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CAPTION: Declaration of Covenants, Conditions and Restrictions for
San Tan Sunrise Estates



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

SAN TAN SUNRISE ESTATES

TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
SAN TAN SUNRISE ESTATES
MARICOPA COUNTY, ARIZONA**

This DECLARATION of Covenants, Conditions and Restrictions is made this 9th day of August, 2005, by Sallaway Development, LLC, an Arizona limited liability company (the "Declarant").

WITNESSETH

A. Declarant is the Owner of both legal and equitable title of the real property described on Exhibit A attached hereto, situated within the County of Maricopa, State of Arizona.

B. Declarant desires to develop and sell lots within the Property as a planned residential development for single-family residential use.

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

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

NOW, THEREFORE, Declarant hereby declares that all of said real property (sometimes referred to as "San Tan Sunrise Estates") shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with said real property, and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

**SECTION 1
DEFINITIONS**

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

- 1.1 "Access Easement" shall mean Tract "A" of the Final Plat for San Tan Sunrise Estates, recorded on March 23, 2006 at Recording No. 2006-0391451 in the official records of the County Recorder, Maricopa County, Arizona, including any amendments thereto or assignments thereof.
- 1.2 "Angular Lots" are Lots which have front lot lines that are angular or curved.
- 1.3 "Architectural Committee" or "Committee" shall mean the committee established by the Board pursuant to Section 8 of this Declaration.

- 1.4 “Architectural Design Guidelines” shall mean the rules and guidelines adopted by the Architectural Committee, as said rules and guidelines may be amended from time to time.
- 1.5 “Articles” shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.
- 1.6 “Association” shall mean The San Tan Sunrise Estates Homeowners Association, an Arizona nonprofit corporation, its successors and assigns.
- 1.7 “Association Rules” shall mean the rules and regulations adopted by the Board, as the same may be amended from time to time.
- 1.8 “Board” shall mean the Board of Directors of the Association.
- 1.9 “Building Envelope” shall mean that area of the Lot within which all construction activity, except for construction access, must take place, as specified in the Architectural Design Guidelines.
- 1.10 “Bylaws” shall mean the Bylaws of the Association, as the same may be amended from time to time.
- 1.11 “Common Area” shall mean all real property, and all Improvements located thereon, owned by the Association for the common use and enjoyment of the Owners.
- 1.12 “Common Expenses” shall mean those expenses used for the purpose of calculating assessments payable by all Owners for administering, maintaining and operating the Property as specified in Section 10.2.
- 1.13 “Declarant” shall mean Salloway Development, LLC, an Arizona limited liability company, its successors and any person or entity to whom it may expressly assign, by recorded instrument, its rights as Declarant under this Declaration. Unless so specifically assigned, no other person shall be entitled to exercise the rights reserved to Declarant hereunder. The Declarant’s rights may, however, be hypothecated to an Institutional lender as security for the performance of any legal obligation and if such lender thereafter succeeds to the Declarant’s rights by foreclosure, or conveyance in lieu thereof, or any other legal remedy, such lender shall be entitled to all of the rights of the Declarant hereunder.
- 1.14 “Declaration” shall mean the covenants, conditions and restrictions herein set forth in this document, as same may from time to time be amended.
- 1.15 “Dwelling Unit” shall mean a residential living unit construction upon a separately designated Lot, without limiting or restricting the definition of Lot referred to below, which may also include the Improvements on a Lot.
- 1.16 “Exempt Property” shall mean: (i) all land and Improvements owned by or dedicated to and accepted by the United States, the State of Arizona, Maricopa County, Town of Gilbert, or any political subdivision thereof, for as long as any such entity or political subdivision is the Owner thereof or for so long as said dedication remains effective and (ii) all Common Areas.

- 1.17 “First Mortgage” shall mean and refer to any mortgage or deed of trust with first priority over any other mortgage or deed of trust.
- 1.18 “First Mortgagee” shall mean and refer to the holder of any First Mortgage.
- 1.19 “Improvement” shall mean buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping Improvements of every type and kind located on the Property.
- 1.20 “Lot” shall mean any plot of land designated as a Lot upon the Plat with the exception of the Common Areas; as used herein, Lot may include the Improvements on a Lot.
- 1.21 “Member” or “Membership” shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.
- 1.22 “Mortgage” shall mean a realty mortgage and includes a “Deed of Trust”; “Mortgagor” shall also mean and include a “Trustor” under a deed of trust; “Mortgagee” shall also mean and include a “Beneficiary” under a deed of trust; and “foreclosure” includes a deed in lieu, trustee’s sale or other similar proceeding pursuant to a deed of trust.
- 1.23 “Occupant” shall mean any individual, other than Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.
- 1.24 “Owner” shall mean the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) of a fee simple title to a Lot, but excluding those having an interest in a Lot merely as security for the performance of an obligation, or a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller’s title in the Lot, whether legal or equitable, on payment in full of all moneys due under the contract. Owner shall not include a purchaser under a contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed the Owner.
- 1.25 “Person” shall mean an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.
- 1.26 “Plat” shall mean the final plat of survey of San Tan Sunrise Estates Subdivision, records of the County Recorder of Maricopa County, Arizona, and all amendments and supplements thereto.
- 1.27 “Project Documents” shall mean this Declaration and the Articles, Bylaws, Association Rules and Architectural Design Guidelines, and all other documents governing the Property, the Association and its Members.

- 1.28 “Project Landscape Designer” shall mean that company selected by the Architectural Committee to design the landscaping for all Common Areas and to design the landscaping for each Lot so as to maintain a consistent, aesthetically pleasing landscape plan throughout the Project.
- 1.29 “Property” or “Project” shall mean the certain real property described in Exhibit A attached hereto.
- 1.30 “Single Family” shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption; or a group of not more than three (3) persons not all so related, together with their domestic servants, who maintain a common household in a Dwelling Unit.
- 1.31 “Single Family Residential Use” shall mean the occupation or use of a Dwelling Unit by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county, or municipal rules and regulations.
- 1.32 “Vacant Lot” shall mean a Lot upon which a permanent Dwelling Unit has not been completed and approved by final construction inspection by the appropriate governmental authorities.
- 1.33 “Visible From Neighboring Properties” shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of any of the Property, other than the Lot upon which such object is situated, at an elevation no greater than the elevation of the base of the object being viewed.

SECTION 2 USE RESTRICTIONS AND USE OF COMMON AREA

- 2.1 Single Family Residential Use. All Lots shall be used, improved, and devoted exclusively to Single Family Residential Use. No trade or business may be conducted on any Lot, except that an Owner or Occupant may conduct a business activity within a residence so long as:
- the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence; and
 - the business activity conforms to all applicable zoning ordinances or requirements for the property; and
 - the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or Occupants; and
 - the business activity does not violate any provision of this Declaration, the Architectural Design Guidelines, or the Association Rules; and
 - the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of others, as may be determined from time to time in the sole discretion of the Board.

The terms “business” and “trade” as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether:

- a. such activity is engaged in full or part time;
- b. such activity is intended to or does generate a profit; or
- c. a license is required for such activity.

The leasing of an entire residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

- 2.2 Minimum and Maximum Livable Area. All Dwelling Units shall contain a single story minimum livable area of three thousand five hundred (3,500) square feet. Where there is a basement, the ground level square footage livable area must be at least three thousand five hundred (3,500) square feet. All square footage requirements shall be exclusive of open porches, accessory buildings, breezeways, screened porches, terraces, patios, guest houses, servants' quarters, garages or other similar areas.
- 2.3 Use of Lots. Each Dwelling Unit shall be constructed within the Lot's Building Envelope which shall be no less than 30 feet from the curb of the Lot's frontage street. The Architectural Committee may create additional rules and guidelines relating to Lots and Improvements, including but not limited to height allowances and setbacks. All Owners are subject to such rules and guidelines as promulgated by the Architectural Committee, provided, however, such additional rules and guidelines shall not affect or apply to Improvements already approved by the Architectural Committee and commenced or constructed on a Lot. Each Lot shall have a separate Building Envelope and allowable building height as specified in the Architectural Design Guidelines.
- 2.4 Fences. Except as may be constructed by the Developer or otherwise approved in writing by the Committee, all lots will have fencing walls between the home and the side property lines built of split block or stucco finish and shall be built to a height of six (6) feet. Fences with a stucco finish must be of the same or an aesthetically pleasing coordinating color as the residence constructed upon the Lot. All fencing shall be constructed on the Lot's common property lines. Section 6 of this Declaration further governs use and maintenance of common walls.
- 2.5 Consolidation of Lots. Two (2) or more immediately adjacent Lots may be combined and the boundary lines originally dividing such Lots eliminated and the setbacks with respect to such eliminated boundary lines abandoned or adjusted, subject to governmental approval, so as to permit construction to overlap such eliminated boundary dividing lines. Thereafter any such consolidated Lots shall be treated as though their expanded dimensions had originally constituted only one (1) Lot for all purposes, except membership and voting rights and assessments that may be levied hereunder by the Association. Consolidated Lots shall be deemed to retain and constitute their original number (e.g., two (2) consolidated Lots shall remain subject to two (2) annual assessments). In order to accommodate the combining of two (2) or more Lots as permitted under this Section, the Building Envelope and setbacks may be adjusted by the Architectural Committee.
- 2.6 Restriction on Further Subdivision of Lots. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any Lot, nor any easement or other interest therein shall be conveyed or transferred by any Owner. Any conveyance of a Lot or any portion thereof to an adjacent Owner must have the prior written approval of the Architectural Committee. Prior to requesting such approval from the Architectural Committee, the Owner making such request shall be required to obtain all necessary governmental approvals.

- 2.7 Approval of Improvements and Alterations. No Improvement, alteration, repair, excavation or other work which in any way alters the exterior appearance of any Improvement or any portion of any Lot from its natural or improved state as existing on the date of this Declaration and no building, fence, wall, driveway or other structure or Improvement shall be commenced, erected, made or done until the plans and specifications for the same and all construction details, including but not limited to shape, height, materials, floor plans, colors, location and approximate cost shall have been submitted to and approved in writing by the Architectural Committee. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plans which are not suitable or desirable in its opinion, for aesthetic or other reasons and in so passing upon such plans, specifications and grading plans, and without any limitation on the foregoing, it shall have the right to take into consideration the suitability of the proposed Improvements, the materials of which such Improvement is to be built, the site upon which it is proposed to be erected, the extent to which natural growth and terrain would have to be altered, the harmony and aesthetics thereof with the surroundings, and the effect of the planned Improvement on adjacent or neighboring property. All subsequent additions, changes or alterations to any Improvement, including exterior color scheme, shall be subject to the prior written approval of the Architectural Committee. No further changes or deviation in or from such plans and specifications once approved by the Committee, shall be made without further prior written approval thereof by the Architectural Committee.
- 2.8 Mailboxes. One (1) United States Post Office approved group mailbox shall be provided by the Declarant and maintained by the Association. No individual mailboxes or newspaper receptacles shall be allowed on any Lot.
- 2.9 Roofs and Flashings. Per the Architectural Design Guidelines, all roof materials, metal flashings, vents, gutters, down spouts, wires or pipes must be approved in advance by the Architectural Committee as to placement and are required to match or coordinate with the color and texture of exterior walls. Changes in color or material of the roof after the structure is built must have the advance written approval of the Architectural Committee.
- 2.10 Air Conditioning and Solar Equipment. No heating, air conditioning or refrigeration units, air coolers, furnaces or similar equipment may be located anywhere other than on the ground; provided, however, that solar units meeting all governmental guidelines for residential use may be located on the roof of a Dwelling Unit if such solar unit is not visible from the street directly in front of the Lot on which said solar units are located and further said solar units shall be shielded from view from all other Lots and Common Areas provided:
- a. its construction or installation does not violate the requirements of this Declaration dealing with Reflective Material; and
 - b. such solar unit and its location is specifically approved in advance by the Architectural Committee.
- 2.11 Antennas. No antenna, aerial, satellite dish or other device for the transmission or reception of television or radio (including amateur or ham radio) signals of any kind (collectively referred to herein as "antennas") will be allowed on a Lot, except those which are approved in advance by the Architectural Committee. Application for such an antenna must be submitted to the Architectural Committee and such application will be approved if the antenna is designed to assure the minimal visual intrusion possible and

complies to the maximum extent feasible with the Project Documents within the confines of applicable federal regulations, i.e., without precluding reception of quality or unreasonably increasing the cost of the antenna. All such approved antennas are required to match the color of the adjoining building material.

- 2.12 Lights and Reflective Material. Spotlights or other lights which may reflect upon or cause glare to neighboring property in the determination of the Architectural Committee will not be allowed. Foil or other light-reflective material may not be placed or maintained in the windows or glass areas of any structure erected on the Property. Notwithstanding the foregoing, the Architectural Committee may, in its sole discretion, approve additional building materials which it deems aesthetically acceptable and which, considering the state of the industry at a given time, may not have been contemplated by the Declarant.
- 2.13 Location of Building Fronts. The location and angle of the front elevation of all Dwelling Units must run generally parallel to the front boundary line of each Lot and must have prior approval from the Architectural Committee.
- 2.14 Location and Construction of Driveways. Per the Architectural Design Guidelines, prior to the commencement of construction of any driveway, each Owner shall obtain written approval from the Architectural Committee of the location and design of all driveways. Prior to the completion and occupancy of any Dwelling Unit, each Owner, at Owner's expense, shall cause all driveways to be constructed to the Dwelling Unit.
- 2.15 Garages and Garage Doors; Carports. To enhance the aesthetics of the Project, garage doors shall be kept closed at all times except to permit vehicle ingress and egress. All garages shall be designed so that the garage doors for vehicular entry do not face the Lot's frontage street unless otherwise approved by the Architectural Committee in the exercise of its sole and absolute discretion. Garages shall be used principally for the parking of vehicles and shall be furnished with garage doors. Garages shall not be converted for living or other indoor activities. Garages shall not be used for any extended period for storage except such storage as is nominal and incidental and as otherwise meets the approval of the Architectural Committee. The parking capacity of garages must be sufficient to house a minimum of three (3) automobiles and the maximum parking capacity is subject to approval by the Architectural Committee. Specific garage requirements are specified in the Architectural Design Guidelines. No carports shall be allowed on the Property for any reason.
- 2.16 Light Post. Each Owner shall install a minimum of one (1) Architectural Committee approved ornamental light post in the front yard of the Owner's Lot. The Owner shall obtain written approval from the Architectural Committee of the location, design, and construction of the post and lamp. Each Owner, at Owner's expense, shall cause all light posts with lamps to be completed prior to the completion and occupancy of any Dwelling Unit. Each Owner shall apply for and acquire the necessary permit from the Town of Gilbert prior to commencing construction of any yard illuminating light. A maximum of two (2) light posts per Lot will be allowed. Each light post shall be equipped and maintained with an automatic electronic sensor or timer for turning the light on and off. Each Owner shall keep the Owner's light post in good repair and working condition at all times. All lighting shall adhere to requirements set forth in Section 2.12.

- 2.17 Street Parking Restrictions. No vehicle or trailer of any kind shall be parked on any street or driveway for any extended period of time (not more than eight hours) or overnight.
- 2.18 Trailers and Motor Vehicles; Recreational Vehicles. Except with the approval of the Architectural Committee, no mobile home, boat, recreational vehicle, trailer of any kind, commercial vehicle, camper or permanent tent or similar item or structure shall be kept, placed, or maintained, or constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, in any portion of the Property, in such a manner as will be Visible From Neighboring Property; provided, however, that the provisions of this subsection shall not apply to emergency vehicle repairs. Trailers and motor vehicles may be stored in garages designed specifically for that purpose as an integral part of the Improvements on the Lot, providing advance approval is obtained from the Architectural Committee and such storage garages do not adversely affect the architectural and aesthetic appeal of the structures. All recreational vehicles not stored in specifically designed garages shall be stored off Property and shall be allowed on Property only for that limited period of time for loading, unloading and cleaning.
- 2.19 Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration, towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the assessment lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of assessment.
- 2.20 Utility Service. Utility transformers shall be located only in such places as the Architectural Committee shall previously approve. Except as approved in writing by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings, structures or Improvements approved by the Architectural Committee.
- 2.21 Drainage. No owner shall divert or cause the diversion of surface water from his Lot onto any other property. The provisions of this section shall be controlled and limited only by the requirements, if any, imposed by regulations of governmental agencies governing such drainage.
- 2.22 Repair. No Improvements upon any Lot shall be permitted to fall into disrepair, and Improvements shall at all times be kept in good condition and repair and adequately maintained, all in accordance with the plans and specifications approved by the Architectural Committee for such Improvements.

- 2.23 Animals. No animal, of any kind whatsoever, other than a reasonable number of generally recognized house pets, shall be maintained on any Lot, and then only if they are kept thereon solely as domestic pets and not for commercial purposes. No such animal shall be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Owner's Lot, be an annoyance to a person of ordinary sensibilities or to become a nuisance. All dogs shall be kept on a leash when outside a residence and all dogs shall be directly under the control of the Owner or Occupant at all times. Any person bringing such animal onto a Common Area shall immediately remove any feces and urine deposited on the Common Area by the animal, and such person shall be liable to the Association for the cost of any cleaning of the Common Area or the repair of any damage to the Common Area caused or required by the animal. No structures for the care, housing or confinement of any such animal shall be maintained on any Lot so as to be Visible From Neighboring Properties, unless otherwise approved by the Architectural Committee. Upon the written request of any owner, the Board shall conclusively determine, in its sole and absolute discretion, whether such a pet is a nuisance or whether the number of such animals on any Lot is reasonable. Any decision on such matter rendered by the Board shall be final and may include a requirement to the Owner causing or responsible for the violation under this Section, for removal of the animal from the Project or other similar remedies, and such decision for remedy, as well as any other right or remedy available at law or in equity.
- 2.24 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any portion of a Lot or the Common Area, nor shall a Lot be used in whole or in part for the storage of any property or thing that will cause a Lot or any part thereof to appear in any unclean, or untidy condition or that will be unsightly, or offensive, obnoxious, or detrimental; nor shall any substance, thing, or material be kept or used upon a Lot or any part thereof that will emit a foul, offensive or obnoxious odor or that will cause any noise that will or might disturb the peace, quiet, comfort, serenity or tranquility of any Owner or Occupant. No nuisance of whatever kind or description shall be permitted to exist or operate upon a Lot so as to be offensive, unsanitary, unsightly or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of the foregoing provisions, no horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any portion of a Lot. Exterior speakers shall be allowed only in private patio portions of Dwelling Units provided that the type, number and location are approved in advance by the Architectural Committee. Exterior speakers shall not be Visible From Neighboring Properties, nor shall the volume of such speakers be so loud as to be heard from adjacent Lots. The Board in the exercise of its sole discretion, shall have the right to determine the existence of any nuisance whether described herein or not. Noise caused by improperly muffled motor vehicles or excessively loud speakers will not be permitted. Construction machinery and equipment must be operated within the manufactures' recommendations and specifications and only during reasonable working hours as determined by the Board.
- 2.25 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any portion of the Property which shall induce, breed or harbor infectious plant diseases or noxious or destructive insects.
- 2.26 Trash Containers and Collection. No garbage or trash shall be placed or kept on any portion of the Property except in a concealed, covered location as described in the

Architectural Design Guidelines and approved by the Architectural Committee and in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained on any Lot so as to be Visible From Neighboring Properties or from the street. The Board shall have the right to require all Owners or Occupants to place their garbage or trash containers at a specific location for collection and then only for the shortest time reasonably necessary to effect such collection. The Association may require all Owners or Occupants to subscribe to a trash collection service. All rubbish, trash and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No garbage or trash containers shall be kept or placed on any part of the Common Areas except as approved by the Architectural Committee.

- 2.27 Burning and Incinerators. No open fires or burning shall be permitted on any Lot at any time and no Incinerators or like equipment shall be placed, allowed or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues, grills or firepits.
- 2.28 Temporary Occupancy and Temporary Buildings. No trailer, tent, shack, garage, or barn, and no temporary buildings or structures of any kind shall be used at any time for a residence on any portion of the Property either temporary or permanent. The location and type of temporary buildings or structures used during the construction of a Dwelling Unit or other permanent structure on any Lot shall be approved in advance by the Architectural Committee and removed immediately after the completion of construction.
- 2.29 Lawful Use. No use, which in the sole determination of the Board, is improper, offensive or unlawful shall be made of any part of a Lot, Common Area or any other portion of the Property. All valid laws, zoning ordinances and regulations of all government bodies having jurisdiction thereof shall be observed by all Owners, Occupants, guests and visitors. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.
- 2.30 Leasing. Nothing herein shall be deemed to prevent the leasing of an entire Lot with all Improvements thereon from time to time by the Owner thereof, subject to all of the provisions of the Declaration, provided the occupancy is only by the lessee and his family, its servants and guests. No transient tenants may be accommodated. However, this restriction shall not be construed to prohibit an Owner from contributing to society through the incidental renting of rooms to clergymen, or one or two students, foster children or children residing through a placement service. The Owner of the Lot who leases or otherwise grants occupancy rights to his Lot to any Person shall be responsible for assuring compliance by the Occupant with all provisions of the Project Documents and shall be jointly and severally responsible for any violations by the Occupant thereof.

All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of the Project Documents and that any violation of this Project Documents by the lessee or the other Occupants shall be a default under the lease. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the lessees and each other person who will reside in the Dwelling Unit during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person whom the Association can

contact in the event of an emergency involving the Dwelling Unit. Any Owner who leases his Dwelling Unit must provide the lessee with copies of the Project Documents. The Owner shall be liable for any violation of the Project Documents by the lessees or other persons residing in the Dwelling Unit and their guests or invitees and, in the event of any such violation, the Dwelling Unit Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

- 2.31 Clothes Drying Facilities. Outside clotheslines and other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot so as to be Visible From Neighboring Properties. All such facilities shall be provided within the Dwelling Units to be constructed on each Lot.
- 2.32 Mineral Exploration. No portion of the Property shall be used in any manner to explore for or to remove any water, oil, or other hydrocarbons, minerals of any kind, sand, gravel, earth or any earth substance of any kind.
- 2.33 Machinery and Equipment. Except during the period of construction, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or good, workmanlike construction of a Dwelling Unit or other Improvements, and except as Declarant or the Association may require for the operation and maintenance of the Property. Machinery and equipment meant solely to be used in conjunction with an Owner's hobby shall be exempt from this restriction so long as all doors to the outside of the Dwelling Unit are kept closed and no excessive noise can be heard from other Lots or Common Areas on the Property.
- 2.34 Signs. No signs whatsoever including, but not limited to, commercial, advertising, political and similar signs, shall be erected or maintained anywhere on the Property, including, but not limited to, the inside or outside of windows in any building located on the Property, except:
- a. such signs as may be required by legal proceedings;
 - b. signs required by the Association for the logical use of the Common Area, including the streets;
 - c. signs used by Declarant to assist in the initial sale of Lots;
 - d. "For Sale" signs or builder's signs not exceeding six (6) sq. feet; and
 - e. one (1) residential number identification feature for each Lot as described in the Architectural Design Guidelines.
- 2.35 Tanks. No tanks of any kind shall be erected, placed or permitted on any Lots unless they are related to swimming pools, spas, fireplaces, residential heating or sauna equipment as approved by the Architectural Committee and then only if attractively screened and not Visible From Neighboring Properties.
- 2.36 Conforming Design and Commencement of Construction. No private garage, customary outbuildings, guest house, servant's quarters or other accessory buildings or structures shall be erected until construction of the Dwelling Unit has been completed; provided, however, that such accessory buildings or structures may be constructed simultaneously with the Dwelling Unit. Any such accessory building or structure and each entire wall and roof thereof erected on any Lot shall be of the same or conforming materials as the Dwelling Unit on such Lot to the reasonable satisfaction and subject to prior approval of the Architectural Committee.

- 2.37 Initial Landscape Plans. In order to provide the Project with a harmonious and consistently aesthetically pleasing landscape, the Architectural Committee will designate a Project Landscape Designer who shall be retained by each Owner to develop the landscape plan for their Lot, according to the Architectural Design Guidelines. Each Owner shall contract with and pay the Project Landscape Designer for the design portion only. Installation and material may be provided by the landscaper of the Owner's choosing. All requests or applications for construction of any building, structure or Improvements must include the complete landscape plan as developed by the Project Landscape Designer, which will show the approximate location of all trees, grass, shrubs, ground cover and rocks.
- 2.38 Underground Sprinkler System. Each Owner shall install an underground sprinkler system to water the landscaping as designed by the Project Landscape Designer, in the entire Lot, according to the Architectural Design Guidelines and shall complete such installation within sixty (60) days following the final governmental inspection of construction of the Dwelling Unit, for the complete landscape plan. Design and installation of the underground sprinkler system may be completed by the Owner or Contractor of his choosing.
- 2.39 Maintenance of Vacant Lots. All vacant Lots shall be at all times kept free of rubbish, litter and weeds, and all grass shall be kept cut, so as to present a tidy appearance and such maintenance shall be the responsibility of the Owner.
- 2.40 Landscaping and Landscape Maintenance. Within sixty (60) days following the final governmental inspection of construction of the Dwelling Unit, all landscaping shall be installed by Owner in accordance with the landscaping plan which has been submitted to and approved by the Architectural Committee. No substantial changes may be made in any landscaping of a Lot without prior approval of the Architectural Committee. Minor changes, such as replacement of annuals or potted plants, may be made without prior approval of the Architectural Committee. Each Owner shall at all times keep all shrubs, trees and plantings located on such Owner's Lot neatly trimmed, property cultivated, and free from trash, weeds and other unsightly material. In the event any Owner fails to landscape or maintain the landscaping on his Lot in accordance herewith, the Association shall have the right (but not the obligation) to do so and shall charge such Owner the reasonable cost thereof, which charges, together with interest, at the highest lawful rate for contracting parties shall be paid by the Owner to the Association within thirty (30) days after demand therefore and shall create a claim enforceable in the same manner as other assessments provided for in the Declaration.
- 2.41 Removal and Replacement of Trees. No trees located upon any Lot may be removed or replaced without the prior written approval of the Architectural Committee, which approval shall not be unreasonably withheld. All requests or applications for construction or alteration of any building, structure or Improvements must show the approximate location of any trees requested to be removed from each Dwelling Unit. All disputes or claims involving a violation (existing or proposed) of this provision concerning the blocking of a view, shall be submitted to the Architectural Committee as the sole arbiter, and the decision of the Architectural Committee shall be final as to any such disputes or claims arising between the respective Owners of Lots. No trees located upon any Lot may be removed or replaced without the prior written approval of the Architectural Committee, which approval shall not be unreasonably withheld.

- 2.42 Development Activities and Facilities. Notwithstanding anything to the contrary herein contained, it shall be expressly permissible for the Declarant or its duly authorized agents, employees and representatives to maintain during the period of the sale of Lots, such facilities, structures and signs as are necessary or convenient, in the sole opinion of the Declarant, to the sale of the Lots, including, but without limitation, a business office, storage area, construction yards, homes and sales offices; provided, however, that such use of the Common Area by the Declarant must be reasonable and must not interfere with any Owner's use and enjoyment of the Property.
- 2.43 Right of the Association to Act for Defaulting Owner. If any Owner does not:
- a. install and complete approved landscaping, sprinkler system and electrical and water connections within sixty (60) days of certificate of occupancy;
 - b. maintain landscaping in a neat and attractive manner;
 - c. maintain all Improvements on a Lot;
 - d. maintain other parts of the Lot as required by these Sections or elsewhere in this Declaration;
 - e. obtain and maintain the insurance required in this Declaration; or
 - f. comply with the Architectural Design Guidelines,
- the Association may give the Owner fifteen (15) days (or such lesser period as may be reasonable in the event of a bona fide emergency) written notice to cure (or if a cure cannot reasonably occur that quickly, commence to cure and diligently proceed to complete cure of) any such default, and if the Owner fails to do so then the Association shall have the right (but not the obligation) to cause the necessary work to be done, including, but not limited to, the hiring of an attorney to take action on behalf of the Association whether by informal pre-suit action or by formal legal proceedings. The cost of any action taken by the Board as set forth herein, including but not limited to all incidental costs, expenses, attorney's fees, collection charges, and any fines assessed against any Owner shall be added to and become a part of the assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the assessment lien.
- 2.44 Use of Common Area. Every Owner in San Tan Sunrise Estates shall have a right and easement of ingress and egress and enjoyment in, over and to the Common Area of the San Tan Sunrise Estates which shall be appurtenant to and shall pass with the title to every Lot.
- 2.45 No Warranty or Enforceability; Declarant's Exemption. While Declarant has no reason to believe that any of the restrictive covenants contained in this Section or elsewhere in this Declaration are or may be invalidated or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any of the restrictive covenants. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

Declarant is undertaking the work of constructing the Improvements and residential Dwelling Units and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of said Dwelling Units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and Dwelling Units constructed on the Lots and the Property

established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent the Declarant, its contractors or subcontractors from doing on the Property whatever is necessary or advisable in connection with the completion of said work; or
- (b) Prevent the Declarant or its representatives from erecting, constructing and maintaining, on any part of the Property, such structures as may be reasonable or necessary for the conduct of the business of completing said work and establishing the Property as a residential community and disposing of the same by sale, lease or otherwise; or
- (c) Prevent the Declarant from maintaining such sign or signs on any of the Property, as long as such signs are in compliance with Section 2.34 of this Declaration.

The foregoing limitations of the application of the restrictions to the Declarant shall terminate upon the sale of the Declarant's entire interest in the Property. So long as Declarant, its successors and assigns, owns one or more of the Lots, Declarant, its successors and assigns shall, except as specifically provided in this Declaration, be subject to the provisions of this Declaration. Declarant shall use reasonable efforts to avoid disturbing the Owners' use and enjoyment of their Lots while it is completing any work necessary on the Lots and Common Area. In addition, nothing in this Declaration shall be construed to prevent Declarant from modifying the Plat or any portion thereof.

- 2.46 Enforcement of Use Restrictions. As applicable, the Board and/or Architectural Committee have the right and obligation to enforce this Section and all other provisions of the Declaration for the collective benefit of the Owners and the project, and the Board and/or Architectural Committee, as applicable, in its sole but nondiscriminatory judgment, may adopt Association Rules or Architectural Design Guidelines, respectively, establishing minimum maintenance and other standards as it deems appropriate with respect to the provisions it is assigned to enforce, and enforce the same as provided therein.
- 2.47 Speed Limits. Owners, Occupants, guests, and visitors shall obey the posted speed limit of twenty (20) miles per hour on all roads within the Property boundaries and shall take care to drive vehicles in a safe manner at all times. Flagrant and/or repeated violations of this section may result in the Board taking action, including, but not limited to, fines as allowed by Sections 10.1 and 10.9.
- 2.48 Tennis/Sport Courts/Sports Equipment. Tennis courts, and other racquet, paddle and handball courts and the like shall be permitted only if, in the judgment of the Architectural Committee, after proper application, the proposed tennis/sport court is not detrimental to the surrounding properties and does not materially interfere with the harmonious and orderly development of the Development. No sports equipment, including, but not limited to, basketball hoops, shall be stored, kept or left on any Lot or Common Area so as to be Visible From Neighboring Properties.
- 2.49 Environmental Protections. Neither the Lot nor any facilities on the Lot shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or

process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this paragraph, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," or "toxic substances" in: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, fi seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

SECTION 3 EASEMENTS

- 3.1 Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities and utility services, including, without limitation, water, sewer, gas, cable, telephones, electric, sprinkler lines and systems. Pursuant to this easement, a providing utility or service company may install and maintain all such utility facilities and equipment on the Lots or Common Area. No electrical lines, water lines or other utilities or service lines, facilities and equipment may be installed or relocated on the Common Area except as initially developed and approved by the Declarant or thereafter approved by Declarant or the Architectural Committee. This provision shall in no way affect any other recorded easements on the Property.
- 3.2 Common Area Easements. There is hereby created a blanket easement upon and across the Common Area in favor of:
- a. each Owner and his tenants, guests and invitees for the purpose of providing ingress and egress to the Lot owned by said Owner;
 - b. the Association, its invitees, employees or independent contractors for the purpose of providing landscaping, or other maintenance of the Common Areas or other portions of the property;
 - c. the Architectural Committee, its invitees, employees or independent contractors for the purpose of performing their functions as outlined in Section 8; and
 - d. the Declarant, and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Area and for any activities related to the development, promotion and sale of any of the Lots.
- 3.3 Easement for Declarant and Association. There is hereby created a blanket easement upon, across, over and under the Lots in favor of the Declarant, the Association and the Architecture Committee, and their officers, agents, contractors, subcontractors, employees and representatives, for reasonable access, ingress and egress to and from, and as reasonably necessary to the use, occupancy, construction, installation and maintenance of the Project consistent with and subject to the terms and provisions of and the respective duties under this Declaration on the part of the Declarant, the Association and the Architectural Committee, including the right to perform all reasonable acts and matters necessary and/or reasonably consistent with performance of supervision, maintenance, construction, installation, servicing, effecting sales, and in development, financing and disposition, of the Project.

- 3.4 Right of Entry of Association, Committee and Declarant. During reasonable hours, the Declarant, the Association, any member of the Architectural Committee, any member of the Board or any authorized representative of the Board, shall have the right to enter upon and inspect any Lot, excluding the interior of any Dwelling Unit or Improvement located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules and the Architectural Design Guidelines are being complied with the Owner of said Lot.
- 3.5 Access Easement; Shared Use of Streets. Pursuant to the Access Easement, the Association and each Owner or Occupant and their agent, contractors, suppliers, guests, employees and invitees, have a perpetual, exclusive easement for the vehicular and pedestrian ingress and egress over and across the private street known as Twilight Court located in the Town of Gilbert, Arizona. The easement is appurtenant to each Lot within the Association. A copy of the Final Plat for San Tan Sunrise Estates declaring such easement as Tract "A", an easement for drainage, private street public utilities, and as an ingress/egress easement for refuse collection, Government vehicles and emergency type vehicles is attached hereto as Exhibit "B", and incorporated herein, along with any and all amendments and assignments, by this reference.

SECTION 4 PROPERTY RIGHTS

- 4.1 Owners' Easement of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners of the Lots and is necessary for the protection of all Owners. Such easement of enjoyment is, however, subject to the following provisions:
- a. The right of the Association to adopt uniform rules and regulations governing the use of the Common Area;
 - b. The right of the Association to suspend the voting rights of an Owner and/or the rights to the use of the Common Area by an Owner or Occupant, an Owner's tenants and/or licensees for any period during which any assessment against such Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Project Documents; and for consecutive sixty (60) day periods thereafter during which the infraction is still not corrected;
 - c. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least two-thirds (2/3) of the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting duly called for such purpose; and
 - d.
- 4.2 Delegation of Use. Any Owner may delegate, in accordance with this Declaration and the Project Documents, his right of enjoyment to the Common Area to the members of his family or his tenants who reside on the Property.
- 4.3 Limitations. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be

deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrances may not refer to the Common Area. No Owner may exempt himself from personal liability for Common Expenses, nor release the Lot owned by him from the liens or charges arising under this Declaration by waiver of his use and enjoyment of the Common Area.

- 4.4 No Liability. In no event is Declarant making any representation or warranty regarding the adequacy of any drainage onto or off of any Lot, Common Area or other part of the Property and Declarant is assuming no responsibility or liability for drainage of water over, under or across the Lots, Common Area or any other part of the Property (whether such drainage is from neighboring property or other parts of the Property) nor for any damage, loss, costs, expenses or fees incurred as a result of any debris, silt, erosion, or other incidental consequences thereof.
- 4.5 Health, Safety and Welfare. In the event any uses, activities and facilities on any Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or Occupants, the Board may make rules restricting or regulating their presence within the Property as part of the Association Rules, if any, or may direct the Architectural Committee to make rules governing their presence on Lots as part of the Architectural Design Guidelines.

SECTION 5 MAINTENANCE

- 5.1 Maintenance of Common Area by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:
- a. Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any Common Area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);
 - b. Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway, wall and parking area;
 - c. Replace injured and diseased trees or other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
 - d. Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof; and
 - e. Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.
- 5.2 Exterior Maintenance by the Association. In addition to the maintenance, repair and replacement of the Common Area, and the Improvements located thereon, the Association shall maintain, repair and replace the landscaping and other Improvements on any area within or immediately adjacent to the Property providing the Board agrees that such maintenance shall be in the best interest of all the Members.
- 5.3 Maintenance by Owners. Each Owner shall be solely responsible for the maintenance, repair and replacement of his Lot and Improvements thereon, unless accepted in writing for maintenance by the Association.

- 5.4 Damage or Destruction of Common Areas. No Owner shall in any way damage or destroy any Common Area or interfere with the maintenance responsibilities of the Association in connection therewith, including, but not limited to, landscaping, street, and wall. If, due to the act or neglect of an Owner or Occupant, his invitee, guest or other authorized occupancy or visitor of such Owner, damage shall be caused to the Common Area, or to a Lot owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such maintenance, repairs and replacements as may be determined by the Board. For Owners, such amounts shall be a lien upon the Owner's Lot and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of assessments.
- 5.5 Nonperformance by Owners. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates the Project Documents, or in the event the Owner of any Lot is failing to perform any of its obligation under the Project Documents with respect to the maintenance, repair or replacement of the Improvements located on such Lot, the Board may make demand that corrective action be taken immediately. If corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken, including but not limited to the hiring of an attorney to take action on behalf of the Association, whether by informal pre-suit action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein, including but not limited to incidental costs, expenses, attorney's fees, collection charges and any fines assessed against any Owner shall be added to and become a part of the assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the assessment lien.
- 5.6 Maintenance of Private Street. The Association shall be responsible for the maintenance, repair and replacement of the private street known as Twilight Court located in the Town of Gilbert, Arizona, and declared on the Final Plat for San Tan Sunrise Estates as Tract "A", an easement for drainage, private street, public utilities, and as an ingress/egress easement for refuse collection, Government vehicles and emergency type vehicles.

SECTION 6 COMMON WALLS

- 6.1 Use. Each fencing wall that is built upon a Lot and placed on the dividing line between Lots, shall constitute a common wall, and, to the extent not inconsistent with the provisions of this Section, the Owners of contiguous Lots shall both equally have the right to use such common wall, provided such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner. A purchaser of an unimproved Lot adjacent to a Lot on which a fencing wall has been built by the Owner of the other Lot shall reimburse the Owner of the other Lot for one-half (1/2) of the cost of the fencing wall. Owners who build a fencing wall between their property and an adjacent unimproved Lot must keep their invoices for construction costs of the fencing wall in order to be reimbursed under this paragraph.

- 6.2. Sharing of Repair and Maintenance. In the event any common wall is damaged or destroyed, including but not limited to deterioration from ordinary wear and tear, but other than by the act of the Owner of another Lot or his agents, guests, family, or lessees, the cost of reasonable repair and maintenance of a common wall shall be shared by the Owners whose Lots adjoin such common wall, at their joint and equal expense; provided, however, that each Owner shall be responsible for all nonstructural work (including painting) necessary to maintain the appearance of the common wall viewed from Owner's Lot.
- 6.3. Negligent Destruction. In the even a common wall is destroyed or damaged through the negligent or willful act of an Owner or any of his agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to promptly rebuild or repair the common wall without cost to the other adjoining Lot Owner or Owners.
- 6.4. Right to Contribution. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.
- 6.5. Consent. In addition to meeting the other requirements of this Declaration and any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to, or rebuild a common wall shall first obtain the written consent of the adjoining Owners.
- 6.6. Encroachments. In the event any common wall encroaches upon a Lot or the Common Areas, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall.

SECTION 7 INSURANCE

- 7.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a purchaser, the Association shall maintain, to the extent reasonably available and as deemed necessary by the Board, the following insurance coverage:
- a. Property insurance on the Common Area insuring against all risk of direct physical loss, in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;
 - b. Commercial general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and all other portions of Property which the Association is obligated to maintain under this Declaration, and may also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

- c. Workman's Compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;
- d. Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;
- e. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:
 - (i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, as to Owners and members of their household;
 - (ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;
 - (iii) That the coverage afforded by such policy shall not be brought into contribution or pro-ratio with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;
 - (iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;
 - (v) Statement of the name of the insured as the Association; and
 - (vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the First Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.
- f. If the Property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the Improvements and any other property covered by the required form of policy of the maximum limit of coverage available under the National Insurance Act of 1968, as amended; and
- g. If applicable, "Agreed Amount" and "Inflation Guard" endorsement.

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

7.3 Payment of Premiums. The premiums for any insurance obtained by the Association shall be included in the budget of the Association and shall be paid by the Association.

7.4 Insurance Obtained by Owners. Each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense covering his Lot and the Improvements located thereon, and his personal property and fixtures located on his Lot, and providing personal liability coverage to the extend such insurance is not obtained by the Association.

7.5 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Section, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to

the Association and not to any mortgagee or beneficiary under a deed of trust and the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

- 7.6 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least seventy-five percent (75%) of the total authorized votes in the Association vote not to rebuild. The Association shall pay the cost to repair or replacement in excess of insurance proceeds and reserves. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis on an equal share for each Lot.

SECTION 8 ARCHITECTURAL COMMITTEE

- 8.1 Creation of Architectural Committee. The Architectural Committee shall consist of three (3) members to be appointed by the Board, and shall regulate the external design, appearance and use of the Property and perform such other functions and duties as may be imposed upon it by this Declaration, the Project Documents or the Board.
- 8.2 Appointment and Removal. In the event of the death, incapacity, resignation, or removal of any member of the Architectural Committee, the Board shall have full authority to designate successor members. Any member of the Architectural Committee may be removed from the Architectural Committee by the vote of the Board, and the vacancy created thereby shall be filled as aforesaid.
- 8.3 Term of Office. The terms of office of each member of the Architectural Committee shall be for a period of at least one (1) year. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or been removed may be reappointed.
- 8.4 Fees. The Architectural Committee shall charge reasonable processing fees to cover the costs of the Architectural Committee in considering any requests for approvals submitted to it, which fees shall be paid at the time the request for approval is submitted per the Architectural Design Guidelines. The Architectural Committee may employ an architect and other design professionals and the fees for such services shall be included in review fees.
- 8.5 Decisions of the Architectural Committee. All decisions of the Architectural Committee shall be by affirmative vote of at least a majority of its then current members. The Architectural Committee's approval or disapproval of a request made pursuant to this Declaration shall be in writing and in the manner described in the Architectural Design Guidelines.
- 8.6 Purpose of Committee; Grounds for Denial. The declared purpose of the Architectural Committee provided for herein is to assure that the character, design, exterior materials, color, roof, proportions, elevations, location and use of each and all Improvements shall

- be in harmony with its surroundings and shall not be offensive or aesthetically detrimental to neighboring property using reasonable and generally accepted criteria of aesthetic and architectural judgment in addition to the specific limitations and powers set forth in these Declarations. In addition to all other standards, the Architectural Committee may deny any application if it determines in its sole discretion that the quality, materials, amount of floor space, cost of construction, or probable fair market value, are not in keeping with the majority of residences in the Property at the time of the application. The Architectural Committee may further deny any application if, in its determination, the applicant is not in compliance with any of the provisions of this Declaration.
- 8.7 Interpretation of Covenants. Except for judicial construction, the Architectural Committee (or the Board in matters not requiring approval from the Architectural Committee) shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Architectural Committee's or the Board's, as the case may be, construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the provisions hereof.
- 8.8 Variances. Under the following conditions, the Architectural Committee shall have the power, but not the duty, to grant a variance from the requirements of these Restrictions (provided, however, that all necessary permits or variances must then be obtained from Town of Gilbert, the State of Arizona, or any other agency or department thereof having jurisdiction):
- a. If a restriction would create an unreasonable hardship or burden on an Owner, or if a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete; or
 - b. If the activity permitted under the variance will not have any substantial adverse affect on any other Owners or the Property and is consistent with the quality of life intended for such Owners.
- 8.9 Rules and Guidelines. The Architectural Committee shall have the power to establish such rules and guidelines to interpret and implement this Declaration by setting forth the procedures for Architectural Committee review and the standards for development within the project within the Architectural Design Guidelines.
- 8.10 Non-Waiver; Separate Approvals Required. The approval by the Architectural Committee of any plans, drawings or specifications for any matter requiring prior written approval by virtue of this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval. Approval given to one Owner shall not constitute approval to another Owner for the same or similar request or application. The failure of the Architectural Committee to give, in writing, approval or disapproval in connection with this Declaration shall not waive its right to do so in connection with any other matter.
- 8.11 Non-Liability. The Architectural Committee will not approve any drawings or specifications for engineering design or for compliance with zoning and building ordinances. Neither the Declarant, the Board nor the Architectural Committee, nor any member or representative thereof shall be liable to the Association, to any Owner or to any other party for any damage, loss or prejudice suffered or claimed on account of:

- a. the approval or disapproval of any plans, drawings or specification, whether or not defective or deficient;
- b. the construction or performance of any work whether or not pursuant to approved plans, drawings and specification;
- c. the development of any portion of the Property;
- d. the execution and filing of any estoppel certificate, whether or not the facts therein are correct; or
- e. the execution of their responsibilities in connection with the Project Documents; provided, however, that with respect to the liability of a member of the Board or the Architectural Committee, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing provisions of this Section, the Board or Architectural Committee, or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposals submitted to the Board of Directors or the Architectural Committee.

SECTION 9 THE ASSOCIATION

- 9.1 Rights, Powers and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Project Documents, together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration. The Association, through its members and Board, shall take the appropriate action to manage and maintain, repair, replace and improve the Common Area, together with Improvements located thereon, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, all in accordance with this Declaration and the Project Documents.
- 9.2 Membership in the Association. An Owner of a Lot automatically upon becoming the Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. An Owner shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.
- 9.3 Transfer of Membership. Membership in the Association shall be appurtenant to each Lot, and a Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot, and then only to such purchase who shall automatically become a Member of the Association after such conveyance, or by intestate succession, testamentary disposition, foreclosure of a Mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.
- 9.4 Voting Right – Class of Members. The Association shall have two (2) classes of voting membership:
- Class A. “Class A Members” shall be all Owners of Lots, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned by such Member;
- Class B. The “Class B Member” shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B

Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

- a. When all the Lots have been conveyed to Owners by Declarant; or
- b. When the Declarant notifies the Association in writing that it relinquishes its Class B membership; or
- c. January 1, 2010.

- 9.5 Joint Ownership. The vote for each Lot shall be cast as a unit, and fractional votes shall not be allowed. If more than one person is the Owner of any Lot, all such persons shall be Members, and they shall designate to the Association in writing one of their Members who shall have the power to vote such memberships, and in the absence of such designation, and until such designation is made, the Board shall make such designation. In no event shall more than one vote be cast with respect to any Lot, except as provided in Section 2.5.
- 9.6 Entity Ownership. In the event any Lot is owned by a corporation, limited liability company, partnership, association or similarly recognized legal business entity, the corporation, limited liability company, partnership, association or business entity shall be a member and shall designate in writing to the Association at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the presiding officer, if any, of such corporation, limited liability company, partnership, association or business entity shall have the power to vote the membership, and if there is no presiding officer, then the board of directors, managing member, general partner or other authorized agent of such corporation, limited liability company, partnership, association or business entity shall designate who shall have the power to vote the membership.
- 9.7 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner or Occupant, by the family of such Owner or Occupant, or by any invitee, guest, licensee or lessee of such Owner or Occupant; provided, however, that the Association Rules may not discriminate among Owners or Occupants and shall not be inconsistent with the Project Documents. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be available for inspection by the Members at reasonable times and upon proper request. The Association Rules shall have the same force and effect as if set forth in and were a part of the Declaration.
- 9.8 Professional Management. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. The Association may engage the services of a professional manager or managers or a professional management company to perform such other duties and to fulfill such other functions as may be determined by the Board.
- 9.9 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) members. Upon the termination of the Class B Membership, the

Members shall elect a replacement Board pursuant to the Bylaws of the Association. Such replacement Board shall consist of not more than five (5) nor less than three (3) directors.

- 9.10 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, no manager or other employee of the Association, and no member of the Declarant, shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Declarant, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 9.10 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

SECTION 10 FUNDS AND ASSESSMENTS

- 10.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all sums contemplated under this Declaration, including, without limitation:
- a. annual assessments;
 - b. supplemental assessments;
 - c. special assessments for capital improvements; and
 - d. such other assessments and expenses of the Association as may be incurred, fixed, established, assessed or deemed collectible from time to time as herein provided.

Such assessments, together with all interest, costs, expenses of collection, fines, penalties and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with all interest, costs, expenses of collection, fines, penalties and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successor in title unless expressly assumed by such successor.

- 10.2 Purpose of the Assessments and Common Expenses. The assessments levied by the Association shall be used exclusively for the purposes of promoting the general benefit, recreation, health, safety and welfare of the Owners and other Occupants of the Property. Such assessments shall be payable by all Owners and no offsets against such amount shall be permitted for any reason including, without limitation, any claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area, that the Association is not enforcing its Project Documents, or whether or not an Owner has elected to use, or not use, the Common Areas. The assessments, shall be calculated based upon Common Expenses for administering, maintaining and operating the Property including, but not limited to:
- a. The costs of any maintenance, management, operation, repair, replacement or Improvement of the Common Area including, but not limited to, the private roads, paths or trails, street signs, and Common Area landscaping;

- b. The cost of maintenance by the Association of areas within the right-of-way of any public streets in the vicinity of the Property which may be provided for pursuant to agreements with the municipal authority;
 - c. The costs of utilities and services for the Property, including, but not limited to, water, electricity, gas, sewer, trash pick up and disposal, as applicable, which are provided to the Association for the Property or to the Property and not individually metered, assessed or billed by Lot;
 - d. Landscaping maintenance and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Association;
 - e. The costs of insurance maintained by the Association for the property as permitted herein;
 - f. Reasonable reserves for the Property, as required or permitted herein, for contingencies, replacements and other proper purposes to meet anticipated costs and expenses including, but not limited to, maintenance, repairs, replacement and Improvement of Common Areas;
 - g. The costs which the Board elects to incur to bond the members of the Board, officers of the Association, any professional managing agent or any other Person handling the funds of the Association;
 - h. Taxes paid by the Association for the Property;
 - i. Unpaid assessments for Owners or Lots in the Property;
 - j. The costs of management and administration of the Association (including enforcement of the provisions of the Project Documents) related to the Property or reasonably allocated to the Property by the Board, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
 - k. Amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof or any other portion of the Property but arising from the acts of the Association and/or its agents;
 - l. Costs incurred by the Architectural Committee with respect to the Property in excess of fees paid by Owners per the Architectural Design Guidelines or by any other committees established by the Board;
 - m. Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, or the costs of any other item designated by, or to be provided or performed by the Association for the Property pursuant to, the Project Documents, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association with respect to the Property.
- 10.3 Annual Assessment. The Association shall levy, and the Owners shall pay to the Association, an annual assessment as follows:
- a. The Board shall set the maximum annual assessment beginning with the year of the conveyance of the first Lot to a purchaser.
 - b. From and after January 1 of the year immediately following the conveyance of the first Lot to a purchaser, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum annual assessment set for the previous year without a vote of the Membership. Said maximum assessment may be increased above twenty percent (20%) by the consent of two-thirds (2/3) of the total votes cast by the Members who are voting in person or by proxy at a meeting duly called for such purpose, subject to the provisions of Section 10.7.

- 10.4 Supplemental Assessments. In the event the Board shall determine that its funds budgeted or available in any fiscal year are, or will, become inadequate to meet all expenses of the Association, for any reason, including, without limitation, nonpayment of assessments by the Members, it shall immediately determine the approximate amount of such inadequacies for such fiscal year and prepare a supplemental budget and determine the amount of such inadequacies for such fiscal year and levy a supplemental assessment against each Lot in such amount as the Board deems necessary in order to obtain the amount of such inadequacies. Supplemental assessment shall be paid on such dates and in such installments as may be determined by the Board. No supplemental assessment shall be levied by the Board until such assessment receives the consent of two-thirds (2/3) of the total votes cast by the Members who are voting by person or by proxy at a meeting duly called for such purpose, subject to the provisions of Section 10.7.
- 10.5 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable for that year for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvement on the Common Area, including landscaping or personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the total votes cast by the Members who are voting in person or by proxy at a meeting duly called for that purpose, subject to the provisions of Section 10.7.
- 10.6 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Lots on the first calendar day of the calendar month following the conveyance of the first Lot by Declarant to an Owner. The first maximum annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The annual assessment is payable in monthly installments, but may be collected on a monthly, quarterly, or annual basis as determined by the Board. The Association shall within ten (10) days after written request, and for a reasonable charge, furnish a certificate signed by an authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.
- 10.7 Meetings – Notice and Quorum for Action Authorized Under this Section. Written notice of any meeting called for the purpose of taking any action authorized under Sections 10.3, 10.4 or 10.5 and requiring the vote of the Members shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies than entitled to cast more than fifty percent (50%) of all votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to these same notice requirements. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- 10.8 Uniform Rate of Assessment. Annual, supplemental and special assessments must be fixed at a uniform rate for all Lots. This shall not preclude the Association from assessing one or more Lots for charges which are specifically attributed to such Lots. As long as there is a Class B Membership, Declarant shall not be subject to assessments for

Lots not sold to purchasers, but instead shall be required to pay the difference between actual operating costs for the Association and Income from assessments and other sources. When Class B Membership is terminated, Declarant shall become a Class A Member and will be subject to assessments for each Lot owned by Declarant.

- 10.9 Enforcement of Assessments. Any assessment levied (including, but not limited to annual assessments, supplemental assessments, special assessments, insurance assessments, attorney fees, charges, late charges, collection expenses, monetary penalties, fines and interest), or installment of an assessment, not paid within fifteen (15) days after the assessment, or the installment of the assessment, first became due, shall bear a monthly late charge to be set by the Board. Any assessment, or any installment of an assessment, which is delinquent shall become a continuing lien on the Lot against which such assessment was made. Recording of this Declaration constitutes record notice and perfection of the lien. Further recordation of any claim of lien is not required. The Association's lien is prior to all other liens, interests and encumbrances on a Lot, except; (1) liens and encumbrances recorded before the recordation of this Declaration; (2) a recorded first mortgage on the Lot, a seller's interest in a first contract for sale, or a recorded first deed of trust on the Lot, recorded prior to the time any assessment or penalty becomes due to the Association; and (3) liens for real estate taxes against the Lot. The association shall have the right, at its option, to enforce collection of any delinquent assessments together with all interest, collection expenses, costs, fees, monetary penalties, fines, late charges, reasonable attorney's fees and any other sums due to the Association in any manner allowed by law including, but not limited to:
- a. bringing an action at law against the Owner personally obligated to pay the delinquent assessments and such action may be brought without waiving any lien securing any such delinquent assessments; or
 - b. bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage.

The Association shall have the right and power to bid at any foreclosure sale and to purchase, acquire, hold lease, mortgage and convey any and all Lots purchased at such sale.

- 10.10 Fines and Penalties. In addition to all other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other residents of the Owner's Lot or any of the Owner's family, lessees, guest, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.
- 10.11 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure or exercise of a power of sale pursuant to a First Mortgage, or any deed or other proceeding in lieu thereof, shall extinguish the lien of such Assessments, but not the personal obligation and liability of each Owner at the time of the Assessment, as to payments which became due prior to such sale or transfer. No sale transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing contained herein shall prohibit such Lot's proportionate share of assessments which became due prior to the foreclosure of the First Mortgage and were

extinguished as a result of such foreclosure from being reallocated among and assessed against all Owners as part of the annual or supplemental assessment.

- 10.12 Reserve Fund and Advance Collection. From the annual assessment received by the Association, the Board shall establish an adequate reserve fund for the maintenance, repair, replacement and Improvement of the Common Areas.
- 10.13 Association's Right in Spending and Reserving Funds. The Association shall not be obligated to spend in any year from the sums received by it in such year (whether by way of annual, supplemental, special assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of annual assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.
- 10.14 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each person or entity, with the exception of the Declarant, who purchases a Lot shall pay to the Association immediately upon becoming the Owner of the Lot (at close of escrow) a sum equal to one-sixth (1/6) of the current annual assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses, or any other purpose permitted under this Declaration. Payments made pursuant to this Section shall be non-refundable and shall not be offset or credited against or considered as advance payment of any assessments levied by the Association pursuant to this Declaration.
- 10.15 Transfer Fee. Each person or entity other than the Declarant who purchases a Lot from a person or entity other than the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

SECTION 11 WAIVER AND INDEMNIFICATION

- 11.1 Indemnification and Hold Harmless Agreement. Each Owner of a Lot, by accepting title to any portion of the Property and becoming an Owner, for himself and his family, heirs, successors, assigns, personal representatives, guest, agents, employees, invitees and all other present on the Property, including Occupants, upon the invitation or with the consent of such Owner (express or implied), waives and covenants not to assert against the Declarant (or any officer, director, shareholder, employee or agent of the Declarant or any subsidiary or affiliate of Declarant) or against the Association (or any officer, director, shareholder, member, employee, agent or committee of the Association), or the San Tan Sunrise Estates Homeowners Association, an Arizona nonprofit corporation (or any officer, director, shareholder, member, employee, agent or committee of the San Tan Sunrise Estates Homeowners Association) any and all claims for personal injury or property damage arising from or in connection with the Common Areas, including, but not limited to, the design, construction, maintenance, appearance, accessibility and use, including, without limitation, any and all claims, demands, costs, expenses, obligations or liabilities for personal injury or property damage arising from any person present on the

Property or Common Areas upon the invitation or with the consent (express or implied) of such Owner.

SECTION 12
GENERAL PROVISIONS

- 12.1 Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservation, liens and charges not or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 12.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- 12.3 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and shall be binding upon each Owner and his heirs, executors, administrators, successors and assigns and all other persons claiming any interest in and to the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.
- 12.4 Amendment. This Declaration may be amended at any time upon approval by seventy-five percent (75%) of all Members. Written notice of any meeting called for the purpose of amending this Declaration shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies then entitled to cast more than fifty percent (50%) of all votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any such Amendment shall be set forth in an instrument signed by the Owners approving said amendment and shall be effective upon recordation in the Office of the County Recorder of Maricopa County, Arizona. So long as there is a Class B Membership, any amendment requires the written approval of the Declarant.
- 12.5 Construction. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by these restrictions.
- 12.6 Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Architectural Committee, or any duly authorized agents of any of them, may enforce by self-help any of the provisions of the restrictions contained in this Declaration.
- 12.7 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation, including zoning laws, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

12.8 Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

12.9 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows:

If to the Association: San Tan Sunrise Estates
Homeowners Association
C/O Sallaway Development, LLC
14415 E. Vallejo Street
Chandler, AZ 85249
Attention: Mary Sanders

If to the Architectural Committee: San Tan Sunrise Estates
Homeowners Association
C/O Sallaway Development, LLC
14415 E. Vallejo Street
Chandler, AZ 85249
Attention: Mary Sanders

If to the Declarant: Sallaway Development, LLC
14415 E. Vallejo Street
Chandler, Arizona 85249
Attention: Mary Sanders

Owners. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address. Each such notice shall list the names of every person or entity that is the record Owner of the equitable or legal title of such Lot.

Change of Address. Any of the foregoing addresses may be changed at any time by the party concerned by delivering notice of such new address thereof to the Association. If the foregoing addresses have changed without the parties delivering such notice of the change, documents relating to or required by this Declaration may be delivered either personally or by mail to the Association, Architectural Committee or Declarant care of their respective last-known statutory agents as maintained on the records of the Arizona Corporation Commission.

12.10 Captions. The captions contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Sections of this Declaration.

12.11 Survival of Liability. The termination of Membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such Membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with, such Membership and the covenants and obligations incident thereto.

- 12.12 Conflicts. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Design Guidelines, the provisions of this Declaration shall prevail.
- 12.13 Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.
- 12.14 Attorney's Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration, or to collect any assessments or other amounts due from an Owner, or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the offending Owner or other person or entity shall pay to the Association, upon demand, all attorney's fees, collection expenses and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the assessment lien.
- 12.15 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by the Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use the corporate name which is the same or deceptively similar to the name of the Association.
- 12.16 Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States on the date hereof.
- 12.17 Plurals; Gender. Whenever the context so requires, the use of the singular shall mean and be construed as including the plural and the masculine shall include the feminine and neuter.
- 12.18 Effective Date. The Declaration reflected herein shall be effective when this instrument is recorded in the official records of Maricopa County, Arizona, but Declarant may amend, supplement or replace any portion(s) of it or revoke it entirely without the approval or consent of any other Person at any time before the first sale of a Lot in the Property.

IN WITNESS WHEREOF, Salloway Development, LLC, an Arizona limited liability company, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first above.

Salloway Development, LLC
an Arizona limited liability company

By Mary E. Sanders
Its Member

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 21st day of April 2006, by Mary E. Sanders, Member of Salloway Development, LLC, an Arizona Limited Liability Company, on behalf of said company.

Notary Public Beth Armstrong McHorton

My commission expires:



BETH HORTON
Notary Public - Arizona
Maricopa County
Expires 04/21/06

http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=184821 [20060571938] 46 Pages

EXHIBIT "A"

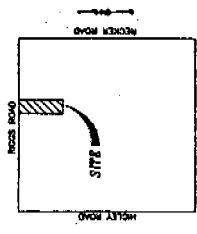
Lots 1 through 10, inclusive, of "SAN TAN SUNRISE ESTATES" as shown on that certain Plat recorded on March 23, 2006 in Book 824, Page 40, Instrument No. 2006-0391451, in the Official Records of Maricopa County, Arizona.

EXHIBIT "B"

A copy of the recorded Final Plat for San Tan Sunrise Estates declaring Tract "A" as an easement for drainage, private street, public utilities and as an ingress/egress easement for refuse collection, Government vehicles and emergency vehicles is attached hereto as Exhibit "B", and incorporated herein, along with any and all amendments and assignments, by this reference. The easement is appurtenant to each Lot within the Association.

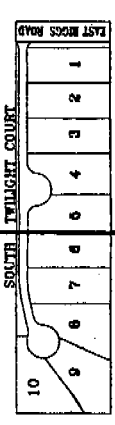
FINAL PLAT FOR "SANTAN SUNRISE ESTATES" A PORTION OF THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 2 SOUTH, RANGE 6 EAST, GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

Manhard Consulting, Ltd. SANTAN SUNRISE ESTATES GILBERT, ARIZONA FINAL PLAT



ENGINEER: MANHARD CONSULTING, LTD. 14505 NORTH WATSON ROAD, SUITE 340 CHANDLER, AZ 85226 PHONE: (480)944-5550

OWNER: KREIBREGER DEVELOPMENT, LLC 14505 NORTH WATSON ROAD, SUITE 340 CHANDLER, AZ 85226 PHONE: (480)944-5550



TRACT SUMMARY TABLE with columns for TRACT NO., FT. X FT. AREA, and ACRES. Includes totals for net area and lot area.

NOTE: NOT ALL OF THE EASEMENTS LISTED IN THE TRACT SUMMARY TABLE ENCOMPASS THE ENTIRE TRACT. TOTAL AREA = 420,000 SQ. FT. OR 9.5208 ACRES

LEGEND: DEDICATION BOUNDARY, PROPERTY LINE, MARICOPA COUNTY RECORDS, ETC.

DEDICATION STATE OF ARIZONA, COUNTY OF MARICOPA, KNOW ALL MEN BY THESE PRESENTS: THIS PROPOSER DEVELOPMENT, LLC, AN ARIZONA LIMITED LIABILITY COMPANY...

ACKNOWLEDGMENT I, KREIBREGER DEVELOPMENT, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER, HAVE HERETOFORE CAUSED THIS PLAT TO BE PREPARED...

APPROVALS APPROVED BY THE BOARD OF THE TOWN OF GILBERT, ARIZONA ON THIS 21st DAY OF OCTOBER, 2006.

LOT AREA TABLE with columns for LOT, SF, ACRES, and TOTAL. Includes a signature block for the Town Engineer and Planning Director.

- NOTES: 1. ALL LANDSCAPING WITHIN TRACTS "B" AND "C" SHALL BE MAINTAINED BY THE SANTAN SUNRISE ESTATES HOMEOWNERS ASSOCIATION. 2. CONSTRUCTION WITHIN EASEMENTS EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES SHALL BE LIMITED TO UTILITIES AND WOOD, WIRE OR REMOVAL SECTION TYPE FENCING.

CERTIFICATION I, LARRY LAWRENCE, PERSON OF MANHARD CONSULTING, LTD., HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA WITH THIS PLAT ON MY CURRENT LISTING AND HAVE REVIEWED THIS PLAT AND THE INFORMATION THEREON...

COUNTY RECORDER: MARI COPA COUNTY RECORDER, 1000 E. UNIVERSITY AVENUE, PHOENIX, ARIZONA 85001-1605

Manhard Consulting, Ltd.

SANTAN SUNRISE ESTATES
GILBERT, ARIZONA
FINAL PLAN



SHEET		2	3
DATE			
SCALE			
DISTRICT			

COUNTY RECORDER

BOOK 224 PAGE 48

OFFICE: MARICOPA COUNTY RECORDER

2006-0301651

DATE: 12/15/06

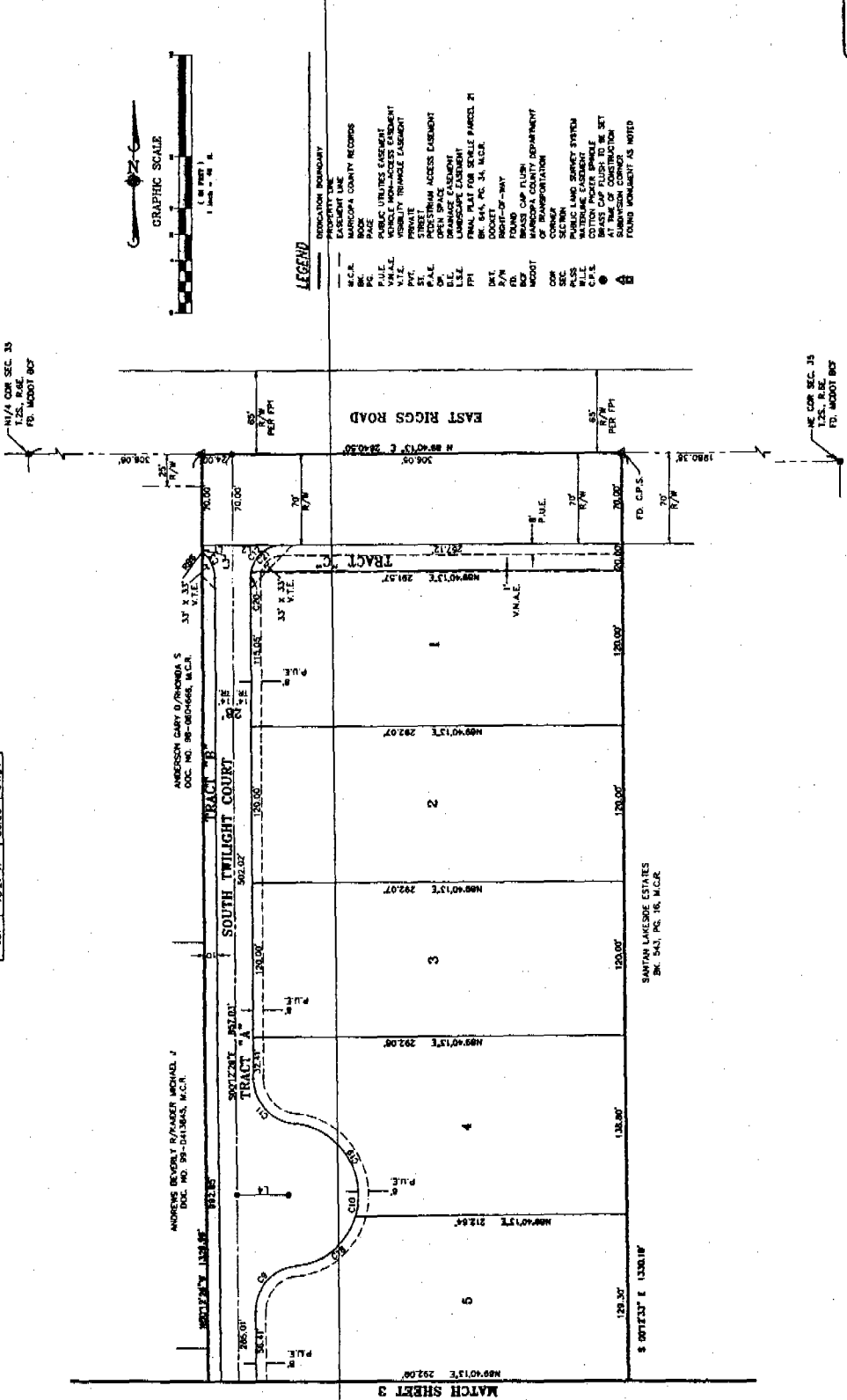
LEGEND

- RECORDATION BOUNDARY
- PROPERTY LINE
- EXISTING LINE
- MARICOPA COUNTY RECORDS
- PAGE
- PUBLIC UTILITIES EASEMENT
- AIRCRAFT EASEMENT
- V.I.L. (VARIABLE LIMB EASEMENT)
- P.V. (PRIVATE VARIATION)
- P.A.L. (PUBLIC ACCESS EASEMENT)
- OPEN SPACE
- DRIVEWAY EASEMENT
- DRIVEWAY EASEMENT
- FINAL PLAN FOR SEVILLE PARCEL 21
- BR. 645, PG. 34, M.C.R.
- DOCKET 05-0497
- FOUND
- FOUND
- FOUND
- BRASS CAP FLUSH
- MONUMENT AT THE CORNER
- MONUMENT AT THE CORNER
- MONUMENT AT THE CORNER
- SECTION LAND SURVEY SYSTEM
- WATERLINE EASEMENT
- COTTON POCER SHADE SET
- AT TIME OF CONSTRUCTION
- SUBMITTANCE CORNER
- FOUND MONUMENT AS NOTED



CURVE	DELTA	RADIUS	LENGTH
C1	53°07'48"	75.00'	23.18'
C2	84°24'01"	55.00'	51.86'
C3	89°48'00"	55.00'	63.00'
C4	84°24'01"	55.00'	51.86'
C5	89°48'00"	55.00'	63.00'
C6	84°24'01"	55.00'	51.86'
C7	89°48'00"	55.00'	63.00'
C8	67°21'14"	55.00'	64.86'
C9	102°28'48"	55.00'	98.34'
C10	112°41'52"	55.00'	4.95'
C11	78°27'47"	55.00'	34.24'

LINE	BEARING	LENGTH
L1	N 89°40'13" E	24.00'
L2	N 89°40'13" E	38.88'
L3	N 00°12'28" W	6.03'
L4	N 89°47'24" E	41.00'
L5	S 35°39'45" W	23.00'

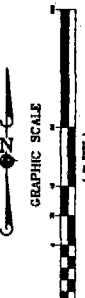


Mahnard Consulting, Ltd.

SANTAN SUNRISE ESTATES
GILBERT, ARIZONA
FINAL PLAT



COUNTY RECORDER
BOOK 424 PAGE 40
OFFICE OF THE COUNTY RECORDER
2006-4201451



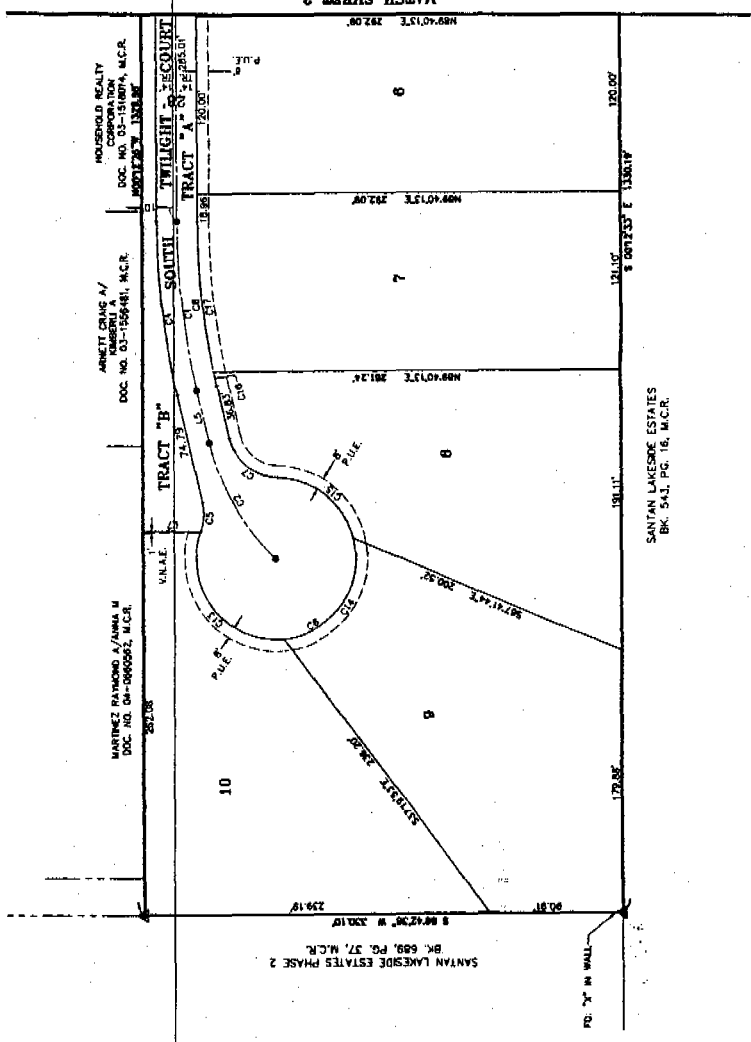
- LEGEND**
- UNDEVELOPED BOUNDARY
 - PROPERTY LINE
 - - - - - EASEMENT LINE
 - ▬ MARICOPA COUNTY RECORDS
 - ▬ 1/2"
 - ▬ 1/4"
 - ▬ 3/8"
 - ▬ 1/2"
 - ▬ 3/4"
 - ▬ 1"
 - ▬ 1 1/2"
 - ▬ 2"
 - ▬ 2 1/2"
 - ▬ 3"
 - ▬ 4"
 - ▬ 5"
 - ▬ 6"
 - ▬ 8"
 - ▬ 10"
 - ▬ 12"
 - ▬ 15"
 - ▬ 20"
 - ▬ 25"
 - ▬ 30"
 - ▬ 35"
 - ▬ 40"
 - ▬ 45"
 - ▬ 50"
 - ▬ 60"
 - ▬ 70"
 - ▬ 80"
 - ▬ 90"
 - ▬ 100"

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH
C1	137.743°	500.00'	118.02'
C2	33.9223°	150.00'	92.35'
C3	137.743°	514.00'	119.77'
C4	33.9223°	35.00'	20.22'
C5	137.743°	465.00'	114.91'
C6	33.9223°	150.00'	92.35'
C7	137.743°	500.00'	118.02'
C8	33.9223°	150.00'	92.35'
C9	137.743°	500.00'	118.02'
C10	33.9223°	150.00'	92.35'
C11	137.743°	500.00'	118.02'
C12	33.9223°	150.00'	92.35'
C13	137.743°	500.00'	118.02'
C14	33.9223°	150.00'	92.35'
C15	137.743°	500.00'	118.02'
C16	33.9223°	150.00'	92.35'
C17	137.743°	500.00'	118.02'

LINE TABLE

LINE	BEARING	LENGTH
L1	S 17°00'00" W	35.83'
L2	N 89°17'37" E	39.84'



20060571938
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
ADRIAN FONTES



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 08/16/2017 12:50:15 PM

By Adrian Fontes Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=184821>