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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS
AND EASEMENTS**

FOR

QUAILWOOD MEADOWS
(Detached Homes)

1184390v3/16766-0005

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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR QUAILWOOD MEADOWS**

THIS DECLARATION of Covenants, Conditions, Restrictions, Reservations and Easements for Quailwood Meadows (the "Declaration") is made as of this 29th day of October, 2004 by Quailwood Meadows, LLC, a Delaware limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of certain real property situated in the County of Yavapai, State of Arizona described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. Declarant presently intends to develop the Property under the name "Quailwood Meadows" and Declarant may annex into Quailwood Meadows the Additional Property as provided herein.

C. Declarant desires to develop part or all of the Property as an integrated development for single family residential use with such common area as may from time to time be designated pursuant hereto.

D. Declarant desires to form a nonprofit corporation (the "Association") for the purpose of acquiring, constructing, operating, managing and maintaining any Common Areas on Quailwood Meadows, establishing, levying, collecting and dispersing the assessments and other charges imposed hereunder, and administering and enforcing this Declaration and enforcing the use and other restrictions imposed on various parts of Quailwood Meadows.

E. Declarant desires to authorize the Association to maintain certain Common Areas (including, without limitation, the clubhouse, and any entry features), which also benefit the townhouse patio home project which is planned for property adjacent to the Property, and for this purpose, the property owner's association formed with regard to said adjacent property (the "Adjacent Property Association") shall pay to the Association one-quarter (1/4) of the costs incurred by the Association as set forth herein.

F. Declarant desires to subject Quailwood Meadows to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements (the "Covenants") hereinafter set forth in order to establish a general scheme for the development, sale, use and enjoyment of Quailwood Meadows for the purpose of enhancing and protecting the value, desirability and quality of life within Quailwood Meadows.

NOW, THEREFORE, Declarant hereby declares as follows:

**ARTICLE 1
DEFINITIONS**

The following words, phrases or terms used in this Declaration shall have the following meanings:

1.1 "Additional Property" shall mean any real property annexed into Quailwood Meadows by the Declarant pursuant to the provisions of Article 14 hereof.

1.2 "Adjacent Property Association" shall mean that property or homeowner's association formed to manage, govern and control the residential development which may exist in the adjacent parcel of land described on Exhibit "C".

1.3 "Annual Assessment" shall mean the charge levied and assessed each year against each Membership pursuant to Section 7.2 hereof.

1.4 "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

1.5 "Assessable Property" shall mean any Lot included within Quailwood Meadows, except such part or parts thereof as may from time to time constitute Exempt Property.

1.6 "Assessment" shall mean an Annual Assessment, Special Assessment, Capital Reserve Assessment, Maintenance Charge, plan review fee or any other fee or charge levied pursuant hereto.

1.7 "Assessment Lien" shall mean the lien created and imposed by Article 7.

1.8 "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated. It is the present intent of the Declarant that the Association shall be referred to as the "Community Association." Declarant, however, shall be entitled to name the Association as it deems appropriate.

1.9 "Board" shall mean the Board of Directors of the Association.

1.10 "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

1.11 "Capital Reserve Assessment" shall mean any Assessment levied and assessed pursuant to Section 7.3(a) hereof.

1.12 "City" shall mean the Town of Prescott Valley, an Arizona municipal corporation.

1.13 “Common Area” and “Common Areas” shall mean all real property and the improvements or amenities thereon, owned, maintained, controlled or operated by the Association (including without limitation areas used for landscaping, drainage, flood control, open areas and the like), or other rights running to the benefit of the Association and intended for the use and enjoyment of the Owners and/or Residents of Quailwood Meadows, or with respect to which the Association has administrative, maintenance or other similar responsibilities, whether or not such areas have been conveyed to the Association.

1.14 “Covenants” shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

1.15 “Declarant” shall mean and refer to the above recited Declarant or any person or entity to whom any part or all of Declarant’s rights reserved to the Declarant hereunder are assigned. The Declarant’s rights shall only be assigned by a written, recorded instrument expressly assigning those rights.

1.16 “Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions, Reservations and Easements, as amended or supplemented from time to time.

1.17 “Deed” shall mean a Deed or other instrument conveying the fee simple title in a Lot.

1.18 “Design Review Committee” shall mean the committee of the Association to be created pursuant to Article 11 hereof.

1.19 “Design Review Guidelines” shall mean those guidelines established by the Declarant pursuant to Section 11.1 hereof and as otherwise established by Declarant or the Design Review Committee from time to time.

1.20 “Designated Builder” shall mean (i) an Owner regularly engaged in the business of building single-family detached residences, (ii) who owns Lots and constructs or intends to construct Dwelling Units on the Lots it owns, and (iii) has been specifically designated as a Designated Builder hereunder by Declarant pursuant to a written recorded instrument.

1.21 “Developer” shall mean Empire Residential Sales, L.P., an Arizona limited partnership, and any other entity designated from time to time by Declarant.

1.22 “Dwelling Unit” shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

1.23 “Exempt Property” shall mean the following parts of Quailwood Meadows:

(a) All land and improvements owned by or dedicated to and accepted by the United States of America, the State of Arizona, Yavapai County, the City, or any other political subdivision, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective; and

(b) All Common Areas, for as long as the Association is the owner thereof.

1.24 “Initial Owner of Additional Property” shall mean the legal owner of the Additional Property at the time of annexation into Quailwood Meadows pursuant to the provision of Article 14 hereof.

1.25 “Lot” shall mean any area of real property within the Property designated as a Lot on the Plats Recorded by Declarant; as used herein, “Lot” shall include the improvements on a Lot. At such time as additional plats of survey of the Property are Recorded, the Lots shown on such additional plats shall, upon Recording of the plat, be each considered a “Lot” for all purposes hereunder.

1.26 “Maintenance Charges” shall mean any and all costs assessed pursuant to Article 10 hereof.

1.27 “Member” shall mean any person holding a Membership in the Association pursuant to this Declaration.

1.28 “Membership” shall mean a Membership in the Association and the rights granted to the Owners and Declarant pursuant to Article 6 hereof to participate in the Association.

1.29 “Occupant” shall mean any person temporarily occupying any Dwelling Unit with the permission of the Declarant or Owner thereof, including lessees and tenants of the Declarant or Owner.

1.30 “Owner” shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot, but excluding the Declarant and those who hold such title merely as security for the performance of an obligation. In the case of a Lot, the fee simple title to which is vested of record in a seller under a valid and outstanding Agreement or Contract of Sale, as defined in A.R.S. §33-741, legal title shall be deemed to be in the purchaser under such Agreement or Contract of Sale. In the case of a Lot, the fee simple title to which is vested of Record in a trustee pursuant to A.R.S. §33-801, et seq., legal title shall be deemed to be in the trustor. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot. The rights and obligations of Declarant as Owner of a Lot shall be separately set out herein.

1.31 “Parcel” shall mean and refer to those portions of the Property designated a parcel on the Plats.

1.32 “Plats” shall mean and refer to the plats of survey recorded in Book 50 of Maps, at Pages 63 through 77, Office of the County Recorder of Yavapai County, Arizona. At such time as additional plats of survey of the Property are Recorded, those additional plats shall, upon Recording, be considered “Plats” for all purposes hereunder.

1.33 “Property”, “Initial Property” and “Quailwood Meadows” shall mean the real property described on Exhibit A attached hereto and incorporated herein by this reference. “Property” and “Quailwood Meadows” shall include the Additional Property, if annexed into Quailwood Meadows pursuant to the provisions of Article 14 hereof.

1.34 "Recording" or "Recordation" shall mean placing an instrument of public record in the Office of the County Recorder of Yavapai County, Arizona, and "Recorded" and "of Record" shall mean having been so placed of public record.

1.35 "Resident" shall mean:

and (a) Each Occupant actually residing on any part of the Assessable Property;

(b) Members of the immediate family of each Owner or Occupant actually living in the same household with such Owner or Occupant.

Subject to such rules and regulations as the Association may hereafter specify, the term "Resident" also shall include the guests or invitees of any such Owner or Occupant to the extent necessary to enforce the provisions hereof.

1.36 "Shared Common Areas" shall mean those Common Areas intended to be used by or a benefit for the Association and its members, as well as the Adjoining Property Association. Presently, such Shared Common Areas shall include the clubhouse, park, entry features, and any other facilities or areas used by or useful to each such association and its members (such as drainage and utility facilities).

1.37 "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

1.38 "Special Assessment" shall mean any Assessment levied and assessed pursuant to Section 7.2(a) hereof.

1.39 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on the same plane as the object being viewed at a distance of two hundred (200) feet or less from the nearest boundary of the property being viewed.

ARTICLE 2 PROPERTY SUBJECT TO THE DECLARATION

2.1 General Declaration Creating Quailwood Meadows. Declarant intends to develop Quailwood Meadows as a master planned residential community. Declarant hereby declares that all of Quailwood Meadows is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that any property owned by or dedicated to a governmental agency or the public shall not be subject to this Declaration while owned by any such governmental entity or the public, except that any restrictions imposed in this Declaration upon the Owners and Residents concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of Quailwood Meadows and is established for the purpose of enhancing the desirability and attractiveness of

Quailwood Meadows. This Declaration shall run with Quailwood Meadows for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Residents of Quailwood Meadows and their successors in interest.

2.2 Limitation of Restrictions on Developer. Developer is undertaking the work of construction of residential Lots and incidental improvements upon Quailwood Meadows. The completion of that work and the sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of Quailwood Meadows as a residential community. In order that said work may be completed and Dwelling Units constructed on the Lots and Quailwood Meadows established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Developer, its contractors or subcontractors from doing on Quailwood Meadows whatever is necessary or advisable in connection with the completion of said work; or
- (b) Prevent Developer or any builder specifically authorized by Declarant or its representatives from erecting, constructing and maintaining, on any part of Quailwood Meadows, such structures as may be reasonable or necessary for the conduct of its business of completing said work and establishing Quailwood Meadows as a residential community and disposing of the same by sale, lease or otherwise; or
- (c) Prevent Developer or any builder specifically authorized by Declarant from maintaining such sign or signs on any of Quailwood Meadows as may be reasonable or necessary for the sale, lease or disposition thereof, including, but not limited to, such sign or signs as may be required or requested by the institution(s) providing financing to Developer.

Nothing in this Declaration shall be construed to prevent Developer from modifying the Plats or any portion thereof.

2.3 Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

ARTICLE 3 EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

3.1 Easements of Enjoyment. Declarant and every Owner, Occupant and Resident of Quailwood Meadows shall have a right and easement of enjoyment in and to all of the Common Areas which easement shall be appurtenant to, and shall pass with, the title to every Lot subject to the following provisions:

- (a) The right of the Association to suspend the voting rights and right to use of the Common Areas by any Member for any period during which any Assessment against his Lot remains delinquent and remains unpaid after written notice or such failure to make payment is given by the Board to the defaulting Member.

(b) The right of the Association to regulate the use of the Common Areas through the Association Rules and to prohibit or limit access to those Common Areas, and other specified landscaped areas, not intended for use by the Members. The Association Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, and otherwise shall serve to promote the best interests of Declarant, Owners, Occupants and Residents of Quailwood Meadows.

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or quasi-public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or other agreements with applicable governing municipalities or quasi-governmental agencies, entities or districts effective prior to the date hereof or specified on the Plats, no such dedication or transfer shall be effective unless an instrument signed by Declarant and the Owners of two-thirds (2/3) of the Memberships in each class of Members agreeing to such dedication or transfer has been Recorded, except that the Board shall leave authority to transfer to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit Quailwood Meadows and which do not have any substantial adverse effect on the enjoyment of the Common Areas by the Members.

(d) The right of the Association to change the use of the Common Areas in accordance with this Declaration.

(e) The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas and to abandon or otherwise transfer Common Areas so long as, in each case, either (1) the Board determines that the Members are not materially or adversely affected, or (ii) two-thirds (2/3) of both Class A and Class B Memberships have executed an instrument agreeing to such change in size, shape or location, exchange, abandonment or transfer.

3.2 Delegation of Use. Any Owner or Resident may, in accordance with the Declaration and the Association Rules and the limitations therein contained, delegate his right of enjoyment in the Common Areas and facilities to the members of his family, his Occupants, or his Residents; provided, however, that the Association shall have the right to limit the number of guest of an Owner or Resident using the Common Areas.

3.3 Waiver of Use. No Owner may exempt himself from personal liability for assessments, nor release the Lot owned by him from the liens or charges arising under this Declaration by waiver of his use and enjoyment of the Common Areas.

3.4 Declarant Easements. Declarant shall have the right and an easement on, over and under the Common Area for the purpose of maintaining and correcting drainage of surface or storm water. The easement created by this subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

3.5 Access Easements. If access to a Lot is through a Common Area, any conveyance or encumbrance of such Common Area is subject to such easement.

3.6 Drainage Easement. Each Lot shall be subject to an easement for the drainage of water from other Lots, Common Area or other property in accordance with the drainage plans for the Property or for any Lot as shown on the drainage plans on file with the City.

3.7 No Liability. In no event is Declarant or Developer making any representation or warranty regarding the adequacy of any drainage onto or off of any Lot, Common Area, or other part of the Property or Quailwood Meadows and Declarant or Developer is assuming no responsibility or liability for drainage of water over, under, or across the Lots, Common Area, or any other part of Quailwood Meadows or the Property (whether such drainage is from neighboring property or other parts of Quailwood Meadows or the Property) nor for any damage, loss, costs, expenses or fees incurred as a result of any debris, silt, erosion, or other incidental consequences thereof.

ARTICLE 4 PERMITTED USES AND RESTRICTIONS

4.1 Covenants, Conditions, Restrictions and Easements Applicable to the Property. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all portions of Quailwood Meadows which are not Exempt Property (unless otherwise specifically indicated), the Owners, Residents and Occupants thereof.

(a) Architectural Control. Quailwood Meadows is subject to architectural control established by the Design Review Committee. Except as otherwise expressly in this Declaration, no improvements, alterations, repairs, excavation, landscaping or other work which in any way alters a Lot, or the exterior appearance of improvements located thereon, shall be made or done without the prior approval of the Design Review Committee. No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without prior written approval of the Design Review Committee. The exterior of any building, fence, wall, residence or other structure shall not be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Design Review Committee.

(b) Restriction on Further Property Restrictions. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Occupant or other person (except Declarant) against any Lot without the provisions thereof been first approved in writing by the Board and any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void. Nothing contained herein shall preclude Declarant from modifying or supplementing this Declaration or imposing such additional covenants, conditions, reservations, and restrictions as Declarant deems appropriate.

(c) Landscaping. Within ninety (90) days after the City has issued a certificate of occupancy for the Dwelling Unit on a Lot, the Owner of such lot shall complete the landscaping of all portions of the Lot that are disturbed by the construction of the Dwelling Unit that are Visible From Neighboring Property or visible from the Common Areas or the streets. All such landscaping shall be subject to prior approval by the Design Review Committee as set forth

herein; provided, however, that initial landscaping conforming to the landscaping guidelines established by the Design Review Committee (the “Landscaping Guidelines”) shall not require prior approval by the Design Review Committee. In addition to those requirements established by the Design Review Committee in the Landscaping Guidelines, landscaping shall be subject to the following general requirements: (i) landscape design shall reinforce and compliment the architectural and site planning; (ii) landscape design shall promote continuity while creating interesting character for the community; (iii) no hedge more than three (3) feet in height shall be closer than the front yard setback as may be required by the City; and (iv) each Owner must submit a separate, detailed landscape plan for approval by the Design Review Committee. In the event an Owner fails to complete such landscaping within said ninety (90) day period, the Board may by resolution make a finding to such effect and pursuant thereto give notice thereof to the Owner that unless landscaping is commenced within fourteen (14) days and thereafter diligently pursued to completion, the Board may cause such landscaping to be accomplished at said Owner’s expense. If at the expiration of said fourteen (14) day period of time such landscaping has not been commenced and thereafter diligently pursued to completion, the Board shall be authorized and empowered to cause such landscaping to occur and the cost thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner’s Lot is subject, and shall be secured by the Assessment Lien. Except as otherwise expressly provided in this Declaration, such landscaping and incidental work shall not be commenced without the prior written approval of the Design Review Committee and no material changes or deviations (as determined by the Design Review Committee) in or from any plans and specifications approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee.

(d) Utility Easements. There is hereby created a blanket easement upon, across, over and under Quailwood Meadows for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems, as such utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Areas and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings thereon. Nothing contained herein shall entitle Declarant or Developer or any utility in exercising the rights granted herein to disturb any Dwelling Unit constructed in accordance with the requirements hereof. Declarant or Developer further reserves such temporary construction easements for utility lines, maintenance of storage tanks and facilities and access to and from such facilities.

(e) Health, Safety and Welfare. In the event any uses, activities and facilities on any Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Occupants or Residents, the Board may make rules restricting or regulating their presence within Quailwood Meadows as part of the Association Rules, or may direct the Design Review Committee to make rules governing their presence on Lots as part of the design guidelines.

(f) Maintenance of Lawns and Planting. Each Owner and/or Occupant shall keep neatly trimmed, properly cultivated and free from trash, weeds and other unsightly material, all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot (including set

back areas and Common Areas), (ii) any other public right-of-way or easement area which abuts the Owner's and/or Occupant's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path or similar area, and (iii) any non-street public right-of-way; provided, however, that such Owner and/or Occupant shall not be responsible for maintenance of any area over which (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a Recorded instrument as provided in Section 10.1 of this Declaration; or (3) the City, County of Yavapai or other public agency assumes responsibility, for so long as the Association, said political subdivision or other public agency assumes or has responsibility as provided in (1), (2) or (3) above. The Design Review Committee may require landscaping by the Owner of the areas described in subsections (ii) and (iii) above.

(g) Nuisances, Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, fireworks, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but all Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. Each Owner and/or Occupant shall be responsible for immediately removing any dirt, mud or debris collecting in public streets as a result of the Owner's and/or Occupant's construction activities. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Design Review Committee. The Design Review Committee may also require screening of said storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

(h) Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

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

(i) Signs required by legal proceedings.

(ii) Numbering designating the street address of the Dwelling Unit (a) stenciled and located on the curb immediately in front thereof or (b) affixed to the Dwelling Unit.

(iii) Signs indicating a property to be "For Sale" or "For Lease," provided no more than one (1) such sign is located on each individual residence, no individual sign is larger than five hundred (500) square inches in size, and no sign is placed closer to the street than six (6) feet.

(iv) Such other signs which are in conformance with the applicable requirements of the City, County of Yavapai or other applicable governmental agencies and which have been approved in advance and in writing by the Design Review Committee as to size, color, design, message content and location.

The foregoing shall not prohibit signs at street entrances constructed by Developer identifying Quailwood Meadows or signs identifying or used in connection with or directing traffic to model homes or other temporary signs used by Designated Builders in connection with the sale of homes in Quailwood Meadows; provided, however that any temporary signs used by Designated Builders shall be approved by the Design Review Committee.

(j) Roof Structures and Equipment. If the Dwelling Unit has a pitched roof, the roofing material for that portion Visible From Neighboring Property must be clay or concrete tile or such other roofing material as may be approved by the Design Review Committee. Unless approved by the Design Review Committee prior to location or installation, no solar units or panels, heating, air conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof.

(k) Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above ground structures and/or media for transmission as may be originally constructed by Declarant or as may be otherwise approved by the Design Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee.

(l) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Occupant of a Lot, any member of the Design Review Committee or any person authorized by the Design Review Committee and any member of the Board or any person authorized by the Board shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration have been, or are being, complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

(m) Developer's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Developer or a Designated Builder, or its

duly authorized agents, of structures, improvements, construction trailers, equipment yards, landscape or materials storage or signs on any part of Quailwood Meadows as may be necessary or convenient to the development or sale of Lots within the Property.

(n) Permitted Uses. Except for the construction, maintenance, and other activities related to the model homes as provided below, the Lots shall be used, unproved and devoted exclusively to residential use by Single Families. No gainful occupation, profession, trade or other non-residential use, other than the keeping of an office for private use, shall be conducted on the Lot and no person shall enter into any Lot for the purpose of engaging in such uses or for the purpose of receiving products or services arising out of such usage.

(o) Animals. No animal, horse, bird, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and no animal of any sort shall be kept on a Lot before a certificate of occupancy is issued by the City for the Dwelling Unit. This prohibition includes, without limitation, guard dogs or any other animal maintained, kept or housed on a Lot for security or to prevent theft during the course of construction. An animal is permissible only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, poultry or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, poultry or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein and in the Declaration.

(p) Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be constructed, erected, placed or used on portions of the Quailwood Meadows at any time for any purpose whatsoever, either temporarily or permanently, without the prior approval of the Design Review Committee. Notwithstanding the foregoing, it shall be expressly permissible for Developer or a Designated Builder to maintain, during the period of construction and sale of Lots within the subdivision, upon such portions of the Quailwood Meadows as Developer may authorize, a temporary office convenient or incidental to the sale of Lots and the construction of residences on such Lots.

(q) Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes or temporary trailers for marketing by Developer or Designated Builders and parking incidental to the use of such model homes and lights, flags, flagpoles, all improvements, fences, signs and other features associated, so long as the use of the trailers and location of such model homes are approved by the Design Review Committee, comply with all reasonable conditions as may be imposed by the Design Review Committee, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. The Design Review Committee may also permit other areas to be used for parking in connection with the showing of model homes provided such parking and parking areas are in compliance with applicable governing ordinances and any rules of the

Design Review Committee. No home shall be used as a model home for the sale of homes not located within Quailwood Meadows.

(r) Diseases and Insects. No Owner shall permit anything or any condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

(s) Antennas. No antenna, satellite dish, or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation which are Visible From Neighboring Property shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Design Review Committee.

(t) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the City and acceptable to the appropriate garbage/trash collector. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be promptly removed from all Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(u) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot.

(v) Window Treatments. All windows within any Dwelling Unit constructed on any Lot shall be covered with appropriate window treatments within sixty (60) days after first occupancy thereof. No reflective materials, including but not limited to aluminum foil, reflective screens or glass, mirrors or similar type items shall be installed or placed on the outside or inside of any windows unless approved by the Design Review Committee. The exterior side of all drapes, curtains or other window coverings shall be white, off-white, beige or natural wood toned in color, unless otherwise approved by the Design Review Committee prior to installation.

(w) Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots, or party fences between Lots shall be as follows:

(i) The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(ii) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner, Occupant, Resident or any agents or invitees of an Owner, Occupant, or Resident (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner or Occupant to rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's or Occupant's liability for such damage shall be resolved as provided in subsection (v) below, but any liability imposed on an Owner or Occupant hereunder shall not prevent the Owner or Occupant from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, Occupant, Resident or any agents or invitees of an Owner, Occupant or Resident it shall be the obligation of all Owners or Occupants whose Lots adjoin such party wall or party fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners or Occupants in accordance with the frontage of their Lots on the party wall or party fence.

(iv) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein whether by way of easement or in fee.

(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(vi) Anything in the foregoing to the contrary notwithstanding, in the case of party fences (1) between Common Areas and Lots, or (2) constructed by the Developer or the Association on Common Areas, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article 7 of the Declaration, except that each Owner of a Lot shall be responsible for planting the portion of the party wall or party fence facing his Lot or the portion thereof which is not a portion of the Common Area.

(x) Walls and Fences. No side or rear fence and no side or rear wall (except the wall of the building constructed on any of said lots), shall be more than six (6) feet in height. All walls and fences shall be either slump block or cinder block. If slump block is used, it shall be of the same color and quality as used on the dwelling. Wrought iron inserts are permissible if they are approved by the Design Review Committee and painted to blend with the color of the Dwelling Unit. Notwithstanding the foregoing, all fences and walls are subject to Design Review Committee approval. In no event shall chain link or wire fencing be allowed.

(y) Number and Height. Unless approved by the Design Review Committee prior to construction, alteration or placement, no structure shall be erected, altered, placed or permitted to remain on any Lot in Quailwood Meadows other than one (1) detached single family dwelling and an attached private garage. All Dwelling Units shall be single, split-level, or two story (subject to the floor area limitation set forth below).

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

(aa) Trucks Trailers Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4 ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or street in Quailwood Meadows

so as to be Visible From Neighboring Property or to be visible from the Common Areas or the streets; provided, however, that the foregoing shall not prohibit temporary parking of such a vehicle solely for purposes of loading or unloading for a period not to exceed twenty-four (24) hours.

(bb) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street in Quailwood Meadows, and no inoperable vehicle may be stored or parked on any such Lot or street so as to be Visible From Neighboring Property or to be visible from the Common Areas or the streets.

(cc) Parking. Vehicles of all Owners, Occupants and Residents, are to be kept only in garages or the driveway of any Lot. Guests, agents and the invitees of Owners and/or Occupants shall be entitled to keep their vehicles on streets in front of a Lot or within reasonable proximity thereof for a period of no greater than three days unless approved by the Design Review Committee. In no event shall a disabled or inoperative vehicle be maintained on a street, driveway or otherwise be Visible from Neighboring Property or from the Common Areas.

(dd) Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family tenant from time to time by the Owner, subject to the provisions of this Declaration; provided, however, that the Owner shall ensure that any such tenant complies with the terms and conditions of this Declaration.

(ee) Environmental Protections. Neither the Lot nor any facilities on the Lot shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this paragraph, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," or "toxic substances" in: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

(ff) No Subdivision. No Lot shall be further subdivided by any Owner into smaller lots or parcels and no portion less than all of any such Lot shall be conveyed, transferred or hypothecated by any Owner. Nothing in the foregoing shall preclude Declarant from replatting the Property, or re-subdividing any Lot.

ARTICLE 5 ORGANIZATION OF ASSOCIATION

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any

reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) members appointed by the Declarant. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

5.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the "Association Rules". The Association Rules may restrict and govern the use of any Common Area by any Member, Occupant or Resident; provided, however, that the Association Rules shall not be inconsistent with this Declaration, the Articles or the Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

5.4 No Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

ARTICLE 6 MEMBERSHIPS AND VOTING

6.1 Owners of Lots. Each Owner of a Lot which is subject to assessment, pursuant to Article 7 hereof, shall be a Member of the Association with Class A voting rights. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not cause there to be more Memberships than the number established for purposes of this Section 6.1.

6.2 Declarant. The Declarant shall be a Member of the Association for so long as Declarant holds a Membership pursuant to Section 6.3 below. Declarant shall be entitled to hold a Class B Membership so long as Declarant owns any Lot, any portion of the Property that may be subdivided into Lots, or any portion of Property that could be annexed into Quailwood Meadows as set forth in Article 14 hereof.

6.3 Voting.

(a) Memberships. The Association shall have two classes of voting Memberships:

(i) Class A. Class A Memberships shall be all Memberships, except the Class B Memberships held by the Declarant, and each Owner shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof;

(ii) Class B. Until converted to Class A Memberships as provided below, each Membership owned by Declarant and the Initial Owner of Additional Property shall be a Class B Membership. At the time of any vote by the Members of the Association, Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B Memberships shall cease and be converted to Class A Memberships on the first to occur of the following:

- a. The date which is ninety (90) days after the date when the total votes outstanding in the Class A Memberships entitled to vote equal the total votes outstanding in the Class B Memberships;
- b. The 31st day of January, 2010; or
- c. The date Class B Members notifies the Board in writing that they are terminating its/their Class B Memberships and converting such Memberships to Class A Memberships.

6.4 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

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

6.6 Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot. A transfer of ownership to a Lot may be effectuated by deed, intestate

succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof. The new Owner of the Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as may be established from time to time by the Board.

6.7 Suspension of Voting Rights. If any Owner is in arrears in the payment of any Assessments or other amounts due hereunder or is otherwise in default under any of the provisions of this Declaration and such violation is not cured before any meeting of the Members where votes are to be taken, the Owner's right to vote as a Member of the Association shall not be exercisable for such meeting and shall remain suspended until all payments, including accrued interest, penalties and attorneys' fees as set forth below, are brought current, and until any other infractions or violations of this Declarant are cured.

ARTICLE 7 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. The Declarant, for each Lot hereafter established within Quailwood Meadows, hereby covenants and agrees and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article; (2) Special Assessments for Capital Improvements or other extraordinary expenses or costs established by this Article; (3) Maintenance Charges established by Article 10; and (4) Capital Reserve Assessments established by this Article as such assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, Maintenance Charges and Capital Reserve Assessments (sometimes hereinafter referred to collectively as the "Assessments" and individually as the "Assessment"), together with interest, penalties, costs, and reasonable attorneys' fees, shall be a charge, continuing servitude and lien upon the Lot against which each such assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the Assessment was due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by such successors.

7.2 Annual Assessments. To provide for the uses and purposes specified in Article 9 hereof, including the establishment of replacement and maintenance reserves, real estate taxes, insurance, management fees and such expenses that the Board deems reasonable or necessary to conduct the business of the Association, the Board shall assess against each Membership an Annual Assessment. The amount of the Annual Assessment shall be determined with the objective of fulfilling the Association's obligations under this Declaration to provide for the uses and purposes specified in Article 9. The Board may, during the Assessment Period (as defined below), revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts anticipated by the Association and collect such increased assessment in accordance with procedures established pursuant to Section 7.8 below. The Annual Assessment shall be assessed

against each Member commencing with the year the first Lot is conveyed to a third party by the Declarant, provided, however, that in the event fulfillment of the purposes of the Association does not require the imposition of an Annual Assessment at that time, the Board may delay the initial imposition of the Annual Assessment against each Member until such time as the fulfillment of the purposes of the Association require such imposition. For purposes hereof, "Assessment Period" shall be the same period as the fiscal year of the Association.

(a) Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, during any Assessment Period, a Special Assessment applicable to that Assessment Period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses; provided that any such Special Assessment levied once during an Assessment Period must have the prior written consent of Declarant, if it still holds a Class B Membership, or sixty percent (60%) of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose; and, further provided, for any such Special Assessment levied more than once during an Assessment Period must have the prior written consent of Declarant, if it still holds a Class B Membership, or seventy-five percent (75%) of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this section shall not preclude or limit the assessment, collection or use of the Annual Assessments for the aforesaid purposes.

7.3 Capital Reserve Fund. In addition to the Annual Assessments and Special Assessments authorized in this Declaration, a Capital Reserve Assessment shall be levied against a new Member at the time of a transfer of a Lot from a Designated Builder, Declarant or Developer to a home purchaser. Such Capital Reserve Assessment shall equal one-sixth (i.e., two months' value) of the then total annual Assessments per Lot in effect at the time of the sale or transfer of the Membership and is separate and in addition to any other Assessment. The Board may also charge a transfer fee to be reasonably set by the Board upon any subsequent sale of a Lot. Such transfer fee shall be deposited into the capital reserve fund provided for herein. Notwithstanding Section 9.1 hereof, the Capital Reserve Assessments shall be kept in a separate capital reserve fund and shall only be used for the repair and replacement of Common Area facilities, including, without limitation, landscaping and equipment.

7.4 Rate of Assessment. Annual Assessments may be collected on a monthly, quarterly, or annual basis as determined by the Board and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment. Subject to Section 7.10, the amount of any Annual Assessment shall be set in the sole discretion of the Board except that (i) in regard to all Members other than Declarant, Initial Owner of Additional Property and any Designated Builder, the Annual Assessment must be fixed at a uniform rate for each Lot, and (ii) in regard to each of Declarant, Initial Owner of Additional Property and any Designated Builder, the Annual Assessment shall be an amount per Lot equal to 25 % of such uniform rate set in subsection (i) hereof. All Special Assessments shall be on a uniform basis per Lot. Annual Assessments for each Lot shall not commence until sixty (60) days after substantial completion of the Common Area improvements and landscaping for the particular Parcel containing such Lot (as shown on

the Plats) have been completed by the Developer, as certified by Developer's architect or engineers. For purposes hereof, such certification by Developer's architect or engineer regarding substantial completion of the Common Area improvements and landscaping shall be conclusive for purposes of commencing Annual Assessments.

7.5 Deficits. In the event that the Annual Assessments set forth in this Article are insufficient to meet the operating and business expenses of the Association, Declarant, Initial Owner of Additional Property and Designated Builders shall subsidize the difference, the subsidy being allocated between Declarant, Initial Owner of Additional Property and Designated Builders as follows: (i) beginning on the first day of the month following the day that Annual Assessments are first payable hereunder and continuing for the remainder of that month and the following month. Declarant, initial Owner of Additional Property, and Designated Builders shall pay 100% of the deficit of the Association in proportion to the number of Lots each party owns on the first day of such two (2) month period divided by the total number of Lots owned by Declarant, Initial Owner of Additional Property and all Designated Builders on that same day; and (ii) for each successive two (2) month period, Declarant, Initial Owner of Additional Property and the Designated Builders shall allocate the percentage amount of any deficit for such two (2) month period (with expenses to be allocated to two (2) month periods on an accrual basis) that each shall contribute based on the number of Lots that each respectively owns on the first day of each such two (2) month period divided by the total number of Lots owned by Declarant, Initial Owner of Additional Property and all Designated Builders on that same day. Notwithstanding any other provision of this Section 7.5, in no event shall the sum of the Annual Assessment and subsidy paid by each of Declarant, Initial Owner of Additional Property or any Designated Builder per year exceed the total amount that each respectively would have paid had they been required to pay the full Annual Assessment rate per Lot set forth in Section 7.4(a) above.

7.6 Notice and Quorum for Any Action Authorized Under Section 7.4 and Section 7.2(a). Written notice of any meeting called for the purpose of taking any action authorized under Section 7.4 or Section 7.2(a) of this Article shall be sent to all Members subject to such assessment no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any Member can waive notice to a meeting and right to vote may be exercised by proxy pursuant to such rules as the Board may from time to time promulgate.

7.7 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein, for the billing and collection of the Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice,

prior to such foreclosure or enforcement at the address of the Member on the records of the Association, that the Assessment, or any installment thereof is, or will be, due, and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots shall be given credit on a prorated basis for prepayments made by prior Owners.

7.8 Computation of Assessments; Annual Budget. The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the Assessments for the applicable fiscal year (subject to the limitations of Section 7.10 hereof). Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall deliver or mail to each Owner a copy of the budget and a statement of the amount of Assessments to be levied against such Owner's Lot for that year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided in Section 7.10, neither the budget nor any Assessment levied pursuant thereto shall be required to be approved by the Owners.

7.9 Due Dates. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent, but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due.

7.10 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the "Maximum Annual Assessment" as determined in accordance with this section. For the fiscal year ending December 31, 2004, the Maximum Annual Assessment shall be Eighty Dollars (\$80.00) per month for each Lot. Thereafter, except as provided below, unless a greater increase is approved by a vote of two-thirds (2/3) of the votes of each class of Members represented in person or by proxy at a meeting of Members called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Annual Assessment for the immediately preceding fiscal year increased by the greater of: (a) the maximum extent allowed by law; or (b) the percentage increase for the immediately preceding year over the year before that in the Consumer Price Index--All Urban Consumers-All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor). Further, notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by this Declaration to be maintained by the Association; and (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration; or (iii) taxes, notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is greater than otherwise permitted under the third sentence of this Section 7.10.

7.11 Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear a late fee and default interest, the amount of which shall be set forth in Section 8.1 below and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting such amounts or in enforcing all of the rights and remedies provided herein. The Board also may, but is not obligated to, record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien; provided, however, that the Board's failure to record a Notice of Delinquent Assessment shall not invalidate any such Assessment Lien.

7.12 Evidence of Payment of the Assessments. Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating (a) that all Assessments (including costs and attorney's fees, if any, as provided above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all Assessments have not been paid, the amount of such Assessments (including costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charge must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter, therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

7.13 Property Exempted from the Annual Assessments, Special Assessments and Assessment Lien. Exempt Property shall be exempted from the Annual Assessments and Special Assessments and, except as provided in Article 10, from Maintenance Charges and the Assessment Lien; provided, however, that if any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall, to the extent applicable, be subject to the Annual Assessments and Special Assessments and, if exempt therefrom, Maintenance Charges (prorated as of the date it became Assessable Property) and the Assessment Lien.

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

7.15 Contribution from Adjacent Property Association. The Adjacent Property Association shall be obligated to contribute to the Association one-half (1/2) of the costs each year incurred by the Association to own, maintain, repair, replace, improve, insure, discharge taxes and assessments and operate the Shared Common Areas. The obligation of the Adjacent Property Association to contribute its allocable share of the costs relating to the Shared Common Areas shall be a burden on the Adjacent Property, and may be enforced as a lien.

ARTICLE 8
ENFORCEMENT OF DECLARATION AND ASSESSMENTS AND MAINTENANCE
CHARGES AND OF ASSESSMENT LIEN

8.1 Enforcement. The Declarant, for so long as it holds a Class B Membership, and the Association, as the agent and representative of the Members, and each of the Members shall have the exclusive right to enforce the provisions of this Declaration.

Any amounts owing the Declarant or Association hereunder as a result of a default by any Owner shall be immediately subject to a late payment penalty as may be set by the Board from time to time (not to exceed the greater of 10% of the amount owed or \$50.00), plus default interest on the amount of such late payment and such late payment fee, at a per annum rate equal to 18%.

In the event of a default of any provisions hereof, including without limitation, any failure to comply with use restrictions or landscaping or design review control, the Association or Declarant shall be entitled to obtain, in addition to any other rights or remedies at law or in equity, immediate injunctive relief. Each Owner agrees that damages are an inadequate remedy for any violation of any term or provision of this Declaration.

If any Owner or Designated Builder fails to keep the streets clear of mud, dirt or debris resulting from the construction activities as set forth herein or fails to keep any Lot clear of rubbish or debris or maintains a nuisance or unsafe, unsightly or offensive condition thereon or otherwise undertakes any activity or fails or permits any condition or circumstance to arise that constitutes a violation of any term or condition of this Declaration, Declarant or Association shall be entitled to take such action as it deems appropriate in order to correct or remove such condition and enter the Lot, street or other property on which such condition exists, with or without such notice as Declarant or Association deems prudent under the circumstance, and all costs, expenses and fees (including attorney's fees incurred by Declarant or Association in taking such action) shall be immediately due and owing by the Owner creating, causing or permitting such condition to exist, together with default interest from the date such costs are incurred and late payment fee as set forth above. The exercise of Declarant's and Association's rights shall not be deemed to cure such default and may be exercised in addition to and not in lieu of any other right or remedy provided herein or at law or in equity.

8.2 Remedies to Enforce Payment of Annual Assessments, Special Assessments, Capital Reserve Assessments, and Maintenance Charges. If any Member fails to pay the Annual Assessments, Special Assessments, Capital Reserve Assessments, or installments when due, or to pay Maintenance Charges assessed pursuant to Article 10, the Association may enforce the payment of such Assessments and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments;

(b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages or, if applicable, a non judicial sale under deeds of trust (including, where applicable, the right to recover any deficiency) and, if foreclosed as a realty mortgage, the Lot may be redeemed after foreclosure sale as provided by law.

8.3 Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual Assessments, Special Assessments, Capital Reserve Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriffs or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriffs or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual Assessments, Special Assessments, Maintenance Charges, Capital Reserve Assessments and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriffs or trustee's deed or deed given in lieu of foreclosure.

8.4 Costs to be Borne by Member in Connection with Enforcement of Payment of Assessments and Maintenance Charges. In any action taken pursuant to Section 8.2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments, Special Assessments, Capital Reserve Assessments and Maintenance Charges together with interest, penalties and the Association's collection costs and attorney's fees, including those costs and fees specified in Section 7.11.

ARTICLE 9 USE OF FUNDS

9.1 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual Assessments and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Quailwood Meadows and the Members and Residents, and in discharging its obligations hereunder, by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without Quailwood Meadows, which may be necessary, desirable or beneficial to the General common

interests of Quailwood Meadows, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance of walls, project signage and landscaping on Common Areas and public right-of-way and drainage areas within Quailwood Meadows, obtaining of liability insurance, supplying of utilities and other public services, providing for communication and transportation within and dissemination of information concerning Quailwood Meadows, indemnification of officers and directors of the Association, including such Director and Officer liability insurance as the Board deems appropriate, and generally protecting the health and safety of the Members and the Residents. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

9.2 No Borrowing Power. The Association may not borrow money unless specifically authorized by Declarant. In no event shall Declarant authorize any borrowing in excess of \$25,000 without the consent of the majority of the Class A Members and in no event shall the proceeds of any borrowing be applied to any expenditure that could not otherwise be defrayed through the application of the proceeds of the Annual Assessments; provided, however that the foregoing shall not apply to any sums paid by Declarant, Initial Owner of Additional Property, and Designated Builders pursuant to Section 7.5.

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

9.4 Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas, or incurred as a result of action or inaction by the Board members and Design Review Committee members, with the amount and type of coverage to be determined by the Board.

ARTICLE 10 MAINTENANCE

10.1 Common Areas and Public Rights-of-Way. The Association, or its duly delegated representative, shall repair, replace, maintain and otherwise manage, all Common Areas, including, but not limited to, entry signs, drainage and flood control areas, the landscaping, project perimeter walls, walkways, paths, parking areas, drives and other facilities, whether or not such areas have been conveyed to the Association. The Association shall also maintain any landscaping and other improvements not on Lots which are within the exterior boundaries of the Property which are intended for the general benefit of the Owners and Residents of Quailwood Meadows, including landscaped medians within any rights-of-way, "gang" mail boxes, bike paths, equestrian trails, signs and lighting. The Association shall not maintain areas which (i) the City, County of Yavapai or ether governmental entity is maintaining or (ii) are to be maintained

by the Owners of a Lot unless the Association elects to maintain such areas. Specific areas to be maintained by the Association may be identified on the Plats or approved by the Declarant, and in deeds from the Declarant to a transferee of a Lot, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of Quailwood Meadows.

The Board shall use a reasonable standard of care in providing for the repair, management and maintenance of said property. In connection therewith the Association may, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any Common Area;
- (b) Replace injured and diseased trees and other vegetation in any Common Area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (c) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (d) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event this Declaration permits the Board to determine whether Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, Occupants and Residents of Quailwood Meadows for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article 10 and, in order to promote uniformity and harmony of appearance; the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

10.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, Resident, Occupant, his family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject, and shall be secured by the Assessment Lien.

10.3 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of Quailwood Meadows which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration or the Design Review Guidelines, standards and rules and regulations of the Design Review Committee, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien.

ARTICLE 11 DESIGN REVIEW COMMITTEE

11.1 Establishment. Declarant shall establish a Design Review Committee and shall establish and adopt Design Review Guidelines and procedural rules and regulations (including an "Approved Plant List" for the purposes of establishing landscaping criteria) to direct the Design Review Committee in the performance of its duties. The Design Review Committee shall consist of three (3) to five (5) regular members, each initially appointed by Declarant, or, if Declarant so elects, the Design Review Committee shall consist of the Board. The appointees need not be Owners, Occupants or Residents and need not possess any special qualifications except such as Declarant may, in its sole discretion, require. Declarant may replace any member of the Design Review Committee at any time with or without cause. In the event of the death or resignation of any member of the Design Review Committee, Declarant shall replace said member within ninety (90) days following such death or resignation. Pending the replacement of such deceased or resigned member, the remaining member or members of the Design Review Committee shall have full authority to act as the Design Review Committee under this Declaration. Declarant's right to appoint Design Review Committee members shall cease and the Board shall be vested with that right and all rights of the Declarant pertaining to the Design Review Committee upon the earliest to occur of the following: at such time as Declarant no longer owns any portion of the Property or any Additional Property or when such rights are expressly relinquished by Declarant to the Board in writing.

11.2 Purpose. The purpose of the Design Review Committee is to maintain consistency of architectural and landscaping standards throughout Quailwood Meadows and thereby preserve the aesthetic and economic value of Quailwood Meadows. The Design Review Committee is hereby empowered to supplement and amend the Design Review Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary; provided, however, that such modifications are in general conformity with the standards set forth in this Declaration. Neither the Design Review Committee, Declarant nor Association is assuming any liability for the economic value nor structural integrity of any improvement. Design Review Committee's decisions shall pertain solely to the matters set forth herein and shall in no way constitute a

representation or warranty of economic value or structural integrity. All decisions shall be made in the Design Review Committee's sole discretion and shall be final and conclusive.

11.3 Operation/Authority. It shall be the duty of the Design Review Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. A quorum for any such meeting of the Design Review Committee shall consist of two (2) members and a vote of two (2) of the members of the Design Review Committee shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The Design Review Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections, which may be indicated on the plans submitted or as the Design Review Committee may deem otherwise appropriate. The Design Review Committee shall have broad discretionary powers in determining whether an application is in conformance with the Design Review Guidelines. In addition, the Design Review Committee may disapprove any application if it, in its discretion, believes the applicant has not supplied sufficient or accurate information for the Design Review Committee to exercise the judgment required by this Declaration. The Design Review Committee has the authority to grant variances to the Design Review Guidelines by an affirmative vote of the majority of the members of the Design Review Committee. In no event, however, shall the Design Review Committee have the authority to grant any variance from a prohibition, restriction, requirement or other provision of this Declaration, unless expressly provided otherwise herein. The Design Review Committee shall keep complete written records of all applications for approval submitted to it (including one (1) set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Review Guidelines. For these purposes, an "application" to the Design Review Committee shall not be deemed submitted unless (1) it is in writing and in such form as the Design Review Committee may from time to time request, (ii) it is submitted with such elevations, drawings and other documents prepared by design professionals in accordance with industry standards and such requirements as the Design Review Committee may impose, (iii) it is submitted in such multiple copies and at such location or locations as specified by the Design Review Committee, (iv) it is accompanied by an application fee in the full and correct amount, and (v) it meets such other requirements as the Design Review Committee may from time to time impose. Each Owner and Builder is encouraged to submit to the Design Review Committee preliminary elevations for review to avoid incurring unnecessary costs making unacceptable final submissions. The Design Review Committee shall review an application submitted to it and issue its written decision within thirty (30) days of the date such application was submitted.

11.4 Fee. The Board shall have the right, in its sole discretion, to assess against applicants a processing fee to, among other things, defer the costs incurred by the Design Review Committee the services of an architect or other professionals in considering any requests for approval submitted to it. An architect or other professionals may serve on the Design Review Committee. The fee shall be in such amount and payable in accordance with such schedule as reasonably determined by the Board. Any processing fee not paid in full at the time of submittal of the request for approval shall be added to, and become a part of, the Assessment to which the requesting Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien.

The Design Review Committee shall be entitled, however, to refuse to process the application if the applicant does not include payment of such fee.

11.5 No Liability of Design Review Committee. All plans, drawings and specifications approved by the Design Review Committee are not approved for engineering, design or architectural competence. Through its approval of such plans, drawings and specifications, the Design Review Committee does not assume liability or responsibility therefor or for any defect in any structure constructed from such plans, drawings and specifications. Declarant, members of the Design Review Committee and members of the Board shall not be liable to the Association, any Owner or any other entity for any damage, loss or prejudice suffered or claimed because of:

- (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; or
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.

11.6 Waiver. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval.

11.7 Nonapplicability. The provisions of this Article are not to apply to any Lots owned by Declarant, Initial Owner of Additional Property or any person affiliated with Declarant. If, however, Declarant undertakes construction of a Dwelling Unit on any Lot, such Dwelling Unit shall comply with the Design Review Guidelines.

ARTICLE 12 RIGHTS AND POWERS OF ASSOCIATION

12.1 Association's Rights and Powers as set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. Until such time as the Association is incorporated, Declarant shall and hereby reserves to itself, its successors and assigns, the exclusive right to exercise the powers, rights and duties granted to or imposed upon the Association under this Declaration.

12.2 Association's Rights of Enforcement of Provisions of This and Other Instruments. The Association, as the agent and representative of the Owners and Occupants, shall have the

right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

12.3 Reservation of Trade Name. Declarant hereby reserves all right, title and interest in the name "Quailwood Meadows" and such other names as Declarant may use in connection with Quailwood Meadows or the Association for the uses set forth herein and any other use as Declarant may choose. The Association and all Owners shall be entitled to the non-exclusive use of the name "Quailwood Meadows" and other names only with reference to, and in connection with, the Property, the Association or its authorized activities. Any officer of the Association, each acting alone without the other, is hereby authorized to execute on behalf of the Association with such consents, approvals, confirmations, acknowledgments and other instruments as Declarant may request in order to evidence and confirm the rights and interests of Declarant in "Quailwood Meadows" and such other names as Declarant may use in connection with Quailwood Meadows or the Association.

ARTICLE 13 TERMS AMENDMENTS; TERMINATION

13.1 Term; Method of Termination. This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if ninety percent (90%) of the votes cast by each class of Members shall be cast in favor of termination at a meeting held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Section 8.3 above, on seventy-five percent (75 %) of the Lots upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Yavapai County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

13.2 Amendments. This Declaration may be amended by Recording with the County Recorder of Yavapai County, Arizona, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Sections 13.3 and 13.4 of this Article, shall certify that, at a meeting duly

called and held pursuant to the provisions of the Articles and Bylaws, the Owners casting at least ninety percent (90%) of the votes then entitled to be cast voted affirmatively for the adoption of the Amendment; provided, however, after twenty-five (25) years from the date of the Recording of this Declaration, the affirmative vote of the Owners casting at least seventy-five percent (75 %) of the votes then entitled to be cast at a duly called meeting shall be necessary to amend this Declaration.

13.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of Quailwood Meadows and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt, as an amendment hereto, other and different control provisions. Except as provided in this Section 13.3 and in Section 13.4, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 13.2 of this Article.

13.4 Declarant's Rights of Amendment. Notwithstanding anything in this Article to the contrary, Declarant shall, for so long as it possesses a Class B Membership, be entitled to unilaterally amend this Declaration to correct minor errors and omissions.

ARTICLE 14 ANNEXATION

14.1 Right of Annexation. The additional land described on **Exhibit "B"** attached hereto (hereinafter referred to as the "Additional Property") may be annexed into the Property by Declarant without the consent of the Owners, Members, Designated Builders or any other party within ten (10) years of the date of recordation of this Declaration. Declarant shall in no way be obligated to annex the Additional Property but if, when and at such time as any or all of the Additional Property is annexed in accordance with the provisions of this Article 14, the Additional Property so annexed shall, in addition to and together with the Initial Property, be referred to as "Quailwood Meadows" or the "Property".

14.2 Method of Annexation. The annexation on the Additional Property shall become effective upon the earlier to occur of the following: (a) the recording of a certificate of annexation signed and acknowledged by Declarant which (1) describes the Initial Property and such Additional Property, (2) refers to this Declaration, (3) declares that the provision of this section shall become effective and affect such Additional Property, and (4) if and to the extent described by Declarant, sets forth supplemental, restrictions which shall apply to the Additional Property, provided that such supplemental resolutions shall not materially conflict with the provisions and restrictions set forth in this Declaration; or (b) the Recording of a deed conveying fee title to a Lot in such Additional Property to an Owner by Initial Owner of Additional Property, provided that the conveyance of a Lot by Initial Owner of Additional Property to a grantee in connection with an assignment of the rights of the Initial Owner of Additional Property under this Declaration shall not cause the Additional Property to be annexed.

14.3 Effect of Annexation. Upon annexation of the Additional Property, whether achieved pursuant to Paragraph (a) or to Paragraph (b) of Section 14.2 above, this Declaration shall apply to and affect such Additional Property, all of the Lots and Common Areas located therein, and the then and future Owners of such Lots, with the same effect as if said Additional Property was originally subjected to the provisions of this Declaration and to the same extent and degree as this Declaration shall and does apply to the Initial Property, and the then and future Owners of said Lots. Thereupon, the powers and responsibilities of the Association and the Board shall be coextensive with regard to all property included within Quailwood Meadows; the Association shall, pursuant to the provisions of this Declaration, constitute the homeowner's association for Quailwood Meadows and shall own all of the Common Areas in the Additional Property and the rights and obligations of the Owners of Lots in the Additional Property shall be the same and identical to the rights and obligations of the Owners of the Lots in the Initial Property.

14.4 Rights of Declarant. Notwithstanding any of the provisions regarding annexation set forth in Section 14.1 of this Article 14, Declarant shall have the following rights with regard to the Additional Property.

(a) Declarant may, at its option, at any time hereafter, without requesting or receiving the consent of the Owners of any portion of the Initial Property or of any other property constituting a part of Quailwood Meadows, or of any mortgagees of any Lot located therein, elect to permanently remove the Additional Property, or any portion thereof, from the right of Declarant to include the Additional Property, or such portion thereof, in Quailwood Meadows, by Recording a written notice of such removal, signed by Declarant, in the Office of the Yavapai County Recorder. Upon such Recording of a notice, the Additional Property, or portion thereof, shall no longer be eligible for inclusion in Quailwood Meadows as contemplated under Section 14.1 of this Article 14.

(b) Declarant reserves the right at any time and from time to time, without requesting or receiving the consent of the Owners of any portion of the Initial Property or of any other property constituting a part of Quailwood Meadows, or of any mortgagees of any Lot located therein, to resubdivide, amend the subdivision map, modify, alter or otherwise change the legal or other status or configuration of the Additional Property, or any portion thereof, to enter into any written agreement with Yavapai County, Arizona or the governing municipality,

changing the location of any easements previously granted to said County or said governing municipality with respect to the Additional Property, and to grant easements to other third parties in connection with the development and/or improvement of the Additional Property, provided that no Lot on the property which is subject to such change, modification, amendment or easement has previously been sold by Declarant to an Owner. The power herein granted to Declarant shall be and is a power coupled with an interest and shall be irrevocable; each Owner of a Lot in Quailwood Meadows appoints Declarant as his attorney-in-fact for the purpose of effecting any such change, modification or amendment or of granting such easements.

14.5 Additional Annexation. Except for annexation of the Additional Property in accordance with the foregoing provisions of this Article 14, annexation of additional Lots and/or Common Areas to Quailwood Meadows shall require the prior written consent of two-thirds (2/3) of each class of Members eligible to vote.

ARTICLE 15 MISCELLANEOUS

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

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

15.3 Perpetuities and Restraints on Alienation. If any of the options, 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 twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States on the date hereof.

15.4 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

15.5 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding and in addition to the disclaimers respecting drainage as set forth above, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Quailwood Meadows can, or will be, carried out, or that any land now owned or hereafter acquired or annexed by it is, or will be, subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to, or developed for, a particular (or any) use, or that if such land is once used

for a particular use, such use will continue in effect. Declarant makes no representations or warranties that the use of any Property subject to this Declaration will not be changed in the future. In addition, Declarant makes no representations or warranties that a guard service will be provided or, if guard service is provided, that it will be provided during any particular hours or will be continued in the future. Nothing contained in this Declaration and nothing which may be represented to a third party purchaser by any real estate brokers or salesmen representing the Declarant shall be deemed to create any implied covenants or restrictions with respect to the use of any Property. Each Owner acknowledges that Declarant may undertake development of Quailwood Meadows in phases and that by undertaking development of a phase Declarant is making no representation that such phase or any other phase will be completed.

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

15.7 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written, Recorded instrument expressly assigning such rights and powers.

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

15.9 Captions and Titles. All captions, titles or headings of the articles and sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

15.10 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Occupant or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Yavapai County. This section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

15.11 Declarant Rights. Notwithstanding anything contained in this Declaration to the contrary, restrictions contained in this Declaration shall not be construed or deemed to limit or prohibit any act of Declarant, the Developer or its employees, agents and subcontractors or parties designated by it in connection with the construction or completion of improvements upon or sale or leasing of the Lots or any other properties in Quailwood Meadows. Declarant shall be entitled to exercise all rights herein even if it has conveyed all Lots in Quailwood Meadows to

Owner if Declarant still owns any Additional Property which can be annexed into Quailwood Meadows as set forth in Article 14.

15.12 FHA/VA Approval. For as long as there is a Class B Member and if VA or FHA certification is desired by Declarant or (if appropriate notice is given as set forth below) a Designated Builder, the following actions will require the prior approval of the VA and FHA unless such agencies have waived such requirements or unless the second sentence of this section applies: (1) annexation of additional properties into the Property (unless such annexation involves only the Additional Property or any part hereof or such annexation is in accordance with a plan of annexation or expansion previously approved by such agencies); (ii) mergers and consolidations; (iii) mortgaging or otherwise encumbering Common Area; (iv) dedication or other transfer of Common Areas; (iv) dissolution of the Association; and (vi) amendment of provisions in the Articles, this Declaration or the Bylaws to the extent required to be approved by the FHA or VA pursuant to their rules and regulations. Consent of the FHA and VA to the foregoing will not be required if the FHA and VA have elected not to approve the Property for certification or if such approval has been revoked, withdrawn, canceled or suspended. If a Designated Builder desires VA or FHA approval, the Designated Builder shall notify each other Designated Builder and Declarant in writing.

ARTICLE 16 DISPUTE RESOLUTION

16.1 Defined Terms. As used in this Article 16, the following terms shall the meaning set forth below:

- (a) **“Alleged Defect”** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Area, any Lot, Dwelling Unit or any other part of the Property.
- (b) **“Bound Parties”** means: (i) the Declarant; (ii) each Developer; (iii) the Association; (iv) each Designated Builder; (v) all Owners, Residents and Occupants; and (vi) any contractor or subcontractor, architect, engineer, consultant or other Person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of the Common Area, any Lot, Dwelling Unit or any other part of the Property and who agrees in writing to be bound by the provisions of this Article 16.
- (c) **“Claim”** means: (i) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Areas, any Lot, Dwelling Unit or any other part of the Property, including, without limitation, any claim or cause of action that the Common Area, the Lots, the Dwelling Units or any other part of the Property are defective or that the Declarant, Developer, Designated Builder, or their respective agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (ii) any claim or cause of action against the Declarant, Developer, Designated Builder or any employee, agent, director, member or officer thereof, arising out of or in any way related to the development of Quailwood Meadows, or the management or operation

of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

16.2 Agreement to Resolve Certain Disputes Without Litigation. All Bound Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 16.

16.3 Notice of Claim. Any Bound Party having or alleging to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. If the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any legal action, cause of action, proceeding, reference or arbitration against the Declarant, Developer or Designated Builder, which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant, Developer, or Designated Builder to correct such Alleged Defect and the opportunities provided to Declarant, Developer or Designated Builder to correct such Alleged Defect; (c) the estimated cost to repair such Alleged Defect; (d) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant, Developer or Designated Builder and a description of the relationship between such attorney and member(s) of the Board (if any); (e) a description of the fee arrangement between such attorney and the Association; (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant, Developer or Designated Builder and the source of the funds which will be used to pay such fees and expenses; (g) the estimated time necessary to conclude the action against the Declarant, Developer or the Designated Builder; and (h) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602.B of the Arizona Revised Statutes.

16.4 Mediation. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an American Arbitration Association ("AAA") or such other independent mediator or mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The

Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

16.5 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 16.5. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 16.5. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 16.5, the arbitration shall be conducted in accordance with the following rules:

(a) **Initiation of Arbitration**. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other AAA rules as may be applicable to the arbitration (the “AAA Rules”).

(b) **Community Procedures**. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 16.5, the provisions of this Section 16.5 shall govern.

(c) **Appointment of Arbitrator**. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 16.5 as the “Arbitrator”.

(d) **Qualifications of Arbitrator**. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator’s occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

(e) **Disclosure**. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection (c) above.

(f) Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the Parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the Parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) Final Award. The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

16.6 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt of a Claim Notice, the Declarant and any other Respondent and their respective contractors, subcontractors, agents and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, Dwelling Unit or any other part of the Property, and/or any improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant and any other Respondent shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this Section shall be construed to impose any obligation on the Declarant or any other Respondent to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant or other Respondent is not otherwise obligated under applicable law or any limited warranty provided by the Declarant or other Respondent in connection with the sale of the Lots and/or the Dwelling Units. The right of the Declarant and other Respondents to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Declarant or other Respondent. In no event shall any statutes of limitations be tolled during the period in which the Declarant or other Respondent conducts any inspection or testing of any Alleged Defects.

16.7 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Claimant is the Association, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

16.8 Approval by Members. The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of all of the Members of the Association. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 16.3.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, Quailwood Meadows, LLC, a Delaware limited liability company, has caused its name to be signed by the signature of its duly authorized representative as of the day and year first above written.

DECLARANT:

QUAILWOOD MEADOWS, LLC, a
Delaware limited liability company

By: Jeremy T Abbott
Name: Jeremy T Abbott
Title: President

STATE OF Arizona)
COUNTY OF Coconino) ss.

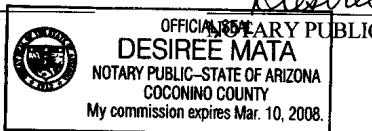
On October 29, 2004, before me, Desiree Mata, a Notary Public in and for said County and State, personally appeared Jerry Abbott, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity; and that by her/his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

March 10, 2008

Desiree Mata



LIST OF EXHIBITS

- | | | |
|-------------|---|--|
| EXHIBIT "A" | - | LEGAL DESCRIPTION OF THE INITIAL PROPERTY |
| EXHIBIT "B" | - | LEGAL DESCRIPTION OF THE ADDITIONAL PROPERTY |
| EXHIBIT "C" | - | LEGAL DESCRIPTION OF THE ADJACENT PROPERTY |

EXHIBIT "A"

Legal Description of the Initial Property

All of that real property described in the plat of record in the office of the County Recorder of Yavapai County, Arizona recorded in Book 50 of Maps, Pages 63-77.

1184390v3/16766-0005

EXHIBIT "B"

The Additional Property

The following tax parcels located in Section 34-35, Township 14 North, Range 1
East, Gila and Salt River Base and Meridian, Yavapai County, Arizona:

1184390v3/16766-0005

EXHIBIT "C"

Legal Description of the Adjacent Property

**ROUWENHORST PROPERTY
RESIDENTIAL PARCEL
LEGAL DESCRIPTION
APRIL 8, 2004**

A PARCEL OF LAND SITUATE IN A PORTION OF SECTION 34, TOWNSHIP 14 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 34, MONUMENTED BY A 2 1/2" GLO BRASS CAP, FROM WHICH THE EAST QUARTER CORNER OF SAID SECTION 34, MONUMENTED BY A STONE MARKED 1/4 ON FACE, BEARS AS A BASIS OF BEARINGS NORTH 00°26'38" EAST, A DISTANCE OF 2642.74 FEET;

THENCE NORTH 00°26'38" EAST, ALONG THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 34, A DISTANCE OF 1321.37 FEET;

THENCE NORTH 89°31'49" WEST, ALONG THE SOUTHERLY LINE OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 34, A DISTANCE OF 2001.88 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 89°31'49" WEST, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 355.58 FEET TO A POINT LYING ON THE APPROXIMATE CENTER LINE OF THE AGUA FRIA RIVER;

THENCE THE FOLLOWING TEN BEARINGS AND DISTANCES, ALONG SAID APPROXIMATE CENTERLINE:

THENCE NORTH 12°04'43" EAST, A DISTANCE OF 214.46 FEET;

THENCE NORTH 09°54'08" EAST, A DISTANCE OF 505.61 FEET;

THENCE NORTH 09°01'42" EAST, A DISTANCE OF 415.08 FEET;

THENCE NORTH 03°09'51" WEST, A DISTANCE OF 355.39 FEET;

THENCE NORTH 18°16'13" WEST, A DISTANCE OF 381.26 FEET;

THENCE NORTH 31°57'21" EAST, A DISTANCE OF 119.62 FEET;

THENCE NORTH 38°44'20" EAST, A DISTANCE OF 189.75 FEET;

THENCE NORTH 14°05'29" EAST, A DISTANCE OF 215.61 FEET;

THENCE NORTH 09°10'07" EAST, A DISTANCE OF 120.16 FEET.

THENCE NORTH 21°50'30" WEST, A DISTANCE OF 247.54 FEET TO A POINT LYING ON THE NORTHERLY LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34.

THENCE DEPARTING SAID APPROXIMATE CENTERLINE, SOUTH 89°28'37" EAST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 835.52 FEET TO NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34.

THENCE SOUTH 00°31'12" EAST, ALONG THE EASTERLY LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34, A DISTANCE OF 1321.15 FEET TO THE NORTHEAST CORNER OF NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, MONUMENTED BY A 1/4 INCH REBAR WITH LS CAP #13011.

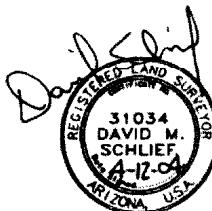
THENCE SOUTH 00°05'51" WEST, ALONG THE EASTERLY LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, A DISTANCE OF 754.78 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, WHOSE RADIUS POINT BEARS NORTH 44°08'21" WEST, A DISTANCE OF 1201.00 FEET.

THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 36°14'54", AN ARC DISTANCE OF 759.82 TO A POINT OF NON-TANGENCY.

THENCE SOUTH 00°03'56" WEST, A DISTANCE OF 233.32 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 2,068.085 SQUARE FEET OR 47.4867 ACRES MORE OR LESS.

SAID LANDS SUBJECT TO EASEMENTS, RIGHTS OF WAY, RESTRICTIONS AND RESERVATIONS OF RECORD, IF ANY.



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