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FEE# 96-009214 ck# 3867  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
QUAIL RUN**

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

QUAIL RUN

This Declaration of Covenants, Conditions, and Restrictions for Quail Run (the "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 1996, by Roosevelt Partners, an Arizona general partnership (the "Declarant").

## ARTICLE 1

### DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

1.1 "Additional Property" means any real property, together with the Improvements located thereon, situated within the vicinity of the Project.

1.2 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.3 "Architectural Committee" means the committee of the Association to be created pursuant to Section 5.10 of this Declaration.

1.4 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.5 "Areas of Association Responsibility" means (i) all Common Area; and (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association.

1.6 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.7 "Assessment" means an Annual Assessment or Special Assessment.

1.8            "**Assessment Lien**" means the lien created and imposed by Article 6 of this Declaration.

1.9            "**Assessment Period**" means the period set forth in Section 6.5 of this Declaration.

1.10           "**Association**" means the nonprofit corporation, and its successors and assigns, to be formed by Declarant to perform the obligations and exercise the rights and powers imposed on or granted to the Association by the Project Documents. Declarant intends to incorporate the Association as "Quail Run Homeowners Association" but if that name is not available, Declarant may incorporate the Association using such other name as the Declarant determines to be appropriate.

1.11           "**Association Rules**" means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.

1.12           "**Board**" means the Board of Directors of the Association.

1.13           "**Bylaws**" means the Bylaws of the Association, as amended from time to time.

1.14           "**Common Area**" means (i) Tracts A through E, inclusive, Quail Run Subdivision, according to the plat recorded in Fee No. 96-\_\_\_\_\_, records of Gila County, Arizona; and (ii) all land, together with all Improvements situated thereon which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

1.15           "**Common Expenses**" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.16           "**Declarant**" means Roosevelt Partners, an Arizona general partnership, and any person to whom it may expressly assign any or all of its rights under this Declaration by an instrument recorded with the County Recorder of Gila County, Arizona.

1.17           "**Declaration**" means this Declaration of Covenants, Conditions, and Restrictions, as amended from time to time.

1.18           "**First Mortgage**" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

1.19           "**First Mortgagee**" means the holder or beneficiary of any First Mortgage.



1.20        "**Improvement**" means any Manufactured Home, building, fence, wall or other structure or any parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

1.21        "**Lessee**" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

1.22        "**Lot**" means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Manufactured Home, building, structure or other Improvements situated on the Lot.

1.23        "**Maintenance Standard**" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.24        "**Manufactured Home**" means a structure on a permanent chassis, capable of being transported in one or more sections and used with a permanent foundation as a dwelling when connected to on-site utilities.

1.25        "**Member**" means any Person who is a Member of the Association.

1.26        "**Owner**" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 *et. seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots subject to a deed of trust pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.27        "**Person**" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.28        "**Plat**" means the plat of Quail Run Subdivision recorded in Fee No. 96-\_\_\_\_\_, records of Gila County, Arizona, and all amendments, supplements and corrections thereto and any subdivision plat recorded against any Additional Property annexed pursuant to Section 2.2 of this Declaration and all amendments, supplements and corrections thereto.

1.29        "**Property**" or "**Project**" means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon, and all real property, together with all Improvements located thereon, which is annexed and subjected to this Declaration by the Declarant pursuant to Section 2.2 of this Declaration.

1.30        "**Project Documents**" means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

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

1.32        "**Recording**" means placing an instrument of public record in the office of the County Recorder of Gila County, Arizona, and "**Recorded**" means having been so placed of public record.

1.33        "**Resident**" means each individual occupying or residing in any Manufactured Home.

1.34        "**Special Assessment**" means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.35        "**Visible From Neighboring Property**" means, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot or Common Area adjoining the Lot on which the object is situated.

## ARTICLE 2

### PLAN OF DEVELOPMENT

2.1        **Property Initially Subject to the Declaration.** Declarant is the owner of the Property, and Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement and desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. The Declarant declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this declaration which are for the purpose of protecting the value and desirability of and which shall run with the Property. Declarant further declares that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, their successors, successors in title and assigns and shall inure to

the benefit of each Owner thereof. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development, sale, lease and use of the Property and hereby evidences his agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

## **2.2           Annexation of Additional Property.**

2.2.1           At any time on or before the date which is seven (7) years after the date of the Recording of this Declaration, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person. The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording a Declaration of Annexation setting forth the legal description of the Additional Property being annexed, stating that such portion of the Additional Property is annexed and subjected to the Declaration and describing any portion of the Additional Property being annexed which will be Common Area. Unless a later effective date is set forth in the Declaration of Annexation annexing the Additional Property, the annexation shall become effective upon the Recording of the Declaration of Annexation. An Declaration of Annexation recorded pursuant to this Section may divide the portion of the Additional Property being annexed into separate phases and provide for a separate effective date with respect to each phase. The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date the Declaration of Annexation annexing such property is Recorded. The Lot Owner's obligation to pay Assessments shall commence as provided in Section 6.7 of this Declaration. If a Declaration of Annexation annexing a portion of the Additional Property divides the annexed portion of the Additional Property into phases, the Declarant shall have the right to amend any such Declaration of Annexation to change the description of the phases within the annexed property, except that the Declarant may not change any phase in which a Lot has been conveyed to a Purchaser.

2.2.2           Declarant makes no assurances as to the exact number of Lots which shall be added to the Project by annexation or if all or any portion of the Additional Property will be annexed.

2.2.3 All taxes and other assessments relating to all or any portion of the Additional Property annexed into the Project covering any period prior to the time when such portion of the Additional Property is annexed in accordance with this Section 2.2 shall be the responsibility of, and shall be paid by, the Declarant.

2.2.4 The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The property annexed by the Declarant pursuant to this Section 2.2 need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property.

2.3 Disclaimer of Implied Covenants. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property or any part of the Additional Property.

### ARTICLE 3

#### USE RESTRICTIONS

##### 3.1 Architectural Control.

3.1.1 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee. All Manufactured Homes and other Improvements constructed or installed on Lots must be new construction.

3.1.2 No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of a Lot, or any Improvements located thereon which are Visible From Neighboring Property shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with any fee payable pursuant to Section 3.1.6

of this Declaration and all supporting information, plans and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.1.3 In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural committee pursuant to this Section 3.1 if the Architectural Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Architectural Committee Rule; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the project or with Improvements previously approved by the Architectural Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect the appearance of the project; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Project.

3.1.4 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.5 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.1.6 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair,

change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.7 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

3.1.8 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.9 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.1.10 If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association would be responsible for the maintenance, repair and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

3.2 **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No condition shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant.

**3.3 Diseases and Insects.** No Person shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

**3.4 Antennas.** No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee.

**3.5 Mineral Exploration.** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

**3.6 Trash Containers and Collection.** All rubbish, trash, or garbage shall be removed from Lots and placed in trash containers located on the Common Areas and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot. No garbage or trash containers may be kept or maintained on any Lot so as to be Visible From Neighboring Property.

**3.7 Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property.

**3.8 Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

**3.9 Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

**3.10 Residential Use.** All Lots shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Manufactured Home, except that an Owner or other Resident of a Manufactured Home may conduct a business activity within a Manufactured Home so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Manufactured Home; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance

or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Manufactured Home by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

**3.11      Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except for dogs, cats, parakeets or similar household birds not to exceed a total of two (2) may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

**3.12      Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

**3.13      Signs.** No signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot without the prior written approval of the Architectural Committee.

**3.14      Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions



thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

### **3.15     Vehicles and Parking.**

3.15.1        As used in this Section 3.15, the term "Motor Vehicle" means a car, van, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle.

3.15.2        No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property or on the Common Area without the prior written approval of the Architectural Committee.

3.15.3        Except as permitted by Subsection 3.15.4 or 3.15.5, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area without the prior written approval of the Architectural Committee.

3.15.4        Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the driveway situated on the Lot. No Motor Vehicle which exceeds 7 feet in height or exceeds 18 feet in length or which are used for commercial purposes or display any commercial name, phone number or message of any kind may be parked or kept on any Lot. No Motor Vehicle of any kind may be stored on a Lot, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of this Subsection 3.15.4, a Motor Vehicle should be deemed stored if it is covered by a car cover, tarp or other material. Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident which exceed 7 feet in height and/or exceed 18 feet in length may be parked in the driveway on a Lot for the purpose of loading or unloading, but in no event shall such recreational vehicle, motor home or similar vehicle be parked in the driveway for more than twenty-four (24) consecutive hours or for more than seventy-two (72) hours within any seven (7) day period.

3.15.5        Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on a private street for a period not to exceed 72 hours within any seven (7) day period.

3.15.6        The Board of Directors shall have the right and power to adopt rules and regulations governing the parking of Motor Vehicles on Lots and the Common Area and implementing the provisions of this Section 3.15.

3.15.7        No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot or Common Area in such a manner as to be Visible From Neighboring Property

and no inoperable vehicle may be stored or parked on any Lot or Common Area in such a manner as to be Visible From Neighboring Property.

3.15.8 The Board shall have the right to have any Motor Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the Motor Vehicle. Any expense incurred by the Association in connection with the towing of any Motor Vehicle shall be paid to the Association upon demand by the owner of the Motor Vehicle. If the Motor Vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in their Declaration for the collection of Assessment.

3.16 Variances. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

3.17 Drainage. No Manufactured Home, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

3.18 Water Usage. Water usage for each Lot shall not exceed 270 gallons per day.

## ARTICLE 4

### EASEMENTS

#### 4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.3 and 4.4 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area provided such action is approved by Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

4.2 **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed by the Declarant or as approved by the Board.

4.3 **Declarant's Use for Sales and Leasing Purposes.** Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned by Declarant while the Declarant is selling Lots. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.4 **Declarant's Easements.** Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery,

~~equipment, building materials, appliances, supplies and fixtures, and the performance of work~~ respecting the Project. The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

**4.5 Easement in Favor of Association.** The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.5.1 For inspection of the Lots (except for the interior of a Manufactured Home situated on the Lot) in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

4.5.3 For correction of emergency conditions in one or more Lots;

4.5.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

4.5.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

## ARTICLE 5

### THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

**5.1 Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

**5.2 Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

**5.3      The Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for maintenance of Lots; or (iii) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

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

**5.5      Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

**5.6      Identity of Members.** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

**5.7      Classes of Members and Voting Rights.** The Association shall have the following two classes of voting membership:

(i) **Class A.** Class A members are all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant shall be a Class A member so long as the Declarant owns any Lot.

(ii) **Class B.** The Class B member shall be the Declarant. The Class B member shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (i) the date on which the votes entitled to be cast by the Class A members equals or exceeds the votes entitled to be cast by the Class B

member; (ii) the date which is ten (10) years after the recording of this Declaration; or (iii) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

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

**5.9        Transfer of Membership.** The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

**5.10       Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lot, that specified actions of the Architectural Committee, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size of Manufactured Homes; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (iii) placement of Manufactured Homes and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen

~~well design and appearance. The decision of the Architectural Committee shall be final on all~~  
matters submitted to it pursuant to this Declaration.

**5.11      Suspension of Voting Rights.** If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

## **ARTICLE 6**

### **COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

**6.1      Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

### **6.2      Annual Assessments.**

**6.2.1** In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment. The total amount to be assessed against the Lots as an Annual Assessment shall be the amount which is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses taking into account other sources of funds available to the Association. Water for the Lots will be supplied from a well which will be situated on the Common Area and which will be owned, operated, maintained, repaired and replaced by the Association. The cost and expenses incurred by the Association, including allocations to reserves, with respect to the ownership, operation, maintenance, repair or replacement of the well shall be a Common Expense. The Board of Directors shall have the right to furnish water from the

well to other property in the vicinity of the Project at no cost or in payment of such consideration as the Board of Directors may determine to be appropriate.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 **Rate of Assessment.** The amount of the Annual Assessment shall be the same for each Lot other than Lots owned by the Declarant. The Annual Assessment for Lots owned by the Declarant shall be an amount equal to ten percent (10%) of the Annual Assessment levied against Lots owned by Persons other than the Declarant. If a Lot ceases to qualify for the ten percent (10%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

6.4 **Obligation of Declarant for Deficiencies.** So long as there is a Class B membership in the Association, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Annual Assessments levied by the Association, to pay all Common Expenses of the Association as they become due.

6.5 **Special Assessments.** The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.6 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Annual Assessments shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.7 **Commencement Date of Assessment Obligation.** All Lots described on Exhibit A to this Declaration shall be subject to assessment upon the conveyance of the first Lot



to a Purchaser. All Lots annexed pursuant to Section 2.2 of this Declaration shall be subject to assessment upon the conveyance to a Purchaser of the first Lot within the annexed property. If the Declaration of Annexation which annexes all or any part of the Additional Property divides the property being annexed into phases, then the Lots within each phase will be subject to assessment when the first Lot in the phase is conveyed to a Purchaser.

**6.8      Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**6.9      Effect of Nonpayment of Assessments; Remedies of the Association.**

6.9.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum or such other rate of interest as may be set from time to time by the Board. In addition, the Board of Directors may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within five days after such payment was due.

6.9.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all fines levied against the Owner of the Lot; (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot, whether or not suit is filed by the Association; (v) any amounts payable to the Association pursuant to Section 7.3 or 7.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice,

including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

6.9.3 The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6.9.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

**6.10 Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments and other amounts have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make

a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

**6.11      Purposes for which Association's Funds May Be Used.** The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing the Association's duties and obligations under the Project Documents; (ii) exercising the rights and powers granted to the Association by the Project Documents; and (iii) the common good and benefit of the Project and the Owners, Lessees and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners, Lessees and Residents.

**6.12      Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

**6.13      Working Capital Fund.** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot following the conveyance of the Lot to the Purchaser. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**6.14      Transfer Fee.** Each Person who purchases a Lot from a Person other than the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

## ARTICLE 7

### MAINTENANCE

**7.1      Areas of Association Responsibility.** The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility, but all Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility, and the Improvements located thereon. The Association shall be responsible for the maintenance, repair and replacement of the existing well located on the Common Area and the existing and proposed storage and hydropneumatic tanks and related appurtenances.

**7.2      Lots.** Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and all Manufactured Homes, landscaping or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association Responsibility, in accordance with the Maintenance Standard. All Manufactured Homes, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Manufactured Home has been installed shall be maintained in a weed free and attractive manner.

**7.3      Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

**7.4      Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner

which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

## **7.5        Boundary Walls.**

7.5.1 Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary walls shall apply.

7.5.2 The Owners of contiguous Lots who have a boundary wall shall both equally have the 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;

7.5.3 In the event that any boundary wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners;

7.5.4 In the event any such boundary wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

7.5.5 Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any boundary wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

7.5.6 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;

7.5.7 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary wall shall first obtain the written consent of the adjoining Owners;

7.5.8 In the event any boundary wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share such boundary wall.

**7.6            Maintenance of Walls other than Boundary Walls.**

7.6.1 The Association shall maintain, repair and replace the perimeter wall of the Project whether the wall is located on the Lots or the Common Area.

7.6.2 Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

7.6.3 Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area. In the event any such wall encroaches upon the Common Area of a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

7.6.4 Any wall which is placed on the boundary line between a Lot and public right-of-way shall be maintained, repaired and replaced by the Association except that the Owner of the Lot shall be responsible for the repair and replacement of the surface of the wall which faces the Lot.

**ARTICLE 8**

**INSURANCE**

8.1            **Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

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

8.1.2 Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

8.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

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

8.3 **Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 **Payment of Insurance Proceeds.** With respect to any loss to any Area of Common Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject

to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

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

## ARTICLE 9

### GENERAL PROVISIONS

**9.1      Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or by any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, Lessee of the Owner or by a Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

**9.2      Term; Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the



affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

### **9.3        Amendments.**

9.3.1 Except for amendments made pursuant to Subsection 9.3.2 or 9.3.5 of this Declaration, the Declaration may be amended at any time only by the written approval or the affirmative vote, or any combination thereof, of Owners having not less than seventy-five percent (75%) of the votes in the Association.

9.3.2 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

9.3.3 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

9.3.4 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration.

9.3.5 So long as the Declarant holds more than seventy-five percent (75%) of the votes in the Association, any amendment to this Declaration shall be signed by Declarant and Recorded. At any time the Declarant does not hold at least seventy-five percent (75%) of the votes in the Association, any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 or 9.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 9.3.2 or 9.3.4 of this Declaration shall be signed by the Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

#### 9.4

#### Rights of First Mortgagees.

9.4.1 Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.4.2 No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

9.4.3 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(iii) Change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Area;

(iv) Fail to maintain fire and extended coverage on insurance common area on current replacement cost basis in an amount of at least 100 percent of insurable value;

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

9.4.4 No provision of this Declaration gives or shall be construed as giving any owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

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

9.4.6 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Project Documents, the provisions of this Section shall prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Project Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Subsection 9.4.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant or the Board.

9.5 **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

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

9.7 **Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

9.8 **Notice of Violation.** The Association shall have the right to record a written notice of a violation by any Owner, Lessee or Resident of any provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating,

or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner, Lessee and Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance with shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

## **9.9            Laws, Ordinances and Regulations.**

9.9.1    The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

9.9.2    Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

9.10       **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

9.12       **Captions and Titles.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be

deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

ROOSEVELT PARTNERS, an Arizona  
general partnership

By: \_\_\_\_\_

Its: \_\_\_\_\_

State of Arizona            )  
                                      ) ss.  
County of Maricopa        )

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1996, by  
\_\_\_\_\_, the \_\_\_\_\_ of Roosevelt Partners, an Arizona  
general partnership, on behalf of the partnership.

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

My Commission Expires:

\_\_\_\_\_

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**EXHIBIT A**

**DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION**

Lots 1 through 74, inclusive, and Tracts A through E, inclusive, Quail Run Subdivision, according to the plat recorded in Fee No. 96-\_\_\_\_\_, records of Gila County, Arizona.

CONSENT OF BENEFICIARY UNDER DEED OF TRUST TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
QUAIL RUN

National Bank of Arizona, a national banking association, as the beneficiary under the Construction Deed of Trust recorded in Fee No. 95-675327, records of Gila County, Arizona (the "Deed of Trust"), hereby consents to the recording of the foregoing Declaration of Covenants, Conditions and Restrictions for Quail Run (the "Declaration") and agrees that the Deed of Trust shall be subordinate to the Declaration and that the Declaration shall survive any trustee's sale or execution sale of all or any part of the real property subject to the Declaration resulting from the exercise of the Beneficiary's rights under the Deed of Trust.

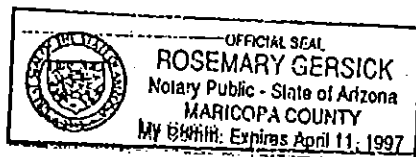
Dated this 17<sup>th</sup> day of June, 1996.

NATIONAL BANK OF ARIZONA, a  
national banking association

By: *J.P. Carroll*  
Its: Vice President

State of Arizona     )  
                                  ) ss.  
County of Maricopa   )

The foregoing instrument was acknowledged before me this 17th day of June, 1996, by Joseph P. Carroll, the Vice President of National Bank of Arizona, a national banking association, on behalf of the association.



*Rosemary Gersick*  
Notary Public

My Commission Expires:

4-11-97





When Recorded, Return To:

DYEKMAN, CURTIS, COHEN  
& KAROW, P.L.C.  
6750 East Camelback Road  
Suite 104  
Scottsdale, Arizona 85251  
Attention: Donald E. Dykman, Esq.



**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
QUAIL RUN**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Quail Run (this "First Amendment") is made as of this 30<sup>th</sup> day of August, 1999, by Roosevelt Partners, an Arizona general partnership (the "Declarant").

**RECITALS**

A. A Declaration of Covenants, Conditions and Restrictions for Quail Run (the "Declaration") was recorded on June 18, 1996, at Fee No. 96-009214, records of Gila County, Arizona, to establish a general plan for the development, sale and use of the planned community known as Quail Run.

B. Unless otherwise defined in this First Amendment, each capitalized term used in this First Amendment shall have the meaning given to such term in the Declaration.

C. Subsection 9.3.1 of the Declaration provides that the Declaration may be amended at any time by the written approval or affirmative vote, or any combination thereof, of Owners having not less than seventy-five percent (75%) of the votes in the Association. Subsection 9.3.5 of the Declaration provides that so long as the Declarant holds more than seventy-five percent (75%) of the votes in the Association, any amendment to the Declaration shall be signed by the Declarant and recorded with the County Recorder of Gila County, Arizona.

D. The Declarant holds more than seventy-five percent (75%) of the votes in the Association, and the Declarant desires to amend the Declaration in the manner set forth in this First Amendment.

**AMENDMENT**

**NOW, THEREFORE,** the Declaration is amended as follows:

1. Section 1.1 of the Declaration is amended to read as follows:

1.1 "Additional Property" means any real property, together with the Improvements located thereon, situated within the vicinity of the Project, including, but not limited to, the real property on which the well which provides water to the Project is situated.

2. Section 1.14 is amended to read as follows:

1.14 "Common Area" means (i) Tracts A through E, inclusive, Quail Run Subdivision, according to the plat recorded in Fee No. 96-002841, records of Gila County, Arizona; (ii) any land, together with the Improvements situated thereon, which is designated as Common Area in any Declaration of Annexation recorded by the Declarant pursuant to Subsection 2.2.1 of this Declaration; and (iii) all land, together with all Improvements situated thereon, whether located within or outside of the boundaries of the Project which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the Owner of the fee or leasehold interest.

3. The following Subsection (iv) is added at the end of Subsection 4.1.1 of the Declaration:

(iv) The rights, privileges and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.

4. The third and fourth sentences of Subsection 6.2.1 of the Declaration are amended to read as follows:

Water for the Lots will be supplied from a well situated on real property located outside the boundaries of Quail Run Subdivision. ~~The well will be owned, operated, maintained and replaced by the Association and the costs, expenses incurred by the Association with respect to the ownership, operation, maintenance, repairs and replacement of the well shall be a Common Expense.~~

5. The last sentence of Section 7.1 is amended to read as follows:

~~The Association shall be responsible for the maintenance, repair and replacement of the existing well which serves the Project and the existing and proposed storage and hydro-pneumatic tanks and related appurtenances, whether or not the well has been annexed and~~

~~subjected to this Declaration by the recorded instrument Declaration  
Amendment pursuant to Subsection 2.2 of this Declaration. The  
existence of this Amendment shall not constitute a Declaration by the Declarant  
nor shall it be subject to the jurisdiction of the Declarant.~~

6. Except as expressly amended by this First Amendment, the Declaration shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between this First Amendment and the Declaration, this First Amendment shall control.

ROOSEVELT PARTNERS, an Arizona  
general partnership

By: *Robert B. Powers*  
Robert B. Powers  
Its: General Partner

State of Arizona       )  
                                  ) ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of August, 1999, by Robert B. Powers, the General Partner of Roosevelt Partners, an Arizona general partnership, on behalf of the partnership.

*Carole M. Jackson*  
Notary Public

My Commission Expires:

