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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VISTOSO HILLS

THIS DECLARATION is made this 28th day of March, 1996 by **FIDELITY NATIONAL TITLE AGENCY, INC.**, an Arizona corporation, as Trustee under Trust No. 10,734, hereafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property in the County of Pima, State of Arizona, which is more particularly described as set forth on Exhibit "A" hereto and incorporated herein by this reference which real property shall hereinafter be referred to as the "Properties."

WHEREAS, The Property is affected by and subject to that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Rancho Vistoso dated September 16, 1986, and recorded on September 17, 1986 in docket 7871, pages 1688-1786, and re-recorded on November 20, 1986 in Docket 7915, pages 1281-1379, restated July 13, 1988 in Docket 8327, pages 2058-2071, supplemented and recorded on March 15, 1989 in Docket 8494, pages 189-195, and amended and recorded on September 25, 1989 in Docket 8629, pages 576-584, all in the office of the Pima County, Arizona Recorder (the "Master Declaration").

WHEREAS, Declarant intends that the provisions herein contained are in addition but subject and subordinate to the applicable provisions of the Master Declaration (and the Articles, Bylaws, and Association Rules identified in the Master Declaration), and not in substitution therefore, and in the event of any conflict or inconsistency between the provisions of this Declaration and the Master Declaration, the provisions of the Master Declaration shall control.

WHEREAS, Declarant and/or the Developer (as hereinafter defined) propose to construct improvements upon the Properties, and to sell and convey the same, subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens hereafter set forth, each of which is for the benefit of the Properties and the subsequent owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Properties, with the exception of Lots 82 & 83, Common Area B and Deer Print Place, are and shall be held, conveyed, encumbered, leased and used

subject to the following covenants, easements, equitable servitudes, charges and liens (hereafter collectively referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. The Restrictions set forth herein shall run with the Properties, shall be binding upon all persons having or acquiring any interest therein, and shall inure to the benefit of, be binding upon and enforceable by all owners, Declarant, the Association and their successors in interest.

These Restrictions do not apply to Lot 82, Lot 83, Walking Deer Place or the area designated as "Common Area B Natural Open Space" on the Plat recorded in Book 48 of Maps and Plats at Page 44, in the office of the County Recorder of Pima County, Arizona. Common Area B Natural Open Space area is restricted to opens space use subject to that certain Declaration of Covenants, Conditions, Restrictions Running With The Land dated 5/30/96, and recorded on 5/30/96 in Docket 10305, pages 889 to 898, in the office of the County Recorder of Pima County, Arizona.

It is specifically acknowledged that this Declaration, the Lots and Parcels described herein, and the Association and its Board and Members, are all subject and subordinate to the Master Declaration and the Articles, Bylaws, and Association Rules (including Architectural and Landscaping Review Committee Guidelines) described therein. It is further specifically acknowledged that all members of the Association are also members of the Vistoso Community Association (the "Master Association") identified in the Master Declaration and are subject to all regular and special assessments of the Master Association in addition to the assessments of the Association.

No provision contained herein shall be construed to prevent or limit Declarant's or Developer's right to complete development of the Properties and construction of improvements thereon, nor Declarant's or Developer's right to maintain model homes, construction, sales or leasing offices, nearby parking areas or similar facilities on the Properties, nor Declarant's or Developer's right to post signs incidental to construction, sales or leasing, nor Declarant's or Developer's right to do anything that is reasonably necessary and proper for the full development of the Properties.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereafter assigned.

Section 1.01. "Articles" shall mean the Articles of Incorporation of the Association and amendments thereto which are or shall be filed in the Office of the Arizona Corporation Commission.

Section 1.02. "Association" shall mean and refer to Vistoso Hills Homeowners Association, its successors and assigns.

Section 1.03. "Board" shall mean the Board of Directors of the Association.

Section 1.04. "By-Laws" shall mean the By-Laws of the Association, together with any amendments thereto.

Section 1.05. "Common Area A", "Common Area" or "Common Areas" shall mean all real property and improvements thereon designated as Common Areas, streets, roads, parking areas, entry gates, sidewalks, walkways, front yards, side yards, trails and the pool & community center, on the Plat as defined herein, whether improved or unimproved, owned by the Association for the common use and enjoyment of the Owners, with the exception of Common Area B Natural Open Space and Walking Deer Place which are not owned by the Association or included in these Restrictions.

Section 1.06. "Declarant" means FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation, as Trustee under Trust No. 10,734, and its successors or assigns who have been designated in writing Declarant as the successor to all or a portion of Declarant's rights hereunder and who own one or more Lots in the Properties.

Section 1.07. "Declaration" shall mean and refer to this instrument and any amendment thereto or restatement thereof.

Section 1.08. "Developer" shall mean Canada Vistas, L.L.C., an Arizona limited liability company, its successors or assigns, who have been designated in writing by Developer as a successor to all or a portion of the Developer's rights hereunder.

Section 1.09. "Dwelling Unit" or "Unit" shall mean any improvements placed within the confines of any Lot.

Section 1.10. "First Mortgage Holder" shall mean a holder of a First Mortgage on a Lot.

Section 1.11. "First Mortgage" shall mean the holder of any Mortgage under which the interest of any Owner of a Lot is encumbered and which mortgage has first and paramount priority (referred to herein as a First Mortgage), subject only to the lien of general or ad valorem taxes and assessments and such other matters as are recognized in such First Mortgage as permitted exceptions.

Section 1.12. "Lot", unless otherwise indicated by the

context, shall first mean and refer to any numbered parcel of real property within the Properties shown on the Plat, with the exception of Lot 82 and Lot 83, as may be amended, together with the Dwelling Unit, if any, thereon. The term Lot shall also include any Lots combined to become a single lot, in which case the Lots so combined shall be considered one lot for all purposes, including voting and assessments.

Section 1.13. "Master Association" shall mean the Vistoso Community Association as identified in the Master Declaration.

Section 1.14. "Member" shall mean and refer to every person and/or entity who holds membership in the Association pursuant to Section 2.01 hereof.

Section 1.15. "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

Section 1.16. "Owner" or "Homeowner" shall mean and refer to (1) the record Owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same has merged) of any Lot, or (2) the purchaser of a Lot under a record contract for the sale of real property as set forth in Arizona Revised statutes Section 33-741 et seq. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, or a lessee or tenant of any Owner as defined above, or an original purchaser or vendee under any executory contract of sale which has not been fully consummated with a deed to the purchaser recorded in the office of the County Recorder of Pima County, Arizona.

Section 1.17. "Person" shall mean a natural individual, corporation or other entity with the legal right to hold title to real property.

Section 1.18. "Plat" shall mean the plat of the real estate, which is subject to this Declaration, recorded in Book 48 of Maps and Plats at Page 44, in the office of the County Recorder of Pima County, Arizona, and any amendment thereto or re-subdivision in the office of the County Recorder of Pima County, Arizona.

Section 1.19. "Properties" shall mean and refer to Lots 1 through 81, of Vistoso Hills and Common Area A as described on the Plat including all roadways and sidewalks, excepting Deer Print Pl.

Section 1.20. "Restrictions" shall mean the covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth in this Declaration.

Section 1.21. "Rules" shall mean any and all rules adopted by the Board pursuant to the By-Laws.

Section 1.22. "Screened" shall mean shielded, concealed, and effectively hidden from view by the appropriate means, as approved by the Architectural Control Committee, so as not to be Visible from within the Property, as defined in Section 1.23.

Section 1.23. "Visible from within the Properties" shall mean with respect to any given object or activity, that such object or activity is or would be visible, without artificial sight aids, from six (6) feet above ground level from any location within the Properties as defined in Section 1.19.

ARTICLE II

ASSOCIATION

Section 2.01. Membership in the Association.

A. Membership. Each Owner (including Declarant) of a Lot, by virtue of being an owner, shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to each Lot owned and shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership to a Lot, and then only to the transferee thereof. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Owner thereof. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

Section 2.02. Voting Rights and Classes of Membership. The Association shall have two classes of voting membership.

Class A: Class A Members shall be all owners, and each such Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners may determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

Class B: The Class B Members shall be the Beneficiaries of Fidelity National Title Agency, Inc. Trust No. 10734 ("Beneficiaries"), who shall be entitled to seven (7) votes for each Lot and for each Planned Lot owned by Declarant, whether or not annexed as part of the Properties. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following events:

(a) When the total votes outstanding in the Class A Membership equals or exceeds the total votes outstanding in the Class B Membership for both Lots and Planned Lots, or

(b) Fifteen (15) years following the conveyance of the first Lot to an Owner, other than the Declarant.

(c) At such earlier date, if any, Beneficiaries unilaterally elects to have its Class B Membership cease and be converted to Class A Membership.

Any Mortgagee who acquires title to a Lot pursuant to a judgement of foreclosure or a trustee's sale shall automatically become entitled to exercise all voting rights which the Owner of said Lot would otherwise have had.

If any Lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration should succeed to the interest of the Declarant by virtue of said assignment, the absolute voting rights of the Declarant as provided herein shall not be terminated thereby, and such lender, or successor to such lender by assignment or foreclosure or acceptance of a deed in lieu thereof, shall hold a Declarant's membership and voting rights on the same terms as they were held by Declarant.

Section 2.03. Purpose of Association. The Association is a non-profit corporation which will serve as the governing body for all Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area and slope & drainage easements, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, the By-Laws, and the Rules. The Association shall not be deemed to be conducting a business of any kind. All funds received by the Association shall be held and applied by it for the Owners and Members in accordance with the provisions of this Declaration, the Articles and the By-Laws.

Section 2.04. Rights and Responsibilities of Association. The Association, through the Board of Directors, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall be responsible for the proper and efficient management and operation of the Common Area and slope & drainage easements, including:

(a) maintaining, operating, rebuilding improvements, and insuring all originally constructed by Declarant or Developer or later constructed by the Association on or about the Common Area;

(b) maintaining and landscaping property owned or controlled by the Association, including private roads, sidewalks, paths, slope easements, drainage easements and other easement rights, if any, and including slope easements which may be located adjacent to common areas lying outside of the rear and side patio walls of Dwelling Units;

(c) maintaining, landscaping and insuring drainageways and slope easements which may, but need not be identified as such or as Common Area on The Plat (including the Drainage Easement along the northern boundary of Parcel 5-N Rancho Vistoso), and which drainageways and slope easements, even if constituting easements across individual Lots, are intended for the benefit of

all the Owners;

(d) paying real estate taxes, assessments and other charges on the Common Area;

(e) insuring all improvements which the Association is obligated to maintain against damage by casualty with such companies and in such limits as provided herein and as the Association deems appropriate;

(f) hiring, firing, supervising and paying employees and independent contractors including, but not limited to workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;

(g) maintaining such liability insurance as the Association deems necessary to protect the members and the Board of Directors of the Association from any liability caused by occurrences or happenings on or about the Common Area and slope easements;

(h) maintaining workmen's compensation insurance for the employees of the Association;

(i) purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;

(j) establishing and maintaining such adequate cash reserves as the Association may, in its sole and absolute discretion, deem reasonably necessary for the periodic maintenance, repair and replacement of the improvements which it is responsible to maintain;

(k) providing for and payment of all utility services for the Common Area and slope easements if deemed appropriate by the Board;

(l) entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Properties as a first-class, residential development;

(m) granting licenses, easements and other agreements for the use of Common Area;

(n) maintaining any personal property owned by the Association and

(o) such other matters as are provided for in this Declaration, the Articles of Incorporation, and the By-Laws.

The Association shall maintain any slope easement areas to which it has been granted an easement for such purposes, and has accepted same. Declarant reserves the right to grant such easements to the Association, and the Association shall accept easements so granted by Declarant.

Section 2.05. Articles and By-Laws. The manner in which the Association hold meetings and attends to other corporate formalities shall be controlled by the provisions of the By-Laws, the Articles and this Declaration, which Declaration shall control in the event of conflict. The Board of Directors of the Association shall be elected by majority vote of the total votes cast by both classes of the membership at a meeting attended by a

quorum as called for by the By-Laws, except that so long as Beneficiaries retains the Class B Membership, Declarant reserves the exclusive right to appoint the officers and directors of the Association and may do so without calling a meeting of members.

Section 2.06. Transition to Board. Prior to the time that the operations of the Association are turned over to the Members by the Declarant, the Members shall be required by February 15 of each year to report and submit to the Association, in writing, any claims or disputes with regard to the operations of the Association by the Developer or Declarant, during the immediately preceding calendar year, including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape or other improvements originally constructed by Developer or Declarant or the collection of assessments, maintenance and reserve accounts and other matters falling within the realm of responsibility of the Association.

When the operations of the Association are turned over to the Members by the Declarant, the Declarant shall deliver all corporate books and accounting records to the Members at the Association's offices. Upon receipt of the corporate books, accounting records and written notice of Declarant's intent to turn over the operations of the Association, the Members shall notify Declarant in writing within forty-five (45) days of any claims or disputes with regard to the operations of the Association by the Declarant which have arisen subsequent to December 31 of the preceding year, including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape or any other improvements, to the extent applicable, originally constructed by Developer or Declarant or the collection of assessments, maintenance of reserve accounts and other matters falling within the realm of responsibility of the Association.

In the event that such claims or disputes are not presented in writing to the Declarant within the time periods set forth above, such claims and disputes shall be deemed forever waived, relinquished and abandoned.

Any valid and timely written claims or disputes presented to the Declarant shall be resolved promptly between the members and Declarant.

Section 2.07. Authority of Board. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (collectively the "Rules"), which shall be binding upon all persons subject to this Declaration and shall govern the use and/or occupancy of the Properties. The Rules may also include the establishment of a system of fines and penalties. The rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area or the slope easements. The Rules may be amended at any special or regular meeting of the Board.

The Rules are deemed incorporated herein by this reference and shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding upon all persons having any interest in, or making any use of, any part of the Properties, whether or not copies of the Rules are actually received by such persons. The Rules, as adopted amended or repealed shall be available for review at the principal office of the Association to each person reasonably entitled thereto. It shall be the responsibility of each person subject to the Rules to review and keep abreast of any changes in the provisions thereof. In the event of any conflict between any provision of the Rules and any provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or By-Laws to the extent of any such conflict.

Section 2.08. Non-Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, Developer, the Board, nor any committees of the Association nor any member thereof, nor any officers, directors or employees of the Declarant, Developer or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account to any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, Developer, the Board or such committees or officers reasonably believed to be within the scope of their respective duties.

To the fullest extent permitted by law, Declarant, Developer and every director, officer or committee member of the Association, Developer and/or the Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal or control over members of the Board or its control over the Association or any committee thereof) shall be indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, and at the request of, the Association, may, in the discretion of the Board, be indemnified by the Association.

Any such indemnification shall be limited to all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed upon such person in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of Declarant by reason of having appointed, removed, controlled or failed to control the Association), or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

Section 2.09. Managing Agent. All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement;

provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause upon 90 days' written notice; provided, however that the Association may terminate the agreement for cause upon 30 days' written notice. The Association is expressly authorized to contract with Declarant or Developer or an affiliate of Declarant or Developer, to provide management services or to perform other duties of the Association or the Board; provided, however, that the compensation to be paid to Declarant, Developer, or their affiliates, under such contract shall not exceed a reasonable amount consistent with compensation paid to professional managers performing similar services in accordance with the standards of the industry.

Section 2.10. Disputes. In the event of any dispute or disagreement between any Owners or any other persons subject to this Declaration relating to the Properties or any question of interpretation or application of the provisions of this Declaration, the Articles, By-Laws or Rules, this Declaration shall control. If the subject is not governed by this Declaration, a determination thereof by the Board shall be final and binding on each and all of such persons, subject to the right of any party to seek declaratory relief. The Board may, at its election, delegate the resolution of such dispute or disagreement to a committee appointed by the Board.

Section 2.11. Records and Accounting. The Association shall keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principals. Such books and records, together with current copies of this Declaration, the Articles, By-Laws and Rules shall be available for inspection by all Owners and First Mortgages of record at reasonable times during regular business hours, and shall specify in reasonable detail all expenses incurred and funds accumulated. Such records, books, and accounts shall be kept for a period of at least two (2) years after preparation.

ARTICLE III

OWNER MAINTENANCE

Section 3.01. Exterior Maintenance, Repair, Up-Keep and Repainting.

A. Maintenance, repair, upkeep and repainting of Dwelling Units, including all other improvements on a Lot, shall be the sole responsibility of each Owner, with the exception of painting of the exterior of the Dwelling Units, re-coating of the

roofs, and maintenance, repair and painting of the yard walls which shall be the responsibility of the Association. Each Owner shall be responsible for sewer blockage, repair, etc. of all Dwelling Unit plumbing as well as the house connection line from the Dwelling Unit to its connection point in the main collection sewer line in the street. Such maintenance, repair and repainting of a Dwelling Unit and other improvements on a Lot shall be undertaken in a manner and with such frequency as shall keep each Owner's Lot in an attractive, well-kept and maintained condition in conformity with all other Lots. In the event any Owner fails to fulfill his or her obligation under this Section, the Association, after approval of two-thirds (2/3) vote of the Board of Directors, shall have the right through its agents and employees, to enter upon the subject property, and to repair, maintain and restore the Lot, including the perimeter yard walls, or fences and any other improvements. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. The Board shall have the right to determine whether or not a Lot is in need of maintenance, repair and upkeep in order to conform to the standards of the general neighborhood of the Properties and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the Lots as a whole will reflect a high pride of ownership. Each Owner or his authorized agent or the Association, as the case may be, in order to conduct such maintenance, repair or repainting, shall have the right of entry at reasonable times upon Lots adjacent to such Owner's Lot, provided reasonable notice of such entry is first given by such Owner to the Owner of the involved adjacent Lot.

B. The Association shall be responsible for maintenance, repair and upkeep of any Common Area improvements including, but not limited to, non-public streets, curb line sidewalks and Common Area sidewalks, paths, trails, recreation facilities, common trash/garbage collection areas, entry and exit gates, parking areas and landscaping and irrigation, if any, constructed on the Common Areas. In addition, the Association shall be responsible for maintaining and landscaping any Common Area slope and drainage easements, and maintaining and repainting perimeter walls or fences constructed along the boundaries of the Property. The Association shall also be responsible for the maintenance, repair and upkeep of the landscaping and irrigation on the front and side yard areas of the Lots exterior to the yard and courtyard walls. The Owner shall be solely responsible for the maintenance, repair and upkeep of the landscaping and irrigation inside the Lot's yard and courtyard walls.

C. Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures located within the Owner's Dwelling Unit, back yard or in the Common Area, provided such lighting in the Common Area is metered to the Owner's Dwelling Unit and is/was installed by the Owner.

ARTICLE IV

INSURANCE

Section 4.01. Insurance Requirements. The Association shall purchase and maintain at all times the following types of insurance:

A. Commercial General Liability and Property Insurance. Commercial general liability insurance covering bodily injury and property damage liability insurance covering all Common Area and slope easements and all other areas under the jurisdiction or control of the Association, excluding the Lots. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or of any other Owners.

The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use to the Properties. Coverage shall be for at least one million dollars ($1,000,000.00) combined single limit.

Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Common Area and slope easements; legal liability arising out of lawsuits related to employment contracts of the Association; and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

B. Insurance of Common Area. Fire and other hazard insurance covering improvements constructed on the Common Area, including but not limited to, pools, ramadas or recreation buildings. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona.

Such policies of property insurance shall contain a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis, without deduction for depreciation, an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement," if possible. The Association shall also

purchase a "Demolition Endorsement", an "Increased Cost of Construction Endorsement", or the equivalent, and coverage on personal property owned by the Association.

If the Common Area or any portion thereof is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage or improvements on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance shall, if deemed necessary by the Board, be obtained on the Common Area in an amount at least equal to the lesser of:

(1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(2) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

C. Workmen's Compensation Insurance. Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws.

D. Fidelity Insurance. Fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, that is, in no event, less than one and one-half times the insured's estimated annual operating expenses and reserves, and provide for at least thirty (30) days notice to the Association before cancellation or substantial modification thereof. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

E. Exceptions. The foregoing insurance and endorsements shall be maintained only to the extent available and reasonably priced and, without limitation, the Board of Directors may elect to dispense with certain endorsements if, in the discretion of the Board of Directors, it is determined that the cost of such endorsements is excessive or the coverage not reasonably available.

Section 4.02. Waiver of Subrogation; Claims Against Declarant, etc. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, Developer, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees and a provision, if available, preventing any cancellation or modification thereof, except upon at least thirty

(30) days' written notice to the insureds.

Liability insurance hereinabove specified shall name as separately protected insureds Declarant, Developer, the Association, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property.

To the extent that each policy will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Declarant, the Board, the Developer, and such other persons or entities named in said insurance policies, and against the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 4.03. Insurance Premiums. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and all such insurance coverage obtained by the Board shall be written in the name of the Association.

Section 4.04. Additional Optional Insurance by Owner. In addition to the aforesaid insurance required to be carried by the Association, each Owner shall, at his own expense, carry any other insurance deemed advisable; however, if available, said policy or policies shall provide that there shall be no contribution or offset between policies of the Association and policies an individual Owner may have in effect.

The Association shall have no duty whatsoever to insure, protect or maintain real or personal property located upon any Lot.

It shall be the individual responsibility of each Owner, at his own expense, to provide Owner's liability and property damage insurance, theft and other insurance covering personal and real property of the Owner.

Section 4.05. Destruction/Insurance Proceeds. In the event of substantial damage or destruction of any part of the Common Area, no Owner of a Lot or other party shall have priority over a First Mortgage with respect to the distribution of any insurance proceeds.

Section 4.06. Condemnation; Destruction.

A. Condemnation.

1. Taking. The term "taking", as used in this Section, shall mean either (a) condemnation by eminent domain or

(b) sale under threat of condemnation.

2. Authority of Board. In the event of a threatened taking of all or any portion of the Common Area, the Members hereby appoint the Board of the Association and such persons as the Board or the Association may designate to represent all of the Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

3. Partial Taking. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area as provided in Section 4.06B.

4. Distribution of Proceeds. Any awards received on account of the taking shall be paid to the Association and to mortgagees of record, as their interests may appear. In the event of a total taking, the Board may retain any award in the general funds of the Association, and any distribution of the award shall be on a reasonable and equitable basis. Notwithstanding anything to the contrary in this Section, the distribution of any award or awards shall be subject to the prior rights of mortgagees.

B. Destruction.

1. Duty of Association. In the event of a partial or total destruction of the Common Area or improvements thereon, except otherwise provided herein, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as is practicable and in a workmanlike manner. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of mortgages whose interests may be protected by said policies.

2. Destruction; Proceeds Exceed 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty percent (80%) of the estimated costs of restoration and repair, a special assessment for reconstruction with each Owner contributing a like sum for each Lot owned, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose, and such assessment shall not require the consent of any specified proportion of the Members.

3. Destruction; Proceeds Less Than 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty percent (80%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored through

application of a special assessment unless such assessment is approved by the vote or written consent of two-thirds (2/3) of each Class of Members.

a. Use of Hazard Proceeds. Notwithstanding the foregoing, unless at least the Owners of two-thirds (2/3) of the Lots other than Declarant have given their prior written approval, the Association shall not be entitled to use hazard proceeds for losses to any Common Area for other than the repair, replacement, or reconstruction of such improvements.

b. Common Area. In the event of a determination not to replace or restore the improvements on the Common Area as set forth in paragraph 3(a) above, the Common Area shall be cleared and landscaped as open space to be used by the owners pursuant to the provision hereof, and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy of uniform special assessment for reconstruction in an amount determined by the Board.

ARTICLE V

OWNERSHIP, USE AND MANAGEMENT OF THE COMMON AREA

Section 5.01. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the provisions hereof.

Section 5.02. Conditional Use of Common Area. Each Owner, his family, licensees, invitees and tenants or lessees, or contract purchasers of a Lot shall be entitled to use the Common Area subject to:

A. The provision of the Articles, By-Laws, this Declaration and the Rules. Each Owner, invitee, licensee and tenant agrees that in using the Common Area he will comply with the provisions of such Articles, By-Laws, this Declaration and the Rules.

B. The right of the Association to charge a reasonable security deposit and clean-up fee for the use of a recreational facility, if any, situated upon the Common Area.

C. The right of the Association to suspend the right of an Owner to use recreational facilities, if any, of the Common Area for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association's published Rules. Each day an infraction continues to exist is to be deemed a separate infraction.

D. The right of the Association to take such steps as

are reasonably necessary to protect the Common Area against foreclosure.

E. The right of the Association, in connection with any adopted Rules, to enforce reasonable rules and regulations with respect to the use of the Common Area, including specific provisions with respect to the parking of vehicles thereon and the use of the pool.

F. The right of the Declarant to modify or resubdivide the Common Area, and rights therein is further subject to all provisions of this Declaration, including other rights reserved by the Declarant hereunder.

Section 5.03. Delegation of Use. Any Owner may delegate his right of enjoyment in the Common Area and facilities to the members of his family, his tenants or lessees or contract purchasers who reside in the Dwelling Unit, subject to such Rules as the Association may, from time to time, establish. Such delegation shall not relieve said Owner of his obligations and responsibilities as a Member under the By-Laws, Rules and this Declaration.

Section 5.04. Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by an Owner of any of his guests, tenants, licensees, agents, or members of his family, such Owner shall be liable therefore to the extent of liability imposed by local law and such Owner does hereby irrevocably authorize the Association to repair the damage property, and the Association shall so repair the damage property in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association the amount actually expended for such repairs. Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon such Owner's Lots and shall continue to be a lien until fully paid. The lien shall be subordinated to any First Mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (but not to exceed the maximum rate permitted by Arizona law). The amount of principal and interest owed by the Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Section 5.05. Restriction on Conveyance of Common Areas and Facilities. The Common Area and facilities owned by the Association may not by act or omission be abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior written approval of the Owners of two-thirds (2/3) of the Lot. Notwithstanding the foregoing, however, the Declarant reserves the right, so long as the Class B membership exists, to modify and resubdivide the Common Area in connection with the development and sale of the property should the Declarant determine, in its sole

discretion, that such modifications or resubdivisions will improve the design or layout of the Properties, or are necessary to correct inadvertent errors in the original design of the Plat or avoid unnecessary hardship or inconveniences in the placement of homes upon Lots in the Properties. Further, the Declarant and the Association shall have the right to grant easements over the Common Area for the purpose of constructing, erecting, operating or maintaining thereon, therein, and thereunder: a) roads, streets, walks, pathways and driveways; b) temporary overhead or permanent underground lines, cables, wires, conduits or other devices for the transmission of electricity for lights, heating, power, telephone, cable TV or other purposes; c) sewers, storm drains and pipes, drainage easements, water systems, water heating and gas lines or pipes; and d) such other improvements as may be provided for in this Declaration or advisable in the discretion of the Board of Directors.

ARTICLE VI

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 6.01. Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed, agrees and is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements, and (3) individual repair and maintenance assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, and individual assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made.

Delinquent assessments, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The sale or transfer of a Lot shall not relieve the prior Owner thereof from personal liability to pay delinquent assessments, plus interest, costs and attorney's fees. Such obligation shall remain the personal obligation of the defaulting Owner. The new Owner, except a First Mortgagee as set forth herein, shall take title to such Lot subject to the lien of the full amount of the delinquent assessment.

Section 6.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement, operation and maintenance of the Common Area, streets, sidewalks and for all purposes set forth in

the Articles, By-Laws and this Declaration. The Board of the Association shall provide that assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area, streets and sidewalks owned by the Association and slope easements that must be maintained or replaced on a periodic basis.

Section 6.03. Maximum Annual Assessment.

A. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments shall be Nine Hundred Dollars ($900.00). Subject to the provisions of Section 6.03(B) hereof, the Board shall each year estimate the total expenses anticipated for the coming year and shall determine the necessary level or reserve balances for ordinary and unexpected expenses, and shall determine the annual assessment necessary to generate the required revenues. The annual assessment determined to be necessary in any given year may be set at any amount less than or up to the maximum annual assessment permitted for such year.

B. Subject to Section 6.03(C) hereof, the Board shall not increase the maximum annual assessment by an amount greater than (i) twenty percent (20%) of the amount of the preceding maximum annual assessment or (ii) the percentage increase in the cost of living index for "All Items, All Cities" as reflected by the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor all Urban Consumers (hereafter called the "Cost of Living Index Number"). In the event that the Bureau of Labor Statistics should fail to publish a comparable Cost of Living Index Number during any such years, but a comparable Cost of Living Index Number shall be published by any governmental agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the maximum annual assessment under the provisions of this Section 6.03 with the same force and effect as the Cost of Living Index of the Bureau of Labor Statistics.

C. Any increase by the Board in the annual assessment which is greater than the amount permitted under Section 6.03(B) hereof must be first approved by a simple majority vote of all votes entitled to be cast by the membership who are present in person or by proxy at a meeting called for this purpose, including all votes of the Class B membership.

D. At the time of conveyance of a Lot by Declarant to an Owner, the Owner thereof shall pay the equivalent of two months' assessments applicable to that Lot into the working capital fund of the Association. Said working capital fund shall be used by the Association to meet unforeseen expenditures, or to additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the working capital fund are not to be considered as advance payment of assessments.

Section 6.04. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, streets and sidewalks, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a simple majority of all votes entitled to be cast by the membership who are present in person or by proxy at a meeting called for this purpose, including all votes of the Class B membership.

Section 6.05. Notice and Quorum for an Action Authorized Under Section 6.03(C) and Section 6.04. Written notice of any meeting called for the purpose of taking action authorized under Section 6.03(C) and Section 6.04 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.06. Uniform Rate of Assessment; Declarant and Developer Reduced Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. However, and subject to the limitations set forth in Section 6.03(B) hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating costs of the Association.

Notwithstanding the above, the amount required to be paid toward regular annual and special assessments for the Lots within the Properties owned by Declarant or Developer which are neither leased, nor rented, nor otherwise occupied as a Dwelling Unit shall be fixed at ten percent (10%) of the assessment rate for the other Lots; provided, that at the time any Lot owned by Declarant or Developer is leased rented, or residentially occupied, that Lot shall thereafter, in subsequent periods, be assessed at the uniform rate of assessment for privately owned Lots.

Section 6.07. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots in any Phase of Vistoso Hills on the first day of the month following the conveyance of the first Lot in such Phase to an Owner. The first annual assessment for Lots in Phase I, which shall be in the amount of the maximum annual assessment as defined in Section 6.03(A), shall be adjusted according to the number of months remaining in the calendar year. (The first annual assessment for Lots in subsequent Phases, if any, shall be in the

amount of the then-effective annual assessment established for such year, but shall be adjusted according to the number of months remaining in such calendar year.) The Board thereafter shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto in the event of its increase or decrease from the last annual assessment. The due dates shall be established by the Board.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6.08. Effect of Non-Payment of Assessments: Remedies of the Association. Each Owner agrees and shall be deemed to covenant and agree to pay to the Association, the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. All delinquent assessments shall bear interest at eighteen percent (18%) per annum (but not to exceed the maximum rate permitted by Arizona law), and late payments shall first be credited toward interest due, then towards assessments first due. In the event the Association employs an attorney for collection of any assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in the manner provided by law or in equity, or without any limitation to the foregoing, by either or both of the following procedures.

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgement rendered in any such action shall include the amount of the delinquency, together with interest thereon from the date of delinquency until paid, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner of Member.

B. Enforcement by Lien. There is hereby created a right to record a claim of lien on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners together with interest thereon from the date of delinquency until paid, and all costs of collection which

may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time after occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment by the defaulting Owner. Said demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for demand but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file and record a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, recorded in the office of the County Recorder of Pima County, and shall contain substantially the following information:

(1) The name of the delinquent Owner;

(2) The legal description of the Lot against which claim of lien is made;

(3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);

(4) A statement that the claim of lien is made by the Association pursuant to this Declaration; and

(5) A statement that a lien is claimed against said Lot in an amount equal to the amount stated; and

(6) A statement that the claim of lien will also extend to all assessments which became due but are not paid from the date of the recording of the claim of lien to the date of payment of all amounts set forth therein (including interest thereon, reasonable attorney's fees, costs and collection), and that the claim of lien will only be deemed satisfied and released when the Owner is current in the payment of all such amounts.

Upon recordation of a duly executed original or copy of such a claim of lien, and the mailing of a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot. Such a lien shall be junior to any assessment lien of the Master Association and to tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the lien of any First Mortgage.

Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided

for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 6.09. No Exemption of Owner. No Owner is exempt from liability for payment of assessments by waiver of the use of enjoyment of the Common Area or by abandonment of Lot.

Section 6.10. Subordination of the Lien to First Mortgages; Sale of Transfer of Lots. The lien of the assessments provided for herein, including without limitation any fees, costs, late charges, or interest which may be levied by the Association in connection with unpaid assessments, shall be subordinated to the lien of any First Mortgage. Sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of such executory land sales contract, shall extinguish the lien of assessments or charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; provided, however, that any such delinquent assessments or charges, including interest, late charges, costs, and reasonable attorney's fees, which are extinguished as provided herein, may be reallocated and assessed to all Lots as a common expense. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of such executory land sales contract, shall relieve any Owner of a Lot from liability for any assessments or charges thereafter becoming due, nor from the lien thereof. In the event of foreclosure of a First Mortgage, or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrued prior to the acquisition of title to the Lot in question by such First Mortgagee.

Section 6.11. Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or By-Laws, or the Rules, the following provisions shall apply to and benefit each First Mortgagee of a Lot:

A. First Mortgagees shall not in any case or manner prior to acquiring title to a Lot be personally liable for the payment of any assessment of charge, nor for the agreement to maintain and keep in repair any improvements encroaching upon the Common Area, slope easements or adjacent Lots which were constructed for the use of their Lot.

B. During the pendency of any proceeding to foreclose the First Mortgage, including any period of redemption, the First Mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to, the right to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

C. At such time as the first Mortgagee shall become record Owner of a Lot, said First Mortgagee shall be subject to all of the terms, conditions and restrictions of this Declaration, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.

D. First Mortgagees are hereby granted the right to jointly, or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area owned by the Association, and such First Mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area and any First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

E. Nothing in this Declaration shall in any manner be deemed to give a Lot Owner, or any other party, priority over any rights of a First Mortgagee of a Lot pursuant to the terms of such First Mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses to or a taking of any Lot or any part of the Common Area owned by the Association. Each First Mortgagee shall be entitled to timely written notice of such loss or taking.

F. Each first Mortgagee shall, upon written notice to the Association, be entitled to a written notification from the Association of any default in the performance by the Owner of a Lot encumbered by the Mortgage in favor of such First Mortgagee of any obligation under this Declaration or under the Articles, By-Laws, or rules of the Association which is not cured within sixty (60) days.

G. Each First Mortgagee shall, upon written notice to the Association, be entitled to (i) inspect the books and records of the Association during normal business hours; (ii) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and (iii) receive notice of all meetings of the Association, and designate a representative to attend such meetings.

H. Upon written request to the Association, identifying the name and address of the holder, and the Lot number or address, a First Mortgage Holder shall be entitled to timely written notice of:

(1) Any condemnation loss or casualty loss affecting a material portion of the Properties;

(2) Any sixty (60) day delinquency in the payment of assessments;

(3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond; and

(4) Any proposed action that requires the consent of a specified percentage of First Mortgage Holders.

ARTICLE VII

EASEMENTS AND COMMON WALLS

Section 7.01. Easement for Encroachment. Each Lot, slope easement and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designated or constructed by the Developer, including footings and walls thereon. A valid easements for said encroachments and for the maintenance of same, so long as any such encroachment stands or is rebuilt to stand, shall and does exist.

Section 7.02. Private Drainage Easement. Private drainage easements may have been established as shown on the Plat or by separate instrument duly recorded over and across certain Lots for the exclusive use and benefit of other Lot Owners. Each Owner of a Lot on which a private drainage easement is located shall be responsible for maintaining that easement and keeping it free and clear from all debris, refuse and any other foreign matter which shall in any way interfere with or hinder the free flow of water in the easement as originally constructed. In the event of the failure of any Lot Owner to so maintain an easement, other Lot Owners benefitted by such easements shall have no cause of action against the Association, but shall have a cause of action against that Lot Owner. Any Common Area drainage ways shall be controlled and maintained by the Association.

Section 7.03. Utility Easements. In addition to those specific easements shown on the Plat, there is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television cable or communications lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Common Area and to affix and maintain wires, circuits and conduits on, in, and under the roofs and walls of Common Area. Notwithstanding anything to the contrary contained in

this Section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Properties, excepts as initially designed and installed by Developer or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Properties. In no event shall any portion of the above mentioned easements for utilities be constructed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Properties. There shall be an access easement for the delivery and collection of the U.S. Mail.

Section 7.04. Easement for Perimeter Walls and Other Improvements. Developer may construct perimeter walls and other improvements, including but not limited to, driveways, walkways, exterior lighting (metered to a particular Dwelling Unit), drainage structures, etc., as a part of, or for the use of, a particular Dwelling Unit which may encroach upon or encompass portions of the Common Area, slope easements or adjacent Lots. Wherever such encroachments on the Common Area, slope easements or adjacent Lots should occur, the Owner of the Dwelling Unit involved shall have, subject to the conditions hereinafter set forth, a perpetual permanent right for such perimeter or adjacent Lots and for such other improvements to encroach upon portions of the Common Area, slope easements or adjacent Lots.

In consideration thereof, such Owners agree to maintain and keep in repair any improvements encroaching upon the Common Area, slope easements or adjacent Lots which were constructed for the use of their Lot.

In the event any such Owner should make demand upon the Association or upon the Owners of adjacent Lots to repair or maintain any Common Area which because of incidental encroachment lies within such Owner's yard area enclosed by a perimeter wall, or to maintain and repair any improvements encroaching upon the Common Area, slope easements or adjacent Lots, then the Association or the Owner of the adjacent Lot upon which the encroachment lies, as the case may be, shall have the absolute right, and may cause the Owner making such demand, to remove at his expense the perimeter wall or other improvements encroaching upon the Common Area, slope easement or adjacent Lot and to replace and rebuild, in accordance with the Board's plans and design specifications, such perimeter wall as to be within such Owner's Lot.

Section 7.05. Common Walls. The rights and duties of Owners with respect to common walls or fences shall be as follows:

A. Each wall, including patio walls and fences, which is constructed as a part of the original construction of the Dwelling Unit, any part of which is placed on, adjacent to, or over the divided line between separate Dwelling Units, shall constitute a common wall. Each Owner consents to the use and construction of such common walls and acknowledges that portions of the Properties

may contain common walls. With respect to any such wall, each of the adjoining Dwelling Unit Owners shall assume the burden of and be entitled to the benefits recited in this Section and to the extent not inconsistent herewith, the general rules of law regarding common walls shall be applied thereto.

B. The Owners of contiguous Dwelling Units who have a common wall shall have reciprocal easements for support and an equal right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

C. Unless other provisions of this Section are applicable, the costs of repair and maintenance of a common wall shall be the responsibility of the Association.

D. In the event any common wall is damaged or destroyed through the act of one adjoining Owner, or any of his guest or agents or members of his family so as to deprive the other Owner of the full use and enjoyment of such wall, then the first of such Owners, shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the other Owner or the Association.

E. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall without prior consent of the Board. In addition to meeting the other requirements of these Restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Dwelling Unit in any manner which requires the extension or other alteration of any common wall shall first obtain the written consent of the Board which shall consider, in its discretion, the adjoining Owner's preference concerning the proposed modification, extension or alteration of the common wall. The Declarant or the Developer may modify a common wall without any consent or approval whatsoever.

F. In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of costs thereof, then upon written request of one of such Owners delivered to the Association, the mater shall be heard and determined by the Board, except that the Declarant or the Developer may modify a common wall without any consent or approval whatsoever.

ARTICLE VIII

ARCHITECTURAL CONTROL COMMITTEE

Section 8.01. Composition of Committee. The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided,

however, that except as otherwise provided, until all Lots and Planned Lots have been conveyed to the first Owner thereof (i.e. other than the Declarant or Developer), Declarant shall appoint the Architectural Control Committee without a meeting and without a vote of the Members, and during said period, no election of the Members of said Committee shall be had unless Declarant has in writing relinquished its rights of exclusive appointment. A majority of the Committee may designate a representative to act for it.

Section 8.02. Review by Committee. No Dwelling Unit, structure, improvement (including but not limited to any building, fence, wall, driveway or other surfaced area), or any attachment to an existing structure, shall be made, placed or constructed upon any Lot or the Properties (except by the Association upon the Common Area), and no change of the exterior of or additions to a Dwelling Unit, structure or improvement shall be made, and no change in the final grade, nor the installation, change of or addition to any landscaping on any Lot (except enclosed rear yards), shall be constructed, reconstructed, made, placed or performed, unless complete plans and specifications showing the nature, design, kind, quality, shape, height, materials, color scheme and location of any such Dwelling Unit, improvement, structure or attachment, and landscaping plans, and including a construction schedule therefore, shall have first been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgement to the end that all Dwelling Units, attachments, improvements, construction, landscaping and alterations to structures on lands located within the Properties (collectively referred to herein as "Architectural Improvements") conform to and harmonize with the existing surroundings and structures. Decisions of the Architectural Control Committee shall be binding and conclusive.

Upon approval of the Vistoso Hills Architectural Control Committee a similar submittal to, and approval by the Master Association Architectural Review Committee is required. Notwithstanding the foregoing, each owner is responsible to ensure they are in compliance with the Master Association even in the event approval is not required by the Vistoso Hills Architectural Control Committee.

Notwithstanding the foregoing, neither the Declarant nor the Developer shall be required to submit any plans or specifications whatsoever to the Architectural Control Committee, nor shall any consent or approval of the Architectural Control Committee be required for the construction of any improvements by the Declarant or the Developer.

Section 8.03. Procedures. The Architectural Control Committee shall approve or disapprove all plans within thirty (30) days after submission and issuance by the Association of a receipt therefore. In the event the Architectural Control Committee fails

to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval shall be deemed denied, except that the party submitting the plans may resubmit the plans and if no response is given for a period of thirty (30) days after a written request by certified mail for a decision, approval shall be deemed given. The Architectural Control Committee may from time to time, without notice, establish, add to, delete or amend separate standards, rules and procedures, which shall not be contrary to or inconsistent with these Restrictions, providing for or otherwise relating to the submission, procession, review and approval of plans and specifications for Architectural Improvements or various portions or stages thereof. The Architectural Control Committee shall not be bound by previous standards or interpretations of its standards; and any consent or approval of a prior set of plans and specifications shall not preclude disapproval of a subsequent identical or similar set of plans and specifications.

Section 8.04. Vote. A majority vote of the Architectural Control Committee is required to approve proposed change or improvement, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control.

Section 8.05. Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 8.06. Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article I hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the Restrictions contained in this Article or Article I hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Properties and shall not militate against the general intent and purpose hereof.

Section 8.07. Nonconforming Architectural Improvements. In the event that the Architectural Improvements do not, upon the proposed date set forth in the construction schedule, conform to the plans submitted to and approved by the Architectural Control Committee, the Architectural Control Committee shall give written notice to the Owner of the property upon which such Architectural Improvements have been made. Such notice shall specify the nature of the nonconformity of the Architectural Improvements and shall grant the Owner a hearing before the Architectural Control Committee in accordance with the By-Laws.

If an Owner has not, within sixty (60) days of the mailing or delivery of the written notice, corrected the nonconformity of the Architectural Improvement, then the Architectural Control Committee shall have the right and an easement to direct its agents, employees or contractors to enter upon the said Owner's property for the purpose of making any or all of such improvements, alterations or repairs as are necessary to bring the Owner's Architectural Improvements into conformity with the plans submitted to and approved by the Architectural Control Committee.

All costs incurred by the Association in the course of the Architectural Control Committee's efforts to bring the nonconforming Architectural Improvements into conformity with the approved plans as provided above, including costs of labor, materials and all associated administrative costs reasonably incurred by the Association in connection therewith, shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien on such Owner's Lot and the improvements thereon, and shall be enforceable and collected as provided for in Article VI hereof.

Section 8.08. Color and Building Material. Without limiting the foregoing, no color changes nor any changes in the original building structure, composition or products shall be permitted without approval of the Architectural Control Committee.

Section 8.09. Broad Discretion of Architectural Control Committee. In reviewing plans for alterations, modifications, additions or other changes to a Dwelling Unit, improvement or structure upon a Lot, the Architectural Control Committee shall exercise its discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of subdivision development. The Architectural Control Committee shall have the right to deny alterations or modifications for purely aesthetic reasons if the Architectural Control Committee considers the alteration or modification to be unattractive in relation to the overall scheme of development, or if the Architectural Control Committee considers the alteration or modification to be a nuisance or upset of design, or if the Architectural Control Committee considers the alterations or modifications to be in contrast or out of harmony with the style of existing structures, or if the physical views of the Properties will be disrupted by the alteration or modification. The Architectural Control Committee may elicit the opinion of other Owners, including the neighbors of the Owner submitting the plan for alteration or modification, as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical views of other Owners. After eliciting these opinions, the Architectural Control Committee may, but need not, take them into account in making its final decision of approval or disapproval of an alteration or modification to an existing structure. While the opinion of no single Lot Owner will control a decision of the Architectural Control Committee, the Architectural Control Committee may, within its own discretion, but

need not, attach whatever significance it deems sufficient to the statements of residents and/or neighbors of the Owner submitting the proposed alteration or modifications to an existing structure.

Section 8.10. Fee. The Association may establish a reasonable processing Fee to defer the costs of the Architectural Control Committee in considering any requests for approvals submitted to the Architectural Control Committee. The fee for initial submission and processing of plans and specifications shall be $100.00, provided that such fee may be increased from time to time by the Association as it deems appropriate. The Association also may establish a fee schedule from time to time, with respect to all or any portion or stage of the processing of plans and specifications as provided for in Section 8.04.

ARTICLE IX

USES AND RESTRICTIONS

All Properties within Vistoso Hills shall be held, used and enjoyed, subject to the following limitations and restrictions (in addition to all other provisions hereof and of the Master Declaration and Design Guidelines):

Section 9.01. Private Residential Purposes. Dwelling Units and Lots shall be occupied and used by the respective Owners solely for private residential use of the Owner, his family, tenants and social guests and for no other purpose. All Dwelling Units shall be constructed of first class materials, and no manufactured, prefabricated or mobile homes shall be permitted. No gainful occupation, profession, trade or other non-residential use shall be conducted on the Properties, except that (a) Declarant or Developer may maintain sales offices, construction offices and sales models on the Properties, and (b) an Owner may carry on a "Home Occupation", as defined in, and under the conditions set forth in, Section 2-101 (as hereinafter revised or amended from time to time) of the Town of Oro Valley Zoning Code, Revised.

No Home Occupation conducted on any Lot within Properties shall involve nuisance to surrounding property Owners, excessive noise, odors, or other interference with the peaceful use and enjoyment of the Properties, and the Board of Directors shall have the discretion to determine whether, in a particular case, the conduct of a Home Occupation violates the provisions hereof. If such determination is made, the Board of Directors shall have the authority to require that the Home Occupation in question cease immediately.

In addition, no Home Occupation shall involve frequent or repeated visits to the Properties by members of the public such that excessive vehicular traffic and visits to and from the Properties cause a disturbance of the overall peaceful nature of

the area and residential character of the subdivision.

Sales offices, sales models and construction offices utilized by the Declarant or Developer on the Properties need not be owned by either Declarant or Developer. Further, sales models and sales offices may be utilized on the Properties as sales models and sales offices for the benefit of other subdivisions of either Declarant or Developer.

Section 9.02. Renting. Each Owner shall have the right to lease or rent his Dwelling Unit; provided, however, that any lease agreement, including any agreement to lease the Dwelling Unit on a month to month basis, must be in writing and must provide that the failure of any lessee or tenant to comply with the Rules, By-Laws, Articles and provisions of this Declaration or the Master Declaration and the Articles, By-Laws, Development Guidelines and Rules of the Master Association shall be a default under the lease. Any lease agreement shall be for a period of not less than thirty (30) days, and a copy thereof shall be delivered to the Association.

Section 9.03. Antennas and Exterior Additions. No exterior antennas, satellite dishes or other devices for the transmission or reception of radio and television signals shall be placed, erected or maintained on any Lot without prior written authorization of the Board or the Architectural Control Committee, and if any of the foregoing are authorized they shall be screened or otherwise not visible from within the Properties unless the Board or Architectural Control Committee waives this condition in writing. Further, no exterior devices, additions, structures or attachments other than those initially installed by Developer shall be constructed on the exterior of a Dwelling Unit (including but not limited to the roof) without the written authorization of the Board or the Architectural Control Committee.

Section 9.04. Solar Devices. No solar devices, of any type, shall be placed erected or installed on any Lot without the approval of the Board or the Architectural Control Committee as set forth in Article VIII herein.

Section 9.05. Insurance Rates. Nothing shall be done or kept on any Lot or Common Area which will increase the rate of insurance on such property nor shall anything be done or kept on or in any Dwelling Unit or Common Area which will result in the cancellation of insurance on any such property or which would be in violation of any law.

Section 9.06. Signs. No signs of any kind shall be displayed which are visible from within the Properties without the approval of the Board or the Architectural Control Committee except:

(a) such signs as may be required by legal proceedings;

(b) such signs as may be used by Developer or Declarant.

Notwithstanding the above, a sign of not more than five (5) square feet advertising the property for sale or rent shall be permitted, with the design and placement of such sign to be regulated by the Association.

Section 9.07. Animals. No animals of any kind shall be raised, bred, or kept on any Lot on the Properties, except that a reasonable number of generally recognized house or yard pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. No animals shall be allowed to become a nuisance. A reasonable "number" as used in this Section shall ordinarily mean no more than two pets per Dwelling Unit; provided, however, the Board may determine that a reasonable number in any instance may be more or less. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this Section, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable.

Section 9.08. Nuisances. After completion of construction of all Dwelling Units and landscaping of Lots by Developer, no rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot, and no odors shall be permitted to arise therefrom so as to render a Lot or any portion thereof unsanitary, unsightly, offensive and detrimental to any other Lot or property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on a Lot or the Common Area without the prior written approval of the Board. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

Section 9.09. Violation of Rules. If any Owner, his family or any licensee, tenant or lessee or invitee violates these Restrictions or the Association's Rules, the Board may, in addition to any other enforcement provisions contained herein, suspend the right of such person to use the Common Area, under such conditions as the Board may specify, for a period not to exceed sixty (60) days for each violation. Each day an infraction continues is a separate violation. Before invoking any such suspension, the Board shall give such person notice of hearing before the Board.

Section 9.10. Exemption of Developer. Nothing in this Declaration shall limit the right of Developer or Declarant to complete excavation, grading and construction of improvements to any of the Properties, to resubdivide any Lot, Common Area, or portion of the Properties, to obtain a Lot split, or to alter the foregoing or to construct such additional improvements as Developer deems advisable in the course of development of the Properties so long as any Lot therein remains unsold. Further, nothing in this Article shall limit the right of a Developer or Declarant to use any structure as a sales model, sales office or construction office

or parking area and to place any sign, banner, flag or similar method of advertisement to promote sales within the Properties or subdivision of Declarant or Developer. Without limitation, the Declarant may maintain sales, administrative and construction offices on any Lot within the Properties and may maintain parking areas and parking lots on any Lot or Common Area within the Properties. The rights of Declarant or Developer hereunder or elsewhere in this Declaration may be assigned by Declarant or Developer.

Section 9.11. Drainage. There shall be no interference with the established drainage pattern over any of the Common Area or on the Properties as a whole, including any private drainageways or easements within the Properties, except by Declarant in the course of development unless adequate provision is made for proper drainage conforming to Pima County and Town of Oro Valley rules, regulations, ordinances and drainage criteria and is approved by the applicable governing body or its duly appointed representative. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Properties is completed, or which is shown on the Plat or on any plans conforming to applicable rules, regulations, ordinances, and drainage criteria approved by the applicable governing body or its duly appointed representative.

Section 9.12. Unsightly Articles. No unsightly articles shall be permitted to remain so as to be visible from within the Properties or from a public street or sidewalk outside the Properties. Grass, shrub or tree clippings and all machinery, storage piles, wood piles, garbage or trash containers shall be kept within an enclosed structure or appropriately screened from being visible from within the Properties or public way except when necessary to effect collection; provided, however, any such structure or screen shall be subject to the Board's or the Architectural Control Committee's review and approval pursuant to Article VIII. The Board or the Architectural Control Committee shall have sole discretion in determining if any activity by an Owner is in violation of this Section.

Section 9.13. Trash Containers. No garbage or trash shall be placed or kept on any Lot or the Properties, except in covered containers of a type, size and style which have been installed by Developer or have been approved by the Board or the Architectural Control Committee or are required by governmental authorities. All rubbish, trash or garbage shall be removed from the Dwelling Units and shall not be allowed to accumulate thereon. No incinerators shall be allowed. Trash/garbage containers shall be placed at curb side only on days of scheduled collection and shall be removed from view on the same day of collection. Owners of Dwelling Units utilizing common trash/garbage collection areas shall be jointly and severely responsible for keeping said common collection areas in a clean and sanitary condition. The Board or the Architectural Control Committee shall have sole discretion in determining if any activity by an Owner is a violation of this Section.

Section 9.14. Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of the Board shall have the right upon reasonable notice to the Owner of a Dwelling Unit to enter upon and inspect the Lot (except the interior of 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.

Section 9.15. Mail Boxes. The Board or Architectural Control Committee shall determine the location, color, size, design, lettering, and all other particulars of all mail and paper delivery boxes, and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

Section 9.16. Vehicles/Carports/Garages. The use and number of all vehicles, including but not limited to trucks, vans, recreational vehicles, automobiles, bicycles, motorbikes, motorcycles, motorized carts and boats shall be subject to the Rules, which may prohibit or limit the use thereof, provide parking regulations, or generally regulate same. Any and all items stored in a carport/garage area shall be stored so as to conceal the same from view from adjoining property, or from the streets or public way, and further, in the case of a garage, garage doors shall be kept closed at all times, except as may be reasonably necessary for ingress, egress and normal day-to-day activities which require the utilization of the garage. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories. Further, the storage or parking of any recreational vehicle, commercial vehicle or boat, other than completely within an Owner's carport/garage, is prohibited.

Section 9.17. Clothes Lines. No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes.

Section 9.18. Diseases and Insects. No Owner shall permit anything or any condition to exist upon his Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 9.19. Subdividing; Change of Lot Lines. Declarant expressly reserves to itself and the Developer the exclusive right for either of them to execute and record from time to time one or more replants of all or any part of the Properties which provide for changes of location of Lot lines and Common Areas, or additions, deletions or other changes in the size, shape or area of Lots or Common Areas.

Section 9.20. Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, except

existing overhead lines; provided that no provisions hereof shall prohibit the erection of temporary power or telephone structures incident to construction.

ARTICLE X

GENERAL PROVISIONS

Section 10.01. Term. The Restrictions in this Declaration shall remain in full force and effect for a period of twenty (20) years from the date of recordation thereof. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each, unless then amended or repealed by the written consent of the Owners of at least seventy-five percent (75%) of the Lots within the Properties.

Section 10.02. Amendments; Termination. This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent of the then Owners, including Declarant, of not less than two-thirds percent (2/3%) of the Lots within the Properties, and such amendment shall be effective upon its recordation with the Pima County Recorder, Pima County, Arizona.

Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or By-Laws of the Association shall be necessary in order for existing or future mortgages, deeds of trust, or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, then, subject to Section 10.01 above, Declarant shall have and hereby specifically reserves the right and power to unilaterally make and execute any such amendments without obtaining the approval of any other Owners, Members, or First Mortgagees.

Declarant further reserves the right to amend this Declaration of its own violation, and without any consent or approval whatsoever of the Association or its members, and without calling a meeting of members, at any time during the pendency of the Class B membership.

This Declaration may be terminated by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Termination has been approved by the written consent of the Declarant, and Developer, and the vote of the then Owners of not less than seventy five percent (75%) of the Lots within the Properties, and such termination shall be

effective upon its recordation with the Pima County Recorder, Pima County, Arizona.

So long as Declarant owns a single Lot, any amended or termination proposed shall first be submitted to Declarant for approval, and, should Declarant refuse to approve such amendment, such amendment or termination shall be null and void, provided that this right of veto shall not endure beyond twelve (12) years after recording of this Declaration.

Section 10.03. Enforcement and Non-Waiver.

A. Enforcement. Except as otherwise provided herein, the Association, or any Owner shall have the rights to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by provision of this Declaration.

Failure by the Association or any Owner, to enforce any of the Restrictions herein contained shall in no event be deemed a waiver of the right to enforce any such Restriction or any of the other Restrictions thereafter.

Further, the Association shall have the authority to bring an action at law or in equity to enforce any of the provisions and Restrictions of this Declaration. Expenses of enforcement, in the event the Association is a substantially prevailing party, shall be paid to the Association by the Owner against whom enforcement action was commenced. The Association shall have the right to enter upon the Lot of any Owner for the purpose of repairing, modifying, or demolishing improvements which are not in conformance with the provisions of this Declaration and all expenses incurred in connection therewith shall be paid to the Association by the Owner in violation.

B. Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein or in the By-Laws.

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

D. Non-Waiver. Failure by the Declarant, the Developer, the Board, the Association, the Architectural Control Committee, or by any Owner to enforce any of the provisions hereof at any time shall not constitute a waiver of the right thereafter to enforce any of such provisions.

Section 10.04. Construction.

A. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Properties. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret this Declaration and the provisions and Restrictions herein. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant's construction or interpretation of the provisions and Restrictions in this Declaration shall be final, conclusive and binding upon all persons and the Properties.

B. Restrictions Severable. Notwithstanding any other provision hereof, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

C. References to Restrictions. Any and all instruments of conveyance or lease of any interest in any Lot or the Properties may contain reference to this Declaration and shall be subject to the Restrictions in this Declaration the same as if they were therein set forth in full; provided that the Restrictions herein shall be binding upon all persons affected by the same, whether express reference is made to this Declaration or not.

D. Rule Against Perpetuities. In the event the provisions hereunder are declared void by a Court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event said periods of time shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the law of the State of Arizona.

E. Singular Includes Plural; Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

F. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

Section 10.05. Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the Properties included within this Declaration, each person or entity, for himself, or his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transgress and assigns to all of the provisions, Restrictions, covenants, conditions, rules and regulations now or

hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Properties and hereby evidences his intent that all the Restrictions, conditions, covenants, rules, and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transgress thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

Section 10.06. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, 6700 N. Oracle Rd. #505, Tucson, Arizona, 85704; if to an Owner, to the address of the Owner within the subdivision; if to the Declarant, 7750 E. Broadway, #B222, Tucson, Arizona, 85710; and if to the Developer, 6700 N. Oracle Rd. #505, Tucson, Arizona, 85704, with a copy to the Association; provided, however, that any such address may be changed at any time by the party concerned by delivering written notice of change of address to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day, month and year first above written.

FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation, as Trustee under Trust No. 10,734, as Trustee only and not in its corporate capacity.

By Martha L. Hill

Its Trust Officer

J U R A T

STATE OF ARIZONA }
} ss
County of Pima }

The above Declaration of Covenants, Conditions, Restrictions and Easements for Vistoso Hills were subscribed and sworn to before me this 28th day of March, 1996, by Martha L. Hill as Trust Officer of FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation, as Trustee under Trust No. 10,734 as Trustee only and not in its corporate capacity, on behalf of said Trust.

Suella Swart
Notary Public

My Commission Expires:

OFFICIAL SEAL
SUELLA SWART
Notary Public Arizona
PIMA COUNTY
My Comm. Expires Sept. 3, 1997

EXHIBIT "A"

Lots 1 through 81 and Common Area A of VISTOSO HILLS according to the plat of record in the Office of the County Recorder of Pima County, Arizona, recorded in Book 48 of Maps Page 44, excepting Common Area B, Lots 82, 83 and Deer Print Place.