Mortgagee"** means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

1.27 **"Mortgagor"** means the party executing a Mortgage as obligor, or the Trustor under any Deed of Trust.

1.28 **"Owner"** means the record owner, whether one or more Persons, of beneficial or equitable title and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest in a Lot Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Tenant Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of A RS 833-741, et seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots subject to a deed of trust pursuant to ARS Section 33-801, et seq., the Trustor shall be deemed to be the Owner. If fee simple title to a Lot is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the owner.

1.29 **"Pasi3n Rules"** means the rules adopted by the Board pursuant to Section 5 5, as amended from time to time.

1.30 **"Person"** means a natural person, corporation, partnership, trustec, limited liability company, joint venture, or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.

1.31 **"Plat"** means the final replat for Pasi3n Recorded July 5, 2000, in Cabinet C, Slide 142 (which is sometimes referred to in this Declaration as the initial Plat"), with respect to the Property, and all amendments, supplements, and corrections thereto.

1.32 **"Property"** or **"Pasi3n"** means the real property shown on the initial Plat, together with all Improvements located thereon, and all real property, together with all Improvements located thereon, which may be annexed and subjected to this Declaration pursuant to Section 2.2, but excluding any real property, together with all Improvements thereon, withdrawn pursuant to Section 2.3.

1.33 **"Property Documents"** means this Declaration, the Articles, the Bylaws, Pasi3n Rules, and the Design Guidelines.

1.34 **"Purchaser"** means any Person, other than Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for (i) a Person who purchases a Lot and then leases it to Declarant for use as a model in connection with the sale or lease of other Lots, or (ii) a Person who, in addition to purchasing a Lot, is expressly assigned any or all of Declarant's rights as Declarant under this Declaration; or (iii) a Developer.

1.35 **"Record"**, **"Recording"**, **"Recorded"** and **"Recordation"** means placing or having placed an instrument of public record in the office of the County Recorder of Pinal County, Arizona.

1.36 **"Reimbursement Assessment"** means any assessment levied and assessed pursuant to Section 7.7.

1.37 **"Residence"** means any building, or part thereof, located on a Lot designated and intended for use as a residence.

1.38 **"Resident"** means each individual occupying or residing in a Residence.

1.39 **"Single Family"** means a group of one or more individuals each related to the other by blood, marriage or legal adoption, or a group of not more than four (4) individuals not so related, who maintain a common household in a Residence.

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

1.41 **"Special Assessment"** means any assessment levied and assessed pursuant to Section 7.6.

1.42 **"Tenant"** means any person who occupies a Residence on a Lot under any type of rental or leasing arrangement.

1.43 **"Tracts"** mean all portions of the Property labeled as a "Tract" on a Plat, including Tracts A, B, C, D, E, F, G, H, I and I shown on the initial Plat.

1.44 **"Visible From Neighboring Property"** means, with respect to any given Improvement or object, that such Improvement or object is or would be visible to a natural person six feet tall, standing at ground level on any part of any other Lot or the Common Area.

2. **PLAN OF DEVELOPMENT.**

2.1 **Property Initially Subject to Declaration.** This Declaration is being Recorded to establish a general plan for the development and use of the Property in order to protect and enhance its value and desirability. All portions of the Property shall be held, sold, used, developed and conveyed subject to this Declaration Each Person, by acceptance of a deed or by acquiring any interest in any of the Property, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and the other Property Documents In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its intent that all the restrictions, conditions, covenants, easements, rules and regulations contained in this Declaration shall run with the

land and be binding on all subsequent and future Owners, grantees, purchasers, assigns, Tenants and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners in the manner set forth in this Declaration.

2.2 Annexation of Additional Property.

2.2.1 At any time on or before December 31, 2010, Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person other than the Person who owns the property to be annexed, if other than Declarant. The annexation of all or any portion of the Additional Property shall be effected by Declarant Recording an instrument (i) setting forth the legal description of the Additional Property being annexed, (ii) stating that such portion of the Additional Property is annexed into the Property and is subjected to this Declaration, and (iii) at the election of Declarant, designating Common Area, and/or establishing the Land Use Classification(s) for the Additional Property, and/or reserving or granting easements to such Persons and for such purposes as Declarant may deem appropriate, and/or imposing such additional covenants, conditions and restrictions as Declarant may deem appropriate for the Additional Property.

2.2.2 The Additional Property may be annexed as a whole, or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. Property annexed by Declarant pursuant to this Section 2.2 need not be contiguous with other portions of the Property, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property. Declarant makes no assurances as to which part of the Additional Property, if any, will be annexed.

2.2.3 The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date the written instrument annexing such Additional Property is recorded by Declarant.

2.2.4 If Declarant no longer owns any Lot, the Association shall have the rights of annexation described herein.

2.3 Withdrawal of Property. At any time on or before December 31, 2010, Declarant shall have the right to withdraw any portion of the Property designated by Declarant without the consent of any other Owner or Person (other than the owner of such portion of the Property, if other than Declarant) The withdrawal of any portion of the Property shall be effected by Declarant Recording an instrument setting forth the legal description of the portion of the Property being withdrawn and specifically stating that such portion is being withdrawn from the Property Upon the withdrawal of any portion of the Property pursuant to this Section, such portion shall no longer be subject to any of the covenants, conditions, easements and restrictions set forth in this Declaration.

2.4 Declarant's Disclaimer. Declarant makes no representations or warranties whatsoever that (a) the Property will be completed in accordance with the plans for the Property as they exist on the date of Recording of this Declaration or the Recording of any Plat; (b) any of the Property will be committed to or developed for a particular use or for any use; (c) any property not now subject to this Declaration will be subjected to the provisions hereof; (d) the use of any of the Property will not be changed in the future, or (e) the portion of the Additional Property described on Exhibit "A" will be developed as "The Preserve at Pasión". Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salespersons representing Declarant or any Developer shall be deemed to create any covenants or restrictions, express or implied, with respect to the use of any of the Property or of any part of the Additional Property.

3. EASEMENTS

3.1 Owners' Easements of Enjoyment of Common Area. Subject to the rights and easements granted to Declarant in Section 36, and subject to the easement rights granted to the owners of Lots 34 and 35 over a portion of Tract "I", every Member shall have a non-exclusive right and easement of use and enjoyment in, to and over the Common Area, including without limitation, all streets and roads, for the benefit of such Member and the invitees, Tenants and Residents thereof, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions of this Declaration, including, without limitation, the following.

3.1.1 The Association shall have the right to suspend the voting rights and the right to use any recreational facilities which may be located

in the Common Area by any Member and the invitees, Tenants and Residents thereof (o) for any period during which any Assessments against such Member's Lot remains delinquent, (11) for a period not to exceed 60 days for any violation of this Declaration or the Pasi3n Rules, or (iii) for successive 60-day periods if any such violation is not corrected during any preceding suspension period.

3.1.2 Declarant or the Association shall have the right to dedicate or transfer portions of the Common Area to any public agency, public authority, or utility for such purposes and subject to such conditions as may be agreed to by Declarant or the Association, as the case may be. Any conveyance or encumbrance of the Common Area is subject to each Owner's easement of ingress or egress over and upon all roads providing access to such Owner's Lot. Unless otherwise required by zoning stipulations or agreements with Pinal County effective prior to the date hereof or specified on a Plat, no such dedication or transfer shall be effective unless an instrument signed by Owners representing two-thirds (2/3) of the votes in each class of Members agreeing to such dedication or transfer has been Recorded. However, the Association shall have authority, without the consent of the Members or any other person, to transfer to such public agencies, public authorities or utilities, such easements and rights-of-way as may be required or requested by Pinal County or any municipal or other governmental agency having jurisdiction in connection with or at the time of the development of portions of the Property which are intended to benefit Pasi3n and which do not have any substantial adverse effect on the enjoyment of the Common Area by the Owners.

3.1.3 The Association shall have the right to regulate the use of the Common Area through the Pasi3n Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way and drainage facilities, not intended for use by the Owners, Tenants or Residents. The Pasi3n Rules shall be used, in the absolute discretion of the Board, to enhance the use and preservation of the Common Area and the safety and convenience of the users thereof, or otherwise shall be used to promote the best interests of the Owners, Tenants and Residents.

3.1.4 Declarant and the Association shall each have the right to grant easements or licenses for the construction of Improvements on the Common Area.

3.1.5 Declarant and the Association shall each have the right to grant ingress and egress easements over the streets and roads in the Property to Persons who are not Owners or Members of the Association, including without limitation for the benefit of owners of all or portions of the Additional Property whether or not annexed pursuant to Section 2, subject to such terms and conditions as Declarant and/or the Association may agree to in their discretion.

3.1.6 Declarant and/or the Association shall each have the right to convey certain portions of the Common Area to Owners of adjoining Lots in connection with the correction or adjustment of any boundary between Common Area and any one or more adjoining Lots.

3.2 **Use of Common Area by Tenants and Residents.** All Tenants and Residents permitted to do so by their respective owners shall have the right to use, in accordance with the Pasi3n Rules and the limitations contained in this Declaration and other Property Documents, the Common Area.

3.3 **Easements for Utilities.** There is hereby created and granted an easement upon, across, over and under those portions of the Property designated on the Plat as a "utility easement", "waterline easement", "sewer line easement", "PUE" or "public utilities easement" for the purposes of installing, construction, replacing, repairing, maintaining and operating all utilities serving the Property (whether public or private), including, but not limited to, water, sewer, gas, telephone, electricity, cable (including, but not limited to, television cable), security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. All sewers, electrical lines, water lines, telephone cable, or other utility or service lines must be installed or located on the Common Area or Lots below ground in the manner initially designed, approved and/or constructed by Declarant or as approved by the Design Review Committee, which may permit a limited number of permanent utility facilities above ground and temporary power and telephone structures incident to the construction of buildings or structures.

3.4 **Easement for Unintended Encroachments.** To the extent that Improvements on any Lot or portion of the Common Area encroach on any other Lot or portion of the Common Area as a result of original construction, shifting or settling, or alteration or restoration authorized by this Declaration or any reason other than the intentional or knowing encroachment on the Common Area or any

Lot by an Owner, a valid easement for the encroachment, and for the maintenance thereof is hereby granted by the owner of the servient tenement.

3.5 Wall or Fence Easement. There is hereby created an affirmative easement in favor of Declarant, the Association, and their respective agents, employees and independent contractors, upon, over and across the Common Area and each Lot affected for purposes of reasonable ingress, egress, installation, replacement, maintenance and repair of a perimeter wall, fence, gate or other boundary control for the Property, which Declarant and/or the Association may elect to install in their sole discretion.

3.6 Declarant's Use and Easement. Declarant shall have the right and a non exclusive easement appurtenant to all portions of the Property owned by Declarant for its benefit and for use by its employees, contractors, agents and invitees, (1) for ingress and egress and the installation and maintenance by Declarant of utilities and drainageway facilities, which easement burdens all Common Area, including, but not limited to, all streets and roads, and (11) to go over, under and across, and to enter and remain upon, all Common Area and all unoccupied Lots for all purposes reasonably related to Declarant's rights and obligations under this Declaration, and (iii) to go over, upon and across the Common Area and all unoccupied Lots for Declarant's development, operation, management, administration, maintenance, advertisement, sale, promotion, rental and use of the Property, as permitted under this Declaration.

3.7 Easements in favor of Association. The Lots and the Common Area are hereby made subject to non-exclusive easements in favor of the Association, its directors, officers and employees, and the Association's designated agents and independent contractors, for the following purposes:

3.7.1 Except for inside of buildings, for inspection during reasonable hours of the Lots and the Common Area in order to verify the performance of Owners or other Persons of all items of maintenance and repair for which they are responsible.

3.7.2 For inspection, maintenance, repair and replacement of portions of the Common Area accessible only from such Lots.

3.7.3 For correction of emergency conditions on one or more Lots or the Common Area.

3.7.4 For the purpose of enabling the Association, the Board, the Design Review Committee or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Property Documents.

3.7.5 For inspection during reasonable hours of the Lots and Common Area in order to verify that the Owners, Tenants and Residents, and their guests and invitees, are complying with the Property Documents.

3.8 Drainage Easements. Declarant grants to the Association, for its benefit and the benefit of the Owners, a perpetual non-exclusive easement upon, over, under and across all Tracts and all roads constituting Common Area under or upon which drainage facilities may be installed or drainage will occur, and those portions of the Property designated on the Plat as a "drainage easement" or "drainage esm't" for the purpose of accepting and transporting storm water from portions of the Property or portions of the Additional Property and for installing, maintaining, replacing and repairing above ground and below ground drainage facilities, including without limitation, drainage pipes, lines, drains, grates, culverts, embankments, retention basins and similar structures and facilities, together with the right of ingress and egress over and upon such drainage easement areas and the Common Areas to perform the installation, maintenance, replacement or repair. No Improvements may be installed, erected or maintained or any obstructions allowed within such drainage easement areas unless approved by the Design Review Committee pursuant to Article 4 and, if required by law, by Pinal County, provided that Declarant may install signage, decorative entry walls and other entryway improvements, and lighted landscaping within such drainage easement areas and a driveway upon a portion of Tract I shown on the Plat as provided in Section 39 below, all of which will be maintained by the Association. The exercise of the easement rights granted herein shall be subject to the right of the Design Review Committee to review drainage plans for each Lot pursuant to Section 4, and compliance by each Owner benefitted by such easement with the applicable requirements of Pinal County.

3.9 Driveway Easement Over Tract "I" for Lots 34 and 35.

3.9.1 Grant of Easement. Declarant and the Association hereby grant, for the benefit of the Owners of Lot 34 and Lot 35, and their respective designated agents, guests, Tenants, Residents and invitees (including police, fire protection and emergency medical personnel), a non

exclusive easement, appurtenant to the title to Lot 34 and Lot 35, on and across that portion of Tract "I" designated as "20'INGRESS/EGRESS ESM"T" on the Plat W("Driveway Easement Area") for the purpose of providing ingress and egress to and from Lot 34 and Lot 35, and S. Desierto Luna Way shown on the Plat Such easement rights shall also permit the Owners of Lot 34 and Lot 35 to install, maintain and replace a driveway within said easement area, provided that Declarant shall install a driveway within said easement area for the benefit of Lot 34 and Lot 35, and thereafter the Association shall maintain, repair and replace said driveway and include fifty percent (50%) of all reasonable costs to do so within the Annual Assessments due from the Owner of Lot 34 and fifty percent (50%) of all such reasonable costs within the Annual Assessments due from the Owner of Lot 35 Notwithstanding the foregoing, if any Owner of Lot 34 or Lot 35, or the agents, contractors, guests, Tenants, Residents, or invitees of such Owner ("responsible Owner"), should damage the driveway or other improvements within the Driveway Easement Area or other real property or improvements within Tract "I" or other portions of Pasi3n, the responsible Owner shall repair in a good and workmanlike manner, free of liens, any such damage at the responsible Owner's expense within ten (10) calendar days after written notice from the Association and/or the Owner of the portion of Pasi3n which has been damaged; provided, however, if such damage cannot reasonably be repaired within said 10-day period, then the responsible Owner shall repair, or cause to be repaired, all such damage within a reasonable time thereafter if such repairs are commenced within said 10-day period. If the responsible Owner fails to comply with the foregoing requirements, the Association and/or the Owner of the portion of Pasi3n which has been damaged, shall have the right to repair the damage and receive reimbursement on demand from the responsible Owner for the total cost thereof, plus interest thereon at a rate determined by the Board from the date such costs are incurred until paid in full, together with a construction fee equal to the greater of \$1,000 00 or fifteen percent (15%) of the total cost of said repairs, all of which shall constitute a Reimbursement Assessment pursuant to Section 7.7.

3.9.2 Indemnification. Each Owner of Lot 34 and Lot 35 and their respective successors and assigns ("Indemnifying Owner") shall indemnify, defend and hold harmless the Members and the Association, and the officers, Board members and the employees thereof ("Indemnified Persons"), from and against any and all claims, costs, liabilities and

expenses (including, but not limited to, reasonable attorneys' fees) asserted against or incurred by any Indemnified Person and arising in whole or in part from any personal injury, death or property damage or other loss caused by or arising out of the use of the Driveway Easement Area by the Indemnifying Owner, or the Tenant thereof or any other Person using the same or any portion thereof under the rights granted to the Indemnifying Owner. If requested by the Association, each Owner of Lot 34 and Lot 35 shall provide a certificate of insurance from an insurance company reasonably acceptable to the Association evidencing that such Owner maintains public liability insurance covering property damage and personal injury occurring within the Driveway Easement Area and the indemnity obligation set forth herein, with coverage of at least \$1,000,000.00 combined single limit, or such higher amount as the Association may reasonably request. Such certificate shall provide that the insurance coverage evidenced thereby shall not be terminated unless the Association receives notice of termination at least thirty (30) days prior to the effective date thereof.

3.10 Driveway Easement Over Lots 26 and 27 for Lot 28.

3.10.1 Grant of Easement. Declarant, as the owner of Lot 26 and Lot 27, hereby grants to the Owner of Lot 28, its successors and assigns, and their respective designated agents, guests, Tenants, Residents and invitees (including police, fire protection and emergency medical personnel), a non-exclusive easement, appurtenant to the title to Lot 28, on and across that portion of Lot 26 and Lot 27 designated as "30' INGRESS/EGRESS AND DRAINAGE ESM" on the Plat ("Easement Area") for the purpose of (1) providing ingress and egress to and from Lot 28 and S Pura Vida Way shown on the Plat, (11) installing, maintaining, repairing and replacing underground utilities, and (ii) drainage. Such easement rights shall also permit the owner of Lot 28 to install, maintain and replace a driveway and drainage facilities within the Easement Area, provided that Declarant shall install a driveway within said Easement Area for the benefit of Lot 28 and thereafter the Association shall maintain, repair and replace said driveway (but not any utilities or drainage facilities, and include the reasonable cost thereof within the Annual Assessment due from the Owner of Lot 28. Notwithstanding the foregoing, if any Owner of Lot 28, or the agents, contractors, guests, Tenants, Residents, or invitees of such Owner ("responsible Owner"), should damage the driveway or other improvements within such Easement Area or real

property or improvements within Lot 26 or Lot 27 or other portions of Pasi6n, the responsible Owner shall repair in a good and workmanlike manner, free of liens, any such damage at the responsible Owner's expense within ten (10) calendar days after written notice from the Association and/or the Owner of Lot 26, Lot 27 or other portion of Pasi6n which has been damaged; provided, however, if such damage cannot reasonably be repaired within said 10-day period, then the responsible Owner shall repair, or cause to be repaired, all such damage within a reasonable time thereafter if such repairs are commenced within said 10 day period. If such Owner fails to comply with the foregoing requirements, the Association and/or the Owner of Lot 26, Lot 27 and/or other portion of Pasi6n which has been damaged, shall have the right to repair the damage and receive reimbursement on demand from the responsible Owner for the total cost thereof, plus interest thereon at a rate determined by the Board from the date such costs are incurred until paid in full, together with a construction fee equal to the greater of \$1,000 00 or fifteen percent (15%) of the total cost of said repairs, all of which shall constitute a Reimbursement Assessment pursuant to Section 7.7.

3.10.2 Indemnification. Each Owner of Lot 28 and the successors and assigns thereof ("Indemnifying Owner") shall indemnify, defend and hold harmless the Members and the Association, and the officers, Board members and the employees thereof ("Indemnified Persons), from and against any and all claims, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) asserted against or incurred by any Indemnified Person and arising in whole or in part from any personal injury, death or property damage or other loss caused by or arising out of the use of the Easement Area by the Indemnifying Owner or any other Person using the same or any portion thereof under the rights granted to the Indemnifying Owner. If requested by the Association, each Owner of Lot 28 shall provide a certificate of insurance from an insurance company reasonably acceptable to the Association evidencing that such Owner maintains public liability insurance covering property damage or personal injury occurring within the Easement Area and the indemnity obligation set forth herein, with coverage of at least \$1,000,000 00 combined single limit, or such higher amount as the Association may reasonably request. Such certificate shall provide that the insurance coverage evidenced thereby shall not be terminated unless the Association receives notice of termination at least thirty (30) days prior to the effective date thereof.

4. LAND USE CLASSIFICATIONS; PERMITTED USES AND RESTRICTIONS: ARCHITECTURAL CONTROLS.

4.1 **Land Use Classifications.** The only permitted Land Use Classifications within the Property are as follows:

4.1.1 Single Family Residential Use, which applies to and restricts all Lots.

4.1.2 Association Use, which means those uses contemplated by this Declaration and applies only to Common Area.

Unless otherwise specifically provided in Section 433 or elsewhere in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses within such Classifications, shall be determined by Declarant so long as Declarant holds a Class B Membership, and thereafter by the Board.

4.2 **Architectural Control.** Except for Improvements constructed, installed, replaced or altered by Declarant, (i) no Improvements of any kind shall be commenced, erected, maintained, improved, altered, or made within the Property except with the prior written approval of the Design Review Committee, and in compliance with the Design Guidelines, including without limitation, requirements relating to Building Envelopes and Natural Areas (as those terms are defined from time to time in the Design Guidelines), and (ii) all subsequent additions to or changes or alterations in any Improvements, including exterior color scheme or a change in exterior materials, and all changes in the grade of Lots, but excluding alterations inside of a building or structure which are not Visible from Neighboring Property, shall be subject to the prior written approval of the Design Review Committee and shall be performed in compliance with the Design Guidelines No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without prior written approval of the Design Review Committee.

4.2.1 **Establishment of Design Review Committee;** Design Guidelines Declarant shall establish and appoint the initial members of a Design Review Committee to perform the functions of the Design Review Committee set forth in this Declaration The Design Review Committee shall consist of at least three (3) members or such additional number of regular members and alternate members as Declarant may designate All members shall be appointed by Declarant until Section 4 2 8 applies the appointees need not be architects, Owners, or Residents and do not need to possess any special qualifications of any type except as Declarant may,

in its discretion, require. The Design Review Committee shall hold regular meetings. A quorum for each such meeting shall consist of fifty percent (50%) or more of the regular members, and the concurrence of a majority of the quorum present shall be necessary for any decision of the Design Review Committee. An alternate member, approved by Declarant, may participate at any meeting at which there is not a quorum of regular members present, and the presence of such alternate member will constitute a quorum and the alternate member shall have the authority of a regular member to vote while so participating. The Design Review Committee shall promulgate architectural guidelines and design standards with review, approval and enforcement procedures (which may include fines) to be used in rendering and enforcing its decisions, which may be modified from time to time by the Design Review Committee ("Design Guidelines"). The Design Guidelines may be modified from time to time, but all modifications must be approved by the Declarant until Declarant no longer holds a Class B Membership, thereafter the same must be approved by the Board. The Design Guidelines adopted and approved pursuant to this Declaration may also prohibit, regulate and/or control certain Improvements and uses, in addition to the restrictions and limitations set forth in this Declaration.

4.2.2 Procedure. Any Owner or other Person desiring an approval from the Design Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which requires the approval of the Design Review Committee as set forth above or in the Design Guidelines, shall (1) submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change, replacement or other work which such Owner or other Person desires to perform, together with any additional information, plans and specifications which the Design Review Committee may reasonably request, and (ii) comply with all other design review procedures and requirements in the Design Guidelines.

4.2.3 Review Fees. The Design Review Committee may assess reasonable fees in connection with its review of drawings, plans and specifications, which may include the fees charged by professional engineers, architects or other professional advisors retained by the Design Review Committee.

4.2.4 Delegation. The Design Review Committee may delegate all or a portion of its review and approval responsibilities for drawings, plans and specifications, except final review and approval, to one or more of its members or architectural or engineering consultants retained by the Design Review Committee.

4.2.5 Consents and Approvals. Any consent or approval of the Design Review Committee which is required under this Declaration shall not be effective unless it is in writing and signed by the Design Review Committee, or by the Person to whom responsibility for the particular consent or approval has been delegated under Section 4.2.4.

4.2.6 Non-Liability for Approval of Drawings and Specifications. DRAWINGS, PLANS AND SPECIFICATIONS SHALL BE APPROVED BY THE DESIGN REVIEW COMMITTEE AS TO STYLE, EXTERIOR DESIGN, COLORS, APPEARANCE AND LOCATION, AND ARE NOT APPROVED FOR ENGINEERING DESIGN OR INTEGRITY OR FOR COMPLIANCE WITH ZONING AND BUILDING ORDINANCES, FIRE CODES OR OTHER APPLICABLE LAWS AND CODES. BY APPROVING SUCH DRAWINGS, PLANS AND SPECIFICATIONS, O) THE DESIGN REVIEW COMMITTEE AND THE MEMBERS THEREOF, THE ASSOCIATION, AND THE MEMBERS THEREOF, THE BOARD, OFFICERS AND DIRECTORS OF THE ASSOCIATION, AND THE DECLARANT, ITS MEMBERS, EMPLOYEES AND AGENTS, DO NOT ASSUME ANY LIABILITY OR RESPONSIBILITY THEREFOR, OR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH DRAWINGS, PLANS AND SPECIFICATIONS, AND (11) SHALL NOT BE LIABLE TO ANY OWNER OR OTHER PERSON FOR ANY DAMAGE, EXPENSE, LOSS OR PREJUDICE ERRED OR CLAIMED ON ACCOUNT OF OR ARISING FROM(A) THE APPROVAL OR DISAPPROVAL OF ANY DRAWINGS AND SPECIFICATIONS, WHETHER OR NOT DEFECTIVE, (B) THE CONSTRUCTION OR PERFORMANCE OF ANY WORK, WHETHER OR NOT PURSUANT TO APPROVED DRAWINGS, PLANS AND SPECIFICATIONS, (C) THE CHANGE IN THE SIZE, CONFIGURATION OR LOCATION OF ANY BUILDING OR THE CHANGING OF THE NATURAL GRADE OF, AND/OR THE COMPACTING OF ANY SOIL ON, ANY LOT, OR (D) THE EXECUTION AND FILING OF AN ESTOPPEL CERTIFICATE, IF ONE IS PROVIDED IN THE DISCRETION OF THE DESIGN REVIEW COMMITTEE, THE ASSOCIATION OR THE BOARD, WHETHER OR NOT THE FACTS

THEREIN ARE CORRECT; PROVIDED, HOWEVER, THAT SUCH ACTION, BASED ON THE ACTUAL KNOWLEDGE POSSESSED BY THE INDIVIDUAL ACTING, WAS TAKEN IN GOOD FAITH. APPROVAL OF DRAWINGS, PLANS AND SPECIFICATIONS BY THE DESIGN REVIEW COMMITTEE, OR THE APPROVAL OF ANY CHANGE IN THE SIZE, CONFIGURATION OR LOCATION OF ANY BUILDING OR OTHER IMPROVEMENT, OR A CHANGE IN THE NATURAL GRADE OF ANY LOT IS NOT, AND SHALL NOT BE DEEMED TO BE, A REPRESENTATION OR WARRANTY THAT SAID DRAWINGS, PLANS, SPECIFICATIONS OR CHANGES COMPLY WITH APPLICABLE GOVERNMENTAL ORDINANCES OR REGULATIONS INCLUDING, BUT NOT LIMITED TO, ZONING ORDINANCES, FIRE CODES AND BUILDING CODES.

4.2.7 Enforcement. Any Residence, building, structure or other Improvement installed, made or constructed in violation of this Section or the Design Guidelines shall be deemed to be nonconforming Upon written request from the Board or Declarant (or the Design Review Committee of the Board or Declarant authorizes it to do so), the Owner(s) thereof shall, at its or their own cost and expense, remove or modify such structure or other Improvement to the full extent necessary to comply with this Declaration and the Design Guidelines and, if necessary, restore the land to substantially the same condition as existed prior to the nonconforming work Should an Owner fail to remove, modify and/or restore as herein required, the Board or Declarant or their designees shall have the right to enter the nonconforming Lot, remove or correct the violation, and restore the property to substantially the same condition as previously existed, all at the expense of the Owner thereof The Board shall establish rules for notice and opportunity to respond prior to action by the Board All costs and expenses incurred by the Board, or Declarant, together with interest thereon at the rate adopted by the Board, from the date such costs and expenses are incurred until paid in full, and together with a construction fee equal to the greater of One Thousand Dollars (\$1,000 00) or fifteen percent (15%) of such costs and expenses, plus all fines imposed as permitted by this Declaration, may be assessed against the nonconforming Lot and the Owner thereof as a Reimbursement Assessment pursuant to Section 7.7, and shall be secured by the Assessment Lien on such Lot, which shall be collected and enforced as provided in Section 8 WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCES, THE BOARD OR DECLARANT MAY, IN

ADDITION TO THE FOREGOING RIGHTS, FIX AND LEVY (AND/OR AUTHORIZE THE DESIGN REVIEW COMMITTEE TO LEVY) FINES OF UP TO \$10,000 AGAINST THE OWNER(S) OF THE NONCONFORMING LOT FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR FAILURE TO COMPLY WITH THE REQUIREMENTS OF SUCH APPROVALS OR THE DESIGN GUIDELINES, WHICH MAY REQUIRE SECURITY DEPOSITS OR SURETY BONDS TO ASSURE COMPLIANCE WITH THE DESIGN GUIDELINES.

4.2.8 Appointment of Design Review Committee Members.

Design Review Committee members are appointed by Declarant and may be replaced at the discretion of Declarant as provided in Section 421. Declarant's right to appoint Design Review Committee members as provided in Section 4 2.1 shall cease and the Board shall be vested with that right and all other rights of Declarant pertaining to the Design Review Committee as stated in this Article 4, at such time as Declarant no longer owns any property in Pasi3n or when such right is expressly relinquished by Declarant to the Board in writing, whichever occurs first.

4.3 Animals. No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes No house or yard pets shall be allowed to make an unreasonable amount of noise or cause odor problems, or to become a nuisance. No structure for the care, housing or confinement of any house or yard pets shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular house or yard pet is a generally recognized house or yard pet, whether such a pet causes unreasonable noise or creates an odor problem or is a nuisance, or whether the number of animals or birds on any such property is reasonable Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained in this Declaration.

4.4 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used within the Property at any time for a residence, either on a temporary or permanent basis Temporary

buildings or structures used by Developer or contractors for non residential purposes during the construction of an Improvement on any Lot shall be installed and maintained in accordance with the Design Guidelines and shall be removed immediately after the completion of construction.

4.5 Landscaping. Each Owner of a Lot shall install and substantially complete the landscaping in the front of the Residence and within any other areas of the Lot approved by the Design Review Committee which are Visible From Neighboring Property, including any landscaping necessary to satisfy screening requirements imposed by the Design Review Committee and/or set forth in the Design Guidelines, within three (3) months after occupancy of the Residence on a Lot or within six (6) months after the substantial completion of an unoccupied Residence, except that landscaping shall be limited in the drainage easements as provided in Section 3.8 All landscaping plans shall be submitted to the Design Review Committee for written approval prior to commencement of the landscaping, as provided in Section 4.2. If any Owner does not install and complete approved landscaping within the applicable three-month or six-month period described above, Declarant, or the Association, after giving the Owner thirty (30) days written notice to cure any such default, shall have the right to cause the necessary landscaping work to be done. The Owner in default shall be responsible for the cost thereof and the parties expending funds for such work shall have a lien on the defaulting Owner's Lot for the funds expended together with interest thereon at the rate set by the Board until paid, and all such amounts shall constitute a Reimbursement Assessment pursuant to Section 7.7.

4.6 Maintenance of Lawns and Plantings; Irrigation Methods. Subject to Section 4.2 and the requirements of the Design Guidelines regarding natural desert vegetation and the Natural Area (as defined in the Design Guidelines), each Owner of a Lot shall keep neatly maintained, properly cultivated and free of trash and other unsightly material, all shrubs, trees, cacti, hedges, grass and plantings of every kind located on:

4.6.1 Such Owner's Lot, provided that no irrigation or sprinkling of the Natural Area (as defined in the Design Guidelines) on a Lot shall be permitted, unless approved in each instance by the Committee;

4.6.2 Any other public right-of-way, drainage easement or other easement area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, path or similar area; and

4.6.3 Any non-street public right-of-way or easement area adjacent to his Lot, provided, however, that such Owner shall not be responsible for maintenance of any area over which the Association is expressly given such responsibility in this Declaration or assumes the responsibility in writing, (II) the Association has been given such responsibility by a Recorded instrument as provided in Section 10.1 below, or (III) Pinal County assumes responsibility, but only for as long as the Association or government entity assumes or has responsibility as provided in subsections (I), (II) or (III).

The Design Review Committee shall have the right, in its discretion, to require landscaping by an Owner of all or a portion of those areas described in Sections 4.6.1 and 4.6.2, and 4.6.3 above.

4.7 Nuisances; Construction Activities No Owner, Resident or other Person shall allow or cause rubbish or debris of any kind to be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, sirens, firecrackers, bells or other sound devices, (except security devices used exclusively for security purposes and stereo speakers of both are used in a reasonable manner which is not offensive or detrimental), shall be located, used or placed on any Lot Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, and trash and debris shall be stored and removed in the manner provided in the Design Guidelines In addition, any construction trailers, portable field offices, construction equipment and building materials stored or kept on any Lot during construction of Improvements may be kept thereon but only in areas approved by the Design Review Committee, which may also require screening of the storage areas. The Board in its sole discretion shall have the right to determine whether any such nuisance or other offensive or detrimental activity or condition exists.

4.8 **Diseases; Insects; Pests.** No Person shall permit any thing or condition to exist upon any Lot which may induce, breed or harbor infectious plant diseases or noxious insects or pests.

4.9 **Repair of Building.** No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with the plans and specifications therefor approved by the Design Review Committee. If any building or structure is damaged or destroyed, then, subject to the approvals required by Section 42 above and the Design Guidelines, such building or structure shall be immediately (i) repaired or rebuilt, or (ii) demolished.

4.10 **Antennas and Satellite Dishes.** No type of antenna, dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation which are Visible From Neighboring Property shall be erected, used or maintained outdoors on any Lot, nor attached to the roof of a building or structure. The Design Review Committee shall determine whether any antenna, dish or other device is Visible From Neighboring Property and whether screening is aesthetically acceptable.

4.11 **Mineral Exploration.** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for drilling related to soil testing for the construction of Improvements, and excavation work related to constructing Improvements.

4.12 **Trash Containers and Collection.** No garbage or trash shall be placed, kept, dumped or buried on any Lot, except that the same may be stored in covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection, and except for neatly maintained construction bins placed thereon by a Developer or an Owner's contractor for the construction of Improvements in compliance with the Design Guidelines. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

4.13 Clothes Drying Facilities. No outside clothes lines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot unless they are approved by the Design Review Committee and are erected, placed and maintained exclusively within a fenced yard or otherwise concealed and they are not Visible From Neighboring Property.

4.14 Sports and Recreation Equipment; Basketball Hoops. No structure, equipment or apparatus Visible From Neighboring Property or from the street shall be permitted except as may be allowed in the Design Guidelines and except with the prior approval of the Design Review Committee, including but not limited to, sport courts, tennis and basketball courts, exercise equipment, and children's playground equipment The location and design of any swimming pool or jacuzzi shall be approved by the Design Review Committee. No basketball hoops may be mounted on the roofs or attached to a Residence. Subject to the Design Guidelines, portable basketball hoops shall be permitted and permanent structures may be permitted, if not attached to a Residence.

4.15 Mechanical Appurtenances; Vents and Stack Pipes. No mechanical appurtenance (air conditioning/heating units, etc) shall be mounted on or attached to any roof Stack pipes and mechanical vents shall be limited in number and shall be regulated by the Design Guidelines.

4.16 Machinery and Equipment. Except motor vehicles, which shall be governed by Section 4 27, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except (1) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (but only during the period of construction) of a building, appurtenant structures, or other Improvements, or (11) that which Declarant or the Association may require for the development, operation and maintenance of Pasión.

4.17 Signs. No signs whatsoever (including, but not limited to, commercial, political, "garage sale" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

4.17.1 Signs required by legal proceedings.

4.17.2 Residential identification signs if the nature, number, size, color, design, content and location of such signs have been approved by the Design Review Committee.

4.17.3 Temporary signs (including "for sale," "open house," and "for lease" signs) if the size, design, color, nature, number, and location of which have been approved in advance and in writing by the Design Review Committee, which may also specify and require limits on the hours and number of days the same may be displayed.

4.17.4 Signs of Developers and/or the contractors of an Owner on any Lot if approved from time to time by the Design Review Committee as to nature, number, size, colors, design, message content, location, type and duration.

4.17.5 Such other signs (including, without limitation, construction job identification signs, builder signs, and subdivision signs), which are in conformance with the requirements of Pinal County and which have been approved in writing by the Design Review Committee as to nature, number, size, color, design, message content, location and duration.

4.17.6 Signs permitted by the terms of Section 4.34 if approved by the Board.

4.18 Residential Use; Trades or Businesses. All Lots may be used only for the construction and occupancy of Single Family detached Residences and typical residential activities incidental thereto, such as the construction and use of a family swimming pool. No trade or business may be conducted on any Lot or in or from any Residence, except that an Owner or other Resident may conduct a business activity in a Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence, (b) the business activity conforms to all applicable zoning. ordinances and other governmental requirements, (c) the business activity does not involve the door-to-door solicitation of Owners or other Residents in the Property; (d) the use of a Residence for trade or business shall in no way destroy or be incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business shall be conducted only inside the Residence or inside an accessory building or garage, and shall not involve the viewing, purchase, shipping or taking delivery of goods or merchandise at, to, from or in any Residence, the trade or business shall be conducted by a Resident or Residents of the Residence with no more than one (1) employee working in or from such Residence who is not a Resident thereof, (g) the Residence used for trade or business shall not be used as a storage facility for a business conducted elsewhere, (h) the volume of vehicular or

pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood like Pasi3n, (1) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use, and (1) a trade or business shall not utilize large vehicles not customary to a residential use The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (1) such activity is engaged on a full or part time basis; (ii) such, activity is intended to or does generate a profit, or (u) a license is required for such activity Construction of a Residence by a Developer who does not use the same for other business purposes, and the leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.19 Violation of Law or Insurance. No Owner shall permit anything to be done or kept in or upon his Lot or in or upon any Common Area which will result in the cancellation, or increase in premium, or reduction in coverage of insurance, maintained by Association or which would be in violation of any law, code, ordinance or regulation.

4.20 Height Limitations; No Carports. Single-family dwellings constructed on any Lots shall be of permanent construction, and shall comply with all height limitations set forth in the Design Guidelines. All structures shall be constructed of materials set forth in the Design Guidelines. Carports are prohibited and fully enclosed garages are required on each Lot Model homes shall be governed by Section 4.31 below.

4.21 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein not shown on the Plat or expressly granted in this Declaration, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the subdivision, casement or other interest This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant No further covenants, conditions, restrictions or easements (except for those set forth in this

Declaration or shown on the Plat) shall be Recorded by any Owner or other Person against any Lot without the provisions thereof having been first approved in writing by the Board, and any. covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void Except if filed by Declarant, no application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Design Review Committee and the proposed use otherwise complies with this Declaration.

4.22 Rental of Lots. No Lot may be rented or leased ("rent" and "lease" shall have the same meaning herein) for a term of less than six (6) months. In no case may less than the entire Lot be leased, and subleases are prohibited. Before the commencement of each lease term, the Owner shall be required to provide to the Board the name and contact information for any adults occupying the Lot, the time period of the lease agreement including the beginning and ending dates of the tenancy, and a description and the license plate numbers of the tenants' vehicles. Each Owner shall provide to his or her tenant a copy of the Declaration, Articles, Bylaws, Pasion Rules, and any other documents governing the Associations. No Lot may be leased to any person(s) who is required to be registered pursuant to Arizona Revised Statute 13-3821 and who is/are classified as a level two or level three sex offender(s).

The Owner shall remain liable for compliance with the Property Documents governing the Association and shall be responsible for any violations thereof by his or her tenant or the tenants's family, guests, or invitees. All notices shall be sent to the Owner unless the Owner designates in writing a third party to act as the Owner's agent with respect to all association matters.

Only the entire Lot, together with the Improvements thereon, may be rented and only for Single Family purposes Each Owner who leases or otherwise grants occupancy rights to his Lot to any Person shall be responsible for assuring compliance by the Resident with all of the provisions of this Declaration, including without limitation use as a Single Family Residence and each Owner shall be jointly and severally responsible for any violations thereof by its Resident An Owner who leases a Lot shall notify and provide the Association with the names of the Tenants and each permitted Resident.

4.23 **Walls or Fences.** No walls or fences shall be constructed or maintained on a Lot except as may be permitted by the Design Guidelines, and only if approved in advance by the Design Review Committee.

4.24 **Utility Service; Underground Installation Required.** No lines, wires, or ices or facilities for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures or a limited number of utility facilities of a permanent nature above ground, if approved by the Design Review Committee in each instance.

4.25 **Overhead Encroachments.** No tree, shrub, cacti or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other Common Area or another Lot from ground level to a height of eight (8) feet without the prior approval of the Design Review Committee.

4.26 **Trucks, Trailers, Campers and Boats.** No mobile home, travel trailer, motor home, tent trailer, trailer, camper shell, detached camper, semi-trailer and/or tractor cab, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street in Pasi3n so as to be Visible From Neighboring Property; provided, however, the provisions of this Section shall not apply to the parking of pickup trucks with no more than two axles and not exceeding 7 feet in height measured from ground level and mini-motor homes not exceeding 7 feet in height and 18 feet in length which are parked as provided in Section 4.28 below and are used on a regular and recurring basis for basic transportation.

4.27 **Motor Vehicles.** No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired anywhere within the Common Area or upon any Lot or street in Pasi3n, and no inoperable or unlicensed vehicle may be stored or parked anywhere within the Common Area or on any portions of such Lot or street so as to be Visible From Neighboring Property, provided, however, that the provisions of this Section shall not apply to (1) emergency repairs, and (11) vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance.

4.28 **Parking.** It is the intent of Declarant to restrict on-street parking as much as possible Subject to Sections 4.26 and 4.27 and any additional restrictions set forth in the Design Guidelines, vehicles of all Owners, Tenants and Residents, and of their employees, guests and invitees, are to be kept in garages or residential driveways on the Lot of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot.

4.29 **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, Improvements or signs necessary or convenient to the development or sale of property within Pasi3n, or the use of vehicles or equipment with respect thereto and the parking or storing of such vehicles and equipment.

4.30 **Health, Safety and Welfare.** If any additional uses, activities, and facilities are deemed by the Board to be a nuisance or to affect adversely the health, safety or welfare of Owners and Residents or their enjoyment of Pasi3n, the Board may make rules restricting or regulating their presence in Pasi3n as part of the Pasi3n Rules, or may make rules governing their presence on Lots.

4.31 **Model Homes.** The provisions of this Declaration which prohibit non residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by Declarant or by Developers engaged in the construction of Residences in Pasi3n and parking incidental to the visiting of such model homes so long as (i) the location and construction of such model homes are approved by the Design Review Committee prior to construction, (ii) the opening and closing hours are approved by the Design Review Committee, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration and the Design Guidelines. The Design Review Committee may also permit Lots and other areas in the Property to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of Pinal County and any rules of the Design Review Committee, and the owner of such areas consents thereto Any homes constructed as model homes shall cease to be used as model homes at any time the owner or Developer thereof is not actively engaged in the construction and sale of Single Family Residences in Pasi3n, and no home shall be used as a model home for the sale of homes not located at Pasi3n.

4.32 **Lighting.** Owners shall be permitted to install such security lights or decorative lighting as may be permitted by the Design Guidelines, if approved in advance by the Design Review Committee as therein provided and if the same comply with the rules and regulations of Pinal County.

4.33 **Incidental Uses.** The Design Review Committee may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners or Residents of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Design Review Committee may wish to impose, in its sole discretion, for the benefit of Pasi3n as a whole. By way of example and not of limitation, a use which the Design Review Committee may permit is a sales, information and marketing center operated by Declarant within an area having a land use classification of Association Use. Declarant intends to utilize a Lot or Lots for information and marketing related activities and reserves the right for such use until Declarant no longer owns any Lots for initial sale to Developers or Purchasers.

4.34 **No "Garage Sales".** No sales such as "garage sales" may be conducted within any portion of Pasi3n unless approved in writing by the Board.

4.35 **Mailboxes.** A mailbox will be required on each Lot, provided that the size, design, color, nature and location thereof are subject to the approval of the Design Review Committee.

5. ORGANIZATION OF ASSOCIATION.

5.1 **Purpose of Association.** The Association shall be incorporated as a nonprofit corporation to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area and other portions of the Property, the assessment and collection of expenses, payment of losses, use and disposition of casualty insurance proceeds, the enforcement of this Declaration, and other matters as provided in this Declaration and the Articles, Bylaws, Pasi3n Rules and Design Guidelines. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of the Property Documents.

5.2 **Articles and Bylaws.** The Association shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.3 **Association's Rights and Powers.** In addition to the rights and powers of the Association set forth in this Declaration or in applicable statutes, the Association sha rights and powers set forth in its Articles and Bylaws, to the extent such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration.

5.4 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws, as the same may be amended from time to time. So long as Declarant has a Class B Membership, Declarant shall appoint the Board After Declarant no longer has a Class B membership, the Owners shall appoint the Board The Board shall have the power to levy reasonable fines against an Owner for a violation of this Declaration or other Property Documents, by the Owner or a Tenant or any Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to respond The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association The Board shall determine the compensation to be paid to the Manager or any other employee of the Association.

5.5 **Pasión Rules.** The Board may from time to time adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Common Area including, but not limited to, any recreational facilities situated upon the Common Area; (ii) minimum standards for maintenance of Lots, (iii) the health, safety or welfare of the Owners, Tenants and Residents, or (iv) restrictions on the use of Lots. In the event of any inconsistency between the provisions of this Declaration and the Pasión Rules, the provisions of this Declaration shall prevail The Pasión Rules shall not discriminate among similarly situated Members The Pasión Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions, and restrictions set forth in this Declaration.

5.6 Limitation on Personal Liability. NO MEMBER OF THE BOARD OR OF ANY COMMITTEE OF THE ASSOCIATION, NO OFFICER OR EMPLOYEE OF THE ASSOCIATION, AND NO MANAGER OR MANAGEMENT COMPANY AND ITS EMPLOYEES SHALL BE PERSONALLY LIABLE TO ANY MEMBER, OR TO ANY OTHER PERSON, INCLUDING THE ASSOCIATION, FOR ANY DAMAGE, LOSS OR PREJUDICE SUFFERED OR CLAIMED ON ACCOUNT OF ANY ACT, OMISSION, ERROR, OR NEGLIGENCE OF THE ASSOCIATION OR ITS OFFICERS OR EMPLOYEES, THE BOARD, THE MANAGER, THE MANAGEMENT COMPANY AND ITS EMPLOYEES, OR ANY COMMITTEE OR COMMITTEE MEMBER; PROVIDED, HOWEVER, THE LIMITATIONS SET FORTH IN THIS SECTION S 6 SHALL NOT APPLY TO ANY PERSON WHO HAS ENGAGED IN WILLFUL OR INTENTIONAL MISCONDUCT.

5.7 Easements. In addition to the easements granted in Section 3, the Board is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and drainage ways, telephone cable and other similar public or private utility purposes, security lines, roadways, walkways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas, or for the preservation of the health, safety, convenience and welfare of the Owners The Board and the Association are authorized and empowered to grant upon and across the Common Area and other real property owned or controlled by the Association such licenses and easements for ingress, egress, utilities and drainage as the Board may deem appropriate with respect to owners of property located adjacent to Pasi3n, including without limitation non-exclusive easements for ingress and egress upon and across all roadways within Pasi3n for the benefit of present and future owners, and their respective guests, invitees, agents, and tenants, of approximately forty (40) acres located immediately to the east of Pasi3n and described on Exhibit "A" attached hereto and property adjacent thereto, all on terms and conditions acceptable to the Board, which shall permit access to and from the Access Easement approximately thirty feet (30 feet) in width over and across Lot 28 and Lot 30 as described in Section 4.21 which shall be supervised and controlled by the Association as therein provided.

5.8 Association's Rights of Enforcement. The Association shall have the right to enforce this Declaration and other Property Documents, and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise indicates that the provisions of such instrument were intended to be enforced by the Association, or by Declarant and Declarant assigns its right to enforce the same to the Association Declarant shall provide a copy of this Declaration and any and all amendments to Pinal County However, Pinal County shall have no obligation to enforce this Declaration.

5.9 Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or affected by the fact that one or more directors or officers of the Association or members of any committee may also be employed by or otherwise connected with Declarant or its affiliates, provided that such interest must be disclosed or known to the other directors acting upon such contract or transaction, and the transaction or contract must be fair and reasonable Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or any committee of which he or she is a member which authorizes any contract or transaction described above or grants or denies any approval sought by Declarant, its affiliated companies or any competitor thereof, and may vote at such meeting to authorize any such contract, transaction or approval with like force and effect as if he or she were not so interested.

5.10 Change of Use of Association Land and Procedure Therefor. Upon adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association's land or interest in other Common Area is no longer in the best interests of the Owners and Residents, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Common Area.

6. **MEMBERSHIPS AND VOTING.**

6.1 **Owners of Lots.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Each Member shall have one (1) Membership for each Lot owned by the Member.

6.2 **Declarant.** Declarant shall be a Member of the Association for so long as it holds a Class B Membership pursuant to Section 6.3.2 below or as long as it owns any Lot in Pasi6n.

6.3 **Voting.** The Association shall have two classes of voting Memberships.

6.3.1 **Class A.** Class A Memberships shall be all Memberships, other than the Class B Memberships held by Declarant, and each Owner shall be entitled to one (1) vote for each Class A Membership held by such Owner.

6.3.2 **Class B.** Class B Membership shall be all Memberships held by Declarant. Declarant will hold a Class B Membership for each Lot owned, and shall be entitled to three (3) votes for each Class B Membership held by Declarant. The Class B Membership shall cease and be converted to a Class A Membership, on the earlier of the following:

6.3.2.1 One Hundred Twenty (120) days after the total votes outstanding in the Class A Memberships equal or exceed the total votes outstanding in the Class B Memberships; or

6.3.2.2 December 31, 2015; or

6.3.2.3 At any time by Declarant giving written notice to the Association that Declarant wishes to convert its Class B Memberships to Class A Memberships.

6.4 **Right to Vote.** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be

allowed If a Membership is held by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made at the time the vote is cast if more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

6.5 Membership Rights. Each Member shall have the rights, duties and tions set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

6.6 Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Association are appurtenant to its Lot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot, and then only to the transferee of ownership to the Lot A transfer of ownership of a Lot may be affected by deed, intestate succession, testamentary disposition, judicial or non-judicial foreclosure of a Mortgage, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona Any attempt to make a prohibited transfer shall be void Any transfer of ownership to a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

7. COVENANT FOR ASSESSMENTS AND CREATION OF LIEN.

7.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Lot established within Pasi3n, hereby covenants and agrees, and each Owner by acceptance of a deed therefor (whether or not so expressed in such deed) is deemed to covenant and agree to pay to the Association the following assessments and charges: (i) Annual Assessments established by this Section 7, (ii) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Section 7, and (iii) Reimbursement Assessments established in this Section 7. All Assessments shall be established and collected as hereinafter provided The Annual Assessments, Special Assessments, and Reimbursement Assessments together with interest, costs, and reasonable attorney's fees, shall be a charge against

and a continuing servitude and lien upon the Lot against which each such Assessment is made The Annual and Special Assessments against each Lot shall be based on the number of Memberships appurtenant to the Lot Each Annual Assessment, Special Assessment, Reimbursement Assessment and Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment becomes due The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them, but the lien shall follow title as hereafter provided.

7.2 Annual Assessments.

7.2.1 Obligation to Pay. Each Owner shall pay Annual Assessments as provided in this Section and Sections 73 and 75 Annual Assessments shall include all Common Expenses and all other sums expended by the Association pursuant to this Declaration and other Property Documents, and an adequate reserve fund for taxes, insurance, maintenance, repairs and replacement of the Common Area and other improvements for which the Association is responsible Except as otherwise specifically provided herein, payment of Annual Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Board for the purpose of paying and satisfying Common Expenses other than those expenses covered by Sections 7 6 and 77 Annual Assessments for Lot 28, Lot 34 and Lot 35 will also include the cost and expenses of the Association to be reimbursed by the Owners of Lot 28, Lot 34 and Lot 35 as provided in Section 3.9 above.

7.2.2 Annual Calculation. Not less than 45 nor more than 60 days prior to the beginning of each fiscal year of the Association, the Association shall make a budget for the upcoming fiscal year available for review by Members in accordance with the provisions of the Bylaws. Subject to the provisions of Section 7.3.1, the Association shall at that time determine the amount of the Annual Assessments to be paid by each Owner for each Lot in accordance with the procedures set forth in Section 7.3 The Board shall notify each Owner at least thirty (30) days prior to the beginning of the Assessment Period of the amount of the Annual Assessment to be paid by him. Each Owner shall thereafter pay the Annual Assessments to the Association in installments at such regular

intervals as may be fixed by the Board. Each installment shall be due and payable on the date specified by the Board. Notwithstanding the above, the failure of the Association to make such budget available for review or give notice of the Annual Assessment within the prescribed period shall not constitute a waiver of the Association's right to levy and collect such Assessments, nor relieve any Person of its obligation to pay such Assessments.

7.3 Determination of Annual Assessment. Subject to the limitations set forth in Section 7.5 of this Declaration, the amount of any Annual Assessment to be levied against each Lot shall be determined as follows (excluding the amounts due from the Owners of Lot 28, Lot 34 and Lot 35 pursuant to Section 3.9, which shall be added to the Annual Assessments determined for all Lots as hereafter provided):

7.3.1 For purposes of this Section 7.3, the term "Membership Assessment" shall mean the total amount of any Annual Assessment to be levied against all Lots which are Assessable Property divided by the total number of Memberships attributable to the Assessable Property.

7.3.2 Except for Lots covered by Section 7.3.3 or which are owned by Declarant and are exempt from Assessment under Section 7.3.4, each Lot shall be assessed an Annual Assessment in an amount equal to the number of Memberships attributable to such Lot pursuant to Section 6.1 of this Declaration multiplied by the Membership Assessment.

7.3.3 A Lot designated for use as a Residence in this Declaration shall be assessed 25% of the Membership Assessment until the earlier of (i) the completion of the first Residence on the Lot, or (ii) six months from the commencement of construction of a Residence on the Lot (and the Board shall determine when construction has commenced for purposes of this subsection), or (iii) two (2) years from the date the Lot is conveyed by Declarant to an Owner.

7.3.4 As long as there is a Class B Membership in the Association, Lots owned by Declarant shall not be subject to any Assessment, but Declarant shall be required to pay to the Association the difference between the cost of operating and administering the Association and the Annual Assessment levied pursuant to this Section 7.3. When the Class B Membership ceases in accordance with Section 6.3.2 above, Declarant

shall no longer be required to subsidize the cost of operating and administering the Association, but all Lots owned by Declarant shall be subject to Assessment in the same manner as any other Lot.

7.4 Completion of Improvements. For purposes of Section 7.3, a Residence shall be deemed completed when, in the opinion of the Board, the building is ready for occupancy regardless of whether a certificate of occupancy has been requested and/or issued. If the Owner of a Lot ceases to qualify for the reduced 25% rate during the period to which an Annual Assessment is attributable, then the Assessment attributable to a Membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly or annual basis as determined by the Board. Special Assessments may be collected as specified by the Board, unless otherwise determined in the resolution of the Members of the Association approving the Special Assessment.

7.5 Maximum Annual Assessment. The Annual Assessment to be established by the Board may not exceed a certain amount, which shall be determined and shall vary in accordance with the following provisions (hereinafter referred to as the "Maximum Annual Assessment"):

7.5.1 Until January 1 of the year following the conveyance of the first Lot by Declarant to a Purchaser, the Maximum Annual Assessment for each Lot shall be \$600.00.

7.5.2 From and after January 1 of the year immediately following conveyance of the first Lot to a Purchaser and during such year, the Board may without a vote of the Members increase the Maximum Annual Assessment, effective January 1 of such year, and each year thereafter, by the greater of (a) 5% of the Maximum Annual Assessment for the immediately preceding fiscal year, or (b) an amount equal to the increase, if any, in the CPI (as hereinafter defined). The Maximum Annual Assessment for each such period shall be computed by reference to statistics published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics, designated "Consumer Price Index--All Items, All Urban Consumers (1982-84 = 100) ("CPI"). The Maximum Annual Assessment shall be computed by the following formula.

X = CPI for September of the year immediately preceding the prior calendar year.

Y = CPI for September of the year immediately preceding the calendar year for which the Maximum Annual Assessment is to be determined.

Y minus X Multiplied by the Maximum Annual Assessment for the then preceding calendar year equals the amount by which the Maximum Annual Assessment may be increased, if the resulting increase is less than five percent (5%).

If the Bureau of Labor Statistics changes the method of determining the CPI, the formula for determining the Maximum Annual Assessment shall be altered or amended by the Board, if possible, so as to continue the base period and base figure, but if it is impossible to do so, or if the Bureau of Labor Statistics shall cease to publish said statistical information and such information is not available from any other source, public or private, then and in any such event a new formula for determining the Maximum Annual Assessment shall be adopted by the Board.

7.5.3 From and after January 1 of the year immediately following the conveyance by Declarant of the first Lot to a Purchaser, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under subsection 7.5.2 above only by a vote of two-thirds (2/3) of the votes entitled to be cast by Members that are voted in person or by proxy at a meeting duly called for such purpose.

7.6 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area not resolved for or covered by the Annual Assessment, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that the Special Assessment must be approved by two-thirds (2/3) of the total votes entitled to be cast by the Members of both Class A and B that are voted in person or by proxy at a meeting duly called for such purpose. In connection with

any such Special Assessment, Owners qualifying for paying only 25% of the Annual Assessment attributable to their Memberships pursuant to Section 7.3 above shall also be required to pay only twenty-five percent (25%) of the Special Assessment otherwise attributable to each such Membership. The provisions of this Section are not intended to and shall not preclude or limit the assessment, collection or use of Annual Assessments for the foregoing purposes.

7.7 Reimbursement Assessment. The Board or Declarant shall be entitled to levy an assessment ("Reimbursement Assessment") against any Owner who fails to comply with Sections 3.9.1, 3.10.1, 4.2.7, 4.5, 10.3 or 10.5 and Declarant or the Association, as the case may be, performs the necessary landscaping, repairs, maintenance or corrective work as provided in said Sections, which Reimbursement Assessment shall be in the amount of all funds expended and all other sums due under such Sections after notice is given and the Owner fails to perform as provided in the foregoing Sections.

7.8 Notice and Quorum for Any Action Authorized Under Sections 7.5.3 and 7.6. Notwithstanding any other provision hereof or of the Articles, Bylaws or Pasi3n Rules, written notice of any meeting called for the purpose of taking any action authorized under Sections 7.5.3 and 7.6 shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or submission of proxies entitled to cast sixty percent (60%) of all the total Membership votes shall constitute a quorum. If the required quorum as set forth in the Bylaws is not present, subsequent meetings may be called subject to the same notice requirement. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Notice of the meeting may be waived by unanimous written consent of all Members.

7.9 Establishment of Annual Assessment Period. The first period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the first conveyance to a Purchaser of a Lot and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by notifying Members in writing of the new Assessment Period.

7.10 Collection Costs and Interest.

7.10.1 Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate established from time to time by the Board. In addition, the Board may establish a late charge to be charged to any Owner who has not paid an Assessment or installment of an Assessment within thirty (30) days after such payment was due. The Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The Association shall have a lien on each Lot for all delinquent Assessments as provided in Section 7.1 above, plus interest thereon, late charges and all other fees and charges. This Declaration shall constitute a lien for all Assessments, deemed to be perfected upon the recording hereof. The Board may also record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent which recording constitutes notice of the amount due secured by the lien, and may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment. Such fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

7.10.2 The Assessment Lien for the delinquent Assessment shall not be foreclosed or otherwise enforced until the Member has been given less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, stating that the Assessment or any installment thereof is or will be due and the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period, successor Owners of Lots and successor Tenants shall be given credit for prepayments, on a prorated basis, made by prior Owners and Tenants. In case a Member becomes liable for payment of an increased sum pursuant to Section 7.4 during an Assessment Period, such Member shall notify the Association immediately, but failure to do so shall not relieve such Member of the liability for such amounts.

7.11 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating (i) that all Assessments (including interest, late charges, costs and attorneys' fees, if any) have been paid with respect to any specified Lot as of the date of such certificate, or (ii) if all Assessments have not been paid, the

amount of such Assessments (including interest, late charges, costs and attorney's fees, if any) due and payable as of such date The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid in advance at the time the request for any such certificate is made Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

7.12 Property Exempt from Assessments and Assessment Lien.

Exempt Property shall be exempted from the Assessments and the related Assessment Lien, provided, however, that if any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any Assessment Period, the same thereupon shall be subject to the Assessments (prorated as of the date it became Accessible Property) and the Assessment Lien.

7.13 Subordination of Lien. The Assessment Lien against a Lot shall be subordinate to the lien of a Recorded First Mortgage encumbering the Lot to the extent the Assessment Lien secures the amount of any unpaid Assessment (together with any interest, costs, attorneys' fees and any late charges related thereto) which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first. If the Assessment Lien for unpaid Assessments that become payable after Recording of the First Mortgage but prior to the date the First Mortgagee comes into possession of or acquires title to the Lot is extinguished by the process by which the First Mortgagee acquired title to the Lot, neither such First Mortgagee nor a third-party purchaser shall be liable for the unpaid Assessments and, upon written request to the Association by the First Mortgage or purchaser, the Assessment Lien shall be released in writing by the Association to the extent it secured Assessments unpaid as of the date title was so acquired Nevertheless, if the Owner against whom the original Assessment was made is the purchaser or redemptioner, the Assessment Lien shall continue in effect and may be enforced by the Association, or by the Board, for the respective Lot's Assessment, including those due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board may use all available rights and remedies to collect the unpaid Assessment from the Owner even after such Person is no longer the Owner of the Lot Any unpaid Assessments which are extinguished pursuant to this Section may also be reallocated by the Board among all Owners

as part of the Common Expenses. Except as provided above (and except for liens for taxes and other public charges which, by applicable law, are made prior and superior), the Assessment Lien shall be prior and superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed on any Lot.

7.14 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses, make repairs or improvements and purchase necessary equipment or services, each Purchaser of a Lot from Declarant shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to 15% of the current Annual Assessment for the Lot Funds paid to the Association pursuant to this Section may be used by the Association for payment of the operating expenses or any other purpose permitted under the Property Documents Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.15 Transfer Fee. Each Person who purchases a Lot from a Person other than Declarant shall pay to the Association immediately upon becoming the owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

8. ENFORCING PAYMENT OF ASSESSMENTS: ENFORCEMENT OF ASSESSMENT LIEN.

8.1 Association's Remedies to Enforce Assessments. The Association, as the agent and representative of the Members, shall have the right to enforce all provisions of this Declaration.

8.2 Association's Remedies to Enforce Payment of Assessments. If any Member fails to pay the Assessments or any installments thereof when due, the Association may enforce the payment of the Assessments (including interest, late charges, costs and attorneys' fees), and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise any other remedy):

8.21 Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments; and/or

8.22 Foreclose the Assessment Lien against the Lien in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), At the Association's option, the Association may bid for and purchase the Lot at any foreclosure sale.

8.3 **Costs to be paid by Defaulting Member.** In any action taken pursuant to Section 8.2, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Assessments, together with interest at the rate established by the Board and the Association's collection costs and attorney's fees, including the interest, costs, late charges and fees specified in Section 7.10.

9. **USE OF FUNDS; BORROWING POWER.**

9.1 **Purposes for which Association's Funds may be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the performance of its rights and duties under the Property Documents and for the common good and benefit of Pasi3n and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, replacement, provision and operation of any and all land, properties, improvements, facilities, services, properties, programs, studies and systems, within Pasi3n (including land annexed into Pasi3n in accordance with this Declaration), which may be necessary, desirable or beneficial to the general common interests of Pasi3n, the Owners and the Residents and in accordance with an approved Association operating budget The Association shall not expend funds directly or indirectly to support, endorse, or contribute to any political candidate' or issue. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit social interaction among Owners and Residents, maintenance and replacement of landscaping on Common Arca and public right of way and drainage areas, maintenance and replacement of signs, gates, lighting and entryway features, recreation, liability and property damage insurance, communications, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also use funds to:

9.1.1 Comply with its maintenance obligations and/or enforce its rights with respect to the driveway on Tract "I" as provided in Section 3.9 above, and the driveway on Lot 26 and Lot 27 as provided in Section 3.10; and

9.1.2 Enforce its rights and perform its duties under any easements, licenses or other documents entered into by the Association as provided in Section 5.7 or elsewhere in this Declaration.

9.2 **Borrowing Power.** The Association may borrow money from Declarant or other Persons in an aggregate amount not to exceed the total of Annual Assessments of Members for one (1) year, at such rates, upon such terms, providing such security, and for such period of time as is necessary or appropriate in the opinion of the Board.

9.3 **Association's Right to Spend Funds From Year to Year.** The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual Assessments or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

9.4 **Insurance** The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Area.

10. **MAINTENANCE.**

10.1 **Maintenance of Common Area by the Association.** The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Area, including, but not limited to, landscaping, walkways, paths, parking areas, roads and drives, drainageways and retention areas (and all pipes, conduits, concrete diversion walls, rip-rap areas and related Improvements entryway gates, access control equipment/security systems, signs) and any Improvements located upon or adjacent to said properties. The Association shall also maintain any landscaping and other improvements not on

Lots which are within the exterior boundaries of Pasión and are adjacent to public rights-of-way which provide ingress and egress into Pasión and which are intended for the general benefit of the Owners, Tenants and Residents of Pasión, except the Association shall not maintain areas which (i) Pinal County, or a governmental entity, is maintaining, or (ii) are to be maintained by the owners of a Lot pursuant to Section 4 of this Declaration unless the Association elects to maintain such areas. Specific areas to be maintained by the Association may be identified in deeds from Declarant to a transferee of a Lot, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Area and other areas intended for the general benefit of Pasión.

10.2 Board's Authority. The Board shall be the sole judge as to the appropriate maintenance of all Common Area and other properties maintained by the Association. Any action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly authorized representative. If any deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of Pasión for the Association or an individual Owner to be responsible for such maintenance or enforcement, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Section. The Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such charges and fees as the Association and Owner may agree upon, and such amounts shall also become a part of the Assessment for such Owner and his Lot, and shall be secured by the Assessment Lien.

10.3 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. If the need for maintenance or repair of Common Area and other areas maintained by the Association is caused by the willful or negligent act of any Owner, or his Resident, Tenant, family, guests, or invitees, all costs of such maintenance or repairs incurred by the Association shall be due on demand from such Owner, together with interest at a rate designated by the Board and attorneys' fees, together with a construction fee equal to the greater of One Thousand Dollars (\$1,000.00) or fifteen percent

(15%) of the cost of such maintenance and repairs. All of which shall be a Reimbursement Assessment to which such Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien .

10.4 Maintenance by Owners. Each Owner shall be solely responsible for the maintenance, repair and replacement of his Lot and Improvements situated thereon except for any portion of the Lot which has been accepted in writing for maintenance by the Association, All buildings, Residences, landscaping and other Improvements shall at all times be kept in good condition and repair No yard equipment, woodpiles or storage areas shall be maintained so as to be Visible From Neighboring Property All vacant Lots shall be maintained in an attractive manner free of debris and weeds.

10.5 Improper Maintenance and Use of Lots. If any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of Pasión which are substantially affected thereby or related thereto, or if any portion of a Lot is being used in a manner which violates this Declaration or the Project Documents or if the owner or Tenant of any Lot is failing to perform any of its obligations under this Declaration, Design Guidelines or other Property Documents, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist. Unless notice and an opportunity to cure have already been given pursuant to another provision of this Declaration, in which event the Board may proceed as provided in such other provisions, the Board after adopting such resolution shall give notice to the offending Owner that unless corrective action is taken within ten (10) days and diligently pursued to completion thereafter, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 10-day period the requisite corrective action has not been taken or is thereafter not diligently pursued to completion to the satisfaction of the Board, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof, together with interest thereon at a rate designated by the Board, costs and attorneys' fees, together with a construction fee equal to the greater of One Thousand Dollars (\$1,000.00) or fifteen percent (15%) of the cost of such corrective action, shall be added to and become a part of the Reimbursement Assessment to which the defaulting Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

11. TERM; AMENDMENTS.

11.1 Term; Method of Termination. This Declaration shall be effective upon the date of Recording and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time hereafter if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Members holding ninety percent (90%) or more of the votes in each class of Membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in each class of Membership in the Association. If the necessary written approvals and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, these covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.2 Amendments. Except as provided in Sections 11.3 and 11.4 below, this Declaration may be amended at any time only by the written approval or affirmative combination thereof, of Members holding not less than seventy-five percent (75%) of the votes in each class of Membership in the Association. Any amendment approved pursuant to this Section 11.2 shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section.

11.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Section to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration without the consent of any Owner to such an extent and with such language as may be requested by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corp, or by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected upon Recordation by Declarant of a Certificate of Amendment duly signed by or on behalf of the authorized agents or authorized members of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending

institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of Pasión and all Persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions. Except as provided in this Section 11.3 and in Section 11.4 below, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 11.2.

11.4 Declarant's Right of Amendment. As long as Declarant owns any Lot, any amendment to or termination of this Declaration must also be approved in writing by Declarant and Recorded Declarant, as long as Declarant owns any Lot, and thereafter, the Board, may amend this Declaration without the consent of any other Owner, to correct any error or inconsistency in this Declaration.

12. **DECLARANT'S EXEMPTION.** Notwithstanding anything to the contrary in this Declaration, none of the covenants, conditions, restrictions, easements or other provisions in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents, contractors or other persons designated by Declarant, necessary or appropriate to the construction, completion, maintenance, management, administration, operation, sale, leasing, promotion or general development of the Property and each and every portion of it, or land adjacent thereto.

13. **RIGHTS OF FIRST MORTGAGEES.**

13.1 Inspection of Records; Notice. Any First Mortgages will, upon written request, be entitled to (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting First Mortgagee; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

13.2 Approval of Further Subdividing. No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

13.3 Approval of Actions by Association. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage encumbering a Lot) or Owners (other than Declarant) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

13.3.1 Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area, and transfers pursuant to subsection 3.1.6 shall not be deemed a transfer within the meaning of this subsection.

13.3.2 Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner.

13.3.3 If improvements are constructed, fail to maintain fire and extended insurance coverage on Common Area on a current replacement cost basis in an amount of at least 100 percent of insurable value; or use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

13.4 Insurance and Condemnation Proceeds.. No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or. condemnation awards for losses to or taking of such Lot or Improvements thereon.

13.5 No Response Deemed Approval. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action of the Association has not received a negative response in writing from such First Mortgagee within thirty (30) days of the date of the Association's request.

14 **INSURANCE.**

14.1 **Scope of Coverage.** Commencing on a date selected by the Board, but in any event not later than the time of the first conveyance of a lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage.

14.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$2,000,000.00 combined single limit Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and all other portions of the Property which the Association is obligated to maintain and/or control under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group.

14.1.2 If Improvements are constructed within the Common Area, property insurance on all Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (subject to a deductible amount deemed reasonable and prudent by the Board), exclusive of land, excavations, foundations and other items normally excluded from a property policy.

14.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona; and

14.1.4 Such insurance as the Association may determine from time to time is appropriate to protect the Association or the Owners,

The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions, (i) that there shall be no subrogation with respect to the Board or the Association, its agents, officers, servants, and employees, or with respect to Owners and members of their household, (ii) no act or omission by any Owner will void the policy or be a condition to recovery on the policy; (iii) that the

coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust, (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association, the Declarant or other Owners; (v) statement of the name of the insured as the Association and its Members, and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify each First Mortgage named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

14.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Section 14 shall be included in the budget of the Association and shall be paid by the Association.

14.4 Payment of Insurance Proceeds. With respect to any loss to any Common Area covered by property insurance obtained by the Association in accordance with this Section, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of Section 14.5, the proceeds shall be disbursed for the repair or restoration of damage to the Common Area or other property covered by such insurance proceeds.

14.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Members representing at least seventy-five percent (75%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Area are not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a

condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

15. **ADDITIONAL COVENANTS.**

15.1 Enforcement Rights. Except for those rights and remedies specifically granted only to Declarant, the Board, the Association and/or the Design Review Committee in this Declaration or other Property Documents, each Owner (including Declarant, so long as Declarant is an Owner) or the Association shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration by any proceeding at law or in equity. Failure of Declarant, the Association or any Owner to enforce any covenant restriction, provision or limitation in this Declaration or in any other Property Document shall not be deemed a waiver of the right to do so thereafter. Likewise, no act or omission by Declarant shall act as a waiver or defense to the enforcement of this Declaration by the Association or any Owner. Any Person who violates any of the covenants, restrictions, limitations and provisions in this Declaration or any other Property Document may be enjoined by a court of competent jurisdiction and/or damages may be awarded against such Person. The remedies provided for in this Declaration and the other Property Documents may be exercised separately, cumulatively and in any order. A suit to recover a money judgment for unpaid Assessments, including interest, costs, late charges and attorneys' fees provided in this Declaration, or any other amount due, or to obtain specific performance or injunctive relief, may be maintained without foreclosing, waiving, releasing or satisfying the liens created, levied and imposed by this Declaration. Without limiting the power and authority of the Association to incur and assess attorneys' fees as part of the creation or enforcement of any Assessment and any Assessment Lien, if any action is instituted to enforce any of the provisions of this Declaration or the other Property Documents by a Person or Persons entitled to do so, the Person prevailing in any such action shall be entitled to recover from the non-prevailing Person all reasonable attorneys' fees and court costs, as determined by the court and not by a jury if the Association is the prevailing Person in the action, the amount of attorneys' fees and court costs shall be deemed a part of the Assessment against the Owner involved in the action and the Lot of such Owner, and shall be secured by the Assessment Lien. PINAL

COUNTY SHALL BE UNDER ABSOLUTELY NO OBLIGATION TO ENFORCE THE PROVISIONS OF THIS DECLARATION.

15.2 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration and the other Property Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the covenants and provisions of the Property Documents.

15.3 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration or the other Property Documents is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof or thereof.

15.4 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

15.5 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

15.6 References to the Covenants in Deeds. Deeds to and other instruments affecting any Lot or any part of Pasi6n may contain the covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants shall be binding upon the grantee-Owner or other Person claiming through any deed or instrument, and the heirs, executors, administrators, successors and assigns thereof.

15.7 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder assigned as provided in Section 1.14.

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

15.9 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in interpreting this Agreement.

15.10 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required to be given to any Owner or Resident either by applicable law, this Declaration or other Property Documents or resolution of the Board, then unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is sent by the Board via regular mail to the last available mailing address provided by the Owner or Resident to the Board This Section shall not be cons require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

15.11 No Absolute Liability. No provision of the Property Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots Owners shall only be responsible for damage to the Common Area or Lots caused by the Owners' negligence or intentional acts.

15.12 Interpretation of Property Documents. In the event of a conflict regarding the provisions of the Articles, the Bylaws, the Design Guidelines, the Pasi3n Rules, and/or this Declaration, the provisions of this Declaration shall prevail The priority of conflicting provisions shall prevail in the following order of priority after the Declaration: Articles, Bylaws of the Association, Design Guidelines and Pasi3n Rules.

15.13 **No Third-Party Beneficiaries.** No Person shall constitute a third-party beneficiary of this Declaration unless specifically designated as such in this Declaration, and only those Persons with rights specifically set forth in this Declaration shall have rights and benefits with respect thereto.

15.14 **Exhibits.** All exhibits attached hereto are incorporated herein by this reference, and shall constitute a part of this Declaration.

15.15 **Security.** EACH OWNER UNDERSTANDS AND AGREES, ON ITS BEHALF AND ON BEHALF OF EACH RESIDENT, FAMILY MEMBER, GUEST AND INVITEE THEREOF, THAT ANY ENTRY GATE FEATURES OR COMMON SECURITY MEASURES THAT MAY BE USED AT THE PROPERTY WILL BE COMMENCED AND MAINTAINED BY THE ASSOCIATION, AND MAY BE ABANDONED, TERMINATED OR MODIFIED BY A MAJORITY VOTE OF THE BOARD, AND THAT THE INSTALLATION AND MAINTENANCE OF ENTRY GATES OR OTHER COMMON SECURITY MEASURES OR CONTROLS SHALL NOT BE DEEMED TO BE AN ASSUMPTION OF ANY DUTY ON THE PART OF THE BOARD, THE ASSOCIATION OR DECLARANT WITH RESPECT TO THE PROPERTY, THE OWNERS OR ANY OTHER PERSON.

IN WITNESS WHEREOF, Kings Ranch 42, LLC, by its duly authorized member, has executed this Declaration as of the day and year first above written.

KINGS RANCH 42, LLC

By:

Charles E. Cross, Managing Member

STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this _____ day of _____, by Charles E. Cross, as a Managing Member of Kings Ranch 42, LLC, with full right and authority to do so.

Notary Public

My Commission Expires

CONSENT AND APPROVAL OF LENDER

The undersigned Lender, which is the Beneficiary of that certain Deed of Trust and Assignment of Rents dated _____ and recorded _____ as Instrument No _____ in the Records of the Pinal County Recorder (the "Deed of Trust"), which constitutes a lien on a portion of the Property described in the foregoing Declaration of Covenants, Conditions, Restrictions and Grant of Easements for Pasión En La Colina Del Cascabel (the "Declaration"), for and on behalf of itself and its successors and assigns, hereby consents to and approves the Declaration and agrees that its lien and all rights it may have with respect to the Property are subject and subordinate to the Declaration, provided that said subordination shall not affect the right of the undersigned to enforce the obligations of the trustor in the Deed of Trust, or its rights as a First Mortgagee (as defined in the Declaration).

DATED as of the _____ day of _____ 2000

By:
Its:

STATE OF ARIZONA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 2000, by _____, the _____ of _____ But, an _____, for and on behalf of said _____

Notary Public
My Commission Expires _____