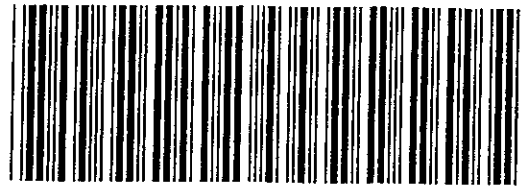


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MARICOPA COUNTY RECORDER
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Louis A. Silverman, Esq.

RICHARDSON and SILVERMAN

P.O. Box 1680

Tempe, Arizona 85280

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AMENDED

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ROSELEA COURT

(THIS AMENDED DECLARATION AMENDS AND SUPERSEDES THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED ON APRIL 8, 1997 AT RECORDING NUMBER 97-0229372 AND ON APRIL 29, 1997 AT RECORDING NUMBER 97-0280968.)

**AMMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ROSELEA COURT**

THIS DECLARATION is made on the date hereinafter set forth by BEATI INVESTMENT, L.L.C., an Arizona Limited Liability Company (the "Recording Declarant").

WHEREAS, the Recording Declarant is the owner of the Real Property situated in Maricopa County, Arizona, which is described on Exhibit "A" attached hereto, together with all buildings and improvements located thereon; and

WHEREAS, the Recording Declarant desires to establish, for their own benefit, and for the mutual benefit of all future Owners, lienholders, occupants, or other holders of an interest in the Real Property, or any part thereof, certain easements and rights, and certain mutually beneficial covenants, restrictions and obligations with respect to the proper use, conduct and maintenance of the Real Property, and fully amend and supersede the Declaration of Covenants, Conditions and Restrictions for Roselea Court as recorded as Instrument No. 97-0229372 and re-recorded as Instrument No. 97-0280968, records of the Maricopa County Recorder; and

WHEREAS, the Recording Declarant desires and intends that the Owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and other persons hereafter acquiring any interest in the Real Property shall at all times enjoy the benefits of, and shall hold their interest subject to, the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are ~~declared to be in furtherance of a plan to promote and~~ protect the cooperative aspects of the Real Property and are established for the purposes of enhancing and perfecting the value, desirability and attractiveness of the Real Property;

NOW, THEREFORE, the Recording Declarant hereby fully amends and supersedes the Declaration of Covenants, Conditions and Restrictions for Roselea Court as recorded as Instrument No. 97-0229372 and re-recorded as Instrument No. 97-0280968, records of the Maricopa County Recorder, and submits the Real Property described on Exhibit "A" attached hereto, together with all buildings and other improvements located thereon and all rights and privileges belonging or

pertaining thereto, to be known as Roselea Court, and hereby declares that the Real Property shall be subject to these covenants, conditions, and restrictions and shall be held, conveyed, mortgaged, encumbered, leased, rented, occupied, improved and used subject to the following restrictions, covenants, conditions, easements and equitable servitudes. The covenants, conditions, restrictions, and easements set forth in this Declaration shall run with the Real Property, shall be binding upon all persons having or acquiring any right, title or interest in the Real Property, or any part thereof, shall inure to the benefit of every portion of the Real Property, and any interest therein, shall inure to the benefit of and being upon any successor in interest of the Recording Declarant and of each owner and may be enforced by the Declarant (as defined in Section 1.10 of this Declaration), by any Owner or their successors in interest or by the Association.

AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ROSELEA COURT

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ARTICLE I

DEFINITIONS

1.0. "Articles" means the Articles of Incorporation of the Association, as the same may be amended from time to time.

1.1. "Assessments" means the annual and special assessments levied and assessed against each Lot pursuant to Article IX of this Declaration.

1.2. "Association" means the Arizona nonprofit corporation organized by the Recording Declarant to administer and enforce the Property Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "Roselea Court Owners Association," but if such name is not available Declarant may organize the Association under such other name as the Declarant deems appropriate.

1.3. "Association Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

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

1.5. Intentionally left blank.

1.6. "Bylaws" means the Bylaws of the Association, as the same may be amended from time to time.

1.7. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserve.

1.8. "Property" means the real property located in Maricopa County, Arizona, which is described in Exhibit A attached to this Declaration, together with all buildings and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto.

~~1.9. "Property Documents" means this Declaration and the Articles, Bylaws, and Association Rules.~~

1.10. "Recording Declarant" or "Declarant" means BEATI, L.L.C., an Arizona Limited Liability Company, and its successors and any person or entity to whom it may expressly assign its rights and obligations under this Declaration.

1.11. "Declaration" means this entire document, as the same may be amended from time to time.

1.12. "Eligible Insurer Or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 12.0 of this Declaration.

1.13. "Eligible Mortgage Holder" means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 12.0 of this Declaration.

1.14. "First Mortgage" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust.

1.15. "First Mortgagee" means the holder of any First Mortgage.

1.16. "Common Area" means Tracts A and B as depicted on the Plat.

1.17. "Improvement" means all physical structures including, but not limited to, buildings, private drives, parking areas, residences, fences and walls, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

1.18. "Limited or Restricted Common Area" means any portion of the General Common Area designed for the use of the Owners of more than one but less than all of the Lots. The Restricted Common Area are described in Section 2.3 of this Declaration.

1.19. "Member" means any person, corporation, partnership, joint venture or other legal entity who is or becomes a member of the Association.

1.20. "Owner" means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Unit, whether legal or equitable, on payment in full of all monies due under the contract. 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 executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title

to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement the beneficiary of any such trust who is entitled to possession of the Lot shall be deemed to be the Owner.

1.21. "Plat" means (i) the map for Roselea Court recorded with the County Recorder of Maricopa County, Arizona, in Book 3 of Maps, page 11, and any amendments thereto (sometimes referred to in this Declaration as the "Plat").

1.22. "Purchaser" means any person or entity, other than the Declarant, who by means of a voluntary transfer becomes the owner of a Lot except for (i) a person or entity who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale of other Lots or (ii) a person or entity who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.23. "Restricted Common Area" means those portions of the General Common Area that are reserved for the exclusive use of the Owner or other occupant of one Lot in accordance with Section 2.3 of this Declaration.

1.24. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, who maintain a common household on a Lot.

1.25. "Unit" shall mean the Lots as shown on the Plat together with any improvements thereon.

1.26. "Lot Estate" means a Lot together with an undivided interest in the General Common Area as set forth in Section 2.2 of this Declaration, the right to the use of the Restricted Common Area, if any, reserved to such Lot pursuant to Section 2.3 of this Declaration and the right to the exclusive use of the Restricted Common Area reserved for the exclusive use of the Lot under Section 2.3 of this Declaration.

ARTICLE II

DESCRIPTION OF THE PROPERTY

2.0. Description of the Project. The Property shall include a total of six (6) Units which are numbered on the Plat as Lots 1 through 6.

2.1. Description of Common Area. The Common Area shall include all of the Property except for the Lots. The Common Area shall include, but not be limited to all recreational facilities,

pumps, landscaping, pavements, parking spaces, private drives, all waste, water and gas pipes, ducts, conduits, wires, drainage lines, or other utility and installation meters and lines, compartments or installations of central services for public utilities, reservoirs, water tanks and pumps servicing more than one Lot, and all other devices and premises designated for common use or enjoyment by more than the Owner of a single Lot.

2.2. Fractional Interest. Each Owner shall own a one-sixth (1/6th) undivided fractional interest in the Common Area.

2.3. Restricted Common Area. Ownership of a Lot shall entitle the Owner thereof to the exclusive use of the following portions of the Common Area subject to such rules and regulations regarding the use and maintenance of such areas as may be adopted by the Board:

(a) The covered parking space designated by the same number as the Unit as depicted on the Plat;

(b) The storage unit space designated by the same number as the Unit number as depicted on the Plat.

The right to the exclusive use of the Restricted Common Area shall not be transferred, assigned or conveyed separate or apart from the Lot to which such Restricted Common Area are reserved. In the event a Lot is conveyed, the right to the exclusive use of the Restricted Common Area shall automatically be transferred to the new Owner. Any lien, including, but not limited to, the lien of a mortgage or a deed of trust, arising against a Lot, shall also be a lien against the Owner's right of exclusive use of the Restricted Common Area, and the foreclosure of a mortgage upon the Lot, or the taking of a deed in lieu thereof, or a trustee's sale under a deed of trust or any other proceeding for foreclosing liens on a Lot shall carry with it and transfer to the foreclosing party or the purchaser at any sheriff's sale or trustee's sale the exclusive use of the Restricted Common Area. Partial or full satisfaction or release of any such lien upon a Lot shall similarly be a satisfaction and release of the lien against the right to the exclusive use of the Restricted Common Area.

2.4. Prohibition of Severance or Partition of a Lot Estate.
 No Owner shall be entitled to sever his interest in his Lot from his undivided interest in the Common Area, his right to the use of Restricted Common Area and his right and easement to the use and enjoyment of the Common Area. The undivided interest in the Common Area as established by this Declaration and the fee title to their respective Lots shall not be separated, severed, partitioned or separately conveyed, encumbered or otherwise transferred, and each such undivided interest in the Common Area shall conclusively be deemed transferred or encumbered with the Lot to which it is appurtenant even though the description in the instrument of conveyance or encumbrance may refer only to the Lot. The

provisions of Arizona law relating to partition of real property shall not be available to any Owner of a Lot or of any other interest in real property included in the Property as against any other Owner or Owners of Lots or of any other interest in the Property so as to terminate the Property created by the recording of this Declaration; provided however, that nothing contained in this Declaration shall be construed as a limitation on partition by joint Owners of one or more Lots as to individual ownership of such Lot without terminating the Property, or as to ownership of such Lot and real property outside the limits of the Property. Nothing contained in this Section shall be construed to preclude an Owner of a Lot from creating a co-tenancy in the ownership of a Lot with any other person or persons.

2.5. Parking.

(a) Assignment to Lots. There are six parking spaces located on the Property over which the Association and the Owners have an easement for parking. Each of the parking spaces is identified by number which corresponds to the Lot number as designated on the Plat. Each Lot is assigned one parking space as a Restricted Common Area of that Lot.

(b) Use of Parking Spaces. The parking spaces assigned as Restricted Common Area to the Lots are to be used for the parking of operable passenger motor vehicles and may be used for parking trucks, trailers, or recreational vehicles, or for other purposes only to the extent expressly allowed by the rules and regulations adopted by the Board. The Board may direct that any vehicle or other thing improperly parked or kept in a parking space be removed, and if it is not removed the Board may cause it to be removed at the risk and cost of the Owner thereof.

ARTICLE III

EASEMENTS

3.0. Utility Easement. There is hereby created an easement upon, across, over and under the General Common Area for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the General Common Area. Notwithstanding anything to the contrary contained in this Section, no sewer lines, electrical lines, water lines, or other utility or service lines may be installed or located on the General Common Area except as initially designed, approved and constructed by the Declarant or as approved by the Board. This easement shall in no way affect any other recorded easements on the General Common Area.

3.1. Easements for Encroachments. Each Lot and the General Common Area shall be subject to an easement for encroachments, including but not limited to, encroachments of walls, ceilings, ledges, floors, and roofs created by construction, settling and overhangs as originally designed or constructed, or as created by discrepancies between the Plat and the actual construction. If any portion of the General Common Area shall actually encroach upon any Lot, or if any Lot shall actually encroach upon any portion of the General Common Area, as the General Common Area and the Lots are shown on the Plat, a valid easement for any of said encroachment and for the maintenance thereof, so long as they stand, shall and does exist. In the event any Lots or General Common Area are repaired, altered, or reconstructed, the Owners of the Lots agree that similar encroachments shall be permitted and that a valid easement for said encroachment and for the maintenance thereof shall exist.

3.2. Easements for Ingress and Egress. There is hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the General Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes; provided, however, that such easements shall not extend to any Restricted Common Area. Such easements shall run in favor of and be for the benefit of the Owners and occupants of the Lots and their guests, families, tenants and invitees.

3.3. Owners' Easements of Enjoyment. Every Owner, and each person residing with such Owner, shall have a right and easement of enjoyment in and to the General Common Area, except for the Restricted Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to adopt reasonable rules and regulations governing the use of the General Common Area, except for the Restricted Common Area;

(b) the right of the Association to suspend the voting rights of an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any other infraction or violation of the Property Documents;

(c) the right of the Association to dedicate or transfer all or any part of the General Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership in the Association agreeing to such dedication

or transfer has been recorded. The requirements of this Section shall not apply in the case of utility easements covered by Section 3.0 of this Declaration;

(d) the right of Declarant and its agents and representatives, in addition to the Declarant's rights set forth elsewhere in this Declaration, to the nonexclusive use, without charge, of the General Common Area for display and exhibit purposes and the maintenance of sales facilities;

3.4. Lessees. If a Lot is leased or rented by the Owner thereof, the lessee and the members of his family residing with such lessee shall have the right to use the General Common Area, except for the Restricted Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the General Common Area, except for the Restricted Common Area until the termination or expiration of such lease.

3.5. Guests and Invitees. The guests and invitees of any member or other person entitled to use the General Common Area, except for the Restricted Common Area, pursuant to Section 3.3 above or of any lessee who is entitled to use the General Common Area, except for the Restricted Common Area, pursuant to Section 3.4 above may use the General Common Area, except for the Restricted Common Area, provided they are accompanied by a Member, lessee or other person entitled to use the General Common Area, except for the Restricted Common Area pursuant to Section 3.3 or 3.4 above. The Board shall have the right to limit the number of guests and invitees who may use the General Common Area, except for the Restricted Common Area at any one time and may restrict use of the General Common Area, except for the Restricted Common Area by guests and invitees to certain specified times.

3.6. Limitation on Transfer. An Owner's right and easement of enjoyment in and to the General Common Area, except for the Restricted Common Area, shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the General Common Area, except for the Restricted Common Area, shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

ARTICLE IV

USE AND OCCUPANCY RESTRICTIONS

4.0. Single Family Residential Use. All Lots and Restricted Common Area shall be used, improved and devoted exclusively to residential use by a Single Family. No gainful occupation, profession, trade or other nonresidential use shall be conducted on

or in any Lot or Restricted Common Area. Nothing herein shall be deemed to prohibit an Owner from (i) maintaining his own personal professional library in his Lot, (ii) keeping his personal business or professional records or accounts therein, or (iii) handling his personal business calls or correspondence therefrom.

4.1. Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any portion of the Property whether attached to a Building or structure or otherwise, unless approved by the Association.

4.2. Utility Service. Except for lines, wires and devices existing on the Property as of the date of this Declaration and maintenance and replacement of the same, no lines, wires, or other devices 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 the Property 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 Association. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Buildings or structures approved by the Association.

4.3. Improvements and Alterations. Except for original construction work undertaken by Declarant with respect to any Lot or the General Common Area, there shall be no structural alterations, additions or improvements to any lot or the General Common Area without the prior written approval of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of membership. Any Owner may make nonstructural additions, alterations and improvements within his Residence without the prior written approval of the Association, but such Owner shall, to the extent required by Arizona law, be responsible for any damage to other Lots and to the General Common Area which results from any such alterations, additions or improvements. Owners are hereby prohibited from making any structural additions, alterations or improvements within a Lot or Residence, unless prior to the commencement of each addition, alteration or improvement, the Owner receives the prior written approval of the Association and an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity of the Residence within which such addition, alteration or improvement is to be made. The Owner shall, to the extent required by Arizona law, be responsible for any damage to other Lots and to the General Common Area which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a Lot or Residence, whether structural or not, which would be visible from the exterior of the Residence in which the Lot is located, shall be

made without the prior written approval of the Association, which approval shall only be granted if the Association affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements.

4.4. Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property, except in covered containers of a type, size and style which are approved by the Board. The Board shall have the right to subscribe to a trash service for the use and benefit of the Association and all Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Board shall have the right to require all Owners to place trash and garbage in containers located in areas designated by the Board. No incinerators shall be kept or maintained in any Lot.

4.5. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the permitted uses of such property, and except that which Declarant or the Association may require for the operation and maintenance of the General Common Area.

4.6. Animals. No animals, birds, fowl, poultry, or livestock shall be maintained or kept in the Lots or on any other portion of the Property; provided, however, that a reasonable number of house pets may be kept or maintained in a Lot if (i) they are kept, bred or raised solely as domestic pets and not for commercial purposes and (ii) no such pet exceeds eighteen (18) inches in height at the shoulders. No pet or any other animal shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. All dogs shall be kept on a leash not to exceed six (6) feet in length when outside a Lot or any Restricted Common Area reserved to the use of such Lot, and all dogs shall be directly under the Owner's control at all times. No Owner or any lessee or guest of an Owner shall permit any dog being kept in the Lot or the Restricted Common Area reserved to the use of such Lot to relieve itself on any portion of the General Common Area. It shall be the responsibility of said Owner, lessee or guest to remove immediately any droppings from pets. No structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the General Common Area or in any Lot so as to be visible from the exterior of the building in which the Lot is located. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal or bird is a generally recognized house pet, a nuisance, or whether the number of pets on any property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein. The right of Owners and other

occupants of Lots to maintain a reasonable number of house pets in or on the Property pursuant to this Section is expressly subject to the right of the Board to restrict such house pets to only certain portions of the Property and to require that house pets may only use certain doorways in entering and exiting the Residences.

4.7. Temporary Occupancy. No trailer, , tent, , garage, or other structure, and no temporary Improvement of any kind shall be used at any time for a residence either temporarily or permanently. Temporary buildings or structures used during the construction of buildings or structures approved by the Board shall be permitted but must be removed promptly upon completion of the construction of the building or structure.

4.8. Restriction on Further Subdivision and Time Shares. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board. This restriction shall not prevent the granting by an Owner thereof of an easement over part of a Lot for use by another Owner. Neither the ownership nor occupancy of any Lot shall be in time shares. No Owner shall transfer, sell, assign or convey any time share in his Lot and any such transaction shall be void. "Time share" as used in this Section shall mean a right to occupy any Lot or any one of several Lots during five (5) or more separated time periods over a period of at least five (5) years, including renewable options, whether or not coupled with an estate or interest in a Unit or a specified portion of a Lot.

4.9. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on the Property.

4.10. Mineral Exploration. No portion of the Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

4.11. Diseases and Insects. No Owner shall permit any thing or condition to exist upon the Property which could induce, breed or harbor infectious plant diseases or noxious insects.

4.12. Trucks, Trailers, Campers and Boats. No mobile home, motor home, trailer, truck, camper, truck with a camper shell, boat, boat trailer or similar vehicle or equipment shall be parked, kept, placed, maintained, constructed, reconstructed, serviced or repaired upon any portion of the Property; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Board.

4.13. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Property so as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked on any portion of the Property so as to be Visible From Neighboring Property; provided, however, the provisions of this Section shall not apply to emergency repairs. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any street (public or private) within the Project.

4.14. Signs. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or on any building erected thereon, other than one sign not larger than 12" by 18" indicating that the property is for sale or for rent, with wording limited to "For Sale" or "For Rent", and the name and address and telephone number of the owner or agent and the words "Inquire within", provided, however, that the Recording Declarant and their agents may erect and maintain signs advertising for sale the Lots.

4.15. Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of any part of the Property. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

4.16. Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Property and no activity shall be conducted upon the Property which is offensive or detrimental to any portion of the Property or any Owner or occupants of the Property. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Property.

4.17. Lodging. No hospital, sanitarium, hotel, lodging house, apartment house, or other building of any kind or nature whatsoever used or occupied for the care, lodging, or entertainment of persons suffering from disease or for any purpose that will depreciate the value of the Property shall be maintained, kept, or permitted.

4.18. Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Board. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence or any Restricted Common Area reserved

for the use of corresponding Lot shall be constructed or installed on any Lot or Restricted Common Area without the prior written consent of the Board.

4.19. Limitation on Leasing of Lots. No Owner may lease less than his entire Lot. No Lot may be leased for a period of less than thirty (30) days. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Property Documents and any failure by the lessee to comply with the terms of the Property Documents shall be a default under the lease. Upon leasing his Lot, an Owner shall promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will be occupying the Lot during the term of the lease.

ARTICLE V

MAINTENANCE AND REPAIR

5.0. Maintenance of Lots, Common Area, and Restricted Common Area. The Association is responsible for maintenance, repair, and replacement of the Common Area, including all common facilities, streets, roadways and common landscaped areas. The City of Mesa is not responsible for and will not accept maintenance of any private facilities, streets, driveways, parking facilities, private structures, or landscaped areas within this project. Each Owner is responsible for maintenance, repair and replacement of the Owner's Residence and for keeping the Restricted Common Area allocated to the Owner's Lot in a clean and orderly condition. Each Owner shall, at the Owner's sole expense, keep the interior and exterior of the Lot and its equipment, appliances, and appurtenances in a clean and sanitary condition, free of rodents and pests, and in good order, condition, and repair and shall do all redecorating and painting at any time necessary to maintain the good appearance and condition of the Residence. Each Owner shall replace any broken glass in the windows or exterior doors of the Residence. Each Owner shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heaters, fans, and heating equipment which serve only that Residence, whether or not located in the Residence.

5.1. Exterior Appearance. No Owner may modify, decorate, or repaint the exterior of a building, including the Restricted Common Area, or the screens, doors, awnings, or other portions of any Residence visible from outside the Residence without the prior written consent of the Board or in accordance with rules or regulations of the Association. No radio or television antennas or other appliances may be installed on the exterior of a building without the prior written consent of the Board. The Board may also require use of a uniform color and material for blinds, draperies, under-draperies, or drapery lining for all Residences.

5.2. Effect on Insurance. Nothing shall be done or kept on any Lot or in any Common Area that will increase the rate of insurance on the property without the prior written consent of the Board. Nothing shall be done or kept on any Lot or in any Common Area that will result in the cancellation of insurance on any part of the property, or that would be in violation of any laws.

5.3. Owner's Easement. Each Owner shall have an easement over, across and through such portions of the General Common Area as are necessary in order for the Owner to perform his obligations under this Section with respect to the maintenance, repair, replacement and restoration of those portions of the General Common Area and Restricted Common Area which he is obligated to maintain.

5.4. Repair or Restoration Necessitated by Owner. Each owner shall be liable to the Association, to the extent provided for by Arizona law, for any damage to the General Common Area or the Improvements, landscaping or equipment thereon which results from the negligence or willful conduct of the Owner. The cost to the Association of any such repair, maintenance or replacements required by such act of an Owner shall be paid by said Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.5. Association Right of Access. Each Owner hereby grants to the Association a right of access to the General Common Area for the purpose of enabling the Association, Board, and any other committees established by the Board to exercise and discharge their respective powers, duties and responsibilities under the Property Documents. This right of access shall include, but not be limited to, the right to enter upon the General Common Area for the purpose of determining whether the provisions of this Declaration are being complied with by the Owners, their guests, invitees, tenants and licensees. The Association shall have the right to enter a Residence in case of emergency.

ARTICLE VI

THE ROSELEA COURT HOMEOWNERS' ASSOCIATION

6.0. Rights, Powers and Duties of the Association. The Association shall be a nonprofit Arizona corporation. The Association shall be the entity through which the Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Property Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration.

6.1. Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers and committees as the directors may elect and appoint, in accordance with the Articles and the Bylaws.

6.2. Association Rules. The Board, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal rules and regulations. The Association Rules may, among other things, restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invites, licensee or lessee of such Owner; provided, however, that the Association Rules may not unreasonably discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded.

ARTICLE VII

MEMBERSHIP AND VOTING RIGHTS

7.0. Identity. Each Owner of a Lot shall be a Member of the Association.

7.1. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned.

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

(a) 120 days after the date by which seventy-five percent (75%) of the Lots have been conveyed to Purchasers; or

(b) five (5) years after the conveyance of the first Lot to a Purchaser; or

(c) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

7.2. Joint Ownership. When more than one person is the Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote for each such Lot must be cast as a unit, and

fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, 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 Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

7.3. Corporate or Partnership Ownership. In the event a Lot is owned by a corporation, partnership or association, the corporation, partnership or association shall be a Member and shall designate in writing to the Association at the time of its acquisition of the Lot, the name and title of the person who shall have the power to vote the membership of the corporation, partnership or association in the Association. The person so designated shall be the only person who shall be entitled to cast the vote for the Lots owned by such corporation, partnership or association. If the corporation, partnership or association fails to designate the person who shall have the right to vote the membership of the corporation, partnership or association, then such corporation, partnership or association shall lose its right to vote and it shall not be considered as a Member for the purpose of determining the requirement for a quorum or any other purpose requiring the approval of a person entitled to cast the vote for the Lot owned by such corporation, partnership or association.

7.4. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessment or other amounts due under the terms of the Property Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be automatically suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current, and for a period not to exceed sixty (60) days for any infraction of the Property Documents.

7.5. Transfer of Membership. The Association membership of each Owner of a Lot shall be appurtenant to his Lot. The rights and obligations of an Owner and his membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of such Lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under a Deed of Trust, 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 and shall not be reflected upon the books and records of the Association. Any transfer of ownership to said Lot shall operate to transfer said membership to the new Owner thereof.

ARTICLE VIII

TORT AND CONTRACT LIABILITY

8.0. Association Liability. An action alleging a wrong done by the Association must be brought against the Association and not against any Owner or any officer or director of the Association.

8.1. Limitation of Liability for Utility Failure, Etc. Except to the extent covered by insurance obtained by the Board, neither the Association, the Board, nor the Recording Declarant shall be liable for: the failure of any utility or other service to be obtained and paid for by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, or sand which may leak or flow from outside or from any parts of the buildings, or from any of their pipes, drains, conduits, appliances, or equipment, or from any other place; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

8.2. No Personal Liability. So long as a Board member, or Association committee member, or Association officer, or the Recording Declarant has acted in good faith, without wilful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner, 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 such person; provided, that this Section shall not apply where the consequences of such act, omission, error, or negligence is covered by insurance obtained by the Board.

8.3. Indemnification. Each Board Member, Association committee member, Association officer, and the Recording Declarant shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of wilful misfeasance in the performance of such person's duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

ARTICLE IX

COVENANT FOR MAINTENANCE ASSESSMENTS

9.0. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor or otherwise becoming the Owner thereof, is deemed to covenant and agree to pay to the Association annual assessments and special assessments. The Assessments, together with interest, costs, reasonable attorneys' fees and all other accounts payable to the Association under the Property Documents shall be a lien on the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of each person who was the Owner of such Lot at the time when the Assessment was levied. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

9.1. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners, for the improvement and maintenance of the General Common Area, and for all purposes set forth in the Property Documents, including but not limited to, insurance premiums, expenses for maintenance repairs and replacements of General Common Area and reserves for depreciation and contingencies.

9.2. Annual Assessment.

(a) In order to provide for the operation and management of the Association and to provide funds for the Association to perform its duties and obligations under the Property Documents, including the establishment of replacement and maintenance reserves, the Board, for each fiscal year of the Association commencing with the year in which the first Lot is conveyed to a Purchaser, shall assess against each Lot an annual assessment. The amount of the annual assessment shall be in the sole discretion of the Board except that the annual assessment shall not exceed the maximum annual assessment for the fiscal year as computed pursuant to ~~Subsection (b) of this Section.~~ The Board shall give notice of the annual assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment. If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year, and the revised annual assessment shall commence on the date designated by

the Board except that no increase in the annual assessment for any fiscal year which would result in the annual assessment exceeding the maximum annual assessment for such fiscal year shall become effective until approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

(b) The maximum annual assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be One Hundred Thirty Five Dollars (\$135.00) for each Lot.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the membership, increase the maximum annual assessment during each fiscal year of the Association by an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1967 = 100), or in the event said index ceases to be published, by an successor index recommended as a substitute therefor by the United States government.

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

9.3. Special Assessments. In addition to annual assessments, the Association may levy, in any fiscal year of the Association, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the General Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such assessment shall have first been approved by Owners representing two-thirds (2/3) of the votes of each class of membership who are voting in person or by proxy at a meeting duly called for such purpose.

9.4. Notice and Quorum for any Action Authorized Under Section 9.2 or 9.3. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for

which the consent of the Members is required under Section 9.2 or 9.3 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.5. Rate of Assessment. Annual assessments shall be fixed at a uniform rate for each Lot except that the Declarant shall pay only twenty-five percent (25%) of any annual assessment attributable to a Lot owned by the Declarant until such Lot has been occupied for Single Family Residential Use. If a Lot owned by the Declarant ceases to qualify for a reduced rate of assessment during the period to which an annual assessment is attributable, such assessment shall be prorated between the applicable rates on the basis of the number of days in the period that the Lot qualified for each rate. Until the termination of the Class B membership, the Declarant shall pay to the Association the amounts, which when added to the annual assessments collected by the Association, are necessary in order for the Association to manage the Property and to fulfill all of its duties and obligations under the Property Documents.

9.6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount or the annual assessment against each Lot at least thirty (30) days in advance of each fiscal year. If the annual assessment is not fixed by the Board at least thirty (30) days in advance of the fiscal year, then the annual assessment for the prior fiscal year shall remain in effect until the thirtieth day after the Board fixes the annual assessment for the then current fiscal year. Written notice of the annual assessment shall be sent to every Owner subject thereto prior to the commencement of the fiscal year; provided, however, that failure to give such notice shall not affect the validity or enforceability of the assessments as fixed by the Board. The Board may require that the annual, supplemental or special assessments be paid in installments. Unless otherwise specified by the Board special and supplemental assessments shall be due thirty (30) days after they are levied by the Association and notice of the assessment is given to the Owners.

9.7. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum.

Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent Owner, (2) the legal description or street address of the Lot against which the claim of lien is made, (3) the amount claimed as of the date of the recording of the notice including interest, collection costs, lien recording fees and reasonable attorneys' fees, (4) the name of the Owner of the Lot as shown in the records of the Association, and (5) the name and address of the Association. In the event the Association records a Notice and Claim of Lien against a Lot, the Owner of such Lot shall be obligated to pay to the Association a lien fee in such amount as may be established from time to time by the Board. The Association's lien shall have priority over all liens or claims created subsequent to the recordation of the Notice of Claim of Lien except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens which are specifically described in section 9.8 of this Declaration.

Before recording a lien against any Lot the Association shall make a written demand to the defaulting Owner for payment. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner.

The Association shall have the right, at its option, to enforce collection of any delinquent Assessments in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving any lien securing any such delinquent Assessments, (b) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage, or (c) exercising a power of sale in the manner provided by law for a sale under a deed of trust. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

9.8. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided in this Declaration shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Lot through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to such sale or transfer. Any such delinquent Assessments which are extinguished pursuant to this Section may be reallocated and assessed to all Lots as a Common Expense. Any assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

9.9. Exemption of Owner. No Owner of a Lot may exempt himself from liability for payment of Assessments and other charges levied pursuant to the Property Documents by waiver and nonuse of any of the General Common Area and facilities or by the abandonment of his Lot.

9.10. Unallocated Tax Assessments. In the event that any taxes are assessed against the personal property of the Association, said taxes shall be included in the Assessments made under the provisions of this Article, and, if necessary, a supplemental or special assessment may be levied against the Lots in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

9.11. Certificate of Payment. The Association shall, upon demand of an Owner, furnish to such Owner a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a particular Lot have or have not been paid and the amount of any unpaid Assessments. The Association may charge the Owner requesting the certificate a reasonable fee in an amount established by the Board for each such certificate. Such certificate shall be conclusive evidence of payment of any Assessment described in the certificate as having been paid.

9.12. Maintenance of Reserve Fund. Out of the annual assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the General Common Area which the Association is obligated to maintain.

9.13. No Offsets. All Assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Property Documents.

9.14. Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the annual assessment on his Lot. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

ARTICLE X

DAMAGE AND REPAIR OR DAMAGE TO PROPERTY

10.0. Initial Board Determination. In the event of damage to any Common Area, the Board shall promptly, and in all events within 30 days after the date of damage, make the following determinations with respect thereto, employing such advice as the Board deems advisable:

(a) The nature and extent of the damage, together with an inventory of the improvements and property directly affected thereby.

(b) A reasonably reliable estimate of the cost to repair the damage, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors.

(c) The expected insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer.

(d) The amount, if any, by which the estimated cost of repair exceeds the expected insurance proceeds, and the amount of the Assessments that would have to be made against each Lot if the excess cost were to be paid as a maintenance expense and assessed against all the Lots in proportion to Common Expense Liabilities.

10.1. Notice of Damage. The Board shall promptly, and in all events, within 30 days after the date of damage, file a proof of loss statement with the insurance company if the loss is covered by insurance and abide by all terms and conditions of its insurance policies, unless the Board determines it would not be in the best interest of the Association to file a proof of loss. The Board shall then provide each Owner and each holder of a first mortgage on a Unit with a written notice describing the damage and summarizing the initial Board determinations made under Section 10.0. If the Board fails to do so within the 30-day period, any Owner or mortgagee may make the determinations required under Section 10.0 and give the notice required under this Section.

10.2. Definitions: Damage, Substantial Damage, Repair, Emergency Work. As used in this Article:

(a) Damage shall mean all kinds of damage, whether of slight degree or total destruction.

(b) Substantial Damage shall mean that in the judgment of a majority of the Board the estimated Assessments determined under Section 10.0 for any one Lot exceeds ten percent of the full, fair market value of the Lot before the damage occurred, as determined by the then current Assessments for the purpose of real estate taxation.

(c) Repair shall mean restoring the improvements to substantially the condition they were in before they were damaged, with each Lot and the Common Area and having substantially the same boundaries as before. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made.

(d) Emergency Work shall mean work that the Board deems reasonably necessary to avoid further damage or substantial diminution in value to the improvements and to protect the Owners from liability from the condition of the site.

10.3. Execution of Repairs.

(a) The Board shall promptly repair the damage and use the available insurance proceeds therefor as provided in Section 10.1. If the cost of repair exceeds the available insurance proceeds the Board shall impose Assessments against all lots in proportion to their Common Expense Liabilities in an aggregate amount sufficient to pay the excess costs.

(b) The Board shall have the authority to employ architects and engineers, advertise for bids, let contracts to contractors and others, and take such other action as is reasonably necessary to make the repairs. Contracts for the repair work shall be awarded when the Board, by means of insurance proceeds and sufficient Assessments, has provided for paying the cost. The Board may ~~authorize the insurance carrier to make the repairs if the Board is~~ satisfied that the work will be done satisfactorily, and if such authorization does not contravene any insurance trust agreement or requirement by law.

(c) The Board may enter into a written agreement with a reputable financial institution or trust or escrow company that the institution or company shall act as an insurance trustee to adjust and settle any claim for casualty loss in excess of \$50,000.00, or for the institution or company to collect the insurance proceeds and carry out the provisions of this Article.

10.4. Damage Not Substantial. If the damage as determined under Subsection 10.2(b) is not substantial, the provisions of this Section shall apply.

(a) Either the Board or the requisite number of Owners, within 15 days after the notice required under Section 10.1 has been given, may but shall not be required to, call a special Owners' meeting to decide whether to repair the damage.

(b) Except for emergency work, no repairs shall be commenced until after the 15-day period and until after the conclusion of the special meeting if such a special meeting is called within the 15 days.

(c) A decision to not repair or rebuild may be made in accordance with Section 10.4(a).

10.5. Substantial Damage. If the damage determined under Section 10.2(b) is substantial, the provisions of this Section shall apply.

(a) The Board shall promptly, and in all events within 30 days after the date of damage, call a special Owners' meeting to consider repairing the damage. If the Board fails to do so within 30 days, any Owner or first mortgagee of a Unit may call and conduct the meeting.

(b) Except for emergency work, no repairs shall be commenced until the conclusion of the special Owners' meeting.

(c) At the special meeting, the following consent requirements will apply:

(i) The Owners shall be deemed to have elected to repair the damage in accordance with the original plan unless the Owners of at least 80% of the total voting power of the Property other than that held by the Declarant, including every Owner of a Lot which will not be rebuilt and every Owner of a Lot to which a Restricted Common Area which will not be rebuilt is allocated, have given their written consent ~~not to repair the damage.~~

(ii) The unanimous consent of all Owners will be required to elect to rebuild in accordance with a plan that is different from the original plan.

(iii) In addition to the consent by the Owners specified above, any election not to repair the damage or not rebuild substantially in accordance with the original plan will require the approval of eligible holders of first mortgages on Lots that have at least 51% of the votes subject to eligible holder mortgages.

(iv) Failure to conduct the special meeting provided for under Section 10.5(a) within 90 days after the date of damage shall be deemed a unanimous decision to repair the damage in accordance with the original plan.

10.6. Effect of Decision Not to Repair. In the event of a decision under either Section 10.4 or 10.5 not to repair the damage, the Board may nevertheless expend so much of the insurance proceeds and common funds as the Board deems reasonably necessary for emergency work (which emergency work may include but is not necessarily limited to removal of the damaged improvements and clearing, filling, and grading the land).

ARTICLE XI

CONDEMNATION

11.0. Consequences of Condemnation; Notices. If any Lot or portion thereof of the Common Area or Restricted Common Area or any portion thereof is made subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and Mortgagee and the provisions of this Article shall apply.

11.1. Power of Attorney. Each Owner appoints the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings and negotiations, settlements and agreements with the condemning authority for acquisition of Common Area or any part thereof, from the condemning authority. The Board may appoint a trustee to act on behalf of the Owners in carrying out the foregoing functions in lieu of the Association. Should the Association not act, based on their right to act pursuant to this Section, the affected Owners may individually and jointly act on their own behalf.

11.2. Condemnation of a Lot. If a Lot is acquired by condemnation, or if part of a lot is acquired by condemnation leaving the Lot Owner with a remnant of a Lot which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Lot and its appurtenant interest in the Common Areas, whether or not any Common Areas are acquired. Upon acquisition, unless the decree otherwise provides, that Lot's allocated interests are automatically reallocated to the remaining Lots in proportion to the respective allocation interests of those Lots before the taking, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Lot remaining after part of a Lot is taken under this Section is thereafter a Common Area.

11.3. Condemnation of Part of a Lot. Except as provided in Section 11.0, if part of a Lot is acquired by condemnation, the award must compensate the Lot Owner for the reduction in value of the Lot and its appurtenant interest in the Common Area, whether or not any Common Area are acquired. Upon acquisition, unless the decree otherwise provides: (a) that Lot's allocated interests are reduced in proportion to the reduction in the size of the Lot; and (b) the portion of the assigned interests divested from the partially acquired Lot are automatically reallocated to that Lot and the remaining Lots in proportion to the respective allocated interests of those Lots before the taking, with the partially acquired Lot participating in the reallocation on the basis of its reduced allocated interests.

11.4. Condemnation of Common Area or Restricted Common Area. If part of the Common Area is acquired by condemnation the portion of the award attributable to the Common Area taken shall be paid to the Owners based on their respective interests in the Common Area. Any portion of the award attributable to the acquisition of a Restricted Common Area must be equally divided among the Owners of the Lots to which that Restricted Common Area was allocated at the time of the acquisition. If the Board determines that a particular Owner's interest in the Common Area diminished with respect to other Owners, by the acquisition of a Common Area, the Declaration may be amended to adjust that Owner's Common Expense Liability allocation, or to remove the allocation of a Restricted Common Area to that Owner's Lot, as the case may be.

11.5. Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article IX.

ARTICLE XII

RIGHTS OF FIRST MORTGAGEES

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

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

(b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer

Or Guarantor or any other default in the performance by the Owner of any obligation under the Property Documents, which delinquency or default remains uncured for the period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 12.1 of this Declaration.

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

1. Voting rights;
2. Assessments, assessment liens or subordination of assessment liens;
3. Reserves for maintenance, repair and replacement of General Common Area;
4. Insurance or fidelity bonds;
5. Responsibility for maintenance and repairs;
6. Expansion of the Property, or the addition or annexation of property to the Property;
7. Boundaries of any Lot;
8. Reallocation of interests in the General Common Area or Restricted Common Area or rights to their use;
9. Convertibility of Lots into General Common Area or of General Common Area into Lots;
10. Leasing of Lots;
11. Imposition of any restrictions on an Owner's right to sell or transfer his Lot;
12. A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;

13. Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Property Documents;

14. Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors.

Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws, which additions or amendments are not material, who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. Any additions or amendments to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

12.2. Prohibition Against Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction.

12.3. Right of Inspection of Records. Any Owner, First Mortgagee or Eligible Insurer Or Guarantor will, upon written request, be entitled to (a) inspect the current copies of the Property Documents and the books, records and financial statements of the Association during normal business hours, (b) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

12.4. Prior Written Approvals of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Lots and/or the General Common Area, unless at least two-thirds (2/3) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the Declarant or other sponsor, developer or builder of the Property) of the Lots have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon or terminate this Declaration;

(b) Change the pro rata interest or obligations of any individual Lot for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Lot in the General Common Area;

(c) Partition or subdivide any Lot;

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the General Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the General Common Area shall not be deemed a transfer within the meaning of this Subsection;

(e) Use hazard insurance proceeds for losses to any Lots or the General Common Area for any purpose other than the repair, replacement or reconstruction of such Lots or the General Common Area.

Nothing contained in this Section 12.4 or any other provision of this Declaration shall be deemed to grant the Association the right to partition any Lot without the consent of the Owners thereof. Any partition of a Lot shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as provided under Arizona law.

12.5. Liens Prior to First Mortgage. All taxes, assessments, and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Lot and not to the Property as a whole.

12.6. Condemnation or Insurance Proceeds. No Owner of a Lot, or any other party, shall have priority over any rights of any First Mortgagee of the Lot pursuant to its mortgage in the case of a distribution to such Lot Owner of insurance proceeds of condemnation awards for losses to or a taking of Lots and/or General Common Area.

12.7. Limitation on Partition and Subdivision. No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

12.8. Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Property Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Property Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (i) an amendment of the Declaration, Articles or Bylaws, or (ii) certain actions of the Association as specified in Sections 12.1 and 12.4 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors shall prevail; provided, however, that the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform

this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration or any federal, state or local governmental agency whose approval of the Property, the Plat or the Property Documents is required or requested by the Declarant.

ARTICLE XIII

GENERAL PROVISIONS

13.0. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Property Documents. Failure by the Association or by any Owner to enforce any covenant or restriction contained in the Property Documents shall in no event be deemed a waiver of the right to do so thereafter.

13.1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

13.2. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

13.3. Amendment to Declaration.

(a) Except for amendments which may be executed by the Board or the Declarant pursuant to Subsection (b) of this Section, the Declaration or the Plat may only be amended by the written approval or the affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Lots;

~~(b) Either the Board or the Declarant may amend this Declaration, without obtaining the approval or consent of any Owner, First Mortgagee, Eligible Mortgage Holder or Eligible Insurer Or Guarantor, in order to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Property, the Plat or the Property Documents is required or requested by the Declarant.~~

(c) So long as the Declarant owns any Lot, any amendment which would eliminate, modify or impair any right granted to the Declarant by this Declaration must be approved in writing by the Declarant.

(d) Any amendment approved pursuant to Subsection (a) above or by the Board pursuant to Subsection (b) above shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection (b) above shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County, Arizona.

13.4. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

13.5. Delivery of Notices and Documents. Any written notice of other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, or the Declarant, to 123 W. 2nd Street, Mesa, Arizona 85201; if to an Owner, to the address of his Lot within the Property owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association provided, however, that any such address may be changed at any time by the party concerned by delivering a written notice of change of address to the Association. Each Owner of a Lot shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

13.6. Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the property, each, person or entity, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Property Documents and any amendments thereof. In addition, each such person by so doing thereby acknowledges that the Property Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in the Property Documents shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that the Property Documents shall be mutually beneficial, prohibitive and enforceable by the various

subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by the Property Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

13.7. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

13.8. Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections of this Declaration.

13.9. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Owner or Member arising out of, or in any way connected with such ownership or membership and the covenants and obligations incident thereto.

13.10. Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, the provisions of this Declaration shall prevail.

13.11. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in, or imposed by the Property Documents, shall be joint and several.

13.12. 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 improvements or signs necessary or convenient to the development or sale of the Property or the Lots. Declarant and their agents and assigns specifically reserve the right to use and enjoy the General Common Area and all other Improvements and Buildings in connection with its advertising, promotion and sales efforts; provided, however, that such use of the General Common Area by the Declarant must not interfere with any Owner's use and enjoyment of the General Common Area.

13.13. Guests and Tenants. Each Owner shall, to the extent required by Arizona law, be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents and employees with the provisions of the Property Documents. An Owners' failure to insure compliance by such persons shall be grounds for the same action available to the Association or any other Owner by reason of such Owner's own noncompliance.

13.14. Attorneys' Fees. In the event Declarant, the Association or any Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Property Documents, the prevailing party in any such action shall be entitled to recover from the other party their reasonable attorneys' fees incurred in the action.

13.15. Management Agreements. Any agreement for professional management of the Association or the Property or any other contract providing for services of the Declarant, or other developer, sponsor or builder of the Property shall not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.

13.16. Number of Days. In computing the number of days for purposes of any provision of the Property Documents all days shall be counted including Saturdays, Sundays and holidays provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

13.17. Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

13.18. Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner of any restriction or provision of the Property Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner; (ii) the legal description or street address of

EXHIBIT "A"

LOTS 1 THRU 6, ROSELEA COURT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA IN BOOK 434 OF MAPS, PAGE 6.