

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
THE PRESERVE  
Scottsdale, Arizona

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\* Effective 7-22-2003 **Appendix A (pgs. 56-60)** and **Appendix B (pg. 61)** are eliminated. The City of Scottsdale ESLO plant list can now be found in 'The Preserve Rules and Regulations to Landscaping'.

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
THE PRESERVE**

Scottsdale, Arizona

This Declaration of Covenants, Conditions, Restrictions and Easements for The Preserve is made as of the 25th day of November, 1997, by Monterey Homes Construction, Inc., an Arizona corporation ("Monterey"), and Rietveld Preserve, L.L.C., an Arizona limited liability company ("Optionor"), to establish a general plan for the improvement, development, operation, maintenance and use of the Property described herein as an attractive and harmoniously designed residential development to be known as The Preserve (the "Project") and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and the quality of life within the Project. Monterey is the developer of the Project and is currently the owner of a part of the Property, which Monterey intends to develop as Phase I of the Project, and Monterey has the right pursuant to the Option Agreement (as defined herein) to purchase the remainder of the Property from Optionor, which is the current owner of the remainder of the Property. In furtherance of the plans for the Project, Monterey and Optionor hereby declare that all of the property within the Project shall be held, sold, conveyed, encumbered, occupied, developed, built on, improved, used, leased and otherwise transferred subject to the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Declaration, each of which shall attach to and run with the land, shall be binding on the Property and all Owners, Occupants, Lessees and other parties having, acquiring or otherwise at any time possessing any right, title or interest in or to the Property or any part thereof, and each of which shall inure to the benefit of said Owners, Occupants, Lessees and other parties.

**ARTICLE 1**  
**DEFINITIONS**

Section 1.01 – “Architectural and Landscaping Standard” Architectural and Landscaping Standards shall mean the Architectural and Landscaping Design and Review Standards and Procedures attached hereto as Exhibit "A" which are incorporated herein by this reference, as such may be amended from time to time by Declarant or the Committee.

Section 1.02 – “Areas of Association Responsibility” Areas of Association Responsibility shall mean (i) all Common Areas and Improvements situated therein; (ii)

all land, and the Improvements situated thereon, situated within the boundaries of a Lot which the Association acknowledges in this Declaration or in another recorded document is land which is to be improved, maintained and/or repaired by the Association; (iii) any access gates and other Project entry features constructed within the Project; (iv) all perimeter fences of the Project, including any perimeter fence walls located upon or within the boundaries of a Lot, provided, however, the Association shall not be responsible for painting or surfacing the interior side of any perimeter fence walls located upon or within the boundaries of a Lot; (v) if any perimeter fence of the Project is located within the boundaries of a Lot, the area of the Lot located outside such perimeter fence; and (vi) walls, embankments and related facilities installed by developer within any drainage easements shown on the Plat which are installed for the purpose of alleviating erosion or protecting drainage facilities.

Section 1.03 - "Articles of Incorporation". Articles of Incorporation shall mean the Articles of Incorporation of the Association as they may from time to time be amended.

Section 1.04 - "Assessment". Assessment shall mean all assessments authorized and provided by Article 8 of this Declaration.

Section 1.05 - "Assessment Lien". Assessment Lien shall mean a lien created or imposed by Article 8 of this Declaration.

Section 1.06 - "Association". Association shall mean and refer to the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein and in this Declaration, and its successors and assigns. Declarant intends to organize the Association in the name of "The Preserve Owners' Association" but if such name is not available, the Association shall be organized under such other name as the Declarant may select.

Section 1.07 - "Board". Board shall mean the Board of Directors of the Association.

Section 1.08 - "Bylaws". Bylaws shall mean the Bylaws of the Association, as they may from time to time be amended.

Section 1.09 - "City". City shall mean the City of Scottsdale, Arizona.

Section 1.10 - "Committee". Committee shall mean the Architectural and Landscaping Control Committee created pursuant to Article 4 of this Declaration, and, if no such committee is created, it shall mean the Board.

Section 1.11 - "Common Areas". Common Areas shall mean (i) those portions of the Project, together with the buildings, structures and any other improvements thereon, which the Association may, from time to time, own in fee or in which it may have an easement interest, for as long as the Association holds fee title or an easement interest, including, but not limited to, Tracts A through K, inclusive, as shown on the Plat; (ii) Tract L, unless and until the Association (at the sole discretion of Declarant so long as the Class "B" Membership exists) conveys such tract to the City for a well site, after which time Tract L will no longer constitute part of the Common Areas; (iii) all land within the Project which Declarant, by this Declaration or in any other recorded instrument, makes available for use by Members of the Association or otherwise designates as Common Areas for purposes of this Declaration; (iv) all land or right-of-way easements within the Project which are dedicated to the public or to the City, and which the City or other governmental agency requires the Association to maintain; and (v) any other areas with respect to which the Association has, in writing, assumed the administrative or maintenance responsibilities.

Section 1.12 - "Declarant". Declarant shall mean and refer to Monterey and its affiliates, successors and assigns and any Person to whom it may expressly assign any or all of its rights under this Declaration. An assignment of the rights of the Declarant under this Declaration may be an assignment of less than all of the rights of the Declarant under this Declaration, and such assignment may apply to less than all the Property. No assignment of the Declarant's rights under this Declaration shall be valid until it is recorded with the County Recorder of Maricopa County, Arizona. Notwithstanding the foregoing, in the event the Option Agreement is terminated prior to the purchase by Monterey from Optionor of all of the Option Parcels, Optionor shall automatically become a Co-Declarant under this Declaration, in which event all references herein to Declarant shall, thereafter, mean and refer to Monterey and Optionor, as Co-Declarants. In the event Optionor becomes a Co-Declarant in accordance with this Section 1.12, the rights and obligations of Co-Declarants under this Declaration shall be in proportion to the number of Lots owned by each CoDeclarant.

Section 1.13 - "Declaration". Declaration means this Declaration of Covenants, Conditions, Restrictions and Easements for The Preserve, as and if amended.

Section 1.14 - "Eligible Insurer or Guarantor". Eligible Insurer or Guarantor shall mean an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 12.01 of this Declaration.

Section 1.15 - "Eligible Mortgage Holder". Eligible Mortgage Holder shall mean a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 11.01 of this Declaration.

Section 1.16 - "First Mortgage". First Mortgage shall mean any mortgage, deed of trust or any other form of security instrument or agreement given for the purpose of creating a lien on one or more Lots, with the first priority over any other mortgage, deed of trust or other security instrument or agreement.

Section 1.17 - "First Mortgagee". First Mortgagee shall mean the holder of any First Mortgage.

Section 1.18 - "Improvement". Improvement shall mean any building, driveway, parking area, fence, wall or other structure, all parts of a Living Unit, any swimming pool or spa, any Landscaping and all other improvements of every type and kind constructed on a Lot or the Common Areas or otherwise located within the Project.

Section 1.19 - "Landscaping". Landscaping shall mean any tree, plant, shrub, hedge, cacti, grass and other vegetation of any kind and any inert material used as ground cover and any rocks or similar materials used in connection with the landscaping of Lots or Common Areas.

Section 1.20 - "Lessee". Lessee shall mean the lessee or tenant under a lease, oral or written, of any Lot, including any assignee of a lease.

Section 1.21 - "Living Unit". Living Unit shall mean any building, or portion of a building, situated upon a Lot, designed and intended for use and occupancy as a residence. All references to a Living Unit shall be deemed to refer also to the underlying Lot, whether or not developed, and all permanent Improvements thereon.

Section 1.22 - "Lot". Lot shall mean each parcel designated as a lot on the Plat, as and if amended, with the exception of the Common Areas, and where the context indicates or requires, shall include any Living Unit or other Improvement and Landscaping situated thereon.

Section 1.23 - "Member". Member shall mean any Person who is a member of the Association as provided in Article 7 below.

Section 1.24 - "Occupant". Occupant shall mean any Person, other than an Owner, occupying or in possession of a Lot, or any portion thereof, or the Living Unit thereon, whether as a Lessee or otherwise.

Section 1.25 - "Option Agreement". Option Agreement shall mean the Purchase and Sale Agreement and Escrow Instructions and Option Agreement dated July 24, 1997, between Monterey and Nenever Rietveld, as Trustee under Trust Agreement dated January 8, 1987, as evidenced by that certain Memorandum of Options recorded on September 10, 1997, as Document No. 97-0626568 in the Official Records of Maricopa County, Arizona. The optionor's rights under the Option Agreement have been conveyed to Optionor.

Section 1.26 - "Option Parcels". Option Parcels shall mean any part of the Property which from time to time is owned by Optionor and which remains subject to the Option Agreement other than the Corner Property described in the Option Agreement, which is not part of the Property which is the subject of this Declaration.

Section 1.27 - "Optionor". Optionor shall mean Rietveld and its successors and assigns or any successor to the Optionor's rights and obligations under the Option Agreement.

Section 1.28 - "Owner". Owner shall mean and refer to 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 of a Lot. Owner shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, (ii) a Lessee or (iii) an Occupant. Owner shall include a purchaser under a contract for the conveyance of Property, subject to the provisions of A.R.S. § 33-741 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 the fee simple title to which is vested in a trustee pursuant to A.R.S. § 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 trust property shall be deemed to be the Owner.

Section 1.29 - "Person". Person shall mean a natural person, corporation, business trust, estate, trust, limited liability company, partnership, association, joint venture, municipality, governmental subdivision or agency or other legal or commercial entity.

Section 1.30 - "Plat". Plat shall mean the subdivision plat of The Preserve, as recorded in Book 452 of Maps, page 16, Official Records of Maricopa County, Arizona, as may hereafter be amended or supplemented.

Section 1.31 - "Project". Project shall mean the Property, together with all Improvements located thereon, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 1.32 - "Project Documents". Project Documents shall mean this Declaration, the Articles, the Bylaws, the Rules and Regulations, the Architectural and Landscaping Standards and all other documents or instruments pertaining to and affecting the Project, as the same may be amended from time to time.

Section 1.33 - "Property". Property shall mean the Lots and all Common Areas as shown in the Plat.

Section 1.34 - "Purchaser". Purchaser shall mean any Person, other than the Declarant, who by means of a voluntary transfer, hereafter becomes the Owner of a Lot, except for (i) a Person who purchases a Lot and then leases it to the 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 assigned any or all of the Declarant's rights under this Declaration.

Section 1.35 - "Rules and Regulations". Rules and Regulations shall mean any rules and regulations adopted and/or amended from time to time by the Association for the Project.

Section 1.36 - "Single Family". Single Family shall mean a group of one or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not so related, who maintain a common household in a Living Unit.

Section 1.37 - "Single Family Residential Use". 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 laws.

Section 1.38 - "Visible From Neighboring Property". Visible From Neighboring Property shall mean, with respect to any particular object or matter, if such object or matter would be visible to a person six (6) feet tall, standing on a part of the Project adjacent to the Lot on which the object or matter is found at an elevation no greater than the elevation of the base of the object or matter being viewed.

## **ARTICLE 2 PLAN OF DEVELOPMENT**

Section 2.01 - Property Subject to the Declaration Declarant and Optionor declare that all of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any Lot subject to this Declaration, each Person, for himself or itself, his or its heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs,

personal representatives, successors, transfers and assigns to all of the provisions, restrictions, covenants, easements, charges, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each Person, by so doing, thereby acknowledges that all restrictions, conditions, covenants, easements, charges, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees, Occupants and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. The Lots and the membership in the Association and the other rights created by this Declaration 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.

Section 2.02 - Common Areas. The Common Areas shall be transferred by Monterey and Optionor, by special warranty deeds, to the Association pursuant to the terms of this Declaration and such special warranty deeds. Such transfers shall be subject to all easements of record affecting the Common Areas, and such transfers shall occur as soon as practical following the recordation of this Declaration.

Section 2.03 - Private Roadway. The roadway to be constructed on Tract A of the Common Areas (the "Roadway") shall be a private Roadway constructed for the exclusive use of Owners, Lessees and their guests and other invitees, and an affirmative easement for ingress and egress over and across the Roadway is hereby granted to each Owner for such purposes. The Association and not the City shall be solely responsible for the upkeep, maintenance and repair of the Roadway.

Section 2.04 - Access Gates. Two (2) access gates for the Project shall be installed on the Roadway, one of which shall be located near Dynamite Boulevard and the other to be located near 56th Street for the intended purpose of limiting access to the Project. The access gates shall be part of the Common Areas, and the Association shall be solely responsible for the maintenance of the access gates. It is contemplated that the access gates will be operated by remote openers. Each initial Owner shall be provided with two (2) remote units. Additional or replacement remote units may be purchased only through the Association at a charge to be established by the Association. Each Owner shall also be responsible for payment of any programming fees charged by the supplier or the programmer of the remote units.

Section 2.05 - Access Gate Limitations. While the access gates are intended to limit access to the Project, such gates shall be unmanned and are not intended to make the Project a secured community. Each Owner, Lessee and their respective family members, guests and other invitees further acknowledge and hereby

agree to assume the risks that the access gates may restrict or delay entry into the Project by police, fire, ambulances and other emergency vehicles or personnel and neither the Declarant, the Optionor nor the Association or any director, officer, agent or employee of Declarant or Optionor or the Association shall be liable to any Owner, Lessee or other occupant, family members, guests or other invitees for any claims or damages resulting directly or indirectly from (a) the construction, existence, maintenance or adequacy of the access gates for the Project and (b) any loss, damage, injury or theft occurring within the Project.

Section 2.06 - Security and Monitoring Service. The Board shall have the authority to enter into agreements with a security and monitoring service company for the purpose of providing security and monitoring to all Living Units within the Project. Any security and monitoring agreements shall be with such companies and upon such terms and conditions as the Board shall determine, and the fees for such monitoring service, to the extent provided to all Living Units within the Project, shall be paid by the Association from Assessments.

Section 2.07 – Disclaimer of Representations. Notwithstanding anything to the contrary herein, neither Monterey nor Optionor makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out or that the Property or any adjacent real property is or will be committed to, or developed for, a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While neither Monterey nor Optionor has any reason to believe that any of the restrictive covenants contained in this Declaration are, -or may be, invalid or unenforceable, neither Monterey nor Optionor makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenants. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks as to the validity and enforceability thereof, and by accepting a deed to a Lot, agrees that neither Monterey nor Optionor shall have any liability with respect thereto.

### **ARTICLE 3 COVENANTS AND RESTRICTIONS**

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

Section 3.01 – Residential Use. Each Lot in the Project shall be improved and used exclusively for Single Family Residential Use. No trade or business may be conducted on any Lot or in or from any Living Unit, except that an Owner or other resident of a Living Unit may conduct a business activity within a Living Unit so long

as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the outside of the Living Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project, (iii) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Owners or other residents in the Project, (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents within the Project and (v) the business actually conducted on a Lot or from a Living Unit does not involve any employees, other than family members residing in the Living Unit, all as may be determined from time to time in the sole discretion of the Board. If a guest house is located upon a Lot, under no circumstance may such guest house be used as an office. 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 (i) such activity is engaged in full or part-time, (ii) such activity is intended or does generate a profit or (iii) a license is required for such activity. The sale or lease of a Living Unit by the Owner thereof shall not be considered a "trade" or "business" within the meaning of this Section. No Lot, Living Unit or any part of the Project shall ever be used or caused, allowed or authorized in any way, directly or indirectly, to be used for any business, professional, religious, institutional, commercial, manufacturing, industrial, mercantile, storing, vending, or related purposes; provided, however, that Declarant, and its duly authorized agents and employees, may use any part of the Project owned by Declarant for a model site or sites, a display and sales office, a business office and construction office during the construction and sales period. In no event shall an Owner be permitted to hold garage, yard, patio or similar types of sales within the Project.

Section 3.02 - Temporary Occupancy and Buildings. No trailer, bus, mobile home, tent, shack, storage shed, garage, barn or other building of a temporary nature shall be installed, located or used on any Lot at any time as a residence, either temporarily or permanently. Notwithstanding the foregoing, Declarant shall have the right, until the Project is fully developed and improved, to maintain construction facilities and storage areas incident to the development and improvement of the Project.

Section 3.03 – Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or any other portion of the Property. In addition, a Living Unit or any other portion of the Project shall not be used in whole or in part for the storage of any property or thing that will cause the Living Unit or the Project or any part thereof to appear in any unclean or untidy condition or that will be unsightly, offensive, obnoxious or detrimental to any other

Owners. No substance, thing or material shall be kept or used upon any Lot that will emit a foul, offensive or obnoxious odor or that will cause any noise that will or might disturb the peace, quiet, comfort, serenity or tranquility of the Occupants of adjacent portions of the Project. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any portion of any Lot without the written consent of the Committee. Notwithstanding the foregoing, speakers specifically designed and installed as built-in and recessed exterior speakers for a stereo system installed inside any Living Unit may be installed on a Lot provided that such speakers shall not be Visible From Neighboring Property and shall not be used in a manner so as to disturb the peace or the quiet, serenity or tranquility of the occupants of adjacent portions of the Project. Noise caused by improperly muffled motor vehicles shall not be permitted and construction machinery and equipment must be operated within the manufacturers' recommendations and specifications and only during reasonable working hours. No nuisance of any kind or description shall be permitted to exist or operate upon any Lot so as to be offensive, unsanitary, unsightly or detrimental to the Occupants or Owners of adjacent portions of the Project. The Board, in its sole and absolute discretion, shall have the right to determine the existence of any nuisance whether described herein or not. No Improvements or Landscaping shall be permitted to be constructed on or otherwise be permitted to exist on any Lots, the height or location of which shall be deemed by the Committee (i) to constitute a traffic hazard, (ii) to be unreasonably unattractive, or (iii) to be unreasonably detrimental to adjoining Property.

Section 3.04 - Trash Containers and Collection. No rubbish, trash, garbage or debris shall be placed or kept on any portion of any Lot except in covered containers of a type, size and style which are approved by the Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make such containers available for collection and then only for the shortest period of time (not to exceed eighteen (18) consecutive hours) reasonably necessary to effect such collection. All rubbish, trash, garbage and debris shall be promptly removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be maintained or used and no rubbish, trash, garbage or debris shall be burned by open fire or otherwise on any portion of any Lot.

Section 3.05 – Animals. No animals, fish, fowl, poultry or livestock, including horses, shall be raised, bred or kept on or within any Living Unit or Lot, except that a reasonable number of generally recognized and commonly accepted household pets may be kept on or within the Living Units or Lots; provided, however, such household pets may not be kept, bred or maintained thereon for any commercial purposes, or in unreasonable numbers. No household pets may be kept on a Lot which result in an annoyance to or which are obnoxious to other Owners or Occupants. All household pets must be kept indoors or within fenced yards and may not be permitted to run

loose. No structure for the care, housing or confinement of any animal, bird, fowl, poultry or livestock shall be maintained so as to be Visible From Neighboring Property. The Owner of each pet is responsible for cleaning any dirt or soilage caused by the pet. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, for the purposes of this Section, whether a particular animal, bird, fowl, poultry or livestock is a generally recognized and commonly accepted household pet or a nuisance or whether the number of animals, birds, fowl, poultry or livestock on any Lot is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.

Section 3.06 - Motor and Recreational Vehicles. No mobile home, boat, boat trailer, jet ski, motor home, recreational vehicle, all-terrain vehicle, off-road vehicle, trailer, horse trailer, camper, camper shell, snowmobile, bus, truck or other motor vehicle classed by manufacturers' rating as exceeding three-quarter (3/4) tons, vehicles designed for commercial purposes or any vehicles similar to those described above shall be kept, placed, maintained, constructed, reconstructed or repaired on any Lot or within the Project so as to be Visible From Neighboring Property; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs. All other motor vehicles shall be permitted to park only in garages or on paved driveways on Lots and may not park on the Roadway; provided, however, vehicles of guests and invitees may park on the Roadway for a temporary period of time not to exceed six (6) hours provided that such parking is done in a fashion so as not to obstruct driveways on other Lots or traffic within the Project and, provided further, that in no event may such vehicles be parked on any Roadway or Common Area overnight. All motor vehicles of Owners, Occupants, guests and invitees shall be kept in garages whenever such facilities are sufficient to accommodate the number of motor vehicles on a Lot. Any vehicle parked in violation of this Declaration may be towed at the direction of the Board or its agent, and the recording of this Declaration shall constitute the legal notice of intent to tow as though the Project were posted in accordance with the applicable laws and ordinances. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments. The Board may adopt additional parking restrictions including the establishment of fines and assessments for their violation.

Section 3.07 – Garages. Garages shall be used for parking vehicles and other garage purposes only and shall not be converted for living or recreational purposes. All garages must be kept in a neat and tidy manner at all times. Garage doors must be kept completely closed at all times except to permit vehicle ingress and egress.

Section 3.08 – Signs. No signs or billboards of any kind shall be displayed to the public view on any portion of the Project except for: (i) signs as may be required by legal proceedings; (ii) not more than two (2) signs for each Living Unit for identification of the address of such Living Unit with a combined total face area of eighty-four (84) square inches or less; (iii) such signs erected by the Declarant necessary or desirable in connection with the development, sale or operation of the Lots and Improvements during the construction and sales period; (iv) one (1) sign advertising the Lot for sale or for rent, which sign shall not be larger than 24" x 24" and shall be made of metal or fiberboard or wood and mounted on a wood or metal post; (v) one (1) "open house" sign; (vi) signage for the Project at such locations designated or installed by Declarant; and (vii) such other signs, the nature, number and location of which shall have been approved in advance by the Association. All signs provided for under this Section shall require the approval of the Committee as to the size, color, design, message content, location, type and hours of display.

Section 3.09 - Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures or other improvements, which machinery and equipment shall not be Visible From Neighboring Property, except when it is being operated or used in connection with the construction of Improvements.

Section 3.10 – Clotheslines. No clotheslines of any sort or other device for drying or airing of clothes shall be erected, placed or maintained upon any Lot.

Section 3.11 - Sidewalk and Roadway Encroachments. No tree, shrub, planting or other Landscaping or Improvement of any kind shall be permitted to overhang or otherwise encroach upon any Common Area, sidewalk or Roadway within the Project.

Section 3.12 -Storage and Tool Sheds and Structures. No storage Or tool sheds or similar structures shall be placed, erected or maintained upon any part of the Project, except where the storage or tool shed or similar structure (i) is constructed of the same or substantially similar materials as, and is the same color as and architecturally comparable to, the exterior of the Living Unit located upon the Lot (all as reasonably determined by the Committee) subject to the applicable provisions of any Architectural and Landscaping Standards; (ii) complies with any applicable setback line requirements; and (iii) is not Visible From Neighboring Property.

Section 3.13 - Window Materials. No external window covering may be placed, or permitted to remain, on any window of any building, structure or other improvement without the prior written approval by the Committee in accordance with

Article 4. No reflective coating, materials or covering may be placed on any window on any Improvement. Further, all curtains, blinds, interior shutters, screens and window coverings or window treatments which are Visible From Neighboring Property shall be neutral in color. No bed sheets, blankets, bedspreads or other items not designed for use as curtains or other window coverings shall be used for such purposes, whether permanently or temporarily, if they are Visible from Neighboring Property.

Section 3.14 - Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals, gravel or other natural resources of any kind.

Section 3.15 – Conveyance. No portion less than all of a Living Unit or Lot shall be conveyed, transferred or encumbered. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of the Project for public utilities or any other public purposes, in which event the remaining portion of any Lot or Living Unit affected shall, for the purpose of this Declaration, be considered a whole Lot or Living Unit.

Section 3.16 - Further Subdivision. No Lot in the Project shall be further subdivided or separated into smaller lots nor conveyed in less than the full original dimensions of such Lots as shown on the Plat. Notwithstanding this Section or any other provision contained in this Declaration, as long as the Class "B" Membership is in existence, Declarant, without the consent of any other Member, shall have the right to replat the Project in any manner Declarant deems appropriate, including, without limitation, changing the size, location and configuration of Lots, Roadways, and Common Areas and changing the number of Lots within the Project. As long as any Lots remain subject to the Option Agreement, any replat of the Project in accordance with the preceding sentence shall require the consent of Optionor. In the event of any such replat, Declarant shall have the right, without the consent of any other Member, to amend this Declaration as may be necessary or appropriate as a result of such replat of the Project.

Section 3.17 - Violation of Statutes, Ordinances and Regulations. No Lot shall be maintained or utilized in such a manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Arizona, County of Maricopa, the City or any other municipality, governmental agency or subdivision authority having jurisdiction over the Lots or the use or occupation thereof.

Section 3.18 – Rental. Only entire Living Units may be rented, provided the occupancy thereof is only by the Lessee and his family and guests. No Owner shall be permitted to lease a Living Unit for transient or hotel purposes. No Owner may lease less than his entire Living Unit. All lease agreements shall be in writing and shall

provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Project Documents, and any failure by Lessee to comply with the terms of such documents shall be a default under the lease. For purposes of this Declaration, "lease" shall mean any agreement for the leasing or rental of all of a Living Unit, including, but not limited to, "month-to-month" rentals. Upon leasing his Living Unit, an Owner shall promptly notify the Association in writing of the commencement date and termination date of the lease, together with the names of each Lessee or other person who will be occupying the Living Unit during the term of the lease.

Section 3.19 - Items Visible From Neighboring Property. The following shall not be erected, used, maintained or kept on any Lot so as to be Visible From Neighboring Property: air conditioners, coolers, pool filters, pool heaters, lawn and yard tools, storage tanks for water, gas, gasoline, oil or other fuel.

- E. Section 3.20 - Declarant'sEmployee a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to the By-laws and the restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project;
- F. Pay real property taxes, assessments and other governmental charges attributable to the Common Areas and all other expenses of the Association;
- G. Fix, levy, collect and enforcer Assessments and fines as set forth in this Declaration and the Rules and Regulations.
- H. Pay all expenses and obligations incurred by the Association for the conduct of its business, including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Common Areas and any other property or property rights owned by the Association;
- I. Engage in activities which will actively foster, promote and enhance the common interests of the members;
- J. Buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real or personal property and any right or interest therein for any purpose of the Association.
- K. Borrow money for any purpose as may be limited in the Bylaws;
- L. Enter into, make, perform or enforce contracts of every kind and description and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation or other entity or agency, public or private;

- M. Dedicate, sell or transfer all or part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association (such sale, transfer or dedication shall be subject to the restrictions and requirements under the applicable laws of Arizona); and
- N. Have and exercise any and all other powers, rights and privileges and transact any lawful business which nonprofit corporations are permitted

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Exemption. Nothing contained in this Declaration or in the Architectural and Landscaping Standards shall be construed to prevent or materially impair the erection, operation, maintenance, replacement and repair by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, administration, management, sale, operation, maintenance and repair of model homes or other property within the Project. Without limiting the generality of the preceding sentence, Declarant is expressly exempted from the provisions hereof requiring submittals to or authorizations by the Committee, including but not limited to Article 4 hereof. Any provisions of this Declaration which prohibit non-residential use of Lots and regulate parking and vehicles shall not prohibit the construction and operation of model homes (including, without limitation, any use in whole or in part as sales offices) (collectively, the "Models") by Persons engaged in the construction of homes in the Project and parking available to the visiting of such Models so long as construction, operation and maintenance of such Model parking will otherwise comply with all of the provisions of this Declaration. The Committee may also permit Lots in other areas to be used for parking in connection with the showing of Models. Any homes or other structures constructed as Models shall cease to be used as Models at any time that the Owner thereof is not actively engaged in the construction and sale of homes in the Project, and no home or other structure shall be used as a Model for the sale of homes if the structure is not located in the Project. Neither the provisions of this Section nor the provisions of any other Section in this Declaration shall restrict or prohibit the right of Declarant or an affiliate of Declarant to construct, operate and maintain Models in the Project.

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## ARTICLE 4

### **ARCHITECTURAL AND LANDSCAPING CONTROL**

Section 4.01 - Architectural and Landscaping Control and Requirements. In no event shall any Improvements be constructed on, removed from or modified on any Lot and in no event shall any Landscaping be planted, installed, placed on or removed from any Lot unless and until the specifications for such Improvements and/or Landscaping are submitted to and approved by the Committee, all in accordance with the Architectural and Landscaping Standards. In addition, no alteration, addition, repair, change or other work which in any way alters the exterior appearance of any Living Unit or other Improvements on a Lot including, without limitation, the exterior color scheme of any Improvements located thereon, shall be made or done without the prior written approval of the Committee.

Section 4.02 - Appointment of Committee. The Association shall appoint an Architectural and Landscaping Control Committee to perform the functions of the Committee set forth in this Declaration and in the Architectural and Landscaping Standards. The Committee shall consist of not less than three (3) members. From the date of this Declaration until the period ending one (1) year after Declarant has sold its last Lot, the Declarant shall have the sole right to appoint and remove the members of the Committee. At such time as the Declarant no longer is entitled to appoint members of the Committee, the members of the Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove members of the Committee, and in that event, the Declarant may require, for a period expiring one (1) year after the Declarant has sold its last Lot, that specified actions of the Committee, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 4.03 - Architectural and Landscaping Standards. Prior to the termination of the Class "B" Membership, Declarant, without the consent of any other Member, shall have the right to revise the Architectural and Landscaping Standards. Upon the termination of the Class "B" Membership, the Board shall have the right to make such changes to the Architectural and Landscaping Standards as the Board shall deem appropriate. The Committee shall keep and maintain a written record of all actions taken in connection with the Committee. The Committee may establish a reasonable processing fee to cover the costs of the Association in considering any request for approval submitted to the Committee, which fee shall be paid at the time each such request for approval is submitted.

Section 4.04 - Effect of Approval or Disapproval. All decisions of the Committee shall be final, and Monterey, Optionor, Declarant, the Board, the Committee and any member thereof shall have no liability whatsoever to any Owner or any other party for any damage or loss suffered or claimed on account of: (i)

approval or disapproval of any plans, drawings or specifications or any landscape plan; (ii) construction or modification of any Improvement or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or (iii) the development of any property within the Project.

## **ARTICLE 5** **EASEMENTS**

Section 5.01 - Easements in Common Areas. Each and every Member shall have a nonexclusive perpetual easement of use and enjoyment in and to the Common Areas. Such right and easement of use and enjoyment shall be subject to:

- A. The right of the Association to limit the number of guests of Members;
- B. The right of the Association to suspend the right to use the facilities situated upon the Common Areas by any Member for any period during which an Assessment against the Member's Lot remains unpaid or for any violation of the Project Documents;
- C. The right of the Association to dedicate, transfer or convey, all or any part of the Common Areas to any public agency, authority or utility as provided in this Declaration;
- D. The right of the Association to promulgate Rules and Regulations concerning the use of any Common Areas and all facilities located thereon; and
- E. All existing easements of record.

Section 5.02 – Blanket Easement. There is hereby created in the Association and any provider to the Project of public utilities a blanket easement upon, across, over and under the Property for ingress and egress for the installation, replacing, repairing and maintaining of all utility and service lines and systems, including but not limited to water, sewer, gas, telephone, electrical, air conditioning, heating, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company or the Association or their agents to install and maintain underground facilities and equipment on the Property and to affix and maintain wires, pipes, lines, conduits, ducts, vents, cables, circuits and other appurtenant items on the Property. Notwithstanding anything to the contrary contained in this Article, no sewer facilities, electrical lines, water lines or other utility or service lines may be installed or relocated on the Property, except as approved by Declarant, as long as Declarant owns any interest in any Lot or in the Project and, thereafter, except as approved by the Board.

Section 5.03 - Easement for Encroachments Each Lot and the Common Areas shall be subject to an easement for encroachments, including but not limited to encroachments of walls, ceilings, ledges, floors and roofs caused by construction, reconstruction, repair, shifting, settling, movement and overhangs. If any portion of the Common Areas shall actually encroach upon any Lots, or if any Lot shall actually encroach upon any portion of the Common Areas, or, if any Lot shall actually encroach upon another Lot, as the Common Areas and Lots are shown by the Plat, a valid easement for such encroachments and for the maintenance, repair and replacement thereof shall and does exist. In the event that any Improvement is repaired, altered or reconstructed, similar encroachments shall be permitted and a valid easement for such encroachments and for the maintenance thereof shall exist. Owners and any other parties acquiring any interest in the Project shall be deemed to acquiesce and agree to the existence of such easements by accepting a deed or other Ownership interest from any seller of a Lot or by acquiring any interest whatsoever in the Project.

Section 5.04 - Association's Right of Entry. During reasonable hours, the Association or any authorized representative of the Association shall have the right to enter upon and inspect any Lot, excluding the interior of any Improvement located thereon, for the purpose of making inspections to determine whether the provisions of the Project Documents are being complied with by the Owner or Occupants of said Lot.

Section 5.05 - Association's Easement for Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Areas and the Lots for the purpose of repairing, maintaining and replacing those portions of the Lots which the Association is obligated to maintain pursuant to this Declaration and for performing all of the Association's other rights, duties and obligations hereunder.

Section 5.06 - Temporary Easements. Declarant, its agents, employees and contractors shall have a temporary easement upon each Lot and the Common Areas as is necessary for development of adjacent Lots and Common Areas and completion of improvements in public rights-of-way, public utility easements, drainage easements and Common Areas. In addition, Declarant, its agents, employees and contractors shall have a temporary easement upon every Lot and the Common Areas as is necessary to carry out any work required by, convenient to or incidental to carrying out the terms of any warranty or guaranty.

Section 5.07 - Public Easements. Each Owner who accepts a deed to or any interest in a Lot agrees to recognize and be bound by any Natural Area Open Space Easements, drainage easements or other easements shown in the Plat or which otherwise exist with respect to the Lot purchased by such Owner or the Common

Areas, all in accordance with the applicable ordinances and regulations of the City with respect to such easements.

**Section 5.08 - Mailbox Facilities Easement.** The Association and the United States Post Office shall have an easement over Lots 4, 5, 28, 29, 35, 36, 48, 75, 64, 65, 98 and 99 and such other Lots as may hereafter be designated by Monterey and as may be necessary for the installation, operation, maintenance and repair of a pad located within the right-of-way on said Lots (the "Mailbox Sites") to be used as the sites for the mailbox facilities for the Project. In addition, each Owner shall have a non-exclusive easement over the Mailbox Site on which the mailbox for such Owner's Lot is located for access to and- use of the mailbox facility situated thereon. REVISED - See FIRST AMENDMENT dated 2-20-1998

**Section 5.09 - Perimeter Wall Easements and Maintenance** Each Owner who accepts a deed to a Lot which borders Dynamite Boulevard or 56th Street or which is immediately adjacent to any Common Area tract shall be deemed to grant to the Association a non-exclusive easement for access to, and maintenance and repair of, the perimeter walls for the Project along Dynamite Boulevard, 56th Street and any Common Area tract, and each Owner of such a Lot shall be responsible for maintaining the interior of any such perimeter wall and shall also be responsible for repairing any damage to such perimeter wall caused by such Owner or its family members, guests, lessees or agents. To the extent any perimeter wall for the Project encroaches upon any Lot, an easement for such encroachment is hereby established over the encroached upon portion of any such Lot for the benefit of the Association.

## **ARTICLE 6 MAINTENANCE**

**Section 6.01 - Maintenance of Common Areas.** The Association, or its duly delegated representative, shall be responsible for the maintenance, repair and replacement of (i) the Common Areas, including, but not limited to, any walls, structures, signs, Landscaping, parking areas, streets and recreational facilities located thereon, together with all other real and personal property owned by the Association, and (ii) all other Areas of Association Responsibility.

**Section 6.02 - Maintenance of Improvements.** No Improvement upon any Lot shall be permitted to fall into disrepair, and all Improvements shall at all times be kept in good condition and repair, adequately painted and otherwise finished. Each Owner shall maintain in good repair the exterior surfaces of each Improvement on said Owner's Lot, including but not limited to walls, roofs, porches, patios and appurtenances. Nothing shall be done in or to any Improvement which will impair the structural integrity of any Improvement except in connection with any alterations and repairs permitted or required by the Committee. In the event of damage or destruction from any cause whatsoever to all or any portion of an Improvement, the Owner of the Lot shall promptly repair, reconstruct or restore the same, or cause the same to be

repaired, reconstructed or restored, to the condition existing prior to such damage or destruction. Each Owner shall also maintain in good condition and repair all paved, concrete and other artificially surfaced areas, including driveways and walkways located on the Owner's Lot.

Section 6.03 - Maintenance of Landscaping. All lawn areas shall be kept mowed as needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds. In addition, each Owner of a Lot shall keep all other Landscaping of every kind located on his or its Lot neatly trimmed (including the pruning of dead wood) according to their plant culture and landscape design, and each Owner shall keep all such Landscaping watered and fertilized at such time and in such quantities as required to keep them alive and attractive and each Owner shall keep all such areas properly cultivated and free of trash, weeds and other unsightly materials. Each Owner shall immediately remove and replace any dead tree, shrub, plant, ground cover or other dead Landscaping on its Lot. Notwithstanding the foregoing, Owners shall not be responsible for maintenance of any area which (i) is an Area of Association Responsibility or (ii) the Association assumes responsibility for in writing.

Section 6.04 - Insurance Obtained by Owner. Each Owner shall be responsible for obtaining property damage insurance for its own benefit and at its own expense covering its own Lot and the Improvements located thereon. Each Owner shall also be responsible for obtaining at its own expense personal liability insurance for death, bodily injury or property damage arising out of the use, ownership or maintenance of its Lot and Improvements.

Section 6.05 - Additional Maintenance; Standard of Care. The Association shall have the right, but not the obligation to undertake any maintenance within the Project as the Board may from time to time determine to be in the best interest of the Association and the Members. The Board shall endeavor to use a high standard of care in providing any maintenance, management and repair, so that the Project will reflect a high pride of ownership.

Section 6.06 – Assessment for Damage or Destruction. Notwithstanding any other provision contained in this Declaration, in the event that any Lot or Common Areas are damaged or destroyed through the willful or negligent act or omission of any Owner, his family, pets, guests, Lessees, Occupants, licensees or agents and the Association performs the appropriate repairs or replacements as required or permitted herein, the cost to repair such damage or destruction shall be added to and become a part of the Assessment to which such Lot is subject.

Section 6.07 - Assessment for Nonperformance of Maintenance, Repair or Replacement. In the event any Owner fails to fulfill its obligation to maintain, repair

and/or replace any portion of its Lot and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot and perform any such maintenance, repairs and replacement not performed by the Owner, and the cost of such maintenance, repairs and replacement, together with an administrative fee of up to twenty percent (20%) of the cost of such work, shall immediately be added to and become a part of the Assessment to which such Lot is subject.

## **ARTICLE 7** **HOMEOWNERS' ASSOCIATION**

Section 7.01 - Formation of Association. The Association has been or shall be incorporated as an Arizona non-profit corporation to perform and exercise all or any part of the responsibilities and functions granted to the Association under this Declaration and the Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Rules and Regulations, Architectural and Landscaping Standards or any other Project Document, this Declaration shall control.

Section 7.02 - Membership. Each Owner shall automatically be a Member of the Association, and upon subsequent transfers of the Owner's Lot, the new Owner shall automatically become a Member of the Association and the former Owner's membership shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of any Lot and any attempt to transfer membership, other than upon the transfer of the Lot giving rise to the membership, shall be void. Each and every Owner, by accepting its ownership interest in a Lot, agrees to become a Member of the Association and to be bound by the provisions of the Project Documents and this Declaration.

Section 7.03 - Classes of Membership and Voting Rights. The Association shall have two (2) classes of voting membership designated as Class "A" and Class "B". Class "A" Members shall be all Owners, except Declarant shall not be a Class "A" Member as long as the Class "B" membership is in existence. With the exception of the consent requirements set forth in Sections 8.03, 8.04 and 13.01 of this Declaration, the Class "A" Members shall not be entitled to exercise any voting rights in the Association until the termination of the Class "B" membership. Upon termination of the Class "B" membership, each Class "A" member, including Declarant with respect to any Lots owned by Declarant, shall be entitled to one (1) vote for each Lot owned by it. If a Lot is owned by more than one individual Class "A" Member, the Members owning such Lot shall collectively be entitled to cast only one (1) vote for that Lot. The vote for such Lot shall be exercised as the Owners thereof among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Class "B" Member shall be the Declarant. As long as the

Class "B" membership is in existence, the Class "B" Member shall, in its sole discretion, have the right and authority to elect the Board and the Committee and, except for the consent requirements set forth in Sections 8.03 and 8.04 of this Declaration, the Class "B" Member shall have the full right to control the Association. The Class "B" membership shall cease and be converted to Class "A" membership upon the first to occur of the following:

- A. The closing of the sale of the last Lot to a Purchaser; or
- B. Such time as the Class "B" Member shall elect to convert its Class "B" membership to Class "A" membership and provides the Association with written notification of such election.

Upon the termination of the Class "B" membership, that membership shall be converted to Class "A" membership and Declarant shall thereafter be entitled to one (1) vote for each Lot owned by Declarant. Notwithstanding any other provision contained in this Declaration or any other Project Documents, Optionor shall not have any voting rights in the Association unless Optionor becomes a Co-Declarant in accordance with Section 1.12 of this Declaration or unless Optionor still owns any Lots at the time the Class B Membership shall cease to exist.

Selection 7.04 – Duties and Powers of the Association. In addition to the duties and powers enumerated in the Project Documents or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the duty and power to perform the following:

- A. Maintain, repair, replace, restore, operate and manage all Areas of Association Responsibility and all Improvements and Landscaping thereon, and all property that may be acquired by the Association;
- B. Enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel and the commencement and prosecution of legal proceedings;
- C. Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members;
- D. Grant and reserve easements where necessary for utilities and sewer facilities over the Common Area and the Lots;

- E. Employee a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to the By-laws and the restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project;
- O. Pay real property taxes, assessments and other governmental charges attributable to the Common Areas and all other expenses of the Association;
- P. Fix, levy, collect and enforcer Assessments and fines as set forth in this Declaration and the Rules and Regulations.
- Q. Pay all expenses and obligations incurred by the Association for the conduct of its business, including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Common Areas and any other property or property rights owned by the Association;
- R. Engage in activities which will actively foster, promote and enhance the common interests of the members;
- S. Buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real or personal property and any right or interest therein for any purpose of the Association.
- T. Borrow money for any purpose as may be limited in the Bylaws;
- U. Enter into, make, perform or enforce contracts of every kind and description and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation or other entity or agency, public or private;
- V. Dedicate, sell or transfer all or part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association (such sale, transfer or dedication shall b subject to the restrictions and requirements under the applicable laws of Arizona); and
- W. Have and exercise any and all other powers, rights and privileges and transact any lawful business which nonprofit corporations are permitted

to have, exercise or transact under the laws of the State of Arizona, as they may be amended from time to time.

Section 7.05 – Board. The affairs of the Association shall be conducted by the Board which shall be selected in the manner stated in the Project Documents. Each director shall be an Owner of a Lot or the spouse of an Owner, or, if an Owner is a corporation, limited liability company, partnership, trust or other legal entity, a director may be an officer, director, member, partner, beneficiary or authorized agent of such Owner. If a director shall cease to meet such directorship qualifications during his term, he shall automatically cease to be a director and his place on the Board shall be deemed vacant. Notwithstanding the foregoing, as long as there is a Class "B" Membership, directors need not be an Owner of a Lot.

Section 7.06 - No Liability. Neither Declarant nor the Association shall be liable for any theft, vandalism, disturbance, accident, unauthorized entrance or other similar occurrence or breach of the peace or security which may occur or take place within the Project or on the Common Areas or on any Lot.

Section 7.07 - Rules and Regulations. The Association shall from time to time establish such Rules and Regulations as it deems necessary for the conduct and operation of the Project including, by way of illustration and not by way of limitation, Rules and Regulations for the purpose of establishing and maintaining general beautification features within the Project and providing for the health, safety and welfare of Occupants of and visitors to the Project.

Section 7.08 - Use of Common Areas. Every Owner of a Lot, each Occupant of a Lot, each Lot Owner's Lessees, if any, and the social guests and other invitees of the foregoing individuals shall have the non-exclusive right to use the Common Areas, subject to this Declaration and the Rules and Regulations.

Section 7.09 – Funds. All funds received by the Association and the titles of all properties acquired by the Association shall be held in trust for the Members of the Association in accordance with the Project Documents.

Section 7.10 - Availability of Documents. The Association shall make available to all Owners of Lots and prospective purchasers of Lots current copies of the Project Documents.

## **ARTICLE 8** **COVENANTS FOR ASSESSMENTS AND CREATION OF LIENS**

Section 8.01 - Creation of the Assessment Lien and Personal Obligations for Assessments Each Owner of any Lot by acceptance of a deed therefore, whether

or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (i) regular annual Assessments or charges ("Annual Assessments"); (ii) special Assessments for capital improvements and unexpected expenses ("Special Assessments"); and (iii) such other Assessments as are provided for herein or in the Project Documents. The Annual and Special Assessments and any other Assessment or charge made against a Lot pursuant to the Project Documents, together with interest, costs and reasonable attorneys' fees, shall be a charge and a continuing Assessment Lien upon the Lot against which each Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be a personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his contribution toward the Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or the board to take some action or perform some function under this Declaration or the Project Documents, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

Section 8.02 - Purpose of Assessments. The Annual and Special Assessments (except for Enforcement Assessments as defined below) by the Association shall be used exclusively for the improvement and maintenance of the Common Areas and any Areas of Association Responsibility, the promotion of the recreation, health, safety and welfare of all the residents in the Project, the operation and administration of the Association and for the common good of the Project. Annual Assessments shall include a reasonable reserve fund for taxes, insurance, maintenance, repairs and replacement of the Areas of Association Responsibility.

Section 8.03 - Annual Assessments. The Board shall annually determine and fix the amount of the Annual Assessment against each Lot and shall notify the Owner of each Lot in writing as to the amount of such Annual Assessment not less than thirty (30) days prior to the date that such Annual Assessment is to commence. Along with such notification, the Board shall provide the Owners with a proposed budget for the next fiscal year and a summary of the Association's finances for the previous fiscal year. In addition to including amounts for the estimated common expenses and cash requirements of the Association, each budget shall also provide for a reserve for contingencies and a reserve for replacements, all in such amounts as shall be determined by the Board to be reasonably adequate, taking into account the number and nature of replaceable property within the Areas -of Association Responsibility, the expected life of such item and each item's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall

cause a copy of the budget and a statement of the amount of the Annual Assessments to be levied against the Owner's Lot for the fiscal year in question to be delivered or mailed to each Owner. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of the fiscal year, then until and unless a budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Except as to the first Annual Assessment, the Annual Assessment may be neither increased by more than twenty percent (20%) above, nor decreased by more than twenty percent (20%) below the Annual Assessment for the previous year, without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to fifty-one percent (51%) of the Members are present in person or by proxy. Notwithstanding the foregoing, the Board may without the approval of the Members, increase the maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to cover any increase over the preceding fiscal year for: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; (ii) taxes on the Common Areas or (iii) charges for utility services necessary to the Association's performance of its obligations under this Declaration. If item (i), (ii) or (iii) in the preceding sentence results in an increase in the maximum Annual Assessment, such increase shall be permitted notwithstanding the fact that the resulting increase in maximum Annual Assessment is at a rate greater than otherwise permitted by the preceding portions of this Section. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in a full amount of the maximum Annual Assessment for the fiscal year, and the election by the Board not to levy Annual Assessments in a full amount of the maximum Annual Assessments for the fiscal year shall not prevent the Board from levying Annual Assessments in subsequent years in the full amount of the maximum Annual Assessments for the subsequent fiscal year (as determined in accordance with this Section). In the event that for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the maximum Annual Assessment for the fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during the same fiscal year so long as the total of the Annual Assessments levied during the fiscal year have not exceeded the maximum Annual Assessments for such fiscal year. All Annual Assessments shall be payable in advance in quarterly installments on the first (1st) day of January, April; July and October of each year, or in accordance with such other payment schedule as the Board may determine. In the year of the close of escrow on the sale of the first Lot to a Purchaser, the maximum Annual Assessment per Lot shall be One Thousand One Hundred Dollars (\$1100), and the Annual Assessment shall be prorated through the date of the close of escrow for each Lot based on the number of full and partial months remaining in the then current quarter.

Section 8.04 - Special Assessments. In addition to the Annual Assessments authorized above, the Board may levy in any assessment year a Special Assessment, applicable to that 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 upon the Common Areas, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated expenses normally covered by an Annual Assessment, including taxes assessed against the Common Areas, provided, however, that the aggregate Special Assessments for any fiscal year shall not exceed fifty percent (50%) of the budgeted gross expenses of the Association for that Assessment year without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to fifty-one percent (51%) of the Members are present in person or by proxy. Special Assessments may also be levied by the Board against an individual Lot and its Owner to reimburse the Association for costs incurred by the Association in connection with efforts of the Association to require that Owner and his Lot to comply with the provisions of this Declaration and the Project Documents or costs incurred by the Association in connection with causing to be done such work as is necessary to bring a Lot into such compliance (an "Enforcement Assessment"), and such Enforcement Assessments shall not be subject to the limitations set forth above as to the amount of Special Assessments.

Section 8.05 - Allocation of Assessments. Except as provided for in Section 8.06 below with respect to Declarant and Optionor and in Section 8.04 above with respect to an Enforcement Assessment, the Owner of each Lot shall bear an equal share of each Annual and Special Assessment.

Section 8.06 - Declarant's and Optionor's Assessments. Notwithstanding any other provision contained in this Declaration, the Declarant as the Class "B" Member shall not be liable for and shall not be required to pay any Assessments upon Lots owned by Declarant as long as the Class "B" membership is in existence. In lieu thereof, Declarant agrees that so long as the Class "B" membership is in existence, Declarant shall subsidize the Association by paying the difference, if any, between the amount of Annual Assessments levied by the Association and the actual cost of operating and administering the Association (other than costs for which a Special Assessment is levied). Such payments by Declarant shall be made at such times as Declarant and the Board shall agree. Declarant's obligations under this Section may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. Notwithstanding any other provision in this Declaration, as long as the Option Agreement is in effect, no Assessments shall be levied against or with respect to Lots owned by Optionor and Optionor shall not be liable for and shall not be required to pay any Assessments upon Lots owned by Optionor.

Section 8.07 – Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a quarterly basis or such other more frequent basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Rules and Regulations setting forth procedures for the purpose of making assessments and for the billing and collection of the Assessments; provided that the procedures are not inconsistent with this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his or its liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Member has been given not less than twenty (20) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during any period for which any such Assessment pertains. Successor Owners of Lots shall be given credit for prepayments of Assessments, on a prorated basis, made by prior Owners.

Section 8.08 – Transfer of Lot by Sale or Foreclosures Sale or transfer of any Lot shall not affect any Assessment Lien against such Lot. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof. Except for Assessment Liens existing prior to the recording of a First Mortgage, the Assessment Liens provided for in this Declaration shall be junior and subordinate to the lien of any First Mortgage against a Lot, and where the Owner of record acquires title to a Lot as a result of foreclosure of any such First Mortgage, such Owner shall not be liable for the share of the Assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to an Assessment Lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such Assessments becoming due after the date of any such statement.

Section 8.09 – Enforcement of Assessment Obligation. Any part of any Assessment not paid within ten (10) days after the due date shall bear interest from the due date until paid at the greater of (i) fifteen percent (15%) per annum or (ii) two percent (2%) per annum over the prime rate of Bank One, Arizona, NA, or its successor. The Assessment Lien on each respective Lot shall be prior to and superior to all other liens except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record made in good faith and for value. Any First Mortgagee or any other Person

acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, all in connection with a First Mortgage, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable subsequent to the recording of the First Mortgage but prior to the acquisition of such Lot by the First Mortgagee or other Person. An Assessment Lien, when delinquent, may be enforced by sale by the Association in accordance with the provisions of the Arizona Revised Statutes applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by law; however, the right to foreclose the same shall be in addition to and not in substitution of all of the rights and remedies which the Association and the Board may have in accordance with the provisions of this Declaration or otherwise. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the Assessment Lien shall continue in effect and the Assessment Lien may be enforced by the Association or by the Board for the respective Lot's Assessment that was due prior to the final conclusion of such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as a personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a Member. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the Assessment Lien securing the same. The Board may impose reasonable monetary penalties and may temporarily suspend the Association membership rights of an Owner who is in default in payment of any Assessment.

Section 8.10 - Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year but 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.

Section 8.11 - Working Capital and Reserve Funds. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services and to create a reasonable reserve fund, each initial Purchaser who purchases a Lot from Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-fourth (1/4th) of the then current Annual Assessment against its Lot. Such payment shall be non-refundable and shall

be paid in addition to, and shall not be offset against or considered as an advance payment of, any Assessment or transfer fee levied by the Association pursuant to this Declaration.

Section 8.12 - Transfer Fee. Each Purchaser of a Lot, except Monterey when purchasing a Lot pursuant to the Option Agreement and except for a Purchaser who purchases a Lot from Declarant, shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in an amount not to exceed one-fourth (1 /4th) of the then current Annual Assessment against the Lot, which amount shall be used by the Association to cover administrative costs incurred by the Association in connection with such transfer and to supplement the Association's reserve fund. The transfer fee shall be in addition to, and shall not be offset against or considered as an advance payment of, any Assessment levied by the Association pursuant to this Declaration, and the payment of such transfer fee shall not entitle an initial Purchaser to the return of any working capital and reserve payments made to the Association pursuant to Section 8.11 above.

Section 8.13 – Fines. In accordance with the Rules and Regulations or any policy adopted by the Board, the Association shall have the power to levy reasonable fines against any Owner who violates any provision of the Project Documents.

Section 8.14 - Books and Records. The Board shall at all times keep true and correct records of account for the Association in accordance with generally accepted accounting principles applied on a consistent basis, and shall furnish for the inspection of all voting Owners at reasonable times such records which shall specify in detail all expenses incurred and funds accumulated from Assessments or otherwise. If a management agent contracts with the Association to perform all or a part of the Association's duties, the management agreement therefore shall require such management agent to maintain records in accordance with the foregoing requirements, and to provide the Board with a report of its activities under such management agreement prior to the close of each fiscal year of the Association, and at such additional times as may be requested by the Board. The information set forth in such report shall be included in the annual budget and report from the Board to the Owners required by Section 8.03 above.

## **ARTICLE 9** **ENFORCEMENT**

The Association shall have the right to enforce the restrictions, conditions and covenants set forth herein, and the Association shall be the proper party plaintiff in any legal action initiated to enforce any provision of this Declaration. During reasonable hours and after notice (except in the event of an emergency), members of the Board or the Committee or persons authorized by the Board or the Committee shall

have an easement on, over, across and through each Lot to inspect any portion of each Lot and the Improvements thereon for the purpose of ascertaining whether the provisions of this Declaration have been or are being complied with and to permit it to carry out its rights, duties and obligations under this Declaration and such persons shall not be deemed guilty of trespass by reason of such entry. In the event the Board determines that an Owner is in breach of the Owner's obligations under this Declaration, the Board may give the Owner written notice of its determination, including a reasonably detailed list or description of the repairs, maintenance, work or corrective measure required to cure the Owner's breach. If the Owner does not cure the breach within thirty (30) days after the date of the written notice, the Board, on behalf of the Association, may cause the repairs, maintenance, work or corrective measures to be performed so as to cure the Owner's breach. The Association's costs incurred in curing such a breach by an Owner, together with interest from the date of the expenditure at the rate of fifteen percent (15%) per annum, shall constitute a lien on the Owner's Lot. The Association shall also have standing and authority to request that a court of competent jurisdiction compel the Owner to cure the breach and to the extent not inconsistent with an order of such a court, the Association may pursue either or both of the courses of action described in this Section. Owners, by accepting a deed to a Lot, waive any right to assert that damages shall be an adequate remedy for any such non-compliance. If the Association shall fail or refuse to enforce any of the terms of this Declaration for an unreasonable period of time after being notified of a non-compliance, then any Owner shall become a proper party plaintiff.

## **ARTICLE 10** **INSURANCE**

Section 10.01 - Scope of Coverage. Commencing 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:

A. Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner.

B. Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance

after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

E. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

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

G. 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 Association, its agents, servants and employees, with respect to Owners and members of their households;

ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

iii) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

iv) Statement of the name of the insured as the Association;

iv) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the First Mortgagee or other beneficiary under a deed of trust named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

Section 10.02 - Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner and First Mortgagee or other beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each First Mortgagee or other beneficiary under a deed of trust to whom certificates of insurance have been issued.

Section 10.03 - Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 10.01 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

Section 10.04 - Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any First Mortgagee or other beneficiary under a deed of trust. Subject to the provisions of Section 10.05 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

Section 10.05 - Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent ( 50%) of the votes in the Association.

## **ARTICLE 11** **RIGHTS OF FIRST MORTGAGEES**

Section 11.01 - 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 the Lot number or address 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 Project 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 such Owner of any obligation under the Project Documents, which delinquency remained uncured for a period of twenty (20) days.

C. Any lapse, cancellation or material modification of any insurance policy or Fidelity bond maintained by the Association;

D. Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Sections 11.02 and 11.03 of this Declaration.

Section 11.02 – Approval Required to Terminate Project. Any termination of the legal status of the Project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

Section 11.03 – 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 to the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- i) Expansion of the Project or the addition or annexation of property to the Project;
- ii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- iii) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- iv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

B. Any addition or amendment 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.

Section 11.04 - First Mortgagee's Right of Inspection of Records. Any First Mortgagee shall, upon written request, be entitled to (i) inspect the books and records of the Association during normal business hours, (ii) receive within sixty (60) 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 party 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.

Section 11.05 - Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each Lot against which the First Mortgage acts as a lien) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

- i) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned by the Association. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area and any conveyances of a corrective nature made by Declarant shall not be deemed a transfer within the meaning of this Subsection;
- ii) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Lot Owner;
- iii) Fail to maintain fire and extended coverage insuring the Common Areas on a current replacement cost basis in an amount at least one hundred percent (100%) of insurable value; and
- iv) Use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such Common Area.

Section 11.06 - No Priority over First Mortgagees. 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 the Common Areas.

Section 11.07 - Failure of First Mortgagees to Respond. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action

requiring the consent of First Mortgagee shall be deemed to have approved such action if the Association has not received a written negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

Section 11.08 - Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provisions of the Project 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 provisions of the Project 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 this Declaration, the Article or the Bylaws, (ii) a termination of the Project or (iii) certain actions of the Association as specified in Sections 11.02, 11.03 and 11.05 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 so long as there is a Class "B" Membership in the Association, the Declarant, 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, the Veterans Administration or any other federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by Declarant.

## **ARTICLE 12** **TERM**

This Declaration shall remain in full force and effect for a period of twenty (20) years from the date hereof. After such twenty (20) year period, this Declaration shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked by an amendment in writing, executed and acknowledged by the then Owners representing not less than two-thirds (2/3) of the Lots, or such higher percentage as required by applicable law, and recorded in the Maricopa County, Arizona Recorder's Office, within sixty (60) days prior to the expiration of the initial period hereof or any ten (10) year extension. Notwithstanding the foregoing, any amendment of this Declaration is subject to the approval of Declarant so long as Declarant owns any Lot or any interest in the Project. Upon the expiration, revocation, termination or revocation of this Declaration, title to the Common Areas shall immediately pass in equal, undivided interests to the Owners, as tenants in common, but each Owner shall nevertheless continue to be individually and collectively liable under the duty to pay its pro rata share of the costs of the maintaining the Association Areas of Responsibility, payment of all taxes assessed or due with respect to the Common Areas and securing and paying the premium for

comprehensive general liability insurance for all Association Areas of Responsibility. If any Owner does not pay its pro rata share within twenty (20) days following written demand from any other Owner or the city or town within which the Property is located, and if any other Owner or the city or town pays the delinquent Owner's pro rata share, the Person paying such delinquent Owner's pro rata share shall be entitled to assess the delinquent Owner's Lot, impose a lien upon and enforce such lien upon the delinquent Owner's Lot in accordance with the provisions of Article 8 hereof, as if such Person was the Association. The foregoing provisions of this Article shall survive the expiration, revocation, termination or cancellation of this Declaration.

## **ARTICLE 13 GENERAL PROVISIONS**

### Section 13.01 - Amendments

A. Except for amendments made pursuant to Sections 3.16, 8.03 or 8.04 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners entitled to cast not less than sixty-seven percent (67%) of the votes in the Association.

B. Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the recording by Declarant of a Certificate of Amendment duly signed by or on behalf of the Declarant, specifying the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested or required by such agency or institution. The recording of such a 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 the Project and all persons having an interest therein. It is the intent of Declarant to retain control of the Association and its activities during the anticipated 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 thereto, other and different control provisions.

C. So long as Declarant or Optionor owns any Lot, any amendment to this Declaration must be approved in writing by Declarant and Optionor.

D. Any amendment approved pursuant to Section 13.01 (A) or Section 13.01 (B) of this Declaration 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 Section 11.08 of this Declaration shall be executed by Declarant and shall be recorded with the County Recorder of Maricopa County, Arizona.

Section 13.02 – Interpretation of Covenants. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the terms of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the terms of this Declaration, the Architectural and Landscaping Standards, the Rules and Regulations and the Project Documents shall be final, conclusive and binding upon all Persons, any Lot and the Project.

Section 13.03 – Severability. Any determination by any court of competent jurisdiction that any term of this Declaration is invalid, illegal or unenforceable shall not affect the validity, legality or enforceability of the remaining provisions of this Declaration and the same shall remain in full force and effect.

Section 13.04 – References to This Declaration. Any and all instruments of conveyance or lease of any interest in any Lot must contain reference to this instrument and shall be subject to the terms of this Declaration the same as if they were therein set forth in full. Notwithstanding the foregoing, the terms of this Declaration shall be binding upon all Owners and all other persons and entities affected by the same, whether such express reference is made to this Declaration or not.

Section 13.05 – Waiver of Abandonment. The failure to enforce any breach or violation of any of the provisions of this Declaration shall not constitute an abandonment or a waiver of any right to enforce such provision or of any of the other terms hereof.

Section 13.06 – Violation of Law. Any violation of any federal, state, municipal or local law, ordinance or regulation, including zoning laws or ordinances pertaining to the ownership, occupation or use of any Lot is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 13.07 – Accents and Committees. The Board shall have the right to appoint agents or committees or both to act on behalf of the Association for the purpose of exercising any right, power or duty given to or imposed upon it by this Declaration.

Section 13.08 - Waiver of Damages. The Declarant and the Association and their respective officers, directors, employees and agents shall not be liable for damages to anyone relating in any manner to their actions or failures to act in performing or failing to perform their respective responsibilities and functions under this Declaration by reason of mistake in judgment, negligence, malfeasance or nonfeasance and each and every Owner, by accepting a deed to or acquiring any ownership interest in a Lot, thereby agrees to indemnify and hold harmless the Declarant and the Association and their respective officers, directors, employees and agents in respect to the foregoing, except where such indemnification is contrary to Arizona law.

Section 13.09 - Remedies Cumulative. Each remedy provided by this Declaration is cumulative and non-exclusive.

Section 13.10 - Gender and Number. Whenever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders, words used in the singular shall include the plural and words used in the plural shall include the singular.

Section 13.11 - Captions, Tables and Headings. All captions, titles and headings in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context of the terms of this Declaration.

Section 13.12 – Limitation on Declarant’s and Obtainer’s Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner, and each other person, by acquiring any interest in the Project, acknowledges and agrees, that neither Declarant, Monterey nor Optionor (including, but not limited to, any assignee of the interest of such parties) nor any partner, shareholder, officer, director, employee or affiliate of Declarant, Monterey or Optionor shall have any personal liability to the Association, or to any Owner, Member or other person, arising under or in connection with this Declaration or resulting from any action or failure to act with respect to this Declaration, the Association or the Committee except, in the case of Declarant, Monterey or Optionor (or their assignees), to the extent of their respective interests in the Project; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

Section 13.13 – Attorneys’ Fees and Costs. The Declarant and the Association shall be entitled to collect from any Owner any attorneys' fees and related costs incurred in connection with enforcement action taken against an Owner or his

Lot pursuant to provisions contained within this Declaration, and any such amount shall be a charge and a continuing lien upon the Lot of said Owner.

**ARTICLE 14**  
**GOVERNMENTAL APPROVALS**

If certification from the Federal Housing Administration (FHA) or the United States Veterans Administration (VA) is sought by Declarant, the following actions will require the prior approval of the FHA and VA, unless such agencies have waived such requirements or unless the last sentence of this Section applies: (i) annexation of additional properties into the Project (unless such annexation is in accordance with a plan of annexation or expansion previously approved by such agency); (ii) mergers and consolidations; (iii) mortgaging or otherwise encumbering Common Area; (iv) dedication or other transfer of Common Areas; (v) dissolution of the Association; and (vi) amendment of provisions of this Declaration or other Project Documents to the extent required to be approved by the FHA or VA pursuant to their rules and regulations. Consent of the FHA and VA to the foregoing will not be required if the FHA and VA have elected not to approve the Project for certification or if such approval has been revoked, withdrawn, cancelled or suspended.

IN WITNESS WHEREOF, the undersigned have executed this Declaration this 25th day of November, 1997.

MONTEREY HOMES CONSTRUCTION, INC.,  
an Arizona corporation

By \_\_\_\_\_

Its \_\_\_\_\_

RIETVELD PRESERVE, L.L.C., an Arizona  
limited liability company

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF ARIZONA

County of Maricopa

On this 26<sup>th</sup> day of November 1997, before me personally appeared \_\_\_\_\_ the \_\_\_\_\_ of Monterey Homes Construction, inc., an Arizona corporation, known to me to be the person whose name is subscribed to the foregoing Covenants, Conditions and Restrictions, and being authorized to do so, acknowledged that he executed the same for the purposes contained therein.

\_\_\_\_\_  
Notary Public

STATE OF ARIZONA

County of Maricopa

OFFICIAL SEAL

KIM MARIE PITT Notary Public - State of Arizona MARICOPA COUNTY M"omm Emirec  
March F. 2nnn

On this 26th day of November, 1997, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Rietveld Preserve, L.L.C., an Arizona limited liability company, known to me to be the person whose name is subscribed to the foregoing Covenants, Conditions and Restrictions, and being authorized to do so, acknowledged that he executed the same for the purposes contained therein.

\_\_\_\_\_  
Notary Public

My Commission Expires:

## **EXHIBIT "A"**

### **ARCHITECTURAL AND LANDSCAPING**

#### **DESIGN AND REVIEW**

#### **STANDARDS AND PROCEDURES FOR**

#### **THE PRESERVE**

1. Introduction. The following Architectural and Landscaping Design and Review Standards and Procedures ("Architectural and Landscaping Standards") are established to provide standards and procedures to be used in the planning, design and construction of all Improvements (as defined below) on Lots within the Project, thus insuring the development and maintenance of the Project as an attractive, exclusive, harmoniously designed residential community. These Architectural and Landscaping Standards are part of the Declaration to which these Architectural and Landscaping Standards are attached and shall be binding upon each Owner who at any time wishes to construct, reconstruct, refinish, remodel or alter any Improvements on its Lot or install or modify Landscaping on its Lot or makes any changes to the natural or existing surface or drainage thereon. The Association, acting by and through the Board, shall have the authority to take whatever steps are necessary to enforce these Architectural and Landscaping Standards. These Architectural and Landscaping Standards may be amended from time to time in accordance with Section 4.03 of the Declaration, and it shall be the responsibility of each Owner or other interested party to obtain and review a copy of the most recently revised Architectural and Landscaping Standards.

2. Definitions. Capitalized words used herein shall have the same meanings designated for such words in Article 1 of the Declaration. In addition, the following words or phrases, when used herein, shall have the following meanings:

(a) "Architect" means a person appropriately licensed to practice architecture in Arizona.

(b) "Builder" means a person or entity engaged by an Owner for the purposes of constructing any Improvement within such Owner's Lot. All Builders must hold a current Arizona contractor's license in good standing.

(c) "Enclosed Area" means any fenced or screened rear yard area on a Lot or any areas of front entrance to a Living Unit which are not visible from the street which is located immediately adjacent to the front of the Lot.

(d) "Grading" means any disturbance of the surface of a Lot (except to the extent reasonably necessary for planting of approved vegetation), including any trenching *which* results in the removal of earth, rock or other materials from a depth of more than twelve (12) inches below the natural surface of a Lot, or any grading of the surface of a Lot.

(e) "Indigenous Specie" means specie of plant, whether ground cover, shrub, cactus or tree, which is listed on the Indigenous Plant List, set forth in Appendix A hereto.

(f) "Natural Area" means that portion of the natural desert within a Lot which must remain undisturbed pursuant to the regulations of the City, and no Improvements are to be built within the Natural Area.

(g) "Prohibited Plants" means those plants and trees **which are listed on the Prohibited Plant List set forth in The Preserve Rules and Regulations to Landscaping. REVISED 7-22-2003**

(h) "Protected Plants" means those Indigenous Species of trees or cacti listed in the City's Native Plant Ordinance No. 455, Article 7, as may be amended from time to time, including, without limitation, those of four (4) inch caliper or six (6) foot height or greater, including: ironwood, mesquite, palo verde, saguaro, barrel cactus, ocotillo and yucca.

(i) "Unenclosed Area" means that part of any Lot excluding the Natural Area and any Enclosed Area.

3. Architectural Design Standards. The concept and design of all proposed Improvements to be constructed on each Owner's Lot must be approved by the Committee. It is recommended that each Owner retain competent professionals to plan and design Improvements. Only plans of professional quality will be accepted for review by the Committee. Each Owner must strictly comply with these Architectural and Landscaping Standards, the Declaration, the Rules and Regulations and any ordinances, laws and regulations of any governmental authority, in order to bring the design review process to a speedy and satisfactory conclusion. The following architectural standards must be followed in connection with any Improvements on any Lot:

(a) Southwestern Design. In order to create a unified theme, the exterior of all Improvements must be a design consistent with what is commonly known as "Southwestern Architecture".

(b) Size. Living Units shall exceed two thousand eight hundred (2800) square feet of living area unless there are special circumstances requiring

unique design solutions, in which case the size requirements can be slightly modified by the Committee.

(c) Height and Siting of Structures. Living Units shall be limited to a maximum height of (i) **twenty four (24)** feet above the highest adjacent natural grade portion of the Lot or (ii) any lower height limitations imposed by the City. Sensitivity to height and relationship to other Living Units immediately surrounding the Lot must be taken into consideration and will play a role in the review process by the Committee.  
**REVISED 7-22-2003**

(d) Walls and Fencing. Exterior walls with a stuccoed finish may be used for privacy. All fencing and walls built upon a Lot shall be of masonry and/or wrought iron material only and shall be meandering in configuration. Walls are required as screening to enclose all above-ground garbage and trash containers, heating and cooling equipment and other outdoor maintenance and service facilities, and such walls should be a visual extension of the architecture of the Living Unit. The maximum allowable height of walls shall be **six (6)** feet measured from the top of the exterior side of the wall to the natural grade immediately adjacent to said wall, and a wall may not exceed an average of six (6) feet in height measured as herein provided. The color of walls must conform to the color standards set forth in Section 5 below. Walls may not be intended to delineate property lines. Acceptability of wall locations and heights shall be determined by the Committee. **REVISED 7-22-2003**

(e) Garages. In order to establish a visually attractive residential streetscape and to encourage architectural creativity, side entry garages shall be encouraged on all Living Units. No garage doors directly facing a residential street shall be permitted except in cases of extreme hardship as determined in the sole discretion of the Committee. Hardship shall be determined on the basis of safety, Lot grade and configuration, visibility from neighboring property and the architectural appropriateness and integrity of the proposed Living Unit as sited on the Lot as it relates to surrounding residences. In the event a hardship is determined to exist and a front-entry garage is permitted (garage doors facing the street), the garage facade shall be stepped back or recessed from the primary face of the Living Unit so as to diminish its prominence, and in such event, the maximum number of street-facing doors shall be three (3). In the event that a 3-door front-entry garage is approved, the face of all three garage doors may not be on the same plane; at least one door must be stepped back or recessed from the others and further differentiated by its roof line and treatment. All garage stalls must be immediately adjacent to each other. No garage door shall be permitted to be more than two (2) feet higher than any other garage door or standardized garage doors and no such larger than normal garage doors shall be permitted on front entry garages.

(f) Solar Application. Passive solar application or the orientation and design of the Living Unit for winter solar gain will reduce winter heating needs and will

be encouraged. Solar collectors, however, can result in excessive glare and reflection and must be approved by the Committee. REVISED 7-22-2003

(g) HVAC Facilities. No heating, air conditioning, evaporative cooling or similar facilities may be installed, constructed or maintained upon any Living Unit unless (i) such facilities are installed in such a manner so they are not Visible from Neighboring Property and (ii) the Committee has approved the installation of such facilities.

(h) Tennis/Sports Courts. Tennis/sports courts shall be permitted only if, in the judgment of the Committee, after proper application, the proposed tennis/sports court is not detrimental to the view from surrounding properties and does not materially interfere with a harmonious and orderly development of the Project. The process to obtain approval of a tennis/sport court is the same as set forth in Section 9 below.

(i) Lights. Only low level, low intensity accent lights will be allowed at exterior locations on Lots and such lights must be used in a manner that softens the exterior character of the Living Unit. Spot lights or other lights shall not be installed, maintained or used in a manner which causes glare to neighboring property or an annoyance to the Occupant of neighboring property within the Project. Tennis or sport court and overhead swimming pool lights, shall not be allowed except as approved by the Committee. Tennis and sport court lighting shall not be utilized between the hours of 11:00 p.m. and 6:00 a.m. All outside lights will be of a height, design and type approved by the Committee.

(j) Roofs. All roofs shall be of a material, color and texture approved by the Committee. The overall appearance of the Living Unit will be an important consideration. The Committee may approve pitched roofs up to a maximum pitch of 5 in 12. The color of roofs must conform to the color standards set forth in Section 5 below. Reflective roof surfaces which cause excessive glare are not allowed. Only roofs composed of clay, sandcast or concrete flat tiles or another material approved by the Committee shall be constructed on any Lot. No asbestos or shake shingle roofs shall be allowed.

(k) Driveway Construction and Use. The location of a driveway on all Lots is subject to the Committee's approval. All driveways shall be paved with concrete or crushed granite materials approved by the Committee. Each driveway shall be at least fifteen (15) feet in width. The use of special texturing, integral color, borders, etc. shall be encouraged to upgrade the appearance of driveways.

(l) Basketball Goals and Play Structures. No basketball goal, backboard or similar structure or devise, and no swing set or other play structure, which is Visible From Neighboring Property shall be placed or constructed on any Lot without the prior written approval of the Committee (including, but not limited to, approval of appearance and location). In no event shall basketball goals be permitted to be attached to any Living Unit. All basketball goals must be installed, placed and kept no further forward on any Lot than the garage doors of the Living Unit situated on that Lot. Permanent basketball goals must include a free standing pole, which must be painted the color of the body of the Living Unit. The backboard of any basketball goal must be composed of a clear material.

(m) Setbacks. The front, rear, left and right side yard setbacks shall conform with the Code of the City.

(n) Porte Cochere. A *porte cochere* shall be permitted on a Lot so long as (i) the side of the *porte cochere* closest to the street does not extend closer than forty (40) feet from the front yard property line; (ii) the *porte cochere* extends completely over the width of the driveway; (iii) the *porte cochere* is for the sole purpose of vehicular unloading and (iv) the design of the *porte cochere* is approved in writing by the Committee.

(o) Antennas, Poles, Towers and Dishes. Since television, radio, shortwave, microwave, satellite and other antennas, poles, towers, masts, dishes or other similar devices ("Transmission/Reception Devices") can be unsightly, intrusive and inconsistent with the desired character and appearance of the Project, it is essential that the installation within the Project of all such Transmission/Reception Devices be monitored and controlled by the Association to eliminate or minimize the visibility of such devices from all areas within the Project. Accordingly, each Owner, as essential consideration for the deed to its Lot, and except as may be limited by any applicable law, shall be deemed to have covenanted that no Transmission/Reception Devices shall be placed, constructed, installed or maintained upon its Lot (including, but not limited to, upon the roof or exterior walls of any Living Unit or other structure) unless the Transmission/Reception Device is fully screened and is not Visible From Neighboring Property due to a parapet wall or other structure which conforms architecturally with the structure of the Living Unit; or the Transmission/Reception Device is otherwise fully and attractively screened and not Visible From Neighboring Property. Any means of screening or concealment shall be subject to the Architectural and Landscaping Standards adopted by the Committee and shall be subject to approval by the Committee.

#### 4. Materials.

(a) Exterior Surface Materials. Exterior surfaces shall be generally of natural materials that blend and are compatible with the natural landscape. Masonry

and stucco are to be the predominant exterior surfaces. These materials provide an outer surface to withstand the climatic extremes. Large expanses of wood surfaces will not weather well in desert conditions and will not be approved. No exposed metal or wood siding shall be allowed as an exterior construction material; provided, however, that wood beams shall be an acceptable construction material.

(b) Reflective Finishes. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any of the following: roofs, all projections above roofs, retaining walls, doors, trim, walls, fences, pipes and equipment.

(c) Windows. All aluminum window frames must be anodized-bronzed or another color approved by the Committee or coated with an equivalent finish acceptable to the Committee, and no white or mill colored finishes will be allowed.

5. Color. The color of all of all external materials must generally be earth tones and muted to allow the natural colors of the desert to predominate, and in no event shall external materials with a light reflective value (LRV) in excess of fifty percent (50%) be used in the construction of any Improvements on any Lot. Approval of all colors of external materials used in construction of Improvements on any Lot must be obtained from the Committee prior to construction.

6. Miscellaneous Architectural Standards. In addition to other restrictions contained herein, the following restrictions shall apply to all Improvements constructed or installed on the Lots.

(a) Mechanical Systems. No rooftop mechanical units are allowed. All ground-based systems shall be screened by approved Landscaping, building configuration or walls.

(b) Service Yard. Walls are required as screening for a service yard, if any, to enclose all above-ground heating and cooling equipment, garbage and trash containers, clotheslines and other outdoor maintenance and service facilities.

(c) Mailboxes. The design and location of mailboxes and newspaper tubes must be approved by the Committee, and the Committee may require that mailboxes be grouped. In any event, mailboxes are to be located in conformance with U.S. Postal Service requirements.

(d) Additions; Alterations; Reconstruction. All additions, alterations or reconstruction to the Living Unit or to any other Improvement on a Lot shall be

reviewed and approved by the Committee to ensure conformance with previously approved design and quality.

(e) Utility and Irrigation Meters and Panels. No utility or service equipment or lines may be installed or located on any Lot except as has been approved by the Committee. No utility meter or apparatus shall be located on any pole or attached to the outside of any Improvement which is exposed to view from any street within the Project. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls as necessary to comply with the requirements, requests, regulations, orders, commissions or specifications of any public, quasi-public or private utility or any governmental agency or body provided that reasonable efforts shall be made to avoid placing any such meter, panel or equipment on the outside front wall of any Living Unit or other building facing the street directly in front of or to the side of the Living Unit. All sprinkler and irrigation controls, valves, panels and equipment installed on any Lot shall be installed so as not to be visible from any street directly in front of or to the side of any Lot.

(f) New Construction. All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be moved from other locations onto any Lot.

7. Site Development. No excavation or Grading shall be performed on any Lot without the prior written approval of the Committee. No Owner shall erect, construct, maintain, permit or allow any fence, building pad or other Improvement which interrupts the normal drainage of the land within any Lot without the prior written approval of the Committee. On-Lot retention shall be maintained pursuant to the ordinances of the City. No Owner shall alter the elevation of natural grade without the prior written approval of the Committee, and any Grading must be performed with minimum disruption to the Lot and shall not cause water existing on the Lot to drain from different points, in greater quantities or at greater velocities than occurred in its natural condition. On-Lot retention shall be maintained pursuant to the ordinances of the City.

8. Landscaping Standards. Except as necessary in connection with the routine maintenance of Landscaping, no Landscaping shall be planted, installed or placed on or removed from any Lot unless and until a landscaping plan for such is submitted to and approved by the Committee, all in accordance with these Architectural and Landscaping Standards.

(a) Landscaping Requirements. Except as necessary in connection with the routine maintenance of Landscaping, no Landscaping shall be removed from or planted, placed or replaced on any Lot unless and until the plans and specifications for such Landscaping are submitted to and approved by the Committee, all in

accordance with these Architectural and Landscaping Standards. If the front yard Landscaping on each Lot is not installed, and if any areas disturbed during construction are not revegetated (the "Revegetation"), prior to the closing of the sale of a Lot by Declarant to a Purchaser of the Lot, the Purchaser of the Lot shall, within sixty (60) days of the closing of its purchase of the Lot, cause the front yard Landscaping on its Lot to be fully installed and revegetate all areas disturbed during construction, all in accordance with a landscape plan approved by the Committee. If the front yard Landscaping of a Lot is not installed or Revegetation is not completed prior to the closing of the sale of such Lot by Declarant to a Purchaser, the Purchaser of such Lot shall pay to the Association, at the closing for the purchase of its Lot, a front yard Landscaping and Revegetation deposit in the amount of Three Thousand Five Hundred Dollars (\$3500) (the "Landscaping Deposit"). The Landscaping Deposit, less any applicable review fee, shall, within ten (10) business days of the Committee's confirmation of the completion of the front yard Landscaping and Revegetation, be returned by the Association to the Owner who paid the Landscaping Deposit, provided that the front yard Landscaping and Revegetation are fully installed on that Owner's Lot within the sixty (60) day period provided for above and provided, further, that such Landscaping and Revegetation are completed in conformance with plans and specifications approved by the Committee and otherwise fully complies with the criteria set forth in the Architectural and Landscaping Standards. In the event an Owner fails to comply with the requirements set forth in this Section, the Landscaping Deposit shall be forfeited by the non-complying Owner and the Association shall be entitled to take all available action necessary to cause such Landscaping and Revegetation to be installed, including the initiation of legal proceedings against the non-complying Owner. In the event of such non-compliance, the Association shall also have the right to levy a fine against such Owner and suspend such Owner's rights under this Declaration and the Project Documents. The non-complying Owner shall be responsible for all fees and costs incurred by the Association or the Declarant in connection with the enforcement of this Section, including reasonable attorneys' fees, and such amounts shall be added to and become part of the Assessment for which the non-complying Owner's Lot is subject.

(b) Protected Plants. Protected plants are those existing desert plants which must be protected due to size and type pursuant to governmental standards. Improvements must be sited to avoid Protected Plants. If transplanting of Protected Plants is required in order to create a usable building pad, it is recommended that professionals be consulted.

(c) Natural Area. Each of the Lots is subject to City ordinances relating to the preservation of natural area open spaces and by accepting a deed to a Lot, an Owner agrees to leave the Natural Area in its undisturbed and natural state and to comply with all such ordinances. Each Owner shall also fully comply with City statutes and ordinances which (i) prohibit grass from being planted or maintained on certain parts of Lots, (ii) restrict the amount of grass which may be installed on Lots

or (iii) restrict certain types of Landscaping from being installed on Lots. Owners understand that severe fines may be imposed for violation of any natural area open space and landscaping ordinances, and each Owner, by accepting a deed to a Lot, agrees to be responsible for any fines imposed by the City as a result of any violation of natural area open space and landscaping ordinances affecting such Owner's Lot. Consistent with a restriction imposed by the City in connection with the approval of the Plat that a five foot (5') compacted shoulder be maintained on one side of the Roadway throughout the Project, no Landscaping other than compacted gravel may be installed within five feet (5') of the back of curbs adjacent to Lots 19-32, 48-60, 76-94 and 116-128.

(d) **Native Area.** The plant materials permitted to be used in the Native Area are listed on the Native Plant List set forth in The Preserve Rules and Regulations to Landscaping. REVISED 7-22-2003

(e) **Enclosed Area.** Any plant materials except the Prohibited Plants may be used in the Enclosed Area, provided they are not Visible from Neighboring Property.

(f) **Prohibited Plants.** Under no circumstances shall any of the Prohibited Plants be planted on any Lot.

(g) **Fire Break.** Adequate precautions should be taken with Landscaping to protect from brush fires. Please consult with the City for current guidelines and requirements.

9. **Design Review Procedures.** The process for obtaining approval from the Committee of proposed Improvements and Landscaping is set forth in this Section.

(a) **Initial Consultation.** Prior to preparing preliminary plans for any proposed Improvement and Landscaping, it is mandatory that the Owner and/or its Architect meet with the Committee or a member thereof or its appointed consultant to discuss proposed plans and to explore and resolve any questions regarding architectural and Landscaping requirements in the Project. This informal review is intended to provide guidance prior to initiating the preliminary design. An appointment with the Committee for a pre-design meeting should be made at least one week in advance. Conceptual elevations and a site plan must be presented at the pre-design meeting.

(b) **Preliminary Review.** Subsequent to the initial consultation, Owner and/or its Architect must submit to the Committee the following documents:

i) Site plan (at no less than 1" = 30'), showing the location of all Improvements proposed to be constructed thereon; all driveway and parking areas; a grading plan, including existing and proposed topography; utility connections; and finished floor elevations. Also shown must be the area where building materials and debris will be confined during construction.

ii) Preliminary Plans and Specifications for all Improvements proposed to be constructed on the Lot, including the exterior elevations, with both existing and proposed grades shown; the roof plan; floor plans; wall sections; and details of exterior decks or patios.

iii) Samples of all exterior materials and colors under consideration. Samples must be presented on an 18" x 24" board (at least 1/8" thick) clearly marked with Owner's name, filing date and Lot number. All samples must be identified by the manufacturer's name, color and style number.

iv) Preliminary landscape plan, on same scale as the site plan, showing areas to be irrigated, if any; proposed plants and sizes thereof; driveway; retainage; decorative features; etc.

v) An approximate time schedule indicating starting and completion dates of construction, utility hook-up, completion of landscaping work and anticipated occupancy date.

(c) Final Review. Subsequent to the preliminary review, the Owner and/or its Architect and/or Landscaping consultant must submit to the Committee a full set of detailed working drawings and specifications for all Improvements and Landscaping to be located on the Lot. The Committee shall not be deemed to have approved such plans until and unless it issues a written certificate of approval of such plans. All construction documents are to be in accordance with the final plans approved by the Committee. No construction shall commence until such final review is completed and such final approval is given by the Committee.

(d) Review of Plans. The Committee shall conduct reviews of plans during its regular meetings or at such other times as it deems appropriate. Owners, Architects or Builders shall have no right to attend any meeting of the Committee unless specifically requested by the Committee. The Committee shall have the right to disapprove any plans and specifications if they are not complete or are not suitable or desirable, in the Committee's opinion, for aesthetic or other reasons, in light of the general plan for the improvement and development of the Property as an attractive, exclusive, harmoniously designed residential development of custom homes. In so passing upon the plans and specifications for any Improvements, including any

Landscaping plans, and without limiting the foregoing rights of the Committee, the Committee shall have the right to take into consideration the character, color and design of the proposed Improvements, Landscaping, alterations, repair or change, the materials of which the proposed Improvements, Landscaping, alterations, repair or change is to be built or installed, the conformity of the proposed Improvements, Landscaping, alterations, repair or change with the standards contained in the schedules attached to the Architectural and Landscaping Standards, the site upon which the Improvements, Landscaping, alterations, repair or change is proposed to be erected, the extent to which natural growth and elevation would have to be altered, the harmony thereof with the surroundings and the effect of the proposed Improvements, Landscaping, alterations, repair or change on the adjacent or neighboring Lots. The Committee shall respond in writing within thirty (30) days after a submittal of all required documents is complete, provided that the plans are in accordance with the requirements outlined above. In the event the Committee fails to approve or disapprove in writing an application for an improvement, addition or alteration to a Lot within thirty (30) days after its receipt of a complete application, duly prepared in accordance with the rules promulgated by the Declarant or the Board, as the case may be, approval of the Committee will not be required for the Improvements, additions or alterations which were subject to the submitted application, provided such improvements, additions or alterations are carried out in precise conformity with such application. Results of reviews will not be discussed over the telephone by members of the Committee with an Owner or its Architect or Builder. Any responses an Owner may wish to make in reference to the Committee's notice following review of submitted plans must be addressed to the Committee in writing. An application fee of Two Hundred Fifty Dollars (\$250) per application, payable to the Association, may be required at the time the preliminary Plans are submitted if an outside architectural or Landscaping consultant is used by the Committee to review the submission.

(e) Resubmittal of Plans. In the event of any disapproval by the Committee of a submission, a resubmission of plans should follow the same procedure as an original submittal unless the Committee determines that the required revisions are minor in nature, in which case the Committee may, in its sole discretion, approve the plans with conditions and waive resubmission and/or payment of a new application fee.

(f) Commencement of Construction. Upon receipt of final approval from the Committee, the Owner shall diligently proceed with the commencement and completion of all construction pursuant to the approved plans. However, at least three days prior to commencement of construction or any other on-site work, Owner shall notify the Committee so that it can make a visual inspection of the Lot to insure that the final building layout and staking is in accordance with the final plans approved by the Committee. Owner shall satisfy all conditions and commence construction pursuant to the approved plans within six (6) months from the date of such approval.

If Owner shall fail to comply with this paragraph, any approval given shall be deemed revoked unless, upon the written request of Owner made to the Committee prior to the expiration of such six (6) month period and upon a finding by the Committee that there has been no change in circumstances, the time for such commencement is extended in writing by the Committee. Owner shall in any event complete construction of the foundation and all exterior surfaces (including the roof, exterior walls, windows and doors) of any Improvement on its Lot within one (1) year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to Owner due to strikes, fires, national emergencies or natural calamities.

(g) Work in Progress - Inspection. The Committee may inspect all work in progress and give notice of noncompliance. Absence of such inspection and notification during the construction period does not constitute either approval of the Committee of work in progress or compliance with these Architectural and Landscaping Standards or the Declaration.

(h) Completed Work.

i) Upon final completion of any Improvement or Landscaping for which final approval was given by the Committee, Owner shall give written notice of completion to the Committee.

ii) Within such reasonable time as the Committee may determine, but in no case exceeding ten (10) days from receipt of such written notice of completion from Owner or its duly authorized representative, the Committee may inspect the Improvements. If it is found that such work was not done in strict compliance with the final plan approved by the Committee, it shall notify Owner in writing of such noncompliance, specifying in reasonable detail the particulars of noncompliance, and shall require Owner to remedy the same.

iii) If, upon the expiration of thirty (30) days from the date of such notification by the Committee, Owner shall have failed to remedy such noncompliance, the Committee shall notify the Owner, and the Association may take such action as is necessary to remove the noncomplying Improvements or otherwise bring the noncomplying Improvements into compliance, including, without limitation, injunctive relief and/or the imposition of a fine.

(i) Prior Approval. The approval by the Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Committee under these Architectural and Landscaping Standards or the Declaration shall not be deemed to constitute a waiver

of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

(j) Right of Waiver. The Committee reserves the right to waive or vary any of the procedures or standards set forth herein at its discretion for good cause shown if the Committee determines in its discretion that (i) the procedure or standard would create a substantial hardship or burden on an Owner or (ii) the waiver will not have any substantial adverse effect on the other Owners in the Project.

(k) Subsequent Changes. Any change, deletion or addition to the plans and specifications approved by the Committee must be approved in writing by the Committee. Additional Improvements or Landscaping to a Lot and/or any changes after completion of approved Improvements must be submitted to the Committee for approval prior to making such changes and/or additions.

(l) Declarant's Exemption. The design review procedures set forth herein shall not apply to Declarant with respect to any Improvements or Landscaping constructed or installed by Declarant within the Project.

10. Construction Regulations. Builders, Owners and any subcontractors shall be bound by these regulations. Any violation by a Builder or subcontractor shall be deemed to be a violation by the Owner of the Lot.

(a) Debris and Trash Removal. Owners and Builders shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be removed from each construction site at least once a week to a dumping site located off the Project. Lightweight material, packaging and other items shall be covered or weighed down to prevent wind from blowing such materials off the construction site. Owners and Builders are prohibited from dumping, burying or burning trash anywhere on the Lot or in the Project, except in areas, if any, expressly designated by the Committee. During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore or affecting other Lots. Any clean-up costs incurred by the Association in enforcing these requirements will be billed to Owner. Dirt, mud or debris resulting from activity on each construction site shall be promptly removed from roads and driveways or other portions of the Project.

(b) Sanitary Facilities. Each Owner and Builder shall be responsible for providing adequate sanitary facilities for its construction workers. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Committee.

(c) Conservation of Landscaping Materials. Owners and Builders are advised of the fact that the Lots contain valuable native plants and other natural

landscaping materials that should be protected during construction, including topsoil, rock outcroppings and boulders and plant materials. Protected features of the landscape for which removal is prohibited should be marked and protected by flagging, fencing or barriers. The Committee may independently flag major terrain features or plants which are to be fenced off for protection. Any trees or branches removed during construction must be promptly cleaned up and removed immediately from the construction site.

(d) Off-Site Materials. Any rocks, plant material, topsoil or similar items shall not, without the prior written consent of the Committee, be removed from any Lot within the Project, including construction sites.

(e) Restoration or Repair of Other Damaged Property. Damage and scarring to adjacent Lots, streets and/or Improvements constructed thereon will not be permitted. If any such damage occurs, it must be repaired and/or restored promptly at the expense of the Owner of the Lot. Upon completion of construction, each Owner and Builder shall clean its construction site and repair all property which was damaged, including, but not limited to, restoring grades, plants, shrubs and trees as approved or required by the Committee and repair of streets, driveways, pathways, drains, culverts, ditches, signs, lighting and fencing.

(f) Construction Access. The only approved construction access during the time Improvements are being built will be over the approved driveways for the Lot unless the Committee approves an alternative access point.

(g) Vehicles and Parking Areas. Construction crews shall not park on, or otherwise use, other Lots. Private and construction vehicles and machinery shall be parked only in areas designated by the Committee. All vehicles shall be parked so as not to inhibit the flow of traffic and within the designated areas so as not to damage the Natural Areas.

(h) Equipment Cleaning. Changing oil on any vehicle or equipment or allowing concrete suppliers and contractors to clean their equipment on the site itself at other than a location designated for that purpose by the Committee is prohibited.

(i) Dust and Noise. Owner and his builder shall be responsible for controlling dust and noise from the construction site (including the use of radios by construction crews).

WHEN RECORDED, RETURN TO:

C. Timothy White, Esq.  
Tiffany & Bosco, P.A.  
1850 N. Central Ave., Suite 500  
Phoenix, Arizona 85004

OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER HELEN PURCELL  
98-0222085  
03/23/98 12:41

**FIRST AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS  
FOR  
THE PRESERVE**

Scottsdale, Arizona

This First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for The Preserve (this "First Amendment") is made as of the 20th day of February, 1998, by Monterey Homes Construction, Inc., an Arizona corporation (the "Declarant"), with reference to the following:

A. Declarant is the Class "B" Member and currently holds all votes entitled to be cast in the Association under that certain Declaration of Covenants, Conditions, Restrictions and Easements for The Preserve recorded on December 2, 1997, as Document No. 97-0846951 in the Official Records of Maricopa County, Arizona (the "Declaration").

B. Pursuant to the authority vested in Declarant under Section 13.01 of the Declaration, Declarant desires to amend certain provisions of the Declaration.

NOW, THEREFORE, Declarant hereby amends and supplements the Declaration as follows:

1. Recitals and Definitions Incorporated. The recitals set forth above are by this reference incorporated herein. All terms which are capitalized in this First Amendment, thereby indicating their use as defined terms, shall have the meaning given to such terms in the Declaration.

2. Mailbox Facilities Easement. Section 5.08 of the Declaration is hereby amended to read as follows:

*Section 5.08 – Mailbox Facilities Easement The Association and the United States Post Office shall have an easement over Lots 28, 48, 57, 75, 87, 110, 133 and Tract "O" and such other Lots as may hereafter be designated by Monterey and as may be necessary for the installation, operation, maintenance and repair of a pad located within the right-of-way on said Lots or Tract (the "Mailbox Sites") to be used as the sites for the mailbox facilities for the Project. In addition, each Owner shall have a non-exclusive easement over the Mailbox Site on which the mailbox for such Owner's Lot is located for access to and use of the mailbox facility situated thereon.*

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

IN WITNESS WHEREOF, the undersigned has executed this Declaration this First Amendment as of the day and year set forth above.

MONTEREY HOMES CONSTRUCTION, INC., an  
Arizona corporation

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF ARIZONA

County of Maricopa

On this 24th day of February, 1998, before me personally appeared \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of Monterey Homes Construction, Inc., an Arizona corporation, known to me to be the person whose name is subscribed to the foregoing First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he executed the same for the purposes contained therein.

"OFFICIAL SEAL\*  
Marie E. Muller  
Notary Public-Arizona  
Maricopa County  
My Commission Expires 8/6/2001

02-2-7085

**CONSENT OF OPTIONOR  
TO FIRST AMENDMENT  
OF  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS**

To satisfy the requirement of Section 13.01 (C) of the Declaration, Rietveld Preserve, L.L.C, an Arizona limited liability company, hereby approves the foregoing First Amendment dated February       , 1998.

DATED this 2-Q - day of 1998.

RIETVELD PRESERVE, L.L.C., an Arizona  
limited liability company

By: C'  
Its: Managing Agent

STATE OF ARIZONA  
County of Maricopa

On this - G' day o       , 1998, before me personally appeared GUY C. WILSON, as the Managin Agent of 'etveld Preserve, LLC., an Arizona limited liability company, known to me to be the person whose name is subscribed to the foregoing Consent of Optionor to First Amendment 'to Declaration of Covenants, Conditions, Restrictions and Easements, and being authorized to do so, acknowledged that he executed the same on behalf of the company for the purposes contained therein.

Notary Public

My Commission Expires: