

Village IV  
Homeowners Association  
Searchable Version of CCR's  
April 2020

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## **Declaration of Condominium Of the Village Four Condominium**

This Declaration of Condominium, hereinafter referred to as the "Declaration" is made and executed this 21<sup>st</sup> day of November 1986, by the Towne development. Inc. an Arizona corporation, hereinafter referred to as the "Declarant."

### **Recitals:**

A. Description of land. The Declarant is the owner of the following described parcel of land, hereinafter referred to as the "Land" which is located in Maricopa County State of Arizona.

[See Exhibit "A"]

B. Building and Improvements. The declarant has constructed or will construct on the land certain buildings and other improvements as shown on the plat referred to below.

C. Plat. The Declarant intends to execute acknowledge and record in the office of the County recorder of Maricopa County, State of Arizona a certain instrument pertaining to the project and entitled "Village Four Condominium."

D. Intent and Purpose. The Declarant intends by recording this Declaration and the Plat to submit the land the buildings and all other improvements situated in or upon the land to the provisions of the Arizona Condominium Act as amended. Arizona Revised Statutes, section 33-1201, et, seq( hereinafter referred to as the "Act") as a fee simple condominium project and to impose upon said Land mutually beneficial restrictions under a general plan of improvement for the benefit of all condominiums and the Owners thereof.

NOW THEREFORE, the Declarant does hereby make the following declaration:

## **ARTICLE I DEFINITIONS**

- 1.01 Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have meanings set forth in this Article I.
- 1.02 “Additional Land” Shall mean the real property described in the Section 16.02 which has not yet been submitted to the provisions of the Act but which may hereafter be added as a whole or in part to the Project as provided in ARTICLE XVI and the Act.
- 1.03 “Affiliate of Declarant” Shall mean any person who controls, is controlled by or is under common control with Declarant.
- 1.04 “Allocated Interest” Shall mean the undivided interest in the Common Elements, the Common Expense liability and the votes in the Association allocated to each unit.
- 1.05 “Articles of Incorporation” Shall mean the instrument by which the Association is formed and organized under the Arizona Nonprofit Corporation Act.
- 1.06 “Association” Shall mean Village Four Condominium Owners Association, an Arizona nonprofit corporation, to be organized as the Association referred to herein.
- 1.07 “Board of Directors” Shall Mean the governing board or management committee of the Association.
- 1.08 “Building” Shall mean the building in the project containing one or more units that have been will hereafter be constructed on the land as such buildings are shown on the Plat.
- 1.09 “Bylaws” Shall mean the bylaws of the Association.
- 1.10 “Common Elements” Shall all physical portions of the project except all limits and limited Common Elements.
- 1.11 “Common Expense Fund” Shall mean the fund created or to be created pursuant to the provisions of Article IX of this Declaration and into which all monies of the Association shall be deposited.
- 1.12 “Common Expense Liability” Shall mean the liability for Common Expenses allocated to each Unit pursuant to Article IX.
- 1.13 “Common Expenses” Shall mean expenditures made of financial liabilities of the Association, together with any allocation to reserves.
- 1.14 “Common Facilities” Shall mean all furniture, furnishings, equipment facilities and other property (real, personal or mixed) and interests therein at any time leased, acquired,

owned or held by the Association for the use and benefit of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this declaration monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Elements, except to the extent otherwise expressly provided in this declaration.

- 1.15 "Condominium" Shall mean a unit and the undivided interest in the Common Elements appurtenant to such Unit.
- 1.16 "Declarant" Shall mean Town Development, Inc. an Arizona Corporation and its successors and assigns.
- 1.17 "Development Rights" Shall mean the right of the Declarant to do any of the following:
  - A. Add real estate to the project:
  - B. Create easements, units, common elements or limited common elements in the project:
  - C. Subdivide units, convert units into common elements or convert common elements into units:
  - D. Withdraw real estate from the project:
  - E. Make the project part of another condominium project or planned community:
  - F. Amend the Declaration during any period of Declarant control and provided in A.R.S Section 33-1243.D.
- 1.18 "FMA" Shall mean the Federal Housing Administration.
- 1.19 "FHLMC" Shall mean the Federal Home Loan Mortgage Corporation.
- 1.20 "First Mortgagee" Shall mean a Mortgagee which is a bank or savings and loan association or established Mortgage Company or other entity chartered under federal or state laws any corporation or insurance company or any federal or state agency which has a first mortgage lien on any Condominium in the project. "Eligible First Mortgagee" shall mean any First mortgagee who has requested notice of those certain matters referred to in Section 14.01
- 1.21 "FNMA" Shall mean the Federal National Mortgage Association.
- 1.22 "Land" Shall mean the land upon which the project is situated as more particularly described in Paragraph A of the recitals above.
- 1.23 "Lease" Shall mean any agreement for the leasing or rental of the project.
- 1.24 "Limited Common Elements" Shall mean any portion of the Common Elements designed as reserved for use of a certain Unit or Units to the exclusion of the other Units in the Project. Structural separations between Units of the space which would be occupied by such structural separations may become Limited Common Elements for the

exclusive use of the Owner or Owners of the Units on either side thereof as provided in Sections 4.03 hereof. Any balconies, porches, parking spaces or storage facilities that are identified on the Plat with the same number or other designation by which a Unit is identified shall be Limited Common Elements for the exclusive use of the Owner of the Unit bearing the same number or designation. Any shutters, awnings, windows boxes, doorsteps, stoops, porches, balconies, entryways or patios, and all exterior doors and windows or other fixtures designed to serve a single Unit but located outside the unit's boundaries are Limited Common Elements allocated exclusively to the unit.

- 1.25 "Manager" Shall mean the person, firms or company if any designated from time to time by the Association to manage on whole or in part time affairs of the Association and the Project.
- 1.26 "Master Association" Shall mean the Villages Recreational Association, an Arizona nonprofit corporation its successors and assigns formed pursuant to the Declaration of Covenants, Conditions and Restrictions of the Villages at McCormick Ranch and recorded April 2, 1982 in Docket 15934 at Page 1127 et. Seg. Records of Maricopa County, Arizona.
- 1.27 "Mortgage" Shall mean any mortgage need of trust or other security instrument by which a Condominium or any part hereof is encumbered. "First Mortgage" shall mean any first mortgage, deed of trust or other security instruments by which a Condominium or any part thereof is encumbered.
- 1.28 "Mortgagee" Shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered. (ii) Any successor to the interest of such person or entity under mortgage or Deed of trust or (iii) any insurer or guarantor of such person or entity under such Mortgage or Deed of Trust.
- 1.29 "Mortgage Insurer" Shall mean FMA or VA.
- 1.30 "Mortgage Servicer" Shall mean a Mortgage who services any Mortgage or Deed of Trust on any individual Condominium in the Project on Behalf of FHLMC and/or FNMA.
- 1.31 "Parking Space" Shall mean each of the separate parking spaces on the land as shown on the Plat.
- 1.32 "Person" Shall mean a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In case of a subdivision trust as defined in A.R.S. & 6-801 person means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.
- 1.33 "Recreational Areas" Shall mean all of the properties now or hereafter owned and held by the Master Association for the common use and enjoyment of its members, including

the Owners under this Declaration and all buildings, swimming pools, tennis courts and other recreational facilities, landscaping and other improvements at any time constructed in any such Recreational Area.

- 1.34 “Plat” Shall mean the plat map for Village Four Condominium as recorded in the office of the County Recorder of Maricopa County, Arizona a copy which is attached hereto as Exhibit “B” and incorporated herein by this reference and any supplemental plats pertaining to the Project recorded in the office of the County Recorder of Maricopa County, State of Arizona.
- 1.35 “Project” Shall mean the land, the units and all improvements submitted by this Declaration and the Play to the provisions of the Act.
- 1.36 “Rules” Shall mean the Rules and reputations if any adopted by the Association pursuant to Section 8.06 and the Articles of Incorporation and Bylaws.
- 1.37 “Special Declarant Rights” Shall mean the right of the Declarant to do any of the following:
- A. Construct improvements provided for in the Declaration:
  - B. Exercise any developmental right:
  - C. Maintain sales offices, management offices, signs advertising the Project and models:
  - D. Use easements through the common elements for the purpose of making improvements within the Project or within any real estate which may be added to the project:
  - E. Appoint or remove any officer of the Association or any board member during any period of Declarant control.
- 1.38 “Total Votes of the Association” Shall mean the total number of votes appertaining to all Condominiums in the Project, as shown in Exhibit “C” attached hereto.
- 1.39 “Unit” Shall mean an individual air space unit, consisting of enclosed rooms occupying part of a building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of the air space as said boundaries are shown on the Plat together with all the fixtures and improvements therein contained. All lath, furring, wallboard, plasterboard, plaster, paneling tiles, wallpaper, paint, finished flooring and other wall, ceiling or floor covering on interior surfaces shall be deemed to be part of the Units. All other portions of the walls, floors or ceilings are a part of the Common Elements. If any chute flue, duct, wire, consult, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion serving only that Unit is a limited common element allocated solely to that Unit and any portion serving more than one Unit or any portion of the common elements is part of the common elements. The interior when the window or door is closed.

- 1.40 "Unit Owner" Shall mean the person or persons including the Declarant owning in fee simple a Condominium in the Project as such ownership is shown by the records of the County Recorder of Maricopa County, State of Arizona. The term "Unit Owner" shall not refer to any Mortgage (unless such Mortgage has obtained title in fee simple to a Condominium pursuant to a judicial or non-judicial action, including, without limitation a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure). In the case of a contract for conveyance of real property as defined in A.R.S. & 33-741, Unit Owner shall mean the purchaser of a Unit.
- 1.41 "VA" Shall mean the Veterans administration.



## **ARTICLE II SUBMISSION AND DIVISION OF PROJECT**

- 2.01 Submission of Condominium Act. The Declarant hereby submits the land which is located in Maricopa County, Arizona the Units and all other improvements now or hereafter made in or upon the land to the provisions of the Act. All of said land is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a fee simple condominium project to be known as Village Four Condominium. All of said land and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Condominiums: further each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the land and shall be binding upon the Declarant its successors and assigns and to any person acquiring, leasing or owning an interest in a Condominium and to their respective e personal representatives, heirs, successors and assigns.
- 2.02 Division into Condominiums. The project is hereby divided into Condominiums each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Elements as set forth in Exhibit "C" attached hereto and incorporated herein by reference.
- 2.03 Exercise of Development Rights. The Declarant hereby reserves the right and is hereby granted the right to exercise any and all Special Declarant Rights and Development Rights.

### **ARTICLE III UNITS AND COMMON AREAS**

- 3.01 Description of Units. The Plat contains the unit number and location of each unit in the project. The boundaries of each Unit shall be as set forth on the Plat in Section 1.39 herein.
- 3.02 Description of Common Elements. The common Elements include all portions of the Project other than the Units and Limited Common Elements as described on the Plat.
- 3.03 Description of Limited Common Elements. The Limited Common Elements include the entryways, patios, balconies and assigned parking spaces as identified on the Plat. The plat also identifies the Unit to which such Limited Common Elements are allocated.

## **ARTICLE IV NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP**

- 4.01 Interior of Units. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceiling, floors and doors within such boundaries. Each Owner shall also have the right to construct partition walls, fixtures and improvements within the boundaries of his Unit provided, however that such partition walls, fixtures and improvements (i) shall comply with all applicable laws, ordinances and building codes. (ii) Shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the project. (iii) Shall not impair the structural soundness or integrity of the building in which it is located and (iv) shall not encroach upon the Common Elements or any part thereof, unless the Board of Directors shall consent in writing to such encroachment.
- 4.02 Maintenance of Units. Each Owner shall keep the interior of his unit including without limitation interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto. In a clean and sanitary condition and in a state of good repair. In the event that any such unit shall develop an unsanitary or unclean or unsafe condition or fall into a state of disrepair, and in the event that the owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Board of the Directors. The Board of Directors in behalf of the Association shall have the right on reasonable notice and at the expense of the Owner and without liability to the Owner for trespass or otherwise to enter said Unit and Correct or eliminate said unsanitary or unclean condition or state of disrepair provided, however that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.
- 4.03 Right to Combine Units. With the written consent of the Board of Directors which consent shall not be unreasonably withheld, two or more units may be utilized by the Owner or Owners thereto as if they were one Unit to the extent permitted in the written consent of the Board of Directors any walls, floors or other structural separations between any two such Units or any space which would be occupied by such structural separations but for the utilization of the two units as one unit may for as long as the two units are utilized as one Unit be utilized by the Owner or Owners of the adjoining Units as Limited Common Elements except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time upon the request of the Owner of one such adjoining Units, any opening between the two Units which but for joint utilization of the two Units would have been occupied by structural separation shall be closed at the equal expense of the Owner or Owners of each of the two Units and the structural separations between the two units shall thereupon become Common Elements.
- 4.04 Title. Title to a Condominium within the project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Arizona. Including without limitation joint tenancy, tenancy in common or community property.

- 4.05 Ownership of Common Elements. The undivided interest in the Common Elements appurtenant to each unit in the Project shall be as set forth in Exhibit "C" attached hereto. The undivided interest appurtenant to each unit as shown in said Exhibit "C" shall have a permanent character and shall not be altered except with the unanimous written consent of all owners expressed in an amendment to this declaration duly recorded, or except as provided in Article XVI herein. Except as otherwise provided in this declaration, any owner shall be entitled to nonexclusive use of the Common Element (other than limited common elements) in any manner that does not hinder or encroach upon the rights of other owners and is not contrary to any rules and regulations promulgated by the association. Except as otherwise provided in this Declaration, any owner shall have the exclusive use by such Owner.
- 4.06 Inseparability. Title to no part of a Condominium within the project may be separated from any other part thereof, and each unit and the undivided interest in the common elements appurtenant to each unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete condominium. Any purported devise, encumbrance, conveyance, judicial sale or other voluntary or involuntary disposition of undivided interest in the common elements made without the unit to which that interest is allocated is void.
- 4.07 No Partition. The common elements shall be owned in common by all of the owners, and no owners may bring any action for partition thereof.
- 4.08 Separate Mortgages by Owners. Each owner shall have the right separately to mortgage or otherwise encumber his condominium. No owner shall attempt to or shall have the right to mortgage or otherwise encumber the common elements or any Lien against the unit of any owner not expressly consenting to or requesting time same or against any interest in the common elements, except the undivided interest therein appurtenant to the unit of the owner for whom such labor shall have been performed and such materials shall have been furnished.
- 4.09 Separate Taxation. Each Condominium within the Project, including each Unit and appurtenant undivided interest in the Common Elements, shall be deemed to be a parcel of real property and shall be assessed separately for all taxes, assessments and other charges of the State of Arizona or of any political subdivision or any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interest in Common Elements appurtenant to such units. All such taxes, assessments and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium. Notwithstanding the foregoing, any portion of the Common Elements which the Declarant has reserved the right to withdraw from the Project shall be separately taxed and assessed against the

Declarant and the Declarant alone is liable for payment of those taxes, as long as the Declarant retains this right to withdraw.

- 4.10 Mechanics Liens. No labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Elements, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished.
- 4.11 Description of Condominium. Every contract for the sale of a condominium and every other instrument affecting title to a condominium within the project may describe a unit by its identifying number or symbol as indicated in this declaration or as shown on the plat together with the name of the project, and the recording information for the declaration. Such description will be construed to describe the unit, together with its appurtenant undivided interest in the common elements, and to incorporate all of the rights incident to ownership of a condominium within the project and all of the limitations on such ownership.

## **ARTICLE V EASEMENTS**

- 5.01 Easements for Encroachments. If any part of the common elements encroaches or shall hereafter encroach upon any unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a unit encroaches or shall hereafter encroach upon the common elements or upon an adjoining unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the common elements or any part of a unit shall hereafter encroach on real property now owned by the declarant outside the boundaries of the land, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the common elements or the units. Encroachments referred to herein include, but are not limited to encroachments caused by error in the original construction of the building or any improvements constructed or to be constructed within the project or any part thereof in accordance with the provisions of this declaration.
- 5.02 Easements for Maintenance Clearing and Repair. Some of the common elements are or may be located within the units of may be conveniently accessible only through the units. The association shall have the irrevocable right to have access to each unit and to all common elements from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any common elements or for making emergency repairs at any time therein necessary to prevent damage to the common elements or to any units. In addition, agents or the association may enter any unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the association is responsible. Such entry shall be made with as little inconvenience to the owners as practicable and any damage caused thereby shall be repaired by the association with funds from the common expense fund.
- 5.03 Right to Ingress, Egress and Support. Each other shall have the right to ingress and egress over, upon and across the common elements as necessary for access to such owner's unit and in any limited common elements appurtenant to such unit and shall have the right to horizontal, vertical and lateral support of such unit and such rights shall be perpetual and shall be appurtenant to and pass with title to each condominium.
- 5.04 Association right to use Common Elements. The Association shall have an easement to make such use of the common elements as may be necessary or convenient to perform the duties and functions that is obligated or permitted to perform pursuant to this declaration, including without limitation the right to construct and maintain in the common elements (other than limited common elements) facilities for use by owners generally or by the association and its agents exclusively.
- 5.05 Easement for Completion of Project. The declarant shall have a transferable easement over and on the common elements for the purpose of completing construction of the project and making improvements therein as shown on the plat and for the purpose of

doing all things reasonably necessary or appropriate in connection therewith including the exercising of social declarant rights and development rights. To the extent that damage is inflicted on any part of the project by any person utilizing said easement the declarant and the person causing the damage shall be liable to the association for the prompt repair of such damage.

- 5.06 Easement for Use of Recreational Areas. An easement is hereby granted over and across the common elements to an owner member of the master association, occupant, lessee, guest or other person entitled to use the recreational areas for access and egress to and from such recreational Areas.
- 5.07 Easements Deemed Created. All conveyances of condominiums within the project thereafter made whether by the declarant or otherwise, shall be construed to grant and reserve such reciprocal easement as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## **Article VI RESTRICTIONS ON USE**

- 6.01 Single- Family Residential Use. All units are intended to be used for residential housing purposes and are restricted to such use. No owner, occupant or other person residing in a unit shall be younger than eighteen (18) years of age. A person shall be deemed to reside in a unit if he or she is physically present there at any time during more than thirty (30) consecutive days or more than sixty (60) days during any period of twelve (12) consecutive months.
- 6.02 No Noxious or Offensive Activity. No noxious, destructive or offensive activity shall be carried on or placed in or upon any unit, or in the common elements, or limited common elements or any part thereof, which shall interfere with the legal rights of other owners nor shall anything be done therein which is or may become an annoyance or nuisance to any other owner or to any person at any time lawfully residing in the project. No activities shall be conducted, nor improvements constructed in or upon any part of the project which are or may become unsafe or hazardous to any person or property.
- 6.03 Restrictions on Signs. No sign of any nature whatsoever other than a dignified name and/or address sign shall be displayed or placed on any units in any window or on any part of the project. No "For Sale" or "For Rents" signs or other signs or graphics shall be placed in any window, on any patio or balcony on any of the common elements or on any other part of the project without the prior written consent of the board of directors or as directed by the board of directors. A master "for sale" sign may be placed on the project by the board of directors with a telephone number to call for information.
- 6.04 Temporary Structures. No structure of a temporary character shall be permitted on the project and no tent, shack, bar or trailer shall be permitted on the project either temporarily or permanently unless it is located thereon by or with the consent of declarant in connection with the development of the project.
- 6.05 Pets and Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept in any unit or in the common elements except that a maximum of two household pets no larger than fifteen (15) pounds may be kept or housed in units when expressly permitted in writing by the board of directors. Each owner who desires to keep a pet in his unit shall apply in writing to the board of director for permission to keep such pet. Walking of pets on the common elements may be restricted by rules and regulations of the association in no event shall any pet be permitted in any portions of the common elements unless carried or on a leash. Each owner who keeps a pet in a unit shall indemnify and hold all other owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the project. If a pet disturbs other owners by making noise or biting in other ways becoming obnoxious the board of directors will give notice to the owner such pet to cause such annoyance to be discontinued and if such annoyance is not discontinued and corrected the board of



directors shall revoke its permission to keep the pet in the project and the pet shall be removed therefrom.

6.06 Motor Vehicles. If the board of directors determines that any motor vehicle is creating loud or annoying noises by virtue of its operation within the project or that the parking or storage of any vehicle or trailer on the project is unsightly or detracts from the overall character of the project such determination shall be conclusive and final that the operation or storage such vehicle is a nuisance and said operation upon notice by the board of directors to the owner or operator thereof shall be prohibited within the property.

6.07 Miscellaneous Restrictions. The following restrictions shall apply to the project:

- (a) Except as initially installed by declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any building, structure, balcony or patio or parking space which in any manner will allow light to be directed or reflected to the project.
- (b) No windbells, windchimes or similar devices shall be permitted on the project.
- (c) Each owner shall install and maintain at all times at his expense carpeting and/or other sound conditioned floor covering in each case of grades and qualities from time to time approved by the board of directors on all floors in his unit except in the kitchen, bathrooms and laundry areas.
- (d) No window air conditioners or portable units of any kind shall be installed in any unit.
- (e) No reflective materials including but not limited to aluminum foil, reflective screen or glass mirrors or similar type items shall be permitted to be installed or placed on the outside of inside of any windows, Enclosures shades, screens or other items affecting the exterior appearance of any patio or balcony shall not be permitted without the express written consent of the board of directors and shall be subject at all times to the rules and regulations. Patios and balconies shall be furnished only with normal patio furniture and furnishings and shall not be used for storage of personal items such as bicycles.
- (f) No radio, television or other antennas of any kind or nature shall be placed or maintained upon any unit or building except that declarant shall have the right to install a master antenna or antennas and to provide access to such antenna to the units.

6.08 No Alterations. No owner shall, without the prior written consent of the Board of Directors in each specific instance, make or cause to be made any alteration, addition, removal of improvement in or to the Common Elements, or a unit, or any part thereof, or any act that would impair the structural soundness or integrity of the Buildings or mechanical systems and improvements or Jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project, provided that the Owners shall have the right to landscape the limited Common Elements appurtenant to their respective Units without obtaining in each specific instance the prior written consent of the Board of Directors so long as any landscaping undertaken in such

Limited Common Elements is completed in a timely fashion, does not create a harmful or unsafe condition and does not result in an increase in the cost of Insurance on the Common Elements of the Project.

- 6.09 Parking Spaces the Board of Directors may assign parking spaces in the Common Elements to Owners or make such parking spaces available for guest parking.
- 6.10 No Obstructions. Owner shall obstruct the Common Elements or any part thereof. No Owner shall store or cause to be stored in the Common Elements any property whatsoever, unless the Board of Directors shall consent thereto in writing.
- 6.11 No Overloading. No Owner shall bring anything into his unit or permit anything to be done in his unit that will cause damage to the Building. No Owner shall overload the floor of his Unit. No Owner shall permit the use or operation in his Unit of any equipment, machinery or other apparatus that will in any manner injure, vibrate or shake the Building or portions thereof.
- 6.12 Prohibition of Damage in Certain Activities. Except with the prior written consent of the Board of Directors, nothing shall be done or kept in any unit, in the Common Elements or in any other part of the "project that would result in cancellation of the insurance on the Project or any part thereof or shall anything be done or kept in any unit that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would be in violation of any statute, rule, Ordinance, regulation, permit or other worldly imposed requirement of any governmental authority. No damage to, or waste of the Common Elements or any part thereof shall be committed by any Owner or guest of any Owner and each One shall Indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees or invited guests of such Owner.
- 6.13 No Commercial Business. No commercial business shall be permitted within the Project.
- 6.14 Leasing Restrictions. No Owner shall be permitted to lease his or her Condominium for a period of less than thirty (30) days. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles and the Bylaws and that any failure by the leased to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.
- 6.15 Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Elements and the Project. as such rules and regulations may be modified, amended and construed by the Association in the sole discretion of its Board of Directors.

6.16 Construction Period Exemption. During the course of actual construction of any permitted structures or Improvements within the Project the provision, covenants. Conditions and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction: provided, however, that during the course of such construction nothing shall be done which will result in a violation of any said provisions, covenants. Conditions or restrictions upon completion of the construction.

## **ARTICLE VII THE ASSOCIATION**

- 7.01 Membership. Each Owner shall be entitled and required to be a member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium is held by more than one person, the membership appurtenant to that Condominium shall be shared by all such persons in the same proportionate Interest and by the same type of tenancy in which title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by him. Each membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium within the Project cannot be separated from membership in the Association. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Condominium. The Association shall make available to the Owners, Mortgagees and the holders. Insurers and guarantors of the first mortgage on any Unit current copies of the Declaration Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The Association also shall be required to make available to prospective purchasers of Units current copies of the Declaration, Articles. Bylaws, other rules governing the Project and the most recent annual audited financial statement of the Association. If such is prepared. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.
- 7.02 Board of Directors. Until such time as the responsibility for electing the Directors of the Association is turned over to the Owners in accordance with the Act. The Declarant shall have the exclusive right to appoint and to remove all such Directors. This exclusive right shall terminate after the first to occur of the following:
- (a) Four years from the date Declarant ceases to offer Condominiums in the ordinary course of business: or
  - (b) Ninety days after seventy-five percent (75%) of the Condominiums which may be created in the Project have been conveyed by Declarant to the purchasers thereof.
- 7.03 Votes. The number of votes appurtenant to each respective Condominium shall be as set forth in Exhibit "C. Subject to revision upon each expansion of the Project as provided in Article xvi of this Declaration and the Act. The number of votes appurtenant to each Condominium as set forth in the said Exhibit "C" shall have a permanent character and shall not be altered without the unanimous written consent of all owners expressed in a duly recorded amendment to this declaration.

**ARTICLE VIII  
CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION  
AND BOARD OF DIRECTORS**

- 8.01 The Common Elements. The Board of Directors, acting on behalf of the Association and subject to the rights and duties of the Owners as set forth in this Declaration shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon and shall keep the same in good, clean, attractive, safe and sanitary condition, order and repair, provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Elements designated for use in connection with his Unit. If any in a clean, sanitary and attractive condition. The Association shall be responsible for the maintenance and repair of the interior of the Buildings, other improvements and grounds, including without limitation, painting thereof, repair and replacement of interior trim, roofs and fences and maintenance of landscaping, walkways, driveways and parking areas. The Association shall also be responsible for maintenance, repair and replacement of Common Elements within the Buildings, including without limitation, landings, stairways, utility lines, and all improvements and other items located within or used in connection with the Common Elements. The specification of duties of the Association with respect to particular Common Elements shall not be construed to limit its duties with respect to other Common Elements. All goods and services procured by the Association in performing its responsibilities under this section shall be paid for with funds from the Common Expense fund. Notwithstanding anything herein to the contrary, the Declarant alone is responsible and liable for the Maintenance, repair and replacement of any portion of the Common Elements which the Declarant has reserved the right to withdraw from the Project, as long as the Declarant retains the right to withdraw.
- 8.02 Manager. The Board of Directors may retain the services of an experienced, professional Manager to manage the Project. Appropriate fidelity bond coverage shall be required for an employee of the Manager who handles funds of the Association. The Board of Directors may by written contract delegate in whole or in part to Manager such of the duties, responsibilities, functions and powers hereunder of the Board of Directors as are delegable. The services of any Manager retained by the Board of Directors shall be paid for with funds from the Common Expense Fund. Any management contract, employment contract or lease of recreational or parking areas or facilities, or any contract or lease, including franchises or licenses, to which the Declarant or an affiliate of the Declarant is a party which binds the Association either directly or indirectly shall provide that without cause such agreement may be terminated by the Board of Directors or the Association, without penalty at any time after transfer of control by the Declarant, upon not more than thirty (30) days written notice to the other party thereto.
- 8.03 Miscellaneous Goods and Services. The Board of Directors may, on behalf of the Association, obtain and pay for the services of such personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the association or by any person or entity with whom or which it contracts. The Board of Directors may, in behalf of

the Association, obtain and pay for legal and accounting services necessary or desirable in connection with operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Directors, in behalf of the Association, acquire and pay for out of the Common Expense fund water, sewer, garbage collection, electrical gas and other necessary or desirable utility services for the Common Elements and for the Units to the extent not separately metered or billed, insurance, bonds and other goods and services common to the Units.

- 8.04 Right of Board of Directors to Bind Association. A contract for any of the following, if entered into before the responsibility for electing the Board of Directors of the Association is turned over to the Owners in accordance with Section 7.02, shall contain a provision in the contract that the contract may be terminated without penalty by the Association at any time after the Board of Directors elected by the Unit Owners takes office:
1. Any management contract or employment contract.
  2. Any other contract or lease between the Association and Declarant or affiliate of a Declarant.
  3. Any contract or lease that is not bona fide or was unconscionable to the owners at the time there to and under the circumstances then prevailing. The Board of Directors shall notify the appropriate contractual party of the termination in not fewer than thirty (30) days before termination. If a contract covered by this Section 8.04 falls to contain the provisions required by this Section, the contract shall be voidable at the option of the Association.
- 8.05 Rent and Personal Property. The Board of Directors may acquire and hold on behalf of the Association real, personal and mixed property of all types for the Use or benefit of all of the Owners and may dispose of such property by sale or otherwise, provided that any acquisition or disposition of value of any real, personal or fixed property by the Board of Directors wherein such property exceeds Five Thousand Dollars (\$5,000) must be approved by a vote of at least fifty-one percent (51%) of the Total Votes of the Association at a meeting duly called for that purpose. All such property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.
- 8.06 Rules and Regulations. The Board of Directors may make reasonable rules and regulations governing the use of the Units, the Common Elements, the Limited Common Elements and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Board of Directors in behalf of the Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of such Owner arising hereunder, or to obtain damages or fines for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorney's fees, from the offending Owner.

- 8.07 Granting Easements. The Board of Directors may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as It deems advisable, easements, licenses and rights-of-way over, under, across and through the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.
- 8.08 Other Rights and Duties. The Association may exercise any right, power or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to It herein or reasonably necessary to effectuate any such right or privilege. Including, but not limited to the following:
- (a) Adopt and amend Bylaws and rules.
  - (b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from Owners.
  - (c) Hire and discharge managing agents and other employees, agents and Independent contractors.
  - (d) Institute, defend or Intervene in Litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project.
  - (e) Make contracts and incur liabilities.
  - (f) Regulate the use, maintenance, repair, replacement and modification of Common Elements.
  - (g) Cause additional Improvements to be made as a part of the Common Elements.
  - (h) Acquire, hold, encumber and convey in its own name any right, title or Interest to real or personal property, except that Common Elements may be conveyed or subjected to a security Interest only pursuant to A.R.S. 433-12S2.
  - (i) Grant easements, leases, licenses and concessions through or over the Common Elements.
  - (j) Impose and receive any payments, fees or charges for the use rental or operation of the Common Elements other than Limited Common Elements d A.R.S. 533-1212. Paragraph 2 and 4. and for services provided to Unit Owner.
  - (k) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon Owners for violations of the Declaration, bylaws and rules of the Association.
  - (l) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments.



- (m) Provide for the identification of its officers and Board of Directors and maintain directors' and officers' liability insurance
- (n) Assign its right to future income. Including the right to receive common expense assessments, but only to the extent the Declaration expressly provides.
- (o) Be a member of a master association or other entity owning maintaining or governing in any respect any portion of the Common Elements or other property benefitting or related to the Project or the Owners in any respect.
- (p) Exercise any other powers conferred by the Declaration or bylaws.
- (q) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association.
- (r) Exercise any other powers necessary and proper for the governance and operation of the Association.

8.08 Power of Attorney and Amendments. Each Owner makes, constitutes and Appoints the Association is true and Lawful attorney in his name. place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration and the Plat as may be required by law or by vote taken pursuant to the provisions of the Declaration

8.09 Master Association. The Association, for the benefit of all the owners is a member of the Master Association and shall perform all obligations of membership therein and pay all assessments duly levied by said Master Association against the Association or the owners. In the event of any conflict between the provisions of this Declaration and the Declaration of Covenants, Conditions and Restrictions for the villages at McCormick Ranch, the provisions this Declaration shall be subordinate. The Board of Directors shall designate one of its members as a representative to vote the membership of the Association and all meetings or written actions to be taken by the members of the Master Association. The Board of Directors may meet and determine to the extent it considers appropriate how said designated person shall vote touch membership or any issue or item. Such Board Member shall be free to and shall in accordance with his own best Judgment on all matters not so determined.



## **ARTICLE IX ASSESSMENTS**

- 9.01 Agreement to pay Assessments. The Declarant, for earth Condominium owned by it thin the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Condominium by the acceptance of Instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments. shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration Such assessments shall be fixed established and collected from time to time as provided in this Article IX.
- 9.02 Annual Assessments. Annual Assessments shall be computed and assessed against all Condominiums in the Project as follows:
- (a) Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operator. of the Common Elements and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: Expenses of management: real property taxes and special assessments (unless and until the Condominiums are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder: repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utl1ity charges. Including charges for utility services to the Units to the extent not separately metered or billed: legal and accounting fees: any deficit remaining from previous period; creation of an adequate contingency reserve, for maintenance reserve and/or sinking Fund: creation of an adequate reserve fund for tenants, repairs, and replacement of those Common Elements that must be replaced on a periodic basis. and such reserve shall be funded by monthly payments rather than extraordinary special assessments; and any other expenses and 11 abilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The Common Expense shall also include any assessment upon the Association by the Master Association pursuant to the Declaration of Covenants. Conditions and Restrictions for the villages at McCormick Ranch, which shall be divided among and assessed to the Owners in the same proportions other Common, Expenses. Such shall constitute the Common Expense, and all funds received from assessments under this Section 9.02 shall be part of the Common Expense Fund.
  - (b) Apportionment. Expenses attributable to the Common Elements or to the Project as a whole shall be apportioned among and assessed to all Units in proportion to their respective undivided interests in the Common Elements. The Declarant shall be liable for the amount of any assessments against Condominiums owned by it. Expenses attributable to the maintenance, repair or replacement of a limited Common Element shall be equally assessed to the Units to which the Limited

Common Element is assigned. If any Common Expense is caused by the misconduct of any Owner or guest, tenant, licensor or agent of an Owner, the Association may assess that expense exclusively to such Owner.

- (c) Uncompleted Unit. At the Declarant's option, the Annual Assessment for any Unit on which construction has not been substantially completed may be an amount which is not less than twenty-five percent of the Annual Assessment for Units which have been substantially completed provided. the Declarant shall pay to the Association any deficiency in funds due to the Declarant having paid a reduced Annual Assessment and necessary for the Association to be able to timely pay all Common Expenses.
- (d) Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following provided the first fiscal year shall begin on the date of this Declaration and on or before December 15 of each year thereafter, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Over-an-operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.
- (e) Notice and payment. Except with respect to the first fiscal year the Board of Directors shall notify each Owner as to the amount of the Annual Assessment against His or her Condominium on or before December 15 each year for the fiscal year beginning on January Inert following. Each Annual Assessment shall be payable in twelve equal monthly Installments, one such Installment due on the first day of each calendar month during the fiscal year to which the assessment relates: provided. however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year. The Owners shall commence payment of the full monthly assessments against their respective Condominiums no later than sixty (60) days after the conveyance of the first Condominium in the Project or phase. All unpaid installments of any Annual Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date each such installment became due until paid. In addition, in the event that any installment Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due the Association may, at Its option, and upon fifteen (15) days prior written notice to the owner, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the fiscal year and all accrued but unpaid Interest thereon. Payment of the Annual Assessment Installments 50 accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate of eighteen percent (18%) per annum from such date until paid in full. The failure of the Board of Directors to give timely notice of any Annual Assessment as provided herein

shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or release of any Owner from the obligation to pay such assessment or any other assessment, but the date when the payment shall become due in such case shall be deferred to a date Fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration

- (f) Inadequate Funds in the event that the Common Expense Fund prices Inadequate at any time for whatever reason. Including non payment of any Owner's assessment, the Board of Directors may. on behalf of the Association. Levy additional assessments in accordance with the procedure set forth in Section 9.03 below. except that the vote therein specified shall be unnecessary.

9.03 Special Assessments. In addition to the Annual Assessments authorized by this article, the Board of Directors may, on behalf of the Association, levy. At any time and from time to time. upon the affirmative vote of at least fifty-one percent (51%) of the Total votes of the Association. Special Assessments. payable over such periods as the Board of Directors may determine, for the purpose of defraying. In whole or in part, the cost of any construction or reconstruction. unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common expenses). This section shall not be construed as an independent source of authority for the Association to incur Expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective individual Interests in the Common Elements. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners: no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this section shall be part of the Common: Expense Fund.

9.04 Lien for Assessments. All sums assessed to Owners of any Condominium within the Project pursuant to the provision of this article IX, together with penalties and Interest thereon as provided herein, shall be secured by a 1 lien on such Condominium in favor of the Association. Recording of the Declaration constitutes record notice and perfection of the lien. further recordation of any claim of lien for assessment is not required. Such lien may be foreclosed in the same manner as mortgage on real estate. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding including reasonable attorneys' fees, and such costs and expenses shall be secured by the 1 lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Directors shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Condominium in the name of the Association.

- 9.05 Personal Obligation of Owner. The amount of any Annual or Special Assessment against any Condominium shall be the personal obligation of the owner of such Condominium to the Association. Suit to recover money judgment for such personal obligation shall be maintained by the Association without foreclosing or waving the lien securing the same. No Owner by avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Condominium or by waiving any services or amenities provided for in this Declaration, In the event of any suit to recover money judgment for unpaid assessments hereunder, the Involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.
- 9.06 Statement of Account. Upon written request of any Owner. Mortgagee or prospective purchaser of Condominium, the Board of Directors shall within twenty (20) days issue a recordable written statement setting forth the following: The front of the unpaid assessments. If any, with respect to such Condominium; the Amount of the current Annual Assessment and the date or dates upon which installments thereof become due: and credit for advanced payments or prepaid items. Including, without limitation, the Owner's share of prepaid Insurance premium. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith.
- 9.07 Personal Liability of Purchaser. Subject to the provisions of Sections 9.06 and 14.09. a purchaser of a Condominium shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Condominium up to the time of the grant or conveyance: provided, however that the provisions of this section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.
- 9.08 Reserves and working Capital. The Association shall establish the following funds:
- (a) Reserve Fund the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements to the Common Elements and to the Limited Common Elements the Association Ny de obligated to maintain. The reserve fund shall be maintained out of regular assessments for common expenses.
  - (b) Working Capital Fund. The Association shall also establish and maintain for the initial months of the Project, a working capital fund equal to at least two monthly installments of the Annual Assessment for each Condominium. Each Condominiums share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Condominium. The working capital fund must be maintained in segregated account for the use and benefit of the Association. The contribution to the working capital fund for unsold Condominiums in a legal phase of the Project shall be paid to the Association within sixty (60) days after the date of conveyance of the first Condominium in such legal phase of the Project. The purpose of the working capital fund is to ensure that

the Association will have cash available to rent unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts para into the working capital fund are considered advance payments of any regular assessment.

- 9.09 Amendment of Article. This article I shall not be amended unless the Owners of seventy-five percent (75%) of the Condominiums in the Project consent and agree to such amendment in a duly executed and recorded instrument.

## **ARTICLE X INSURANCE**

10.01 Types of Insurance. Commencing not later than the time of the first conveyance of a Condominium to a person other than Declarant, the Association shall obtain and keep in full force and effect at all times the following types of Insurance coverage. provided by companies licensed to do business In the State of Arizona:

- (a) Hazard Insurance. The Association shall obtain, maintain and pay for as a Common Expense a "master" or "blanket" multi-peril policy of property insurance covering the entire Project. Including, without limitation, the Common and Limited Common Elements, fixtures and Building service equipment to the extent that they are part of the Common Elements or Limited Common Elements, common personal property and supplies belonging to the Association and any such property that is within the units which are encumbered by a Mortgage purchased by FNMA or FHLMC. Such master policy of hazard Insurance shall provide. as a minimum, protection against the following:
  - (i) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement: and
  - (ii) All other perils customarily covered with respect to projects similar to the Project in construction, location and use, and any other perils for which coverage is commonly required by private Institutional mortgage Investors for such projects. Including all perils normally covered by the standard all risk endorsement, where such is available. The total amount of Insurance after application of any deductibles shall be not less than eighty percent (80%) of the actual cash value of the Insured property (based upon the current replacement cost of the Project and all by covered the policy). In addition, such master policy of hazard insurance shall include the following endorsements, if available: An Agreed Amount and Inflation Guard Endorsement; and, If the Project should hereafter become subject to construction code provision which would require the Association to incur a significant expense in order to effect code required changes in the undamaged portions of the Project in the event of the partial destruction of the Project by an Insured peril, Construction Code Endorsements (e.g., a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of construction Endorsement).
- (b) Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability Insurance covering all of the Common Elements. in the Project. Such insurance policy shall contain Severability of Interest Endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. The scope of coverage shall include, without Limitation:



- (i) Legal Liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, Maintenance or use of the Common: Elements and legal liability arising out of lawsuits related to employment contracts of the Association; and
- (ii) Additional coverage's as may be required to include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location and use, any other coverage in the kinds and amounts required by private institutional Mortgage investors for such projects. Including, but not limited to host liquor liability, contractual and all-written contract Insurance and comprehensive automobile liability Insurance.

Coverage limits shall be in amounts generally required by private Institutional Mortgage investors for projects similar to the Project in construction, location and use: provided, however, that such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence.

- (c) Workmen's Compensation Insurance. The Association shall obtain and maintain workmen's compensation and employer's Liability Insurance and all other similar Insurance with respect to employees of the Association in the amount and in the forms now or hereafter required by law.
- (d) Fidelity Insurance or Bond. The Association shall obtain and maintain blanket fidelity bonds against dishonest acts on the part of all officers, directors, trustees, managers and employees of the Association and all other persons, including without limitation, volunteers handling or responsible for funds of or administered by the Association. Furthermore, where the Association has designated some or all of the responsibility for the handling of funds to a management agent, such bonds shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered by the Association. Furthermore, where the Association has designated some or all of the responsibility for the handling of funds to a Management agent, such bonds shall be required for such management agents, officers, employees and agents handling or prior funds of, or administered on behalf of the Association. Such Fidelity bonds shall meet the following requirements:
  - (i) All shall name the Association as an obligee and the named insured:
  - (ii) All shall be based on the best business judgment of the Association and shall not be written in an amount less than one and one-half times the amount of the Association's estimated annual operating expenses and reserves, or the estimated maximum of funds, including reserve funds in the custody of the Association or the Manager at any time during the term of each fidelity bond, whichever is greater. However, in no event way the aggregate amount of

such bonds be less than a sum equal to three months' aggregate assessments on all Condominiums plus reserve funds;

- (iii) All shall contain waivers by the issuers of the bonds or policies of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar terms or expressions or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;
  - (iv) All shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association or any Insurance Trustee and each Mortgage Servicer on behalf of FNMA or FHLMC: and
  - (v) The premiums shall all be paid by the Associations common expense. except for premiums on fidelity bonds or Insurance obtained by Management agent for its officers. employees and agents.
- (e) Flood Insurance. Portions of the Project may be located in either an area identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency as an area having special flood hazard for which flood Insurance is not available because the community in which the Project is located is ineligible for participation in the National Flood Insurance Program or an area having special flood hazards and for which flood Insurance has been made available under the National Flood Insurance Program. In the event that at some future time the Project should be declared to be an area having special flood hazards and for which flood insurance is available under the National Flood Insurance Program, the Association shall at that time obtain and maintain at all times blanket policy of flood Insurance that meets the then existing FHLMC/FNMA flood Insurance requirements for similar condominium projects.
- (f) Notwithstanding any other provisions contained herein to the contrary. the Association shall continuously maintain in effect such casualty. flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium development projects established by FHA, VA, FNMA and the Government National Mortgage Association, so long as any of them is Mortgagee. Mortgage Insurer or owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by FA, VA, FNMA or the Government national Mortgage Association.

10.02 Insurance Policy Requirements The Hazard, Public Liability and Flood Insurance policies obtained by the Association pursuant to Sections 10.01(a), (b) and (e) shall be subject to the following:

- (a) The named Insured under any such policies shall be set forth therein substantially as follows: "Village Four Condominiums Owners Association for the use and



benefit of the individual Owners. The policies may also be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement or any successor to such trustee (each of which shall be referred to as "Insurance Trustees for the use and benefit of the individual owners. Loss payable shall be paid in favor of the Association (or Insurance Trustees as a trustee for each Owner and each such Owner's Mortgages. Each Owner and each such Owner's Mortgagee. If any. shall be beneficiaries of the Policies according to the undivided interest in the Common Elements appurtenant to each Owner's respective Condominium in the percentage of common ownership. Evidence of insurance shall be issued to each Owner and Mortgagee upon request:

- (b) Insurance coverage obtained and maintained pursuant to the requirement of Sections 10.01(a), (b) and (e) shall be primary in the event any Owner has insurance covering the same loss:
- (c) Insurance coverage must not be prejudiced by an act or omission of Individual Owners when such act or omission is not within the control of either such Owners collectively or the Association:
- (d) Coverage may not be cancelled, changed in a way which is adverse to a Mortgagee or substantially reduced or modified including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice in advance of the effective date of any reduction in or cancellation of the policy to any and all insured parties. Including any Mortgage Servicer on behalf of FNMA or FHLMC and any First Mortgagee:
- (e) All policies must contain A waiver of subrogation by the Insurer as to any and all claims against the Association, any Owner and/or their respective agents, employees or tenants:
- (f) Each hazard Insurance policy shall be written by hazard Insurance carrier which has a current financial rating by Best's Insurance Reports of Class B+./VI or better:
- (g) Policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, an Owner, FNMA, FHLMC or any designer of FNMA or FHLMC: or (ii) by the terms of the carrier's Charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (111) the policy includes any limiting clauses other than insurance conditions which could prevent FNHA or an Owner from collecting Insurance proceeds:
- (h) All policies shall contain or have attached the standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by private Institutional mortgage Investors in the area in which the Project is located

and which appropriately names FHLMC, FNMA or FHLMC's or FNW's Mortgage Servicer in the policy if such corporations are holders of one or more first mortgages on Units within the Project. If Mortgage Servicer is named as Mortgagee in the mortgagee clause, Mortgage Servicer's name shall be followed by the phrase "Its successors and assigns. The standard mortgagee clause in each policy must be endorsed to provide that any proceeds shall be paid to the Association, or any Insurance Trustee named to represent the Association as provided in Section 10:07, for the use and benefit of the Owners and their first mortgage holders as their interests may appear or must be otherwise endorsed to fully protect FNMA and FHLMC Interests:

- (i) Policy contracts shall provide that no assessment may be made against FNMA, FHLMC for their designees) and that any assessment made against others may not become a lien on the Mortgaged Premises superior to the first mortgage: and
- (j) Policies shall be, in compliance with, and consistent with applicable local and state insurance law. Each insurer and any reinsurer must be specifically licensed or authorized by law to transact business within the State of Arizona

10.03 Evidence of Insurance. Upon request, the Board of Directors shall provide the Mortgage Servicer with copy of the master" or "blanket policy of multi-peril property insurance, including copies of endorsements to such policy as required by FHLMC or FNMA, and, where applicable, copy of any flood insurance policy. a copy of the comprehensive policy of public liability insurance, an appropriate certificate or memorandum of insurance as to each Condominium in the Project which is the subject of mortgage being services for FHLMC or FNMA, any other Insurance drafts, policies, notices, Invoices and other similar documents.

10.04 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain Insurance coverage in addition to any Insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

10.05 Owner's Own Insurance. Each Owner, at his own expense, may procure and maintain at all times fire and extended coverage Insurance covering personal property of such Owner and additional fixtures and improvements added by such Owner against loss by fire and other casualties, including, without limitation, vandalism and malicious mischief. All policies providing such casualty Insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this article. Understanding the provisions hereof, each Owner may obtain Insurance at his own expense providing such other coverage upon his condominium, his personal property, for his personal ability and covering such other risks as any deem appropriate, provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under Insurance policies obtained by the Association pursuant to this article. If obtainable under Industry practice

without an unreasonable additional charge for such waiver, all such Insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners and their respective servants, agents and guests.

- 10.06 Review of Insurance. The Association shall review annually the coverage and policy limits of all Insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project or by such other qualified appraisers as the Association may select.
- 10.07 Insurance Trustee, Power of Attorney. Notwithstanding anything to the contrary in this Declaration, the Hazard. Public Liability and Flood Insurance policies obtained by the Association pursuant to Sections 10.01(a), (b) and (c) may name as insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the insurance trustee"). All such policies obtained by the Association must provide for recognition of any insurance Trust Agreement and the Insurance Trustee, or such other authorized representative, shall have exclusive authority to negotiate losses under any such policy. Each Owner appoints the Association of the Insurance Trustee (in the event a trustee is designated hereafter to represent the Association), as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: The collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee must hold or otherwise properly dispose of any proceeds of Insurance in trust for the Owners and their first mortgage holders, as their interests may appear.

**ARTICLE XI  
DAMAGE OR DESTRUCTION**

- 11.01 Association as Attorney in Fact. All of the Owners Irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grant of a deed from the Declarant or from any Owner shall constitute an appointment by said trustee the Association as his attorney in fact as herein provided. As attorney in fact the association shall have full and complete authorization, right and power to deliver any contract, deed or other instrument with respect to the interest in an owner which may be necessary or appropriate to exercise the powers herein granted.
- 11.02 Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.
- 11.03 Procedures In the event all or any part of the Project is damaged or destroyed and subject to the provisions of Article XIV below, the Association shall proceed as follows:
- (a) Notice to First Mortgagees. The Association shall give timely written notice to any institutional holder of any first mortgage on a Unit in the event of substantial Damage to or destruction of any unit or any part of the Common Elements.
  - (b) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Associate shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.
  - (c) Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out, unless eighty percent (80%) of the Owners. and every Owner of Unit which will not be reconstructed vote not to rebuild.
  - (d) Insufficient Insurance--Less Than Seventy-Five Percent (75%) Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out unless eighty percent (80%) of the Owners, and every owner of a Unit which will not be reconstructed, vote not to rebuild. The Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such Insurance proceeds are insufficient to pay such costs. Such Special Assessment shall be allocated and collected as provided in Section 9.03

hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner of the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

- (e) Insufficient Insurance -- Twenty-five Percent (75% or More Destruction). If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, unless enough Eligible First Mortgagees approve the termination of the Project pursuant to Section 14.02(a) or, within one hundred (100) days following the damage or destruction, and unless at least eighty percent (80%) of the Owners and every Owner of a unit which will not be reconstructed vote not to rebuild. If, however, the termination of the Project is approved by a sufficient number of eligible First Mortgagees and Owners, the Association shall record in the office of the County Recorder of Maricopa County, State of Arizona, notice setting forth such facts. Upon the recording of such notice the following shall occur:
- (i) The Project shall be deemed to be owned in common by the Owners:
  - (ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided Interest previously owned by such Owner in the Common Elements:
  - (iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities to the undivided interest of the respective owner in the Project: and
  - (iv) The Project shall be subject to an action for partition at the Suit of any Owner. In which event the net proceeds of my sale resulting from such suit for partition, together with the net proceeds of the Insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective owner in the Common Elements, as set forth in Exhibit "C" hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens in the undivided interest in the Project owned by such Owner.
- (f) In no event shall an owner of a unit or any other party have priority over the institutional holder of any first mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

11.04 Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the

repair and reconstruction of the part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the change or destruction, with each unit and the Common Elements having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications, unless other action is first approved in writing by a sufficient number of Eligible First Mortgagees Pursuant to Section 14.02.

- 11.05 Disbursement of funds for Repair and Reconstruction. If repair or reconstruction is to occur, the Insurance proceeds held by the Association and any amounts received from assessments made pursuant to Sections 11.02(d) hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from Insurance proceeds; If there is a balance after payment of all costs of such repair and reconstruction, such balance attributable to units and allocated Limited Common Elements which are not rebuilt shall be first distributed to the Owners of such Units in proportion to their respective percentages of ownership in the Common Elements with the remainder distributed to the Owners in proportion to their respective percentages of Ownership of the Common Elements.
- 11.06 Amendment of Article. This Article XI shall not be amended unless the Owners of eighty percent (80%) of the Condominiums in the Project consent and agree to such amendment in a duly executed and recorded instrument.



## ARTICLE XII CONDEMNATION

- 12.01 Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney in fact for the purposes of such representation.
- 12.02 Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Board of Directors on behalf of the Association as herein provided.
- 12.03 Complete Taking In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant thereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Elements. Such distribution shall be made by check payable jointly to the respective owners and their respective Mortgagees, as appropriate.
- 12.04 Partial Taking in the event less than the entire Project is taken by power of eminent domain, the following shall occur:
- (a) Allocation of Award. As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the condemnation award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:
    - (i) The total amount apportioned to taking of or injury to the Common Elements shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Elements:
    - (ii) The total amount apportioned to taking of or injury to the Limited Common Elements shall be allocated equally among and distributed to the Owners of the Unit: to which that limited Common Element was allocated at the time of acquisition:

- (iii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken in proportion to their respective undivided interests in the Common Elements:
  - (iv) The respective amount apportioned to the taking of or injury to a particular unit and its appurtenant undivided interest in the Common Elements shall be allocated and distributed to the Owner of such Unit:
  - (v) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances:
  - (vi) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to be extent it is relevant and applicable:
  - (vii) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear: and
  - (viii) No provision of this Article II or any other provisions in this Declaration, the Articles or the Bylaws shall entitle the owner of a Unit or other party to priority over any First Mortgage holding such Unit with respect to the distribution to such unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.
- (b) Continuation and Reorganization. If less than the entire Projects is taken by power of eminent domain, condominium ownership pursuant here to shall not terminate but shall continue. In such event the project shall be reorganized as follows:
- (i) If any partial taking results in the taking of an entire unit, then the Owner thereof shall cease to be a member of the Association and all voting rights and the undivided interest in the Common Elements appertaining to such unit shall be reallocated to, and shall appertain to the remaining units in proportion to the respective undivided interests in the common Elements.
  - (ii) If any partial taking results in the taking of a Portion of a unit and if no determination is made by the Board of Directors, after duly considering any recommendations, proposals, or other input from the Owners, that such taking does not make it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the undivided interest in the Common Elements appertaining to such Unit shall be reduced in proportion to the reduction in square footage of floor area of such Unit resulting from the taking. The voting rights and undivided interest



in the Common Elements so divested from such unit shall be reallocated to, and shall appertain to such unit and the other units in the Project in proportion to their respective undivided interests in the Common Elements: provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence:

- (iii) If any partial taking results in the taking of a portion of a unit and if there is a determination made by the board of Directors. after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes It Impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Elements pertaining to such Unit shall be reallocated to, and shall appertain to the remaining units in proportlon to their respective undivided interests in the common Elements, and the remaining portion of such Unit shall henceforth be part of the Common Elements:
- (iv) The Board of Directors, after duly considering any recommendations, proposals or other input from the Owners, small have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this section 12.04.(b) provided, however, that if any such determination shall have been or such action taken by Judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.
- (c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by its provisions specified in Article XI hereof for cases of Damage or Destruction: provided. however, that the provisions of said article dealing with sufficiency or insufficiency of Insurance proceeds shall not be applicable.

## **ARTICLE XIII OBsolescence**

- 13.01 Adoption of Plan. Subject to the provisions of Section XIV hereof. Owners holding eighty percent (80%) or more of the Total Votes of the Association may agree that the Project is obsolete and adopt written plan for the renewal and reconstruction of the Project. Written notice of adoption of such a plan shall be given to all Owners and First Mortgagees.
- 13.02 Payment for Renewal and Reconstruction. The Association shall levy a Special Assessment sufficient to provide funds to pay the estimated expenses of renewal or reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 9.03 hereof, except that the vote therein specified shall be unnecessary. Further levies by be made in like manner if the amounts collected prove insufficient to pay the actual expenses of such renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for renewal or reconstruction, such excess shall be distributed to the Owners in proportion to their respective percentages of ownership of the common elements.
- 13.03 Sale of Project. Subject to the provisions of Section XIV hereof, the Owners may at any time, by an affirmative vote of at least eighty percent (80%) of the total votes of the Association, at a special meeting of the members of the Association duly called for such purpose, elect to sell or otherwise dispose of the Project. In such event, the Board of Directors shall forthwith record in the office of the County Recorder of Maricopa County, State of Arizona, a notice setting forth such facts, and upon the recording of such notice by the Board of Directors. the Project shall be sold or otherwise disposed of by the Board of Directors. as attorney in fact for all of the Owners. Such action shall be binding upon all Owners and each Owner shall have the duty to execute and deliver such Instruments and to perform all acts in such manner and form as may be necessary or appropriate to effect such sale or other disposition of the Project. The proceeds of such sale or disposition shall be apportioned among the Owners in proportion to their respective undivided interests in the common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Each such account shall remain in the name of the Association and shall be further identified by the Condominium designation and the name of the Owner. The Board of Directors, as attorney in fact, shall use and disburse the total amount of each such account without contribution from one account to another, first to the payment of valid tax. and special assessment liens in the Condominium in favor of any governmental assessing authority. second to the payment of any First Mortgagee holding first mortgage lien on the Condominium, third to the payment of assessments made pursuant to this Declaration, fourth to the payment of other holders of liens or encumbrances on the Condominium in the order of priority of their liens and the balance remaining. If any, to the respective Owners.

13.04 Amendment of Article. This Article XIII shall not be amended unless the Owners of eighty percent (80%) of the Condominiums in the Project and at least eighty percent (80%) of First Mortgage, based on one vote for each First Mortgage, consent and agree to such amendment by duly executed and recorded instruments.

## **ARTICLE XIV MORTGAGE PROTECTION**

14.01 Notice of Action. upon written request made to the Association by a First Mortgagee, or an issuer or governmental guarantor of First Mortgage, which written request shall identify the name and address of such First Mortgagee, issuer or governmental guarantor and the Unit number or address of the Unit. any such First Mortgagee, Issuer or governmental guarantor shall be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominiums on which there is a first mortgage held, insured or guaranteed by such First Mortgagee, issuer or governmental guarantor.
- (b) Any default in the performance by the owner of a Condominium which is held or is subject to first Mortgage held, Insured or guaranteed by such First Mortgage, insurer or governmental guarantor, of any obligation under this Declaration, including, without limitation, any delinquency in the payment of assessments or charges over by such Owner, which default remains uncured for a period of sixty (60) days:
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action which would require the consent of a specified percentage of eligible First Mortgagees as specified In Section 14.02 below.

14.02 Matters Requiring Prior Mortgage Insurer and Eligible First Mortgagee Approval. Except as provided under the Act in case of condemnation and substantial loss to units and/or Common Elements and as may be required to give effect to the provisions of Article XVI relating to the expansion and phased development of the Project, the prior written consent of Owners entitled to vote at least sixty seven per cent (67%) of the Total votes in the Association (unless pursuant to a specific provision of this declaration the consent of the owners entitled to vote a greater percentage of the total votes in the Association is required. In which case such specific provisions shall control.). mortgage insurers to the extent they have guaranteed the mortgages of any condominium in the Project and first mortgagees holding first mortgages on condominiums having at least sixty seven percent (67%) of the votes of the condominium subject to first mortgages held by first mortgages shall be required to:

- a) Abandon and terminate the legal status of the project (whether by act or omission)
- b) Sell or otherwise dispose of the project pursuant to Section 13.03 of this Declaration;
- c) Establish self-management of the Project by the Association when Professional Management has been previously required by any Eligible First Mortgagee, Mortgage Insurer, Insurer, or Guarantor.
- (d) Add or amend any material provision of the Declaration, Articles. Bylaws or Plat, which establishes, provides for. Governs or regulates any of the following (an

addition or amendment to such documents shall not be considered material (if it is for the purpose of correcting technical errors or for clarification only):

- (i) Voting,
  - (ii) Assessments, assessment liens or subordination of such liens;
  - (iii) Reserves for maintenance, repair and replacement of the Common Elements:
  - (iv) Fidelity Bonds or Insurance:
  - (v) Rights to use of Common Elements:
  - (vi) Responsibility for maintenance and repair of the several portions of the Project:
  - (vii) Boundaries of any unit:
  - (viii) The undivided ownership interests in the Common or Limited Common Elements:
  - (ix) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell transfer or otherwise convey his or her Condominium; and
  - (x) Any provisions which are for the cypress benefit of first Mortgagees.
- (e) Change the pro rata interest or obligations of any individual Condominium for the purpose of:
- (i) Levying assessments or charges or allocating distributions of hazard Insurance proceeds or condemnation awards: or
  - (ii) Determining the pro rata ownership interest of each Condominium in the Common Elements.
- (f) Partition or subdivide any Condominium:
- (g) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements by the Association for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Owners shall not be deemed a transfer within the meaning of this clause); and
- (h) The use hazard Insurance proceeds for losses to any portion of the Project (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of the Project.

In addition, the prior written approval of Mortgage Insurers. to the extent they have guaranteed the Mortgage of any Condominium in the Project, and Eligible First Mortgagees holding First Mortgages on Condominiums having at least fifty-one percent (51%) of the votes of Condominiums subject to First Mortgage held by Eligible First Mortgages, shall be required to (i) effect any restoration or repair of the Project, after hazard, which will not be substantially in accordance with the Declaration and the original architectural plans and specifications of the Project, (ii) expand or contract the Project or add to or withdraw any property from the Project or (iii) convert any of the units in the Project into Common Elements or Common Elements into Units. Any Mortgage Insurer or Eligible First Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request.

- 14.03 Prior Liens Relate Only to Individual Condominiums. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominiums and not to the Project as a whole.
- 14.04 Subordination of Common Expense Lien. To the extent permitted by the Act, any liens which the Association may have on any Condominium in the Project for the payment of common expense assessments attributable to such Condominium and any fees, late charges, taxes or interest levied by the Association in connection therewith shall be subordinate to the lien or equivalent security Interest of any First Mortgage on the Condominium recorded prior to the date on which any such common expense assessments became due.
- 14.05 Information Made Available to owners, Lenders and Holders Insurers and Guarantors of any First Mortgages. Any Owner, lender or holder, Insurer or guarantor of any First Mortgage shall upon request, be entitled to inspect current copies of the Declaration, Bylaws, other rules and regulations concerning the Project and the books, records and financial statements of the Association during normal business hours or under other reasonable circumstances.
- 14.06 Additional Information Made Available to Holders Insurers and Guarantors of First Mortgages. In addition to the rights granted in Section 14.05, any holder, Insurer or guarantor shall upon request, be entitled to written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.
- 14.07 Priority of First Mortgagee in Event of Damage In the event of substantial damage to or destruction of any Unit or any part of the Common Element, no provision of the Declaration, Articles or Bylaws or any amendment thereto shall entitle the owner of Unit or other party to priority over any First Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

- 14.08 Priority of First Mortgagee in Event of Condemnation. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, no provision of the Declaration, Articles or Bylaws or any amendment thereto shall entitle the owner of unit, or any other party, to priority over any First Mortgagee with respect to the distribution to such Unit of the proceeds of any award or settlement.
- 14.09 First Mortgage Rights in Event of Foreclosure. To the extent permitted by the Act, each First Mortgagee who obtains title to a unit pursuant to the remedies provided in the Mortgage, or by deed or assignment in lieu of foreclosure or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the acquisition of title to such Unit by the First Mortgagee.
- 14.10 No Right of First Refusal. No right of first refusal shall be included or added by amendment to the Declaration, Articles or Bylaws.



**ARTICLE XV**  
**COMPLIANCE WITH DECLARATION AND BYLAWS**

- 15.01 Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association. rules and regulations promulgated by the Association and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for Injunctive relief or for both, maintainable by the Association or in a proper case, by an aggrieved Owner.
- 15.02 Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to the Association or Condominiums within the Project shall be enforceable by the Declarant or by any Owner of a Condominium within the Project, subject to this Declaration by a proceeding for a prohibitive or mandatory Injunction or by a suit or action to recover damages or to recover any amount due or unpaid. The obligations, provisions, covenants, restrictions conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to a person or entity or property of other than the Association shall be enforceable by the Declarant or by the Association or in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. No summary abatement or similar procedure may be utilized through non judicial means to alter or demolish Items of construction.

**ARTICLE XVI  
EXPANDABLE CONDOMINIUM**

- 16.01 Reservation of Right to Expand. The Declarant hereof expressly reserves the option and right to expand the Village Four Condominium pursuant to the provisions of this article:
- (a) Consent of Owners Not Required. The consent of the Owners in the Project shall not be required for such expansion, and the Declarant may proceed with such expansion at its sole option.
  - (b) Liability Insurance. Declarant shall obtain at Declarants expense, if requested to do so by any Mortgage Insurer, liability insurance policy in an amount determined by the Mortgage Insurer, in the event and to the extent there are any guaranteed Mortgages in the Project, to cover any exposure of the Owners to any liability resulting from the expansion of the Project. The policy shall be endorsed "as owner's Interest might appear."
  - (c) Preparation and Recording of Supplemental Plat and Amendment. Prior to adding all or any portion of the Additional Land to the Project, the Declarant shall:
    - (i) Substantially complete or cause the substantial completion of any Intended Improvements to be constructed upon the Additional Land to be added to the Project:
    - (ii) Pay or provide for the payment of all taxes, assessments, mechanics liens and other charges affecting or relating to the Additional Land to be added to the Project covering any period of time prior to the date upon which such Additional Land is added to the Project:
    - (iii) Record, with regard to the Additional Land or any portion thereof that is being added to the Project, a supplementary record of Survey plat (the "Supplementary Plat") which shall describe the land added to the project and comply in all respects with this article XVI; and
    - (iv) Prepare, execute and record simultaneously with each Supplemental Plat an amendment to the Declaration (the "Amendment") which shall contain a legal description by metes and bounds of the land added to the Project and shall reallocate individual interests in the Common Elements so that the Units created in the land added to the Project shall be allocated undivided interests in the Common Elements on the same basis as Units initially constructed in the Project as reflected in Exhibit "C" attached hereto. Each such Amendment shall assign an identifying number to each Unit. If any, formed out of the land added to the Project. Each such Amendment shall describe any formed out of the Additional Land added to the Project. or delineate the Limited Common Elements.

(d) Expiration of Right to Expand. This option to expand the Project shall expire ten (10) years after the recording of this Declaration; however, the Declarant may, at any time prior to the expiration of such period, terminate its option to expand by recording among the land records wherein this Declaration is recorded an executed and notarized document terminating this option.

16.02 Description of Additional Land. The Additional Land which may at the option of Declarant be made part of the project is located in Maricopa County, State of Arizona, and is more particularly described as follows, to wit: (see Exhibit "D")

16.03 Declarant's Right to add all portions of additional land. The Declarant need not add all or any portion of the additional Land to the Project; however, the Declarant may, at Its sole discretion and without limitation, add all or any portion or portions of the Additional Land to the project and may do so at different times.

16.04 Location of Improvements. Declarant makes no assurances as to the allocations of any Improvements that may be made on any portions of the Additional Land added to the Project.

16.05 Compatibility with Structures in Initial Project. Declarant intends to erect structures on any portion of the additional Land added to the Project that will be compatible with the structures on the land initially within the Project. However, Declarant hereby reserves the right to select the design and configuration of any improvements erected on any portion of the Additional Land added to the Project that in the Judgment of the Declarant may be required to achieve the best development of the Project, provided that such Improvements are consistent with the Improvements on the land initially within the Project in terms of quality of construction. Declarant must build said Improvements in accordance with an approved plan for the total development of the Project supported by detailed plats and plans.

16.06 Other Improvements. Other improvements to be placed on the Additional Land shall be limited to parking, recreational, service facilities and walls with appropriate security dividers and gates, and mail collection/distribution facilities.

16.07 Units Not Identical to Initial Units. Although Declarant intends to create Units in the improvements on the Additional Land that will be compatible with the Units initially constructed within the Project. Declarant makes no assurances as to whether Units that may be created in the improvements on the Additional Land will be compatible with or Identical to Units initially constructed within the Project.

16.08 Limited Common Elements. The Declarant reserves the right, in its sole discretion and without limitation, to create Limited Common Elements within any portion of the Additional Land and to designate Common Elements therein which may be subsequently assigned as Limited Common Elements for the purpose of making parking

spaces, carports, patios, decks, entries and other such traditional types of Limited Common Elements as the Declarant may see fit to create

16.09 Votes and Common Expenses. The Owners of the Units created within any portion of the Additional Land that is added to the Project shall be entitled to vote the votes in the Association appurtenant to each such Unit. Each additional Unit that is added to the Project shall be allocated an undivided fractional Interest in the Common Elements equal to the undivided fractional interest allocated to each other Unit in the Project, as expanded. For example, if the Project, as expanded, ultimately includes one hundred forty-eight (148) Units, each of the Units in the Project will be allocated a fractional undivided interest in the common Elements equal to 1/148. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to the existing units and to the added Units in proportion to such Units respective individual Interests in the Common Elements of the Project, as expanded.

## ARTICLE XVII GENERAL PROVISIONS

- 17.01 Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision, restriction, covenant or condition contained in this declaration, or in any Supplemental or Amended Declaration shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.
- 17.02 Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Act and all other provisions of law. Whenever used herein, unless the content shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include both genders. The article and section headings set forth herein are for convenience and reference only and are not intended to expand, limit or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.
- 17.03 Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes of personally served or if sent by first-class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address or if no address has been registered to the Unit of such Owner. All notices, demands and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes of personally served or if sent by first-class U.S. mail, postage prepaid, addressed to the Association. Any notice, demand or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid, and in the form provided for in this section, as the case may be.
- 17.04 Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, shall obtain an audit, by certified public accountants, of all books and records, pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.
- 17.05 Amendment. Except as otherwise provided herein, this Declaration may be amended if Owners holding at least two-thirds (2/3) of the total votes in the Association consent and

agree to such amendment by Instruments which are duly recorded in the office of the County Recorder of Maricopa County, State of Arizona.

- 17.06 Effective Date. This Declaration shall take effect upon recording.
- 17.07 Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person in or upon the Project, or resulting from electricity, water, rain, snow or Ice which may leak or flow from outside or from any parts of the Building or its drains, pipes. Conduits, appliances or equipment or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or Improvements to or maintaining the project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.
- 17.08 Owners Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting or selling under contract his Condominium. The Owner of a Condominium within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.
- 17.09 Model Units. Sales Offices and Advertising Signs. Declarant and Declarant's duly authorized agents, representatives and employees shall have the right to establish and maintain model units and sales offices on the land within the Project and the right to use such model units and sales offices during the period that Condominiums in the Project remain unsold. No more than two model units and one sales office will be established and maintained by Declarant in the Project. Declarant reserves the right to relocate the same from time to time within the Project. Declarant further reserves the right to maintain advertising signs on the Project and to place the same in any location and to relocate, replace and remove the same at the sole discretion of Declarant during the period that Units in the Project remain unsold.
- 17.10 Termination. In addition to the prior written approval of the percentage-of Eligible first Mortgagees specified in Section 14.02. the Total Votes in the Association shall be required before the project may be abandoned or terminated, except as provided by law and in this Declaration in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

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

DECLARANT:

TONNE DEVELOPMENT, INC, an

Arizona corporation

By

Its

STATE OF  
COUNTY OF

On this day of 1986. personally appeared before me  
who acknowledge himself to be the  
of Towne Development, Inc., an Arizona corporation, and that he, being  
authorized to do so, executed the foregoing instrument for the purposes therein  
contained.

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NOTARY PUBLIC

Residing at:

(seal)

My Commission Expires:

EXHIBIT A

Description

For

CWW No. 8108254

McCormick Ranch

THE VILLAGES FOUR

PHASE A

Being a portion of the southeast 1/4 of Section 30, T.1N., R.5E., G.s.S. R.B. EM., Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the east 1/4 corner of said Section 30 THENCE N89 S7 27\*W, along the north line of said southeast 1/4 of section 10, and along the centerline of Mountain View Road, as recorded in Book 279, point marking the beginning of a tangent curve, having a radius of 750.00 feet to the right, THEN along the area of said curve through a central angle of 20 34 35, having an arc distance of 269.35 feet; THENCE S20°37'08\*w, 30.00 feet to a point on the southerly right-of-way of said Mountain View Road, and the beginning of a non-tangent curve, the central point of which bears N59 11'44 W, 153s.00 feet; page 10, Maricopa County Recorder, 1319.53 feet to a THENCE Southwesterly along the arc of said curve through a central angle of 13\*50 15, having an arc distance of 370.72 feet to the TRUE



POINT OF BEGINNING;

THENCE 545'21'30"E, 49.54 feet;

THENCE N43'08'42"E, B2.7B feet;

THENCE N4B'21'06"W, 14.54 feet to a point marking the beginning of a tangent curve, having a radius of 3.000 feet to the right;

THENCE along the arc of said curve through a central angle of 89'53'26, having an arc distance of 4.71 feet to a point of reverse curvature marking the beginning of a tangent curve, the central point of which bears N48'27'40"W, 1567.00 feet;

THENCE northeasterly, along the area of said curve, through a central angle of 01'49'52", having an arc distance of 50.08 feet to a point of reverse curvature marking the beginning of a tangent curve, the central point of which bears s50'17'32"E, 3.00 feet;

THENCE northeasterly along the arc of said curve through a central angle of 89'26'04", having an arc distance of 4.68 feet;

THENCE S50'51'28"E, 45.42 feet;

THENCE S07'18'29"W, 82.00 feet;

THENCE S46'05'07"E, 35.00 feet;

THENCE N62'23'54"E, 20.99 feet;

THENCE S43'37'27"E, 78.04 feet;

THENCE S32'33'04"W, 153.00 feet;

THENCE S57'08'13"W, 63.50 feet;

THENCE S77'35'06"W, 87.19 feet;

THENCE N40'17'09"W, 135.22 feet;

THENCE N46'22'34"E, 89.04 feet;

THENCE N43'37'26"W, 87.22 feet to a point marking the beginning of a non- tangent curve, the central point of which bears n24'30'15"w, 1535.00 feet;

THENCE northeasterly along the arc of said curve through a central angle of 02'51'15", have an arc distance of 76.46 feet; to the POINT OF BEGINNING.

Comprising 1.39292 Acres, more or less, subject to all easements of record.

EXHIBIT "C"

UNITS, UNDIVIDED OWNERSHIP INTERESTS AND VOTES

UNIT	UNDIVIDED OWNERSHIP INTERESTS (FRACTION)	VOTES
4-653	1/26	1
4-654	1/26	1
4-655	1/26	1
4-656	1/26	1
4-657	1/26	1
4-658	1/26	1
4-659	1/26	1
4-660	1/26	1
4-661	1/26	1
4-662	1/26	1
4-663	1/26	1
4-664	1/26	1
4-665	1/26	1
4-666	1/26	1
4-667	1/26	1
4-668	1/26	1
4-669	1/26	1
4-670	1/26	1
4-671	1/26	1
4-672	1/26	1
4-673	1/26	1
4-674	1/26	1
4-675	1/26	1
4-676	1/26	1
4-677	1/26	1
4-678	1/26	1

All Units in the Project have been allocated equal Undivided Ownership Interests as shown above.

Description  
for  
McCormick Ranch  
VILLAGES FOUR  
ADDITIONAL LAND

Being a portion of the east half of Section 30, Township 3 North,  
Range 5 East, G.& 5. R. B. & M., Maricopa County, Arizona, more  
particularly described as follows:

COMMENCING at the east quarter corner of said Section 301

THENCE N89 57'27"W, along the north line to the southeast quarter of said Section 30 and along the centerline of Mountain View Road, as recorded in Book 279, Page 10, Maricopa County Records, a distance of 1257.33 feet;

THENCE SO0°02'33"W, 30.00 feet to point on the southerly right of way line of slid mountain view Road marking the TRUE POINT OF BEGINNING)

THENCE S89 57 27 E, along said southerly right of way, 19.65 feet, THENCE S40 49'55"W, 10.04 feet; THENCE SO4 10 05 E, 136.15 feet to a point marking the beginning of a tangent curve, having a radius of 75.00 feet to the left

THENCE Southerly, along the arc of said curve, through central angle of 27'57'10", having an arc distance of 36.59 feet to a point of reverse curvature marking the beginning of a tangent curve, the central point of which bears \$57°52'45 N, 75.00 feet, point of which bears S66 12'55°E, 75.00 feet

THENCE Southerly, along the arc of said curve, through a central angle of 55 54'21", having an arc distance of 73.18 feet to a point of reverse curvature marking the beginning of a tangent curve, the central point of which bears s66'12'55"E, 75.00 feet;

THENCE southerly, along the arc of said curve, through a central angle of 27°57'10', having an arc distance of 36.59 feet;

THENCE S0410'05"E, 53.37 feet to point marking the beginning of a tangent curve, having a radius of 50.00 feet to the left,

THENCE southeasterly, along the arc of said curve, through a central angle of 85°47'22", having an arc distance of 74.87 feet;

THENCE S01 31'21"E, 25.02 feet;

THENCE S46 33'35 E, 68.39 feet,

THENCE S00°02'33 N, 61.50 feet;

THENCE S77°46'30"w, 288.56 feet;

THENCE S62 00'00\*w, 209.48 feet;

THENCE S1127 00 E, 92.60 feet,

THENCE S78°33'00\*w, 140.00 feet,

THENCE S11.27'00"E, 68.39 feet;

THENCE S72 25'00°N, 188.45 feet,

THENCE N34 54'00\*w, S06.73 feet to point marking the beginning of a non-tangent curve, the central point of which bears N29 15'15 W, 1535.00 feet

THENCE northeasterly, along the arc of said curve, through a central angle of 13°15'00', having an arc distance of 354.98 feet

THENCE S43 37 26°E, 87.22 feet:

THENCE S46 22'34 w, 89.04 feet)

THENCE S40'17'09"E, 135.22 feet:

THENCE N7735'06"E, 87.19 feet,

THENCE N57 08 13 E, 63.50 feet)

THENCE N32'33'04E, 153.00 feet;

THENCE N43 37 27w, 78.04 feet)

THENCE S62 33'54"N, 0.99 feet,

THENCE N46°05'07"w, 35.00 feet

THENCE N07 18 29 E, 82.00 feet,

THENCE N50° 51' 28" W, 45.42 feet to point parting the beginning of a tangent curve, having a radius of 3.00 feet to the left,

THENCE westerly, along the arc of said curve, through a central angle of 09 26'04", having an arc distance of 6.68 feet to a point of reverse curvature marking the beginning of a tangent curve, the central point of which bears NS0°17' 32"W, 1567.00 feet;

THENCE Southwesterly, along the arc of said curve, through a central angle of 01°49'52" having an arc distance of 50.08 feet to a point of reverse curvature marking the beginning of a tangent curve, the central point of which bears S48° 27' 40" E, 3.00 feet;

THENCE southwesterly, along the arc of said curve, through central angle of 89°53'26", having an arc distance of 4.71 feet:

THENCE S48° 21' 06" E, 14.54 feet;

THENCE S43° 08' 42" W, 82.78 feet;

THENCE N45° 21' 30" W 49.50 feet to a point marking the beginning of non-tangent curve, the central point of which bears N45°21'29" W, 1535.00 feet,

THENCE northeasterly, along the arc of said curve, through a central angle of 13° 50' 15" having an arc distance 370.72 feet to a point on the aforementioned southerly right of way line of Mountain View Road marking the beginning of a non-tangent curve, the central point of which bears N20° 37' 08" E, 780.00 feet;

THENCE easterly, along said southerly right of way line and along the arc of said curve, through a central angle of 30° 34' 35", having an arc distance of 280128251

THENCE S88° 57' 27" E, continuing along said southerly right of way line 62.20 feet to the TRUE POINT OF SPINNING.

Comprising 10.63721 Acres, more or less, Subject to all easements of record.