

TABLE OF CONTENTS

1. DEFINITIONS 1

 1.1 Annexation Property 1

 1.2 Articles 2

 1.3 Assessments 2

 1.4 Association 2

 1.5 Association Rules 2

 1.6 Board 3

 1.7 Bylaws 3

 1.8 Canal 3

 1.9 Common Areas 3

 1.10 Common Expenses 3

 1.11 County 5

 1.12 Declaration 5

 1.13 Design Review Committee 5

 1.14 Single Family 5

 1.15 Index 5

 1.16 Lot 5

 1.17 Majority of Members 6

 1.18 Member 6

 1.19 Mortgage 6

 1.20 Occupant 7

 1.21 Owner 7

 1.22 Parcel 7

 1.23 Person 7

 1.24 Plat 7

 1.25 President 7

 1.26 Private Road 7

 1.27 Property 7

 1.28 Proportionate Share 8

 1.29 Proxy 8

 1.30 Record or Recording 8

 1.31 Supplemental Declaration 8

2. RIGHTS OF ENJOYMENT 8

 2.1 Members' Right of Enjoyment 8

 2.2 Delegation of Use 9

 2.3 Waiver of Use 10

 2.4 Use of Private Roadways and Canals for Access 10

3.	<u>MEMBERSHIP</u>	10
3.1	<u>Memberships.</u>	10
3.2	<u>Transfer of Memberships.</u>	11
4.	<u>ASSOCIATION.</u>	11
4.1	<u>Purpose of Powers of the Association.</u>	11
4.2	<u>Membership in Association</u>	12
4.3	<u>Pledge of Voting Rights.</u>	12
4.4	<u>Board of Directors.</u>	12
4.5	<u>Board's Determination Binding.</u>	13
4.6	<u>Approval of Members.</u>	13
4.7	<u>Additional Provisions in Articles and Bylaws.</u>	14
4.8	<u>Association Rules.</u>	14
4.9	<u>Indemnification.</u>	15
4.10	<u>Non-Liability of Officials.</u>	15
4.11	<u>Easements.</u>	16
4.12	<u>Accounting.</u>	16
4.13	<u>Records.</u>	16
4.14	<u>Managing Agent.</u>	16
5.	<u>EASEMENTS</u>	17
5.1	<u>Blanket Easements.</u>	17
5.2	<u>Use of Common Area</u>	17
5.3	<u>Special Utility Easement.</u>	18
6.	<u>ASSESSMENTS.</u>	18
6.1	<u>Creation of Lien and Personal Obligation</u>	18
6.2	<u>Purpose of Assessments.</u>	19
6.3	<u>Regular Assessments.</u>	19
6.4	<u>Special Assessments.</u>	20
6.5	<u>Capital Improvement Assessments.</u>	21
6.6	<u>Uniform Assessment.</u>	22
6.7	<u>Exempt property.</u>	22
6.8	<u>Time and Manner of Payment; Late Charges and Interest.</u>	22
6.9	<u>No Offsets.</u>	23
6.10	<u>Homestead Waiver.</u>	23
6.11	<u>Reserves.</u>	23
6.12	<u>Subordination of Lien.</u>	24
6.13	<u>Certificate of Payment.</u>	24
6.14	<u>Enforcement of Lien.</u>	24
6.15	<u>Pledge of Assessment Rights as Security.</u>	25
7.	<u>INSURANCE.</u>	25
7.1	<u>Authority to Purchase</u>	25

7.2	<u>Member's Responsibility.</u>	26
7.3	<u>Coverage.</u>	26
7.4	<u>Required Provisions.</u>	27
7.5	<u>Non-Liability of Association/Board.</u>	29
7.6	<u>Premiums.</u>	29
7.7	<u>Insurance Claims</u>	29
7.8	<u>Benefit.</u>	30
8.	<u>DAMAGE AND DESTRUCTION OF COMMON AREAS</u>	30
8.1	<u>Duty of Association.</u>	30
8.2	<u>Automatic Reconstruction.</u>	30
8.3	<u>Vote of Members.</u>	30
8.4	<u>Excess insurance Proceeds</u>	31
8.5	<u>Use of Reconstruction Assessments</u>	31
8.6	<u>Contract for Reconstruction.</u>	31
8.7	<u>Insurance Proceeds Trust.</u>	32
9.	<u>EMINENT DOMAIN.</u>	32
9.1	<u>Definition of Taking.</u>	32
9.2	<u>Representation in condemnation Proceedings.</u>	32
9.3	<u>Award for Common Areas.</u>	32
10.	<u>MAINTENANCE, REPAIRS AND REPLACEMENTS.</u>	33
10.1	<u>Owner's Responsibility.</u>	33
10.2	<u>Maintenance of common Areas.</u>	33
10.3	<u>Right of Access</u>	33
11.	<u>ARCHITECTURAL AND LANDSCAPE CONTROL.</u>	33
11.3	<u>General Provisions.</u>	35
11.4	<u>Approval and Conformity of Plans.</u>	35
11.5	<u>Non-Liability for Approval/Disapproval of Plans.</u>	36
11.6	<u>Inspection and Recording of Approval.</u>	37
11.7	<u>Reconstruction of Common Areas.</u>	37
11.8	<u>Additional Powers of the Board.</u>	37
12.	<u>USE AND OCCUPANCY RESTRICTIONS</u>	38
12.1	<u>Commercial Use.</u>	38
12.2	<u>Residential Use.</u>	38
12.3	<u>Violation of Law or Insurance.</u>	40
12.4	<u>Signs.</u>	40
12.5	<u>Animals.</u>	41
12.6	<u>Nuisances.</u>	41
12.7	<u>Boats and Motor Vehicles.</u>	42
12.8	<u>Lights.</u>	42

LAKE MOOVALYA KEYS HOA
P.O. BOX 5460
PARKER AZ 85344

*PATRICIA WALL, LA PAZ COUNTY RECORDER
REC REQ BY: LAKE MOOVALYA KEYS HOA
28 DEC 1995 02:26 PM PAGE 1 OF 22
RECORDING FEE \$233.00

AMENDED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

LAKE MOOVALYA KEYS



That the undersigned, being the owner of more than three-fourths(3/4) of the following prescribed premises situate within the County of La Paz, State of Arizona, to wit:

Lots 1-255 inclusive, Lake Moovalya Keys Amended, according to the plat of record in the office of the County Recorder of Yuma, County, Arizona, in Book 4 of Maps, page 136 thereof.

and pursuant to page 12 of that certain Declaration of Restrictions filed at Docket 438, page 692 through 704, Records of Yuma, (Now La Paz), County on 7/8/66 amend said Declaration of Restrictions, by rescinding said Declaration of restrictions, in their entirety, and hereby declare that the above described premises shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title, or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, The Lake Moovalya Keys, Inc. Association and each member thereof.

1. DEFINITIONS.

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of such term capitalized.

1.1 "Annexation Property" means any additional real property which is annexed to the property, thereby becoming a part thereof and subject to this Declaration, in accordance with Section 14, entitled "Annexation of Additional property."

1.2 "Articles" means the Articles of Incorporation of the Association, as such may be amended from time to time, or of any successor thereto.

1.3 "Assessments" shall include the following:

1.3.1 "Regular Assessment" means the amount which is to be paid by each Member of the Association as such Member's Proportionate Share of the Common Expenses of the Association, as provided in Section Six.

1.3.2 "Special Assessment" means a charge against a particular Member, an Owner or a Lot, directly attributable to such Member, Owner or Lot, to reimburse the Association for costs incurred in bringing the Member, the Owner of or the Lot into compliance with or otherwise enforcing the provisions of this Declaration or the Articles, Bylaws, or Association Rules, or any other charge designated as a Special Assessment in this Declaration or the Articles, Bylaws, or Association Rules, together with attorneys' fees and other charges payable pursuant to the provisions of this Declaration, as provided in Section 6.4.

1.3.3 "Reconstruction Assessment" means the amount which is to be paid by each Member representing such Member's Proportionate Share of the cost to the Association for reconstruction of any portion of the Common Areas, as provided in Section 8, entitled "Damage and Destruction of Common Areas."

1.3.4. "Capital Improvement Assessment" means the amount which is to be paid by each Member representing such Member's Proportionate Share of the cost to the Association for the installation or construction of any capital improvements on any of the common Areas which the Association may from time to time authorize pursuant to the provisions of Section 6.5.

1.4 "Association" means Lake Moovalya Keys, Inc., an Arizona non-profit corporation, its successors and assigns.

1.5 "Association Rules" means the rules and regulations adopted by the Association pursuant to Section 4.10.

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

1.7 "Bylaws" means the bylaws of the Association adopted in accordance with the Articles, as such Bylaws may be amended from time to time.

1.8 "Canal" shall mean that certain water and those certain bodies of water which course between the lots, under the bridges, and adjacent to common areas as are otherwise set forth in the plat identified on the premises described in the recitals hereof. "Canals" shall not include the real property which underlies such water.

1.9 "Common Areas" means all real property and the improvements or amenities thereon which may from time to time be owned or leased by the Association expressly for the common use and enjoyment of the Members or Owners. The Common Areas include, but are not limited to, the entrance and exit gates, private roads, bridges and boat ramps. Any real property, and improvements or amenities thereon, which are described as "Common Areas" in a Supplemental Declaration shall be deemed to be "Common Areas" as that term is defined herein for the common use and enjoyment of the Members or Owners, as may be provided in the Supplemental Declaration, and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration.

1.10 "Common Expenses" means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Property, including, but not strictly limited to, the following:

(a) maintenance, management, operation, repair and replacement of the Common Areas, including the Private Roads, and all other areas on the Project which are maintained by the Association;

(b) unpaid Assessments;

(c) maintenance by the Association of areas within the right-of-way of public access to the subdivision as provided in this Declaration or pursuant to agreements with the

County or other governmental agencies, and maintenance by the Association of the roadway and landscaping of the right-of-way constituting the principal entrance to the Project;

(d) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, bookkeepers, engineers, employees and other persons deemed necessary by the association to assist it in the performance of its duties and other matters;

(e) the costs of utilities, including but not limited to water, electricity, gas, sewer, trash pick-up and disposal, and fire protection services, which are provided to the Association and not individually metered or assessed by Lot; landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Property and which are provided by, or on behalf of, the Association;

(f) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Areas or the Association;

(g) the costs of any other insurance obtained by the Association;

(h) reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Association, which reserve fund shall be adequate to meet the costs and expenses of maintenance, repair and replacement of those Common Areas which must be maintained, repaired, or replaced on a periodic basis;

(I) the costs of bonding the members of the Board, the officers of the Association, any professional managing agent or any other person handling the funds of the Association;

(j) taxes paid by the Association;

(k) amounts paid by the Association for discharge of any lien or encumbrance levied against the common Areas or portions thereof;

(l) costs incurred by the Design Review committee;

(m) costs incurred by committees established by the Board or the President;

(n) costs of security guards, if any, and operation of guard gates and/or key gates at entrances to the Property, and any other security systems or services installed, operated or contracted for by the Association;

(o) any and all other expenses incurred by the Association for any reason whatsoever in connection with the common Areas (excepting reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other items or items designated by, or to be provided or performed by, the Association pursuant to, this Declaration the Articles, Bylaws, or Association Rules, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.11 "County" means the County of La Paz, Arizona, a political subdivision of the State of Arizona.

1.12 "Declaration" means this instrument, as from time to time amended.

1.13 "Design Review Committee" means the committee provided for in Section 11, entitled "Architectural and Landscape Control."

1.14 "Family" shall mean single family, which shall mean a husband and wife and their children, or an unmarried person or couple and their children, and their relatives.

1.15 "Index" means the index used in the adjustment of the Regular Assessments as provided in Section 6.3.4.

1.16 "Lot" means a subdivided lot. A "Lot" shall not include any Common Areas. A "Lot" includes the residential dwelling unit, garages, structures and other improvements constructed thereon.

1.17 "Majority of Members" means the Members holding more than 50% of the total votes entitled to be cast with respect to a given matter, whether or not present at a particular meeting; and, any specified fraction or percentage of the Members means the Members holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter. A specified fraction or percentage "of all of the Members" means that fraction or percentage of the total votes of all Members. Unless otherwise specified, any provision herein requiring the approval of the Members means the approval of a Majority of Members.

1.17.1 "Majority of the members present" or similar language which includes the word "present," means the members present or voting, whether in person, in writing or by proxy, at a particular meeting or for a particular purpose, regardless of the presence or participation of a majority of the members.

1.18 "Member" means every Person who holds a Membership in the Association pursuant to Section 3, entitled "Membership." An Owner is not necessarily or automatically a Member, as provided in Section 3.1.

1.19 "Mortgage" means any recorded, filed or otherwise perfected instrument given as security for the performance of an obligation, including without limitation a mortgage, a deed of trust or a recorded agreement of sale or contract for the sale of real property under the terms of which the purchaser is entitled to possession of a Lot, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means the mortgagee under a Mortgage, including the trustee and beneficiary under any deed of trust, or the vendor under a recorded agreement of sale or contract for the sale of real property. "Mortgagor" means the mortgagor executing a mortgage, the trustor under a deed of trust, the maker of any similar instrument constituting a Mortgage, or the purchaser entitled to possession under a recorded agreement of sale or contract for the sale of real property. "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property. "First Mortgagee" means the holder of a First Mortgage.

1.20 "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.

1.21 "Owner" means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation. A contract purchaser under a recorded agreement of sale or contract for the sale of real property wherein legal title to the property remains in the vendor shall be deemed to be an Owner and the vendor thereunder shall be deemed to be a Mortgagee. If title to a Lot is vested of record in a trustee under a deed of trust pursuant to Arizona Revised Statutes, Section 33-801 et seq., then, for purposes hereof, such title shall be deemed to be in the trustor, who shall be deemed to be an Owner.

1.22 "Parcel" means that parcel of real property referred to in the recitals hereof as "premises," which terms may be used herein interchangeably.

1.23 "Person" means any individual, corporation, partnership, joint venture, organization, association, trustee, governmental or political unit or agency, or other entity.

1.24 "Plat" means that plat(s) of subdivision of the Parcel as first recorded in the official records of the County, and as thereafter from time to time amended or supplemented, together with all subsequent plats of subdivision for real property annexed to the Property.

1.25 "President" means the duly elected or appointed president of the Association.

1.26 "Private Road" means any street, roadway, drive, sidewalk, walkway, path or other right-of-way within the Property which has not expressly been dedicated to the public use.

1.27 "Property" means the Parcel and any additional real property made subject to this Declaration by annexation pursuant to Section 14, entitled "Annexation of Additional Property," together with all buildings, improvements and other

permanent fixtures of whatever kind now or hereafter located thereon, including, but not limited to, the canals within or otherwise flowing upon the property, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, and including all common area.

1.28 "Proportionate Share" means that fraction wherein the numerator is one and the denominator is the sum of the total number of Memberships as established in Section 3.

1.29 "Proxy" means person in possession of a written authorization, duly authorized and not revoked or expired, which gives that person the specific authority to represent and vote for a member whose voting rights have not otherwise been revoked or suspended. Proxy shall also mean the written authorization so given. A proxy may only be given to another member whose voting rights have not been suspended or revoked. The form of a proxy shall be established in each case by the board of directors. No proxy shall be valid for more than one year.

1.30 "Record" or "Recording" means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for La Paz County, Arizona.

1.31 "Supplemental Declaration" means a declaration of covenants, conditions and restrictions, or similar instrument, annexing additional real property to the Property and subjecting such real property to this Declaration as provided in Section 14, entitled "Annexation of Additional Property."

2. RIGHTS OF ENJOYMENT

2.1 Members' Right of Enjoyment. Every Member shall have a non-exclusive easement for use and enjoyment of the Common Areas, which right shall be appurtenant to and shall pass with such Member's membership as herein provided, and which shall be subject to the property subject thereto, and to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, without limitation, the following provisions:

2.1.1 The right of the Association to limit the use of the Common Areas by Persons who are not Members, including but not limited to occupants who may be in possession of a Lot or own a portion of, or less than the entire ownership interest of, a Lot.

2.1.2 The right of the Association to establish reasonable rules and regulations pertaining to or restricting the use of the Common Areas by Members or other Persons.

2.1.3 The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas as permitted in this Declaration and, in aid thereof, to mortgage said property, provided that the rights of the lender thereunder shall be subordinated to the rights of the Members as set forth in this Declaration. Said right by the Association to borrow shall not exceed the equivalent of one year's regular assessments absent the express approval by majority vote of the members present at a meeting duly noticed, the specific purpose of which meeting includes voting on increasing said amount.

2.1.4 The right of the Association to suspend the right of a member, or any Person (including without limitation an Owner or an Occupant, or a member of the family of a Member, Owner or Occupant), or a guest, to use the Common Areas or any designated portion thereof during any time in which any Assessment respecting such Member or Person remains unpaid and delinquent, or for a period not to exceed 60 days for any single infraction of the Association Rules or breach of this Declaration, and up to one year for any subsequent violation of the same or similar provision of the Association Rules or this Declaration, provided that any suspension of such right to use the Common Areas, (except for failure to pay Assessments, in which case a member shall not be entitled to notice and a hearing) shall be made only by the Board or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws.

2.2 Delegation of Use. No Member may delegate his right of use and enjoyment of the Common Areas to any Person, except to the members of his immediate family as provided in Section 3 or to his guests as permitted by the Association Rules.

2.3 Waiver of Use. No Member or Owner may exempt himself, and no Member or Owner shall be exempt from personal liability for Assessments or release any Lot owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, or Association Rules , by voluntary waiver of, or suspension or restriction of such Member's or Owner's right to, the use and enjoyment of the common Areas, or the abandonment of such Member's or Owner's Lot or membership.

2.4 Use of Private Roadways and Canals for Access. Notwithstanding anything in this Declaration to the contrary, the Association shall not have the right hereunder to suspend any Member's, Owner's or Occupant's right to use any portion of the Property, Canals or Private Roads necessary for such Member, Owner or Occupant to gain access to his Lot.

3. MEMBERSHIP

3.1 Membership.

3.1.1 There shall be one voting Membership in the Association appurtenant to each Lot. The right to vote said membership shall be governed by this declaration and the bylaws of the Association and the Association shall specifically have the right to suspend the right of a Member who has failed to pay any assessment to vote. The Owner(s) of the Lot shall, in the event that a lot is owned by more than one person, a corporation, partnership, trust, limited liability company or similar entity, designate in writing to the Association an individual who shall be the voting Member with respect to that Lot. The Member so designated must be an individual who, except as provided in Section 12.14, is an Owner or if the Owner is or incudes a Person other than an individual, the Member may be an individual who is a partner of the Owner is or includes a partnership, or an officer of the corporation if the Owner is or includes a corporation, or a beneficiary of the trust if the Owner is or includes a trust, or an owner of the entity if the Owner is or includes a Person other than an individual, a partnership, a corporation or a trust. In the absence of such written designation, Assessments shall nevertheless be charged against the Lot and Owner(s) thereof. A member or members (so designated if applicable) may authorize another member, otherwise authorized to vote, to vote on that member's behalf upon presentation to the

Board of a duly executed Proxy, the form of which shall be set forth by the Board. No such proxy shall be effective for more than one year from the date it was executed and such a proxy shall be revoked by the member who executed it upon receipt by the Board of that member's written notice to the board of its revocation.

3.1.2 The Member, as so designated, shall be the only Person entitled to vote on behalf of the Owner of the Lot at Association meetings and elections. The Member designated by the Owner, and the Member's spouse and children, natural and adopted, under the age of 25 (and such other children and relatives of the Member as the Board may from time to time specify) shall, with respect to the Owner's Lot, be the only persons entitled to use the common areas and any facilities associated with the common areas other than as guests in accordance with the Association Rules, and no other individual or Person, even though an Owner of the Lot, shall be entitled to use the Facilities in the Common Areas other than as guests, except as is otherwise set forth herein.

3.1.3 The number of Memberships shall be equal to the total number of Lots then included within the Property, which shall at no time exceed 255 in number.

3.2 Transfer of Memberships. A membership in the Association shall not be transferred, pledged or alienated in any way, except as herein expressly provided. A Membership shall automatically be transferred to the new Member (as designated, if appropriate, by the new Owner of a Lot as provided in Section 3.1.1) upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot.

4. ASSOCIATION.

4.1 Purpose of Powers of the Association. The Association shall be a non-profit corporation, which shall serve as the governing body for all the Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, disposition of casualty insurance

proceeds, and other matters as provided in this Declaration, the Articles, Bylaws, Association Rules including, but not limited to, enforcement of these restrictions. Toward those ends the Association shall have, but not be limited to, the power to hire accountants, bookkeepers, attorneys, engineers and other persons to assist and guide them in the performance of said duties and other matters. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners and Members in accordance with the provisions of this Declaration, the Articles and the Bylaws.

4.2 Membership in Association. Each Member shall be a Member of the Association so long as he shall be a Member as provided in Section 3, and such membership shall automatically terminate when he ceases to be an owner. Any attempt to make a prohibited transfer of a membership in the Association is void and will not be recognized by or reflected upon the books and records of the Association. In the event any Member fails or refuses to transfer or surrender the membership registered in his name as herein required, the Association shall have the right to record a transfer upon the books of the Association and issue a new membership as appropriate, and thereupon the old membership outstanding in the name of said Member shall be null and void as though the same had been surrendered.

4.3 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to the Membership with respect to his Lot to a Mortgagee as additional security, only the vote of such Mortgagee will be recognized in regard to such special matters if a copy of such proxy or other instrument pledging such vote has been filed with the Association. In the event that more than one such instrument has been filed, the Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

4.4 Board of Directors. The affairs of the Association shall be conducted by the Board as herein provided and in accordance with the Articles and Bylaws. The Board of Directors shall consist of not less than five and not more than eleven members and shall serve from one annual meeting of the members of

the Association and until a new Board is elected at the next such annual meeting. Each director shall be a Member or the spouse of a Member. If a director ceases to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant. Any vacancy in the Board may be filled, until the next annual meeting of the members, by a vote of the majority of the Board present at a Board meeting the agenda of which includes the appointment of a new board member to fill such vacancy. The failure of a Board member to attend three Board meetings during any calendar year shall, in the discretion of the Board, be deemed a vacancy. The Board shall meet at least monthly at such time and place deemed by the Board to be convenient and expedient, and may meet at such other times and places deemed by them to be in the best interest of the Association. No Board member shall receive compensation or any other benefit, in any form, for acting as a Board member.

4.5 Board's Determination Binding - Powers. In the event of any dispute or disagreement between any Owners, Members, or any other Persons subject to this Declaration, relating to the Property, or any question of interpretation or application of the provisions of this Declaration, the Articles, Bylaws, or Association Rules, the determination thereof by the Board shall be final and binding on each and all of such Owners, Members or Persons. The Board may, at its election, delegate the resolution of such dispute or disagreement to a committee appointed by the Board or the President. The Board shall have, in addition to the powers set forth below and otherwise set forth herein, the power to repeal, amend, or otherwise modify the Articles and Bylaws of the corporation.

4.6 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, the Articles or Bylaws (for example, where a Majority of Members, members present, or a specified fraction or percentage of all of the Members or members present is required), any provision of this Declaration, the Articles or Bylaws which requires the vote or written assent of the Members of the Association shall be deemed satisfied by the following:

(a) The vote in person or by proxy of the specified percentage of Members present at a meeting duly called

and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings of the Members.

(b) Written consents signed by the specified percentage of Members as provided in the Bylaws.

(c) If no percentage of Members is otherwise specified, then the vote or written assent of a Majority of Members present shall be required.

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

4.8 Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Lots, the Common Areas or any other part of the property provided, however, that no Rule shall be adopted, amended or repealed unless such adoption, amendment or repeal is approved by two thirds of the members present at a meeting of the members specifically noticed for that purpose. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners and Members except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner and Member in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and members, and all other Persons having any interest in, or making any use of, the property, whether or

not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner, Member or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration, the Articles, or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, or Bylaws to the extent of any such conflict.

4.9 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and the members of the Design Review committee, shall be indemnified by the Association, and every other Person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association, or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, member of the Design Review committee or other Person, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise.

4.10 Non-Liability of Officials. To the fullest extent permitted by law, neither the Board, the Design Review Committee or any other committees of the Association nor any member thereof, nor any directors or officers of the Association, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which the Board, or such committees or

Persons, reasonably believed to be within the scope of their respective duties.

4.11 Easements. In addition to the blanket easements granted in Section 5.1, the Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for (1) sewer lines and associated facilities and equipment, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, (2) roadways, or (3) other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the owners and members; provided, however, that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

4.12 Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with accepted accounting principles. The records of the Association shall be audited which audit shall be certified by a certified public accountant, on no less than a biannual basis, commencing on the calendar year 1996, and continuing thereafter.

4.13 Records. The Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Member the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, and Association Rules.

4.14 Managing Agent. All powers, duties and rights of the Association, or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services of the Developer or any other party, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or

without cause and without payment of a termination fee upon written notice.

5. EASEMENTS

5.1 Blanket Easements. There is hereby created a blanket easement upon, across, over and under the Property for ingress and egress (over existing roadways), installing, constructing, replacing, repairing, maintaining and operating all utilities, including but not limited to water, sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect (including without limitation underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property. The Board may, in its sole discretion, require any utility company, prior to the installation, maintenance or repair of any utility or its components, to deposit with the Board a sufficient bond or other security to enable the Board to cause any damage to the common areas caused by such utility company, its agents, or activities, (including but not limited to malfeasance and nonfeasance), to be repaired and the common areas effected placed in a condition equivalent to that which existed prior to the installation, maintenance or repair. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines or other Facilities for utilities be installed or relocated except as initially created and approved by the Developer or thereafter created or approved by the Association. This provision shall in no way affect any other recorded easements on the Property.

5.2 Use of Common Areas. Except for the use limitations provided in Section 5.3 each Owner and Member shall have the non-exclusive right to use the Common Areas in common with all other Owners and members as required for the purposes of access and ingress and egress to (and use, occupancy and enjoyment of) any Lot owned by such Owner or Member or other common Areas otherwise available for the use of said Owner or member or Occupant. Such right to use the common Areas for purposes of access and ingress and egress shall, subject to the

Association Rules, extend to each Owner, Member, Occupant and the agents, servants, tenants, family members and invitees of each Owner or Member. Such right to use the common Areas shall be perpetual and appurtenant to each respective Lot, subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Association Rules and such reasonable limitations and restrictions as may from time to time be contained herein or therein.

5.3 Special Utility Easement. The Association is hereby authorized, if deemed by the Board of Directors of the Association to be in the best interests of the Association or the Property, to grant an easement upon, across, over and under the common Areas for the purpose of installing constructing, replacing, repairing, maintaining and operating sewer lines facilities and equipment. Such easement shall be in a location, and upon such terms and conditions, as may be specified by the Association, in a subsequent instrument duly recorded.

6. ASSESSMENTS.

6.1 Creation of Lien and Personal Obligation. Each Owner and Member hereby covenants and agrees to pay to the Association Regular Assessments, Special Assessments, Capital Improvement Assessments, and Reconstruction Assessments, if applicable, such Assessments to be established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner or Member's Lot (or combined Lots as provided in Section 12.14) against which the Assessment are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Member and/or Owner to whom such Assessment relates. The personal obligation of an Owner or Member for delinquent Assessments shall become the obligation of the Owner's or Member's successor, even if not expressly assumed by him, unless such successor has obtained from the Association a certificate of payment pursuant to Section 6.14 stating that there are no unpaid Assessments due. The lien against a Lot as provided in this Section 6 shall be continuing and shall not be extinguished by the sale, conveyance or other transfer of the Lot. The obligation of a Member and the Owner of the Lot to

which such membership appertains for the payment of Assessments, and related charges as herein provided, shall be joint and several. An Owner shall be jointly and severally liable with any Occupant of his Lot for any unpaid Assessments, and other charges, occasioned by the actions of, or failure of action by, the Occupant.

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and Members, to enhance the quality of life within the Project, to preserve the value of the Property, to pay the costs of administration of the Association and all other common Expense, or to otherwise further the interests of the Association. Where a Lot has separate gas, electrical, sewer or other similar utilities service separately metered or billed by the providing utility, the cost of the same shall be the personal obligation of each Owner. Maintenance of sewer lines serving a single Lot shall be the responsibility of that lot's Owner.

6.3 Regular Assessments.

6.3.1 Except as otherwise specifically provided in this Declaration (including without limitation in Sections 3.5 and 6.3.4), each Member shall pay as his Regular Assessment such Member's Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Association.

6.3.2 Not later than 30 days prior to the beginning of each fiscal year of the Association, the Board shall prepare and mail to each member a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. Subject to the provisions of Section 6.3.4, the Association shall at that time determine the amount of the Regular Assessment to be paid by each Member and notify the Member thereof. Each Member shall thereafter pay to the Association his Regular Assessment in no less than quarterly installments. The association, in its discretion, may bill such installments monthly. Each such installment shall be due and

payable on the date set forth in the written notice sent to the Members. Notwithstanding any language to the contrary in this paragraph, the Board may not increase a regular annual assessment in an amount more than twenty percent greater than the previous year's regular annual assessment unless, prior to said increase, the board has, at a meeting the agenda for which specifically calls for a vote to consider increasing the regular annual assessment above that amount, and a majority of the members present votes to increase the regular annual assessment above said amount.

6.3.3 If the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Board shall then promptly determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Member for the balance of the year, and the date or dates when due. If the estimated total Regular Assessments for the current year proves to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus shall be grounds for the Association to diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

6.4 Special Assessments. Special Assessments shall be levied by the Association against a Member and/or an Owner and his Lot to reimburse the Association for:

6.4.1 Costs incurred in bringing a Member or an Owner and his Lot, or an Occupant of the Lot, into compliance with the provisions of this Declaration, or the Articles, Bylaws, or Association Rules;

6.4.2 Any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules;

6.4.3 Fines levied or fixed by the Board under Sections 4,8, 11.8, 12.18 the Rules and Regulations, or as otherwise provided herein; and

6.4.4 Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Articles, Bylaws, or Association Rules.

6.4.5 Any cost incurred by the association repairing damage to common area caused by a member/owner, their family, tenants, occupants, guests or guests of the family, tenants of occupants.

In the event the Association undertakes to provide materials or services which benefit individual Members, Owners, Occupants or Lots and which can be accepted or not by individual Members, Owners or Occupants, such Members, Owners or Occupants, in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

6.5 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year a Capital Improvement Assessment for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of a described improvement upon the Common Areas, including, but not limited to, the necessary fixtures and personal property related thereto, to the extent the same is not covered by the provisions affecting Reconstruction Assessments in Section 8, entitled "Damage and Destruction of Common Areas." All amounts collected as capital Improvement Assessments shall be used only for the described capital improvements, shall be deposited by the Association in a separate bank account to be held in trust for such purposes and not be commingled with any other funds of the Association, and shall be deemed a non-refundable contribution to the capital of the Association by the Members. Notwithstanding any language to the contrary in this paragraph, the Board may not levy a Capital

Improvement Assessment in excess of the equivalent of one year's regular assessment unless, prior to said levy, the Board has held a duly noticed meeting of the members for the purpose of approving an assessment in excess of said amount, and a majority of the members present at said meeting approved of such an increase.

6.6 Uniform Assessment. The Regular Assessment and Capital Improvement Assessment for each Regular Member shall be uniform.

6.7 Exempt property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority, other than Lots, shall be exempt from the Assessments created herein.

6.8 Time and Manner of Payment; Late Charges, Interest and Suspension of Voting Rights and Membership Privileges. Assessments shall be due and payable by the Members in such manner and at such times as the Association shall designate. If not paid within ten days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of the Assessment and shall thereafter bear interest at the Default Rate of Interest unto paid. The Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Member shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency and any enforcement action undertaken therein ("enforcement action" shall be deemed to include, but not necessarily be limited to, demand letters, negotiations, consultations and any other action reasonably related to the collection of delinquent assessments) and if any suit, action, arbitration proceedings or other enforcement action is brought to collect any such Assessment or charge, then there shall be added to the amount thereof the costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon. The delinquency of a Member shall be deemed to also constitute the delinquency of the Owner of the Lot to which such Membership appertains. In the event that the assessments, whether regular, special, or otherwise, associated with any lot have not been paid in full prior to the taking of a vote on any matter put before

the members, the voting rights associated with said lot shall be suspended and no vote, by proxy or otherwise, shall be counted with respect to said lot on any matter until such time as all assessments in any way associated with said lot have been paid in full and such payment has been so reflected on the books of the Association. The Board may, as well, suspend and/or revoke any other privileges appurtenant to a lot including, but not limited to, use of the common areas and any improvements thereon, in the event that the any assessments associated with a lot are, or remain, unpaid.

6.9 No Offsets. All assessments shall be payable in the amount specified and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the Association, the Board, or the Design Review committee is not properly exercising its duties and powers as provided in this Declaration, the Articles, Bylaws, or Association Rules; (b) Assessments for any period exceed Common Expenses; or (c) a Member has made, and elects to make, no use of the Common Areas or is otherwise unable to use the common areas.

6.10 Homestead Waiver. Each Owner and Member, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are not in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

6.11 Reserves. The reserves included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of accepted accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to non-profit corporations or homeowners associations. Such reserves shall be deemed a non-refundable contribution to the capital of the Association by the members. The responsibility of the Board shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither the Board or any member thereof shall

have any liability to any Owner or Member or to the Association is such reserves prove to be inadequate.

6.12 Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner or Member to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded First Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charge related thereto), and if any lien for unpaid Assessments prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such First Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and, upon written request to the Association by such First Mortgagee, such lien shall be released in writing by the Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner and Member and may also be re-allocated by the Association among all Members as part of the Common Expenses.

6.13 Certificate of Payment. Any person acquiring an interest in any Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to such Lot, if any, and such person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such unpaid Assessments.

6.14 Enforcement of Lien. The lien provided for in this Section 6 may be foreclosed by the Association in any manner provided or permitted for the foreclosure of liens, realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 6 relating to the enforcement of the lien provided for herein (including without limitation the subordination provisions in Section 6.13 or the provisions of this Section 6.15) shall apply with equal force in each other instance provided for in this Declaration, or the Association

Rules wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by the lien provided for this Section 6. Nothing herein shall be construed as requiring that the Association take any action required hereunder in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

6.15 Pledge of Assessment Rights as Security. The Association shall have the power to borrow on behalf of the association and, as well, to pledge the right to exercise its assessment powers and rights provided for in this declaration as security for any obligation of the Association, provided, however, that any such pledge shall require the prior affirmative vote or written assent of a majority of all of the Members present at a meeting duly noticed for that purpose. The Association's power to pledge its assessment power shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Association; which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Association and used by the Association as set forth in this Declaration, unless and until the association shall default on its obligations secured by said assignment. In no event, however, shall the Association pledge in excess of the equivalent of twenty five percent of its annual regular assessment.

7. INSURANCE.

7.1 Authority to Purchase. The Association shall purchase and maintain certain insurance upon the Common Areas including but not limited to the insurance described in Section 7.3 Such policies, and endorsements thereon, or copies thereof shall be deposited with the Association. The Association shall generally advise the Owners and Members of the coverage of said policies in order to permit the Owners and Members to determine which particular items are included within the coverage so that the Owners and Members may insure themselves as they see fit if certain items are not insured by the Association.

7.2 Member's Responsibility. Is shall be each lot Owner's responsibility to provide for himself insurance on his own Lot, if any, his additions and improvements thereto, furnishings and personal property therein, his personal property stored elsewhere within the Project, his personal liability to the extent not covered by the public liability insurance obtained by the Association and such other insurance which is not carried by the Association as the Owner or Member desires. No Owner or Member shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas.

7.3 Coverage. The Association shall maintain and pay for policies of insurance as follows:

7.3.1 A multi-peril type policy covering all of the common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, without limitation, perils normally covered by an "all-risk" policy, in an amount determined by the Association.

7.3.2 A policy of comprehensive public liability insurance covering all of the Common Areas in an amount determined by the Association but not less than \$1,000,000.00 per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, without limitation, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the Common Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Association.

7.3.3 The association may, at its election, obtain fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or

administered by the Association. If funds of the Association are handled by a management agent, then fidelity bond coverage may also be obtained for the officers, employees or agents thereof handling or responsible for Association funds. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection in an amount not less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to three months' aggregate Regular Assessments plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

7.3.4 A workmen's compensation policy, if necessary to meet the requirements of law.

7.3.5 A policy of "directors and officers" liability insurance to the extent reasonable and available, in the Board's discretion.

7.3.6 Such other insurance, and in such amounts, as the Association shall determine from time to time to be desirable.

Notwithstanding the foregoing, the Association shall endeavor to obtain, to the extent reasonable and available, or shall discontinue such insurance coverage as two-thirds of the Members shall direct; provided, however, the association shall not discontinue casualty and/or liability coverage as required or otherwise set forth in Sections 7.3.1, 7.3.2. and 7.3.5.

7.4 Required Provisions. The insurance policies purchased by the Association shall, to the extent reasonable and available, contain the following provisions:

7.4.1 The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by an Owner, Occupant or Mortgagee.

7.4.2 The conduct of any one or more Owners or Occupant shall not constitute grounds for avoiding liability on such policies.

7.4.3 There shall be no subrogation with respect to the Association, its agents or employees, Owners, Occupants, or members of their households or families and employees, and each Mortgagee of all or any part of the property or of any Lot, or the Policy(ies) should name said persons as additional insured; and, each policy must contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

7.4.4 A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner or Occupant because of the conduct or negligent acts of the Association and its agents or other Owners or Members.

7.4.5 Any "no other insurance" clause shall exclude insurance purchased by Owners, Occupants or Mortgagees.

7.4.6 Coverage must not be prejudiced by (a) any act or neglect of Owners or Occupants when such act or neglect is not within the control of the Association or (b) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

7.4.7 Coverage may not be canceled or substantially modified without at least 30 days' (or such lesser period as the Association may reasonably deem appropriate) prior written notice to the Association.

7.4.8 Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

7.4.9 Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial

rating as designated in Best's Key Rating Guide of Class VI or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

7.4.10 Policies shall not be utilized where, under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owners, Occupants or the Association or loss payments are contingent upon action by the carrier's board of directors, policyholders, or members.

7.5 Non-Liability of Association/Board.

Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any board member shall be liable to any Owner, Occupant, Mortgagee or other Person if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Member to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the owner or Member may desire.

7.6 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the common Areas, by an Owner or Occupant, may, at the Board's election, be assessed against that particular Owner or Occupant.

7.7 Insurance Claims. The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in

this regard and may, at its discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority to negotiate losses under any policy purchased by the Association.

7.8 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for, the Association, the Owners or the Members, as their interest may appear.

8. DAMAGE AND DESTRUCTION OF COMMON AREAS.

8.1 Duty of Association. In the event of partial or total damage or destruction of the common Areas, or any improvements thereon, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this Section 8. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

8.2 Automatic Reconstruction. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be at least 75% of the estimated costs of restoration and repair, a Reconstruction Assessment against each Member in his Proportionate Share may be levied by the Association to provide the necessary funds for such reconstruction in excess of the amount of the funds available for such purpose. The Association shall thereupon cause the damaged or destroyed Common Areas to be restored to substantially the condition the common Areas were in prior to the destruction or damage.

8.3 Vote of Members. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be less than 75% of the estimated cost of restoration and repair, the common Areas shall be replaced or restored unless two-thirds of the Members present at a special meeting held for such purpose disapprove of

such replacement or restoration and the expenditures associated therewith. If the Members present do not disapprove of the proposed replacement or restoration, the Association shall levy a Reconstruction Assessment against each Member in its Proportionate Share and cause the damaged or destroyed common Areas to be restored as closely as practicable to the condition the common Areas were in prior to the destruction or damage. If the Members present disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Areas as provided above, the common areas so damaged or destroyed shall be cleared and landscaped for a community use determined by the Association and the cost thereof shall be paid with the insurance proceeds.

8.4 Excess insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section, the Association, in its sole discretion, may retain such sums in the general funds of the Association or may distribute all or a portion of such excess to the Members in their Proportionate Shares, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Association. The rights of an Owner or the mortgagee of a Lot as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

8.5 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Section 8, shall be deposited by the Association in a separate bank account to be held in trust for such purposes and not be commingled with any other funds of the Association, and shall be deemed a non-refundable contribution to the capital of the Association by the Members. Any Reconstruction Assessment shall be secured by the lien provided for in Section 6.

8.6 Contract for Reconstruction. In the event the Association undertakes the repair and/or restoration of the common Areas, the Association shall contract with a licensed contractor or contractors who may, in the discretion of the Board, be required to post a suitable performance or completion bond. The contract with such contractor or contractors shall provide for the payment of a specified sum for completion of the

work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of any architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Association including, but not limited to, releases of mechanic's and materialman's liens.

8.7 Insurance Proceeds Trust. Upon receipt by the Association of any insurance proceeds, the Association may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in La Paz County Arizona, as designated by the Association as trustee (the "Insurance Trustee"). Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Association. Disbursements to contractors performing any repair or reconstruction upon the Property shall be mad periodically as the work progresses in a manner consistent with procedures then followed by prudent leading institutions in the County.

9. EMINENT DOMAIN.

9.1 Definition of Taking. The term "taking" as used in this Section 9 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

9.2 Representation in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the common Areas, the Owners and Members hereby appoint the Association through such Persons as the Board may delegate to represent the Association and all of the Owners and Members in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

9.3 Award for Common Areas. Any awards received by the Association on account of the taking of Common Areas shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the

Association or distribute all or any portion thereof to the Owners or Members as their interest may appear. The rights of an Owner and the Mortgagee of a Lot as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

10. MAINTENANCE, REPAIRS AND REPLACEMENTS.

10.1 Owner's Responsibility. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Lot.

10.2 Maintenance of Common Areas. Maintenance, repairs and replacements of the common Areas shall be furnished by the Association as part of the Common Expenses, subject to the Articles, Bylaws and Association Rules. If, due to the act or neglect of an Owner, Member or Occupant, or the invitee, guest or other authorized visitor thereof, damage shall be caused to the Common Areas or to a Lot or Lots owned by others, or maintenance, repairs or replacement shall be required which would otherwise be a Common Expense, then such Owner, Member or Occupant shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the Association, to the extent not covered by the Association's insurance. Such obligation shall, in any event, be a Special Assessment secured by the lien provided for in Section 6.

10.3 Right of Access. An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas, or to perform any of the Association's duties or responsibilities hereunder.

11. ARCHITECTURAL AND LANDSCAPE CONTROL.

11.1 The Board of Directors of the Association shall, until and unless they, in their sole discretion, appoint a separate committee, constitute the Design Review Committee.

11.2 The following rules, regulations, restrictions, architectural standards, and design guidelines, (alternately referred to herein as "subdivision standards,") which the Board of Directors may, from time to time modify, repeal or augment, but only upon the vote of a majority of the members duly noticed, shall be binding on all Owners, Members or other Persons:

11.2.1 The Design Review Committee may, at time of approval or thereafter, set time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to this declaration. In any event, all construction, maintenance and repair work shall be prosecuted diligently from commencement until completion.

11.2.2 The Design Review Committee may designate a "building envelope" within a Lot, thereby establishing the maximum developable area of the Lot. Said building envelope shall, as well, include height restrictions, story (whether in whole or in part) restrictions, dock restrictions and any other restrictions deemed advisable to the Board.

11.2.3 The Design Review Committee may determine conformity of completed improvements to plans and specifications approved by them; provided, however, as to purchasers and encumbrances of a Lot in good faith and for value, unless notice of noncompletion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Board of Directors, shall be recorded with the County Recorder of the County, and given to the Owner of such Lot within one year of the expiration of the time limitation described in Section 11.2.1 above, or, if later, within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Board of Directors and in compliance with the architectural standards of the Association and this Declaration.

11.2.4 The Design Review Committee may establish such other limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of all landscaping (including without limitation

absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior additions, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement.

11.3 General Provisions.

11.3.1 The Design Review Committee may assess reasonable fees in connection with its review of plans and specifications.

11.3.2 The Design Review Committee may delegate its plan review responsibilities to one or more of its members or architectural consultants retained by the Design Review committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Board of Directors.

11.3.3 The address of the Design Review Committee shall be the address established for giving notice to the Association. Such address shall be the place for the submittal of plans and specifications and the place where the current Covenants, Conditions and Restrictions shall be kept.

11.3.4 The establishment of the Design Review committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declaration, the Bylaws or Association Rules.

11.4 Submission, Approval and Conformity of Plans.

Prior to the commencement of the construction, modification alteration, or the addition to or improvement of any lot building, fence, wall, seawall, dock or other structure or improvement of whatever type, each lot owner shall submit to the Design Review Committee, at least five days prior to any regularly scheduled meeting of the Board, a complete set of plans which fully set forth the proposed construction, modification, alteration, or the addition to or improvement of said lot or improvement located on said lot. No building, fence, wall or

other structure or improvement of whatever type shall be commenced, erected or maintained upon a lot or elsewhere on the property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, without limitation, the paint (other than paint with the same color of paint as previously existed) of exterior walls, patio covers and fences, except incompliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with this Declaration as to harmony of external design and location in relation to surrounding structures and topography. Any plan(s) submitted to the Design Review Committee in conformance with the provisions of this paragraph shall be either approved or disapproved, in whole or in part, by the Board within thirty five days after the meeting of the Board at which said plans were submitted by the lot owner or his agent and the failure of the Board to act within said time period shall be deemed to be an approval of said plans. The failure of the Board to timely approve or disapprove plans submitted to them shall not, in any event, relieve a lot owner of his continuing obligation to at all times comply with this Declaration and the restrictions and the like contained herein.

11.5 Non-Liability for Approval/Disapproval of Plans.

Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review committee, the members thereof, the Association, any Member, or the Board assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review committee, any member thereof, the Association, or the Board shall be liable to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development, or manner of development of any property within the Project, or (d) the execution and filing of an estoppel certificate pursuant to this Declaration, whether or not the

facts therein are correct; provided, however, that such action, with the actual knowledge possessed by him, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

11.6 Inspection and Recording of Approval. Any member or authorized consultant or agent of the County Board of Supervisors, or other duly authorized municipal, county, state or federal agent, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with this Declaration. The Board of Directors shall cause such an inspection to be undertaken within 30 days of a request therefor from any Owner as to his lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this section 11, the Association shall, at the request of the lot owner provide to such Owner a notice of such approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this Section 11 as to the improvements described in such recorded notice, but as to such improvements only.

11.7 Reconstruction of Common Areas. The reconstruction by the Association after destruction by casualty or otherwise of any Common Areas which is accomplished in substantial compliance with "as built" plans for such Common Areas shall not require compliance with the provisions of this Section 11.

11.8 Additional Powers of the Board. The Board may promulgate as a part of this Declaration, such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE BOARD MAY FIX A FINE FOR FAILURE TO OBTAIN REQUIRED

APPROVAL FROM THE DESIGN REVIEW COMMITTEE, which fine shall become an assessment as set forth in Article 6 hereof.

12. USE AND OCCUPANCY RESTRICTIONS

12.1 Commercial Uses. Lots 216 to and including lot 235 shall be known and described as commercial lots and may be used for the purposes set forth in the La Paz County zoning regulations as "C-1" (LOCAL COMMERCIAL DISTRICT) and none other.

12.2 Residential Uses. Each residential Lot may be used only for purposes set forth herein and none other:

12.2.1 No business or commercial building may be erected on any residential Lot and no business or commercial enterprise or other non-residential use may be conducted on any residential lot. No dwelling, building or structure shall be erected, altered, placed or permitted to remain on any residential lot other than a single, detached single family dwelling. Each such single family dwelling shall be used and occupied as a single family dwelling and for no other purpose. The Board may, in its sole discretion, waive, in appropriate circumstances and with appropriate conditions, this provision.

12.2.2 No single-family dwelling, building or structure shall be erected, permitted or maintained upon said residential lots which contains less than 1,400 square feet of ground floor level area under permanent roof, exclusive of one-story open porches, pergolas, carports and garages.

12.2.3 No temporary buildings or structures, trailers, mobile homes, prefabricated homes or manufactured homes may be erected, placed or maintained on any Lot.

12.2.4 Any dwelling, building or structure erected, altered, placed or permitted to remain on residential or commercial lots shall not, in any event, exceed eighteen (18) feet in height, as that height is measured from the center of the road in the middle of the lot on which any such building or structure, or portion thereof, is located. For the purposes of said eighteen foot restriction antennas, such as radio, television and satellite antennas, and air conditioners and other

fixtures associated with the installation and use of utilities shall not be considered a part of the structure.

12.2.5 No garage or similar building shall be constructed or erected on any residential lot until construction of the residence on such lot, complying with this declaration, shall have been commenced by a reputable and licensed building contractor. No garage or other outbuilding shall be used for residential purposes provided, however, that such restriction shall not prevent the inclusion of guest or servant quarters in such garage or outbuilding provided, however, that any such guest or servant quarters shall be limited to three (3) rooms and a bath. Any such garage or servant quarters shall abide by the eighteen foot height restriction set forth above.

12.2.6 All buildings, dwellings or structures on all residential and commercial lots shall be of new construction and shall conform to the standards and specifications contained in the latest edition of the Pacific Coast Uniform Building Code for Dwelling House Construction.

12.2.7 No dwelling, building, or structure shall be located on any lot the front walls of which are closer than ten (10) feet to the front lot line, or nearer than five (5) feet to any side street line (for purpose of this paragraph, the front line is defined as the lot line fronting the street). No dwelling, building, or structures shall be located nearer than five (5) feet to an interior lot line.

12.2.8 No solid wall or fence over two and one-half (2 ½) feet height shall be constructed or maintained nearer than ten (10) feet to the front street line of any lot. No side or rear fence and no side or rear wall, nor the wall of the building constructed on any of said lots, shall be more than six (6) feet in height. No hedge more than three (3) feet in height shall be permitted closer than ten (10) feet from the front street line of any of said lots.

12.2.9 No store, office or other place of business of any kind, and no hospital, sanitarium or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theater, saloon or other place of entertainment, or any church shall ever be erected or permitted

on any residential lot; and no business of any kind or character whatever shall be conducted in or from any residence located on said residential lots.

12.2.10 No outside toilets shall be permitted under any circumstance (except during construction); and all toilets, sinks, baths, showers (excepting outdoor showers) and similar plumbing or sanitation facilities shall, until such time as a sewer system hookup becomes available, be properly connected to and empty into underground septic tanks, which septic tanks shall be located on the front one third (1/3) of the lot (for purposes of this paragraph, the front of each lot being defined as that area adjacent to a street). All such septic tanks must meet the requirements of the applicable state and county health and sanitation departments.

12.2.11 With the exception of one "For Rent" or "For Sale" sign (which shall not exceed 18 by 24 inches in size) no advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted on any lot.

12.2.12 No elevated tanks of any kind shall be erected, placed or permitted upon any of the above described lots. Any tanks used in connection with provision of utilities to any residence, building or structure on the lots, including but not limited to tanks for storage of propane, must be buried or kept screened by adequate planting or fencing to conceal them from neighboring lots and structures. No tanks containing flammable contents except for the provision of utilities (propane, natural gas, heating oil, and the like) shall be placed or otherwise maintained on any residential lot. Nothing contained in this paragraph shall preclude the placement upon the subject property of such electric transformers and equipment as are necessary to provide electricity to a lot.

12.3 Violation of Law or Insurance. No Owner or Member shall permit anything to be done or kept in his Lot or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

12.4 Signs. No sign of any kind shall be displayed

to the public view or from any Lot or any Common Areas without the approval of the Association or the Design Review Committee, except: (a) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; or, (b) such signs as may be required for traffic control and regulation of Common Areas; or, (c) one "for sale" sign.

12.5 Animals. No animals, including horses or other domestic farm animals, fowl or poisonous animals of any kind may be kept, bred or maintained in any Lot or in or upon any of the Common Areas, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's Lot without a leash.

12.6 Nuisances. No Owner or Member shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners, Members, Occupants or other authorized Persons to the use and enjoyment of their property and the Common Areas, or annoy them by unreasonable noises or otherwise, nor commit or permit any nuisance or commit or suffer any illegal act to be committed therein or thereon. Each Owner, occupant, tenant or Member, and their guests, shall comply with the Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property. Should the Board determine that any vehicle (including, but not limited to, boats, motorbikes, ATVs, or similar vehicles) has created loud or annoying noises by virtue of its operation within the Property, such determination shall be conclusive and final that the operation of such vehicle is a nuisance and said operation, upon notice by the Board to the owner or operator thereof, shall be prohibited within the Property. Subject to this Declaration, all vehicles must be operated within the Property, and specifically upon the common areas, including the private streets, by licensed operators. No person shall operate any noise emitting device, including, but not limited to, boats, motor vehicles (including motorcycles, ATVs, and the like), speakers, sound systems, radios, stereos or other sound emitting devices of any kind in such a manner as to annoy or disturb the peace of any other lot owner or occupant.

12.7 Boats and Motor Vehicles. Except as specifically permitted by the Association Rules, (a) no cars, trucks, boats, trailers, buses, motor homes, campers or other vehicles of whatever type (herein collectively called a "vehicle") shall be stored in or upon the Common Areas, including the Private Roads, or upon a vacant or otherwise unimproved lot (ie; a lot upon which a residence has not been completed); (b) no vehicle shall be repaired or rebuilt upon any Lot or any portion of a lot within view of other lots or upon the Common Areas; and, (c) no vehicle shall be parked on the Private Roads in such a manner as to impede or obstruct ingress and egress and provision of emergency services; (d) Motorcycles, trail bikes, minibikes, all-terrain-vehicles, mopeds or similar vehicles are prohibited and may not be used or operated within Lake Moovalya Keys, except that any such vehicle lawfully licensed for use on public roadways may be used for the strictly limited purpose of ingress and egress to a Lot; provided, however, that any such vehicle may be trailered to or from a Lot, or parked or stored in or upon an improved Lot, in accordance with the Association Rules. (e) No truck, pickup truck, bus, van, trailer, boat, antique car, classic car, camper, motorcycle, passenger car, station wagon, or similar type of vehicle or equipment shall be stored either permanently or temporarily on a lot or on the common area, whether on blocks or otherwise, which is inoperable, in a state of disrepair, or which is in any stage or construction or reconstruction, repair, modification, or rebuilding with respect to the vehicle or any part thereof, including, without limitation, engines, frames, bodies and/or other parts or accessories.

The Association may remove, or cause to be removed, any vehicle or equipment which violates one or more provisions of this section at the expense of the owner thereof in any manner consistent with law.

12.8 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot which, in any manner, will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot, except as may be expressly permitted by the Association Rules.

12.9 Garbage and Vegetation. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible

from another Lot or the Common Areas. No incinerators shall be kept or maintained in any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot. No vegetation shall be permitted to grow or remain on a lot in an unsightly manner or in a manner which constitutes a nuisance or hazard.

12.10 Mining. No portion of the Property shall be used in any manner to explore or remove any oil or other hydrocarbons, minerals of any kind, or earth substance of any kind.

12.11 Safe Condition. Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners, Occupants or other Persons of their respective Lots or the Common Areas.

12.12 Fires. Other than barbecues in properly constructed barbecue pits or grills in strict compliance with the Association Rules and this Declaration, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots or the Common Areas, nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Areas or for other Owners.

12.13 Clothes Drying Area. No unenclosed portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot.

12.14 No Further Subdivision; Compounds. No Lot shall be divided or subdivided. An Owner may own more than one Lot which, if contiguous, may be combined into a single homesite with the consent of the County and the Board of Directors; provided, however, that any such combination of Lots shall not reduce or alter the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount which would have been assessed against the Owner of such Lots pursuant to the

terms hereof in the absence of combination. As provided in Section 3.2, said Membership shall automatically be transferred to the new Owner of the Lot(s) to which the membership(s) appertain upon transfer of the Lot(s). The Assessments attributable to each lot shall be a lien, as provided in Section 6, upon the entire combination of Lots held by the Owner. Notwithstanding anything herein to the contrary, the Owners of two or more contiguous Lots may, with the consent of the County and the Design Review Committee, replat such Lots as a Compound which may include and provide for the construction of common recreation facilities on such Lots, including, for example, a tennis court or swimming pool, in accordance with this Declaration. The lien provided in Section 6 as to each replatted Lot shall also extend to the interest of the Owner in any such common facilities. If one Owner wishes to combine Lots, or if two or more Owners wish to replat Lots as a Compound, in such manner that it eliminates the need for a portion of the Common Areas owned by the Association (for example, where a cul-de-sac is no longer necessary, and if the combination or Compound and abandonment of Common Areas is approved by the Design Review Committee and the County, then such portion of the Common Areas may be deeded by the Association to said Owner or Owners as the Association (and the County, if its consent is required) may specify.

12.15 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on a Plat, or other duly recorded instrument, as a "drainage easement", except that, with the prior written consent of the County and the Design Review Committee, certain structures may, in accordance with this Declaration, be erected or constructed within the drainage easements as long as such structures do not interfere with the intended purpose or functions of such areas.

12.16 Entrance Gate. Subject to the easements created in Section 5.1, the Association shall from time to time determine who may have access through the entrance gate to the Property onto the Private Roads and any Annexation Property, and for its employees, agents, invitees, licensees and guests. The Association may make reasonable rules relating to the right of entry through the entrance gates, but none restricting entry to

Members, Owners, their tenants, guests or to prospective purchasers of Lots invited by Owner or to other authorized users of the Common Areas; provided, however, that certain such entrances may be restricted to emergency access only. Any entrance gate may be abandoned, or its hours of manned operation if any, reduced, at the discretion of the Board of Directors.

12.17 Rental of Lots. No lot owner shall lease less than their entire lot owned by such Owner. During the pendency of any tenancy, the lessee, including sublessees, shall, with regard to any use of the common areas or improvements thereon, be deemed to be guests of the owner. An Owner who leases his Lot to any Person or persons shall be responsible for assuring compliance by his lessee with all of the provisions of this Declaration, the Articles, Bylaws, or Association Rules, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by his lessee(s) thereof. In no event shall an owner or member rent a lot to other than a single family, unless the Board has specifically waived such requirement in appropriate circumstances and with appropriate conditions. In the event that a lot Owner fails to assure that his lessee has fully complied with this Declaration or the Association rules, the Board, as agent for such Owner, shall, upon notice to the Owner, have the right to enforce any violation by such lessee and the Owner who fails to assure such compliance shall be subject to all remedies set forth in this declaration.

12.18 Enforcement. The Association or its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to the Bylaws, or Association Rules, shall be a Special Assessment secured by a lien upon such Lot enforceable in Section 6.14 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Member, Occupant or other Person of any provision of this Section 12.

12.19 Modification. The Board may, except as to Section 12.2 and its subsections, modify or waive the foregoing restrictions set forth in this Section 12, or otherwise restrict and regulate the use and occupancy of the Property and the Lots,

by reasonable rules and regulations of general application adopted by the Board at a meeting of the members called for that purpose and at which meeting a majority of the members present consent to such modification or waiver, which modifications or waivers shall be incorporated into the Association Rules.

13. RIGHTS OF FIRST MORTGAGEES.

13.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, or Association Rules, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Lot:

13.2 Liability for Assessments. A First Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of the Mortgage, or through any equivalent proceedings, such as but not limited to the taking of a deed or assignment in lieu of foreclosure or acquiring title at a trustee's sale under a first deed of trust, or any third-party purchaser at a foreclosure sale or trustee's sale, will not be liable for such Lot's unpaid dues, charges or Assessments which may accrue prior to the time such First Mortgagee or third-party purchaser comes into possession of such Lot or becomes record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any dues, charges or Assessments accrued prior to the time such First Mortgagee or third-party purchaser either comes into possession of such Lot or becomes record Owner of the Lot. Any such unpaid dues, charges or Assessments against the Lot foreclosed shall be deemed to be a Common Expense charged proportionately against all of the lot owners. Nevertheless, in the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, and the Association may use reasonable efforts to collect the same from said Owner even after he is no longer a Member of the Association or the Owner of the Lot.

13.3 No Personal Liability. A Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 13, including without limitation Section 13.6.

13.4 Enforcement After Foreclosure Sale. An action to abate the breach of any provision of this Declaration, or the Articles, Bylaws, or Association Rules may be brought against the purchasers who have acquired title through foreclosure or trustee's sale of a Mortgage (or through any equivalent proceeding), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an in interest in such Lot.

13.5 Exercise of Owner's Rights. During the pendency of any proceedings to foreclosure a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member in the place and stead of the defaulting Owner; provided, however, that the First Mortgagee shall first have given written notice to the Association of its intention and authority to do so.

13.6 Subject to Declaration. At such time as a Mortgagee, or any third-party purchaser at a foreclosure sale or trustee's sale, shall come into possession of or become record Owner of a Lot, such Person shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all assessments and charges accruing thereafter, in the same manner as any other Owner.

14. REMEDIES.

14.1 General Remedies. In the event of any default by any Owner, Member, Occupant, Tenant or other Person under the provisions of this Declaration, the Articles, Bylaws, or Association Rules, the Association, or its successors or assigns, or its agents, shall have each and all of its rights and remedies which may be provided for in this Declaration, the Articles, Bylaws, or Association Rules, or which may be available at law or equity, including, but not limited to the power to suspend voting rights and to fine, and may prosecute any action or other proceedings against such defaulting Owner, Member, Occupant or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest accrued thereon, and then sell the same as hereinafter in this Section 14.1 provided, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner, Member, Occupant or other Person. The proceeds of any such rental or sale of a Lot shall first be paid to discharge court costs, other litigation costs, including without limitation reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

14.2 Expenses of Enforcement. All expenses of the Association, or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Section 14, including court costs and reasonable attorneys' fees and other fees and expenses, and all

damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner, Member, Occupant or other Person and shall be a Special Assessment against such Owner, Member, Occupant or other Person and the Association shall have a lien as provided in Section 6 therefor. In the event of any such default by any Owner, Member, Occupant or other Person, the Association, and the manager or managing agent of the Association, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner, Member, Occupant or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Section 6. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively, in the alternative or otherwise, by the Association.

14.3 Legal Action. In addition to any other remedies available under this Section 14, if any Owner, Member or Occupant (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration, or the Articles, Bylaws, or Association Rules, as then in effect, then the Association, or any affected or aggrieved Owner or Member, shall have the power to file an action against the defaulting Owner, Member or Occupant for a judgment or injunction against the Owner, Member, Occupant or such other Person requiring the defaulting Owner, Member, Occupant or other Person to comply with the provisions of this Declaration, or the Articles, Bylaws, or Association Rules, and granting other appropriate relief, including money damages.

14.4 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, conditions, restrictions, reservations and servitude provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein specifically provided, each and all of said covenants, conditions, restrictions, reservations and servitude shall be binding upon and effective against any lessee or owner of a Lot whose title thereto is acquired by

foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

15. AMENDMENT.

15.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a duly noticed annual meeting of the Members which notice specifically sets forth the contemplated amendment upon the approval thereof of two-thirds of all of the Members present at such meeting or without any meeting if all Members have been duly notified and if two-thirds of all of the responding Members consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President, and shall be attested by the secretary of the Association, who shall state that the amendment was properly adopted, shall be acknowledged by them before a notary public as officers of the Association, and shall be promptly recorded with the County Recorder for the County. Amendments once properly adopted shall be effective upon recording for the Amendment to Declaration.

15.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions, and restrictions, liens, assessments, easements, privileges and rights contained herein which may be affected and any or all clauses of this Declaration or the Plat, unless otherwise specifically provided in the Section being amended or the amendment itself.

15.3 Amendment of Plat. Except as otherwise provided herein, the Plat may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Plat shall be made available for the examination of every Member at the offices of the Association during reasonable times. Such amendment to the Plat shall be effective, once properly adopted, upon recording

with the County Recorder for the County in conjunction with the Declaration amendment.

15.4 Required Approval. Notwithstanding the provisions of the foregoing sections of this Section 15: If this Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all of the Members and/or all lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by said law.

16. GENERAL PROVISIONS.

16.1 Notices. Notices provided for in this Declaration, or the Articles, Bylaws or Association Rules, shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Owners and Members at such time. All notices to Owners and Members shall be to their respective Lots or to the last address shown on the records of the Association and it shall be incumbent upon each lot owner to assure that the Association has been provided, in writing, a correct address for the purpose of receiving the notices contemplated in this paragraph. Any Owner or Member may designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States certified and regular mail, and shall be deemed received by a lot owner ten days after being so placed or when delivered in person with written acknowledgment of the receipt thereof. In the event that a lot is owned by more than one person, or by a partnership, corporation, trust or similar entity, such notice shall similarly be deemed received by the lot owner upon its mailing or delivery to the person designated pursuant to Section 3.1, above.

16.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

16.3 Severability. If any provision of this Declaration, the Articles, Bylaws, or Association Rules, or any section, clause, sentence, phrase or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, or Association Rules, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, or Association Rules shall be construed as if such invalid part were never included therein.

16.4 Rule Against Perpetuities. If any of the privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 21 years after the death of the survivor of the now living descendants of United States Senator Barry Goldwater, and United States Senator Dennis DeConcini.

16.5 Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Member shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the property or any part thereof, except only to the extent of his Lot.

16.6 Power of Attorney. Whenever the Association is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association. Further, unless otherwise specifically restricted by the

provisions of this Declaration, wherever the Association is empowered to take any action or do any act, including but not limited to action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner, the Owners and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of the Association or by the acceptance of a deed for a Lot or by signing a contract for the purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, or a membership in the Association, each Owner and Member shall be deemed and construed the ratified and expressly granted the above power of attorney.

17. RIGHTS AND OBLIGATIONS.

Each purchaser of any lot, or of any interest therein, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each Person acquiring a membership in the Association, and each Person acquiring any other interest in the Property, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all covenants, conditions, restrictions, liens, assessments, easements, privileges and rights herein contained, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitude, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of any Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

IN WITNESS WHEREOF, the following signatories,
constituting more than seventy-five percent of the lots owners of
the property, have caused this Amended Declaration of Covenants,
Conditions and Restrictions to be duly executed and adopted as of
this date.

Date: 12/22/95

Lak Moovally Keys, Inc.
Lake Moovally Keys, Inc.
an Arizona Corporation

By: Charles L. Brown
Its: PRESIDENT

STATE OF ARIZONA)
) ss.
County of)

The foregoing instrument was acknowledged before me
this 22 day of DEC, 19 95, by _____
as _____ of _____.

My commission expires:
August 12, 1997

Leticia Sguero
Notary Public (CREE RIVER)

SEAL