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Del Webb's Coventry Homes
6001 N. 24th Street
Phoenix, AZ 85016

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VIRGINIA

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VIA VERANO**

THIS DECLARATION is made on the date hereinafter set forth by DEL WEBB'S COVENTRY HOMES CONSTRUCTION CO., an Arizona corporation, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner and developer of certain property in the County of Maricopa, State of Arizona, which is more particularly described as follows:

**Lots 1 through 42 inclusive and Tracts A through J inclusive, of VIA VERANO, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 468 of Maps, Page 32,
(the "Property");**

NOW THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, and liens which are for the purpose of protecting the desirability of the Property, and which shall run with the Property and shall be binding on and inure for the benefit of all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors or assigns.

**ARTICLE I
DEFINITIONS**

Section 1. "Annual Assessment" shall mean and refer to the Annual Assessments and charges levied and assessed each year against each Lot pursuant to Article VI, Section 1 hereof.

Section 2. "Architectural Committee" shall mean the committee created pursuant to Article VII hereof.

Section 3. "Articles" shall mean the Articles of Incorporation of the Association which are, or shall be, filed in the office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 4. "Association" shall mean and refer to VIA VERANO COMMUNITY ASSOCIATION, INC., an Arizona non-profit corporation, its successors, and assigns.

Section 5. "Board" shall mean and refer to the Board of Directors of the Association.

Section 6. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 7. "Common Area(s)" shall mean that portion of the Property owned by the Association (including the Improvements, as hereafter defined, thereto), for the common use and enjoyment of Owners (as hereafter defined).

Section 8. "Declarant" shall mean and refer to Del Webb's Coventry Homes Construction Co., an Arizona corporation, including its successors and any Person (defined below) to whom it, in its sole and absolute discretion, may expressly assign any or all of its rights under this Declaration by recording an Assignment of Declarant's Rights.

Section 9. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as same may be amended from time to time.

Section 10. "Design Guidelines" shall mean the architectural, design, development, landscaping, and other guidelines, standards, controls, and procedures, including but not limited to, application and plan review procedures, adopted pursuant to Article VII, Section 4.

Section 11. "Developer" shall mean any Person (defined below), other than the Declarant, who is in the business of developing, selling or leasing real property and who acquires more than one (1) Lot from the Declarant in connection with, and in the course of such business, for the purpose of developing or selling such Lots.

Section 12. "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

Section 13. "Governing Documents" shall mean this Declaration, the Articles, Bylaws, Design Guidelines and Rules (defined in Article IV, Section 3 below), collectively.

Section 14. "Improvement(s)" shall mean buildings, roads, roadways, driveways, parking areas, lighting fixtures, fences, walls, rocks, hedges, plantings, planted trees and shrubs, signs and all other structures or landscaping of every type and kind.

Section 15. "Lot" shall mean and refer to any separate parcel of real property shown upon any recorded subdivision map of the Property, together with all Improvements constructed or to be constructed thereon and appurtenances thereto, with the exception of the Common Area.

Section 16. "Maximum Annual Assessment" shall be as defined in Article VI, Section 3 hereof.

Section 17. "Member" shall mean any Person (defined below), including Declarant and Developer(s), who is a member of the Association, based upon ownership of a Lot.

Section 18. "Mortgage" shall mean any recorded instrument as security for the performance of an obligation, including, without limitation, a deed of trust. **"Mortgagee"** shall mean a lending institution or other Person secured by a mortgage, including a Trustee and Beneficiary under a deed of trust, and **"Mortgagor"** shall mean the party executing a mortgage, including a Trustor under a deed of trust. **"First Mortgage"** shall mean a mortgage which is the first and most senior of all mortgages upon the same Lot.

Section 19. "Natural Area Open Space (NAOS)" shall mean those areas designated on the recorded subdivision plat for VIA VERANO as natural area open space as defined in the ordinances of the City of Scottsdale.

Section 20. "Owner(s)" shall mean and refer to the record owner of equitable or beneficial title (or legal title if same has merged) of any Lot(s). If the owner of record is comprised of more than one (1) Person (defined below), "Owner" shall mean and refer to all such Persons cumulatively. "Owner" does not include Persons who hold an interest in any Lot merely as security for the performance of an obligation. Except as herein stated otherwise, "Owner" shall not include a lessee or tenant of a Lot. Notwithstanding the above, for the purposes of Articles II and VIII only, unless the context otherwise requires, "Owner" shall also include the family, guests,

invitees, licensees, and lessees of any Owner, together with any other Person holding any possessory interest granted by such Owner in any Lot. "Owner" shall include Declarant and Developer so long as each owns any Lot within the Property.

Section 21. "Person" shall mean a natural individual, corporation, partnership, trustee or other entity capable of holding title to real property.

Section 22. "Plat" shall mean and refer to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 468 of Maps, Page 32.

Section 23. "Property" or "Properties" shall mean and refer to that certain real, personal, or mixed property described above which is subject to this Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, by instrument recorded in the Office of the Recorder of Maricopa County, Arizona.

Section 24. "Public Purchaser" shall mean any Person who becomes an Owner of any Lot within the Property, other than the Declarant.

Section 25. "Resident" shall mean each natural person residing in a Dwelling Unit.

Section 26. "Single Family" shall mean a group of one (1) or more natural persons each related to the other by blood, marriage or legal adoption, or group of not more than three (3) natural persons not all so related, who maintain a common household in a Dwelling Unit.

Section 27. "Special Assessment" shall be as defined in Article VI, Section 4 hereof.

Section 28. "Visible From Neighboring Property" shall mean, with respect to any given object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of neighboring property, except where the object is visible solely through a wrought iron fence and would not be visible if the wrought iron fence were a solid fence.

Section 29. "Voting Owners" shall mean all of the Owners who are entitled to cast one (1) or more votes in the Association at the time of such vote.

ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Association to impose monetary penalties and suspend the voting rights and right to use of the Common Areas by an Owner for any period during which any assessment against its Lot remains delinquent pursuant to Article VI, Section 8, or during which any other breach of this Declaration by such Owner continues; and the right of the Association to suspend the right to use the Common Areas for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- b. The right of the Association to Mortgage, dedicate or convey 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 the Members. No such Mortgage or conveyance shall be effective unless an instrument signed by two-thirds (2/3) of each class of Owners agreeing to such Mortgage or conveyance has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, its right of enjoyment to the Common Area and facilities to the members of its family, its tenants, or contract purchasers who reside on the Owner's Lot.

Section 3. Owner's Easement of Enjoyment Limitations.

- a. 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 and 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 the fact that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.
- b. The Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.
- c. Each Owner, tenant and occupant of a Lot, and the family members, guests, invitees and licensees thereof, may use the Common Area in common with the Owners of the other Lots in accordance with the purposes for which it is intended without hindering or encroaching upon the lawful rights of others, and subject to rules and regulations adopted by the Board.
- d. No Owner will be exempted from liability for assessments by waiver of the enjoyment of the right to use the Common Area or by abandonment of its Lot or otherwise.

**ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. General Declaration. As the Property has been subdivided into various Lots, and it is intended that the Property so subdivided shall be sold and conveyed to Public Purchasers subject to this Declaration, Declarant hereby declares that all the Property subject hereto is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing the desirability and attractiveness of said Property and every part thereof. All of this Declaration shall run with all of said Property for all purposes and shall be binding upon and inure to the benefit of the Declarant, Developers, the Association, all Owners and their respective successors in interest.

**ARTICLE IV
THE ASSOCIATION**

Section 1. Organization.

- a. **The Association.** The Association is an Arizona non-profit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- b. **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 Bylaws, as same may be amended from time to time. An Owner in violation of any provision of any of the Governing Documents shall be prohibited from serving on the Board or any committee established by the Board, and shall be prohibited

from serving as an officer of the Association. Only one Person per Lot may serve on the Board or any committee established by the Board.

Section 2. Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth in this Declaration and in the Articles and Bylaws, as same may be amended from time to time.

Section 3. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Rules". The Rules may restrict and govern the use of any area by any Owner, or by any family member, guest, invitee, licensee or lessee of such Owner; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Said Rules shall have the same force and effect as if they were set forth herein and were a part of this Declaration.

Section 4. Personal Liability. To the fullest extent permitted by law, no member of the Board or any committee member of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other party, 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 or employee of the Association, or the Architectural Committee, or any other committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

Section 5. Additional Fees. Each Public Purchaser of a Lot shall pay to the Association (through the Association's designated representative), immediately upon becoming the Owner of the Lot, a transfer fee in such amount as may be established from time to time by the Board to compensate the Association for administrative and other costs associated with such transfer. In the event of a pending sale to Public Purchaser within the meaning of A.R.S. Section 33-1806.A., the Owner of the Lot and/or the Association may be required by Arizona law to provide certain information and documentation to the Public Purchaser. The Association may charge the Owner a reasonable fee, as established by the Board, to compensate the Association for the costs incurred in providing the documents and preparing the dated statements as required by Arizona law.

ARTICLE V MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. There shall be only one (1) Member per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting Membership:

Class A: Class A Members shall be all Owners of Lots within the Property, with the exception of the Declarant, as such term is defined herein, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an interest in any Lot, all such Persons shall collectively comprise one Member. The voting for such Lot shall be exercised as such persons among themselves determine, or, in the absence of such determination, as determined by the Board of Directors, but in no event shall more than one (1) vote be cast, with respect to any Lot. If one of the Persons comprising the Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Person

was acting with the authority and consent of all other Persons comprising the Owner of the same Lot.

Class B:

The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned by Declarant within the Property. The total votes which the Declarant shall be entitled to cast may be cast in such proportion on any matter as Declarant may determine. Each Class B Membership shall cease and be converted to Class A Membership, without further act or deed, upon the happening of any of the following events:

- (a) Upon the conveyance by Declarant of any Lot to an Owner, other than in connection with the assignment by the Declarant of all or substantially all of its rights under the Declaration (including a pledge or assignment by the Declarant to any lender as security), with respect to a particular Lot so sold or otherwise disposed of; or
- (b) With respect to all remaining Class B Memberships, upon the first to occur of the following:
 - (i) When the total votes entitled to be cast by Class A Membership equal or exceed the total votes entitled to be cast by the Class B Membership, or
 - (ii) The last day of December, 2011.

If any lender to whom any Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under the Declaration succeeds to the interest of such Declarant by virtue of said assignment, the Class B Memberships formerly held by such Declarant shall not be terminated thereby, and such lender shall hold the Class B Memberships on the same terms as such were held by such Declarant.

ARTICLE VI COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (through its designated agent) Annual Assessments, Special Assessments, and all other assessments, monetary penalties, fees and charges authorized under this Declaration (collectively, "assessments"), together with interest, late charges, costs and reasonable attorney's fees, such assessments to be established and collected as hereinafter provided.

The Annual Assessments, Special Assessments, and other assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a charge and continuing lien upon the Lot or Lots owned by each Member of the Association. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot(s) at the time when the assessment fell due. The personal obligation for delinquent assessments and interest, late charges, costs and reasonable attorney's fees shall not pass to the successor in title to the Lot unless expressly assumed by such successor.

Section 2. Purpose of Assessments. In order to promote the common good of this community, the assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the

Improvement and maintenance of the Common Area. The assessments shall fund the expenses for the administration and enforcement of the Governing Documents and for the operation, maintenance, repair and restoration of the Common Areas, including but not limited to, salaries, wages, payroll taxes, attorney's fees, accountant's fees, supplies, materials, parts, services, maintenance, repairs and replacements, landscaping, insurance, fuel, power and adequate reserves for the maintenance, restoration and replacement of the Common Areas and the appurtenances thereto.

Section 3. Maximum Annual Assessment. Until January 1, 2000, the Maximum Annual Assessment shall be Nine Hundred and Fifty dollars (\$950.00) per Lot payable to the Association on due dates established by the Board.

- a. From and after January 1, 2000, the Maximum Annual Assessment may be increased effective January 1 of each year without a vote of the Membership by an amount no greater than fifteen percent (15%) of the immediately preceding Annual Assessment.
- b. From and after January 1, 2000, the Maximum Annual Assessment may be increased in excess of the amount indicated in Article VI, Section 3(a) above, by a vote of a majority of the Members of the Association (present in person or by proxy).
- c. The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum.

Section 4. Special Assessment for Capital Improvements. In addition to the Annual Assessment authorized above, the Association may levy in any assessment year, to be paid during such assessment year or such longer period as the Board deems appropriate, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or replacement of damaged or destroyed common elements where the Owner or Owners responsible for such damage or destruction have failed to replace or rebuild pursuant to Article VIII herein, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the votes cast by the Voting Owners (present in person or by proxy), at a meeting duly called for this purpose.

Section 5. Notice for any Action Under Article VI, Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Article VI, Sections 3 or 4 above shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting.

Section 6. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis. For Lots owned by Declarant or Developer, Declarant or the Developer, as applicable, shall pay an amount equal to ten percent (10%) of the regular Annual and Special Assessment for each Lot so owned, provided however, that as long as the Declarant or the Developer is paying a reduced Annual Assessment, the Declarant or Developer shall pay to the Association any deficiency in funds caused by the Declarant or Developer having paid a reduced Annual Assessment as is necessary for the Association to be able to timely pay its expenses. This deficiency may be paid in the way of goods or services to the Association.

Section 7. Date of Commencement of Annual Assessments; Due Date. The Annual Assessments provided for herein shall commence as to all Lots on the first day following the first conveyance of a Lot improved with a home by a Developer to a Public Purchaser. The first Annual Assessment shall be a prorated portion thereof adjusted according to the number of days 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 each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. Statements regarding unpaid assessments required to be given by the Association pursuant to A.R.S. Sections 33-1806.A. and 33-1807.I. shall be given

by the Association in accordance with such statutes and the provisions of Article IV, Section 5 above.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any Annual Assessment, Special Assessment or other assessment not paid within fifteen (15) days after the due date shall bear a late charge of fifteen dollars (\$15.00) or ten percent (10%) of the unpaid assessment, whichever is greater, and interest from the due date at the rate of twelve percent (12%) per annum, or at such other rate as may be determined by the Board. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of its Lot.

a. **Enforcement by Suit.** The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member (or former Owner or Member) to enforce each and all assessment obligations. Any judgment rendered in any such action shall include the amount of the delinquency, any late charges and interest as set forth in this Declaration, together with court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner or Member.

b. **Enforcement by Lien.** There is hereby created a charge and continuing lien, with power of sale, in favor of the Association on each Lot within the Property to secure payment to the Association of any and all Annual Assessments, Special Assessments, and other assessments levied against the Owner of such Lot, together with late charges and interest thereon as provided in this Declaration and all costs of collection which may be paid or incurred by the Association in connection therewith, including court costs and reasonable attorney's fees. Recording of this Declaration constitutes record notice and perfection of the lien, and further recordation of any claim of lien for assessment is not required. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes delinquent. At any time after the occurrence of any default in the payment of any assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner on behalf of the Association. Said demand shall state the date and amount of the past-due assessment. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If any assessment is not paid within fifteen (15) days after the due date therefor, whether or not such a written demand has been made, the Association may elect to record a notice of lien on behalf of the Association against the Lot of the defaulting Owner, but failure to do so does not affect priority, validity or enforceability of the lien. Such notice of lien shall be executed and acknowledged by any Officer or authorized representative of the Association, and shall contain substantially the following information:

1. The name of the delinquent Owner;
2. The legal description and street address of the Lot against which claim of lien is made;
3. The total amount claimed to be due and owing for the amount of the delinquency together with interest thereon, late charges, collection costs, and reasonable attorney's fees;
4. That the claim of lien is made by the Association pursuant to the Declaration; and
5. That a lien is claimed against said Lot in an amount equal to the amount stated.

The lien created hereby shall have priority over all other liens and encumbrances on a Lot except:

- A. Liens and encumbrances recorded before the recordation of this Declaration;
- B. Any consensual Mortgage on the Lot recorded before the date on which the assessment sought to be enforced became delinquent;
- C. Liens for real estate taxes and other governmental assessments or charges against the Lot; and
- D. The liens which are specifically described in Section 9 below.

Any such lien may be foreclosed by appropriate action in the manner provided by law for the foreclosure of a realty mortgage or by the exercise of a power of sale in the manner provided by law under a trust deed, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association for the benefit of the Association. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event of such foreclosure, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner. Notwithstanding any provision to the contrary, at any time that Arizona law may permit a lien for an unpaid assessment to have priority over any lien described in B. or C. above, this Declaration may be amended by unilateral act of the Declarant or the Association to reflect the priority permitted by any such law.

Section 9. Subordination of the Lien to Mortgages. The lien for assessments provided for herein shall be subordinated to the lien of any First Mortgage, and be of equal priority to the lien for assessments imposed by the covenants, conditions and restrictions relating to any Lot or residential unit which is sold in a single family detached development, townhouse development, or a condominium development with separate common area and a separate homeowners association. Sale or transfer of any Lot shall not affect the assessment lien or the personal liability of the Owners for unpaid assessments due as of the date of the sale or transfer. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien for such assessments as to payments which were due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien therefor.

ARTICLE VII ARCHITECTURAL CONTROL

Section 1. Organization, Power of Appointment and Removal of Members. The aesthetic quality of the Property shall be maintained by an Architectural Committee, constituted as follows and exercising its control as herein provided:

- a. **Architectural Committee Composition.** The Architectural Committee shall consist of three (3) members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board or an officer of the Association. An Owner in violation of any provision of any of the Governing Documents shall not be appointed to the Architectural Committee nor be permitted to serve on the Architectural Committee.
- b. **Initial Members.** The members of the Board shall act as the initial members of the Architectural Committee.
- c. **Terms of Office.** Unless the initial members of the Architectural Committee have resigned or been removed, each initial member's term shall last until the Declarant is no longer the legal owner of any Lots. At such time the Declarant is no longer the legal owner of a Lot, the successors will be appointed by the Board, and each Architectural

Committee member appointed shall serve for a period of one (1) year and until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Architectural Committee Members who have resigned, been removed or whose terms have expired, may be reappointed.

- d. **Appointment and Removal.** The right to appoint and remove all members of the Architectural Committee, at any time, shall be and is hereby vested solely in the Board, provided however, that no member may be removed from the Architectural Committee by the Board except by the vote or written consent of a majority of all of the members of the Board.
- e. **Resignations.** Any member of the Architectural Committee may at any time resign from the Architectural Committee by giving written notice thereof to Declarant or to the Board, whichever then has the right to appoint Architectural Committee members.
- f. **Vacancies.** Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint Architectural Committee members. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of the death, sale of Lots(s), resignation or removal of any member.

Section 2. Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Design Guidelines, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

Section 3. Meetings and Compensation. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of Section 1(b) of this Article VII, the vote or written consent of any two (2) Architectural Committee members, at a meeting or otherwise, shall constitute the act of the Architectural Committee unless the unanimous decision of the Architectural Committee is required by any other provision of this Declaration. The Architectural Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee shall not be entitled to compensation for their services.

Section 4. Design Guidelines. The Architectural Committee may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as "Design Guidelines". The Design Guidelines shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes, and materials and similar features which are recommended for use within the Property.

Section 5. Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under 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. Notwithstanding the above, interpretations may change as Architectural Committee members change, and the Architectural Committee may disapprove new applications for items previously approved, provided, however, that standards shall be applied to all Lots in a nondiscriminatory manner.

Section 6. Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, 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 specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development

of any Property; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, 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 any of the foregoing provisions of this Section, the 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 proposal submitted to the Architectural Committee.

Section 7. Time for Approval. In the event the Architectural Committee, fails to approve or disapprove a complete application for approval within forty-five (45) days after receipt of any fee payable pursuant to this Article, and all supporting or any additional information, plans and specifications requested by the Architectural Committee (whether or not submitted with the initial application), approval will not be required and this Article will be deemed to have been complied with by the Owner who had requested approval of such plans. All applications, whether approved or not approved, must meet all zoning laws and building requirements of the City of Scottsdale. Architectural Committee approval does not constitute assurance of structural integrity.

Section 8. Review Fee. The Architectural Committee shall have the right to charge a fee, which fee shall be set by the Board, for applications for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Article. The fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

ARTICLE VIII USE RESTRICTIONS

Section 1. Monetary Penalties. After notice to the violating Owner (which shall include information pertaining to the manner of enforcement) and an opportunity to be heard by the Board (or a committee established by the Board to conduct such hearings), the Board may impose reasonable monetary penalties on Owners for violations of any of the provisions of the Governing Documents. Any monetary penalties not paid within fifteen (15) days after the due date therefor shall bear a late charge of fifteen dollars (\$15.00) or ten percent (10%) of the unpaid monetary penalty, whichever is greater, and interest from the due date at the rate of twelve percent (12%) per annum, or at such other rate as may be determined by the Board. The Association may bring an action at law against the Owner personally obligated to pay the monetary penalty, or foreclose the lien against the Property, as provided in Article VI, Section 8 above. No Owner may waive or otherwise escape liability for the monetary penalties provided for herein by non-use of the Common Area or abandonment of its Lot.

Section 2. Permitted Uses and Restrictions. The permitted uses, easements, and restrictions for all Property covered by this Declaration shall be as follows:

- a. **Access.** The Property shall have controlled vehicular access. In accordance with the recorded plat for VIA VERANO, Tract J is a private street and the Declarant granted to the public, applicable utility companies, and service providers an easement over Tract J for (i) the installation, operation and furnishing of maintenance of public utility lines and facilities, including without limitation, water, sewer, electricity, gas, telephone, and cable television; and (ii) ingress and egress for the operation and maintenance of such utilities, for trash removal and emergency service vehicles. Tract J will be owned and maintained by the Via Verano Community Association.
- b. **Animals.** No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing, or confinement of any animal, bird, fowl, poultry or livestock shall

be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, fowl, poultry or livestock is a generally recognized house or yard pet, whether such pet is a nuisance, or whether the number of animals or birds on any such Property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

- c. **Antennas.** Antennas one meter or less in diameter or diagonal measurement which are designed for over-the-air reception of signals from direct broadcast satellites (DBS), multi-channel multi-point distribution (wireless cable) providers (MMDS) or televisions broadcast stations (TVBS), together with their associated mounting hardware and mast, if applicable (an "Antenna System") and which are placed, installed or kept outside a Dwelling Unit must comply with the following restrictions, unless the particular restriction would impair the user's ability to receive signals from a provider of DBS, MMDS or TVBS (a "Provider"):

- i. An Antenna System must be placed on the Lot in such a manner as to not be visible from any other Lot, Common Area or any street.
- ii. If an Antenna system cannot be placed on the Lot in such a manner as to not be visible from any other Lot, Common Area or any street without impairing the user's ability to receive signals from a Provider, an Antenna System must be screened by landscaping or by some other means so that it is not visible from any other Lot, Common Area or any street, unless screening would impair the user's ability to receive signals from a Provider, in which case an Antenna System must be screened by landscaping or by some other means to reduce to the greatest extent possible its visibility from other Lots, Common Area or streets without impairing the user's ability to receive signals from a Provider.
- iii. If no other location is available without impairing the user's ability to receive signals from a Provider and an Antenna System must be mounted on a residence or other structure and is visible from any other Lot, Common Area or any street, the Antenna System must be painted a color which will blend into the background against which the Antenna System is mounted.
- iv. Antenna Systems designed to receive video program services from MMDS or TVBS which require masts to receive an acceptable signal *must be mounted on masts which do not exceed twelve feet (12') in height above the roof line, provided that no mast shall be higher than the height necessary to establish line of sight contact with the transmitter.*

A restriction contained in this Section shall be deemed to impair the user's ability to receive signals from a Provider if compliance with the restriction would unreasonably delay or prevent installation, maintenance or use of an Antenna System, unreasonably increase the cost of installation, maintenance or use of an Antenna System or preclude reception of an acceptable quality signal.

No dish which exceeds one meter in diameter or diagonal measurement, or any television or radio antenna on any mast which exceeds twelve feet (12') in height above the roof line may be placed, installed, constructed or kept on any Lot without the prior written approval of the Architectural Committee.

- d. **Architectural Control.** No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No building, fence, wall, landscaping, addition, alteration, repair, change, excavation or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of a

Lot, or any Improvements located thereon which are Visible From Neighboring Property, from its natural or improved state existing on the date such Lot was first conveyed or transferred by Declarant to a Public Purchaser shall be made or done without the prior written approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. Any prospective or actual Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change, excavation or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change, excavation or other work which the prospective or actual Owner desires to perform. Any prospective or actual Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. The Architectural Committee shall have the right to refuse to approve any plans or specifications or which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned on the outlook from the adjacent or neighboring Property. Upon written approval notice from the Architectural Committee for any construction, installation, addition, alteration, repair, change, excavation or other work, the prospective or actual Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change, excavation or other work approved by the Architectural Committee within one hundred twenty (120) days after approval or one hundred twenty (120) days after a prospective Lot Owner takes title to a Lot, and thereafter diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee or the Architectural Committee approval is deemed withdrawn. Any subsequent changes, deletions or additions to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee. No prospective or actual Owner or other parties shall have recourse against the Board, Architectural Committee or any of its members, for or with respect to any decisions made in good faith.

- e. **Basketball Goals and Flag Poles.** No flag poles, basketball goals or basketball standards or backboards may be constructed, erected, installed or maintained on any Lot so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee. Notwithstanding the above, portable goals may be placed on a Lot, without prior written approval of the Architectural Committee, provided, however, that such portable goals are promptly stored so as not to be Visible From Neighboring Property when not in use.
- f. **Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.
- g. **Commercial Vehicles.** No vehicle utilized for commercial or business purposes or similar equipment or vehicle may be parked or maintained on any Lot so as to be Visible From Neighboring Property, the Common Areas, or streets.
- h. **Corner Lots.** As noted on the Plat, sight distance easements shall be kept clear of landscaping, signs, or other visibility obstructions between two (2) feet and seven (7) feet in height, and six (6) inches maximum width or diameter.
- i. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant and/or Developer(s), or their duly

authorized representatives, of Improvements or signs necessary or convenient to the development or sale of Lots and the Property.

- j. **Diseases and Insects.** No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.
- k. **Drainage Easement.** There is hereby created a blanket easement for drainage of ground and surface water on, over and across each Lot, right-of-way, Common Area(s) and the Property which shall be appurtenant to, burden or benefit each Lot, right-of-way, Common Area(s) or Property. No Owner shall obstruct, divert, alter or interfere including but not limited to any type of structure or vegetation, in any way with the drainage of ground and surface water upon, across or over any portion of the Lots, right-of-way, Common Area(s) or Property. Each Owner shall, at its own expense, maintain the drainage ways and channels on its Lot in proper condition free from obstruction. The Association shall have the right, after ten (10) days notice to an Owner, except in the case of emergency (in which case the Association shall have an immediate right of access), to repair or otherwise maintain the drainage way or channel on said Owner's Lot, which the Association, acting through its Board, determines has not been maintained by the Owner in compliance with this provision. All costs and expenses, including, but not limited to, reasonable attorney's fees and costs incurred by the Association shall be borne by the Owner, and shall be paid to the Association upon demand, plus interest at an annual rate of twelve percent (12%) from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in like manner as assessments levied pursuant to Article VI of this Declaration. For the purpose of this clause, drainage means the drainage that exists at the time the overall grading of the Lots, right-of-way, and Common Area(s) were completed by the Declarant or Developer.
- l. **Easement for Subsequent Construction.** There is hereby created an easement running in favor of Declarant and its Mortgagee, the Developer(s), the Declarant's successors, assigns, and its or their agents, employees, or independent contractors, to enter upon any portion of the Property for the purpose of constructing or installing Improvements upon any additional land annexed to the Property pursuant to the terms of Article IX, Section 5, of this Declaration.
- m. **Landscaping.** Each Owner of a Lot shall keep all landscaping, including but not limited to all shrubs, trees, hedges, ground coverings and plantings of every kind, located on its Lot or in a public right-of-way adjacent to such Lot neatly trimmed, properly cultivated, and free of trash, weeds and other unsightly material. In addition to the above, *all front yard landscape and landscaping of public right-of-way areas adjacent to the respective Lot must be approved in writing by the Architectural Committee prior to installation and such installation must be completed within ninety (90) days from the close of escrow. All rear yard landscaping must be completed within 180 days from close of escrow. Both front and rear yard landscaping shall be in accordance with all applicable City of Scottsdale Ordinances and/or community Architectural Design Guidelines whichever is more restrictive.*
- n. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Property, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, Improvements or structures which are within the permitted uses of such Property, and except that machinery and equipment which Declarant or the Association may require for the operation and maintenance of the Common Area.
- o. **Maintenance of Common Areas.** In addition to the maintenance which the Association may perform pursuant to Section 3(c) of this Article VIII, the Association acknowledges that it is, and always will be, responsible for the maintenance of the

Common Area in accordance with the landscape plan approved by the City of Scottsdale. The Association further acknowledges that the City of Scottsdale is not, and never will be, responsible in any way for any of the Association duties. The Association shall maintain the landscaping, ground cover and plantings on all Common Areas, and for this purpose, Declarant and the Association shall have the right, at any time, to plant, replace, maintain and cultivate landscaping, shrubs, trees, ground cover and plantings on any Common Area including, but not limited to landscape, ingress and egress areas, and on such easements over an Owner's Lot as may have been granted to Declarant or the Association, regardless of whether any Owner or the Association is responsible hereunder for maintenance of such areas. No Owner shall remove, alter, injure or interfere in any way with any landscaping, shrubs, trees, ground cover or plantings placed upon any Common Area by Declarant or the Association without the written consent of the Association having first been obtained. The Association or its authorized representative shall have the right to enter upon any Lot, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such landscaping, shrubs, trees, ground cover or plantings in the Common Area and shall not be liable for trespass for so doing.

- p. **Mineral Exploration.** No Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.
- q. **Natural Area Open Space.** Areas designated as Natural Area Open Space ("NAOS") easements (Tracts A, B, C, D, E, and a portion of Lot 33) have been dedicated on the Plat to the City of Scottsdale for the purpose of permanently preserving such land in its natural desert state. The NAOS easement shall not be used for any other purpose inconsistent with the preservation of said land in its natural state, according to the City of Scottsdale ordinances. All NAOS areas shall be maintained by the Via Verano Community Association.
- r. **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any of the Property, and no odors shall be permitted to arise or emit therefrom, so as to render any such Property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property without prior written approval of the Board. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Property. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.
- s. **Outdoor Lighting.** The City of Scottsdale has regulations which are intended to establish procedures and standards that insure minimal light pollution, reduce glare, increase energy conservation, and maintain the quality of Scottsdale's physical and aesthetic character. The regulations for all outdoor lighting include, but are not limited to, all lighting or illumination units or sources shall be hooded or shielded so that they are not visible from any adjacent Lot or real property; and lights or illuminating units shall not direct light, either directly or through a reflecting device, upon any adjacent real property. All exterior lighting not installed by the Declarant must receive prior written approval of the Architectural Committee. All outdoor lighting must be in compliance with the City of Scottsdale's Ordinances or Codes, whichever is more restrictive.

- t. **Overhangs.** No objects on any Property shall be allowed to overhang or to otherwise encroach upon any sidewalk, street, pedestrian way or Common Area from ground level to a height of twelve (12) feet, without the prior approval of the Architectural Committee.
- u. **Parking.** Vehicles of all Owners, members of its family, tenants, lessees, agents, guests and invitees, are to be kept in garages or residential driveways of the Owner. Owner's guests and invitees may park vehicles in Tract J adjacent to the curb and gutter for no longer than eight (8) hours at a time or as determined by the Board or the City of Scottsdale Ordinances, whichever is more restrictive.
- v. **Party Walls and Fences.** The rights and duties of Owners with respect to party walls or party fences, which are constructed as part of initial construction, shall be as follows:
1. The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment by the other Owner.
 2. In the event that any party wall or party fence is damaged or destroyed through the act of an Owner, or any of its tenants, lessees, agents, invitees, guests, or members of its family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining Lot Owner or Owners.
 3. In the event any such party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, its tenants, lessees, agents, invitees, guests or family, it shall be the obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint expense.
 4. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.
 5. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board and the Board shall either decide the matter or refer the matter over to a court that would have jurisdiction over the matter.
 6. Each Owner shall permit the Owners of adjoining Lots, or their representative, when reasonably required, to enter its Lot for the purpose of repairing or maintaining a party wall or party fence or for the purpose of performing installation, alterations or repairs to the Lot of such adjoining Owners, provided that requests for entry is at a time reasonably convenient to the Owner. In case of an emergency, such right to entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this paragraph shall not be deemed guilty of trespass by reason of such entry.
 7. Surfaces of party walls or party fences on portions of the Property generally accessible or viewable from only the adjoining portion of the Property may be planted against, plastered, painted, maintained and used by the adjoining Owners. If such surfaces are viewable from public streets or the Common Area, the color scheme shall not be changed without the written consent of the Architectural Committee.

- w. **Perimeter Walls.** All interior and exterior Lot walls including, but not limited to, block walls, wrought iron walls or fences, shall be maintained, repaired and replaced by the respective Lot Owner. Notwithstanding the above, the Association shall be responsible only for maintenance of the perimeter wall's exterior surfaces when adjacent exclusively to Tracts A through I inclusive, of VIA VERANO, as shown on the Plat. The exception to the foregoing is the wrought iron in perimeter walls. All wrought iron will be the responsibility of the respective Lot Owner to maintain, repair and replace. All wrought iron must be maintained in a rust free condition and painted in the color specified by the Architectural Committee. The Association shall have the right, after thirty (30) days notice to an Owner, to repair, paint, or otherwise maintain the wrought iron (and without notice in the event of an emergency) which the Association, acting through its Board, determines in its discretion is in violation of this provision. All costs and expenses, including reasonable attorney's fees and costs, incurred by the Association shall be borne by the Owner, and shall be paid to the Association on demand, plus interest at the rate of twelve percent (12%) per annum from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in a like manner as assessments levied pursuant to Article VI of this Declaration. **In no instance shall any portion of a perimeter fence be temporarily removed or altered, including but not limited to removal in connection with the installation or construction of a swimming pool WITHOUT THE PRIOR WRITTEN APPROVAL OF THE ARCHITECTURAL COMMITTEE. Any Owner in violation of this provision shall be subject to such monetary penalties and suspension of voting rights and Common Area use rights as may be established by the Board.**
- x. **Repair of Buildings.** No Improvement upon any Property shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. The Association shall have the right, after thirty (30) days notice to an Owner, to repair, paint, or otherwise maintain the exterior or any Improvement (and without notice in the event of an emergency) which the Association, acting through its Board, determines in its discretion is in violation of this provision. All costs and expenses, including reasonable attorney's fees and costs, incurred by the Association shall be borne by the Owner, and shall be paid to the Association on demand, plus interest at the rate of twelve percent (12%) per annum from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in a like manner as assessments levied pursuant to Article VI of this Declaration.
- y. **Residential Use.** All Dwelling Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Dwelling Unit, except that an Owner or other Resident of a Dwelling Unit may conduct a business activity within a Dwelling Unit so long as:
1. The existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; and
 2. The business activity conforms to all applicable zoning ordinances or requirements for the Property; and
 3. The business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Property; and
 4. 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 other Residents in the Property, 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 received a fee, compensation or other form of consideration, regardless of whether; (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Dwelling Unit by the Owner thereof shall not be considered a trade or business within the meaning of this provision.

- z. **Restrictions on Further Subdivision.** No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board. This provision shall not in any way limit Declarant from subdividing or separating into smaller Lots or parcels any Property owned by Declarant.

- aa. **Retaining Walls.** The rights and duties of Owners and the Association with respect to retaining walls, which are constructed as part of initial construction, shall be as follows:

1. Retaining walls located on any Common Area will be the maintained, repaired and replaced by the Association.
2. If a retaining wall is located on a Common Area property line, the Association is obligated to maintain, repair and replace the retaining wall's exterior surface facing the Common Area only, the remainder is the obligation of the respective Lot Owner.
3. In the event any retaining wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of the Association or an adjoining Owner, its tenants, lessees, agents, invitees, guests or family, it shall be the obligation of all Owners, including the Association if the retaining wall is on Common Area or a property line, whose Lots or Common Area adjoin such retaining wall to rebuild and repair such wall at their joint expense.
4. In the event that any retaining wall is damaged or destroyed through the act of the Association or an Owner, or any of its tenants, lessees, agents, invitees, guests, or members of its family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner or Association to rebuild and repair the retaining wall without cost to any other adjoining Lot Owner or Association, if applicable.
5. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a retaining wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board and the Board shall either decide the matter or refer the matter over to a court that would have jurisdiction over the matter.
6. Each Owner shall permit the Owners of adjoining Lots, or their representative, when reasonably required, to enter its Lot for the purpose of repairing or maintaining a retaining wall or for the purpose of performing installation, alterations or repairs to the Lot of such adjoining Owners, provided that requests for entry is at a time reasonably convenient to the Owner. In case of an emergency, such right to entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this paragraph shall not be deemed guilty of trespass by reason of such entry.

7. Surfaces of retaining walls on portions of the Property generally accessible or viewable from only the adjoining portion of the Property may be planted against, painted, maintained and used by the adjoining Owners. If such surfaces are viewable from public streets or the Common Area, the color scheme shall not be changed without the prior written consent of the Architectural Committee.
 8. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any retaining wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.
- bb. **Right of Entry.** During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and, such persons shall not be deemed guilty or trespass by reason of such entry.
- cc. **Signs.** The only signs permitted on any Lot shall be: (i) residential identification signs of a face area of seventy-five (75) square inches or less for identification of the occupant and its address, in a style designated by the Design Guidelines or approved by the Architectural Committee; (ii) one (1) sign of customary size may be temporarily erected or placed on a Lot for the purpose of advertising the Lot for sale or rent; and (iii) security signs of a face area of seventy-five (75) square inches or less, in a style and location designated by the Design Guidelines or approved by the Architectural Committee. Notwithstanding the above, the Declarant and Developer may erect any signs during construction and marketing of the subdivision and this restriction shall not apply to the Association in furtherance of its powers and purposes herein set forth. All permitted signs must be professionally painted, lettered and constructed.
- dd. **Temporary Occupancy.** No trailer, basement of any incomplete Improvement, building, shed, tent, shack, garage or barn, and no temporary Improvement of any kind shall be used at any time for a residence on any Property either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such Property shall be removed immediately after the completion of construction.
- ee. **Trailers and Motor Vehicles.** No motor vehicle classed by manufacturer rating as exceeding 3/4 ton, mobile home, mini-motor home, travel trailer, recreational vehicle, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked or maintained, constructed, reconstructed or repaired on any Lot so as to be Visible From Neighboring Property, the Common Areas, or the streets. Such vehicles may, however, be concealed in attractively screened areas with prior written approval by the Architectural Committee. The provisions of this Section shall not apply to pick-up trucks of less than 3/4 ton capacity with camper shells not exceeding seven feet in height measured from ground level. No mobile home, mini-motor home, boat, recreational vehicle, trailer (of any kind), truck, camper, permanent tent, or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed, or repaired upon any Property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee. Except as provided above, only vehicles in operating condition shall be parked in residential driveways. Non-operating vehicles are not permitted in residential driveways, unless repairs are imminent.

- ff. **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Property except in covered containers. In no event shall such containers be maintained or stored so as to be Visible From Neighboring Property, except to make the same available for collection, and then only the shortest time reasonably necessary to affect such collection. All rubbish, trash or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.
- gg. **Utility Easements.** There is hereby created a blanket easement upon, across and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in and under roofs and exterior walls of Improvements upon the Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Property except as initially developed and approved by the Declarant or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Property. This easement shall be limited to Improvements as originally constructed. No excavation shall be done within a utility easement without the prior notification to the appropriate utility service company, and if applicable, without the prior consent of the appropriate utility service company.
- hh. **Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.
- ii. **Variances.** The Board shall have the authority to grant variances from the restrictions in this Article as is reasonably necessary for the health safety, and welfare of the Members.

Section 3. Permitted Uses and Restrictions - Common Area. The permitted uses and restrictions for Common Area shall be as follows:

- a. **Permitted Uses.** In general, the Common Area shall be used for the benefit of the Owners, for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment to be derived from such reasonable and proper use, without hindering the exercise of or encroaching upon the right of any other Owner to utilize the Common Area, provided that no unlawful use shall be permitted.
- b. **Restricted Uses.**
 - 1. The Common Area shall not be used by Owners for storage of supplies, materials or personal property of any kind.
 - 2. In general, no activity shall be carried on nor condition maintained by any Owner upon the Common Area which spoils the appearance of the Property or hinders or encroaches upon the right of any other Owner to utilize the Common Area as reasonably intended, or which would violate laws, rules or regulations of government authorities.

- c. **Maintenance by Association.** The Association may, at any time, as to any Common Area conveyed, leased or transferred to it or otherwise placed under its jurisdiction (excluding any public right-of-way), at the discretion of the Board, without any approval of the Owners being required:

1. Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such 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) in accordance with (a) the last plans therefor approved by the Board; (b) the original plans for the Improvement; or (c) if neither of the foregoing is applicable and if such Improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such Improvement as same existed.
2. Construct, reconstruct, repair, replace, or refinish any road Improvement or surface upon any portion of such area used as a road, street, walk, and parking area.
3. Replace injured and diseased trees or other vegetation in any such 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.
4. Place and maintain upon any such area such signs, markers and lights as the Board may deem appropriate for the proper identification, use and regulation thereof, subject to the approval of the Architectural Committee.
5. Remove all papers, debris, filth and refuse from the Common Areas as required, and clean and relamp lighting fixtures as needed.
6. Repaint striping, markers, directional signs, etc. as necessary.
7. Pay all real estate taxes and assessments on the Common Areas.
8. Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Areas.
9. Pay for and keep in force at the Association's expense public liability insurance in companies acceptable to the Association in amounts and with limits of liability desired by the Owners or required of the Owners pursuant to any other recorded document affecting the Property, such insurance to name the Association as named insured.
10. Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.
11. The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area (subject, however, to any requirements lawfully imposed by a governmental authority having jurisdiction thereof).
12. Nothing herein shall be construed so as to preclude the Association from delegating its powers set forth above to a manager or agent or to other persons, firms or corporations.

- d. **Damage or Destruction of Common Area by Owners.** In the event any Common Area or Improvement thereon is damaged or destroyed by an Owner or any of its family members, guests, tenants, invitees, licensees or agents, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good and workmanlike manner in conformance with the

original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may impose a lien and enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

ARTICLE IX GENERAL PROVISIONS

Section 1. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real Property included within this Declaration, each Person, for itself, its heirs, personal representative, successors, transferees and assigns, binds itself, its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property covered hereby and thereby evidences its interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various present, subsequent and future Lot Owners.

Section 2. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration and to recover its attorney's fees and costs incurred in connection with such proceeding if it prevails. 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. Any violation of these restrictions shall not affect the lien of any First Mortgage now of record, or which hereafter may be placed of record, upon said Lots or any part thereof.

Section 3. 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.

Section 4. Term: Amendment. This Declaration shall be effective upon the date of its recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated or amended at any time upon recordation of the written consent of the Owners holding not less than sixty-seven percent (67%) of the Member votes, subject to City, County, State and Federal requirements and provided that the Common Areas will remain maintained. If the necessary votes and consents are obtained, as long as no right or obligation of the Declarant is affected without Declarant's consent, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration and the covenants contained herein shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 5. Annexation. The Declarant may, with the consent of two-thirds (2/3) of the Voting Owners, annex additional residential property and Common Area.

Section 6. Notices. All notices, demands, or other communication intended to be served upon an Owner, the Board or the Association, except for monthly statements and other routine notices

provided for in this Declaration, shall be in writing and shall be addressed as follows: if to an Owner, to the last known address of the Owner in the files of the Association; if to Declarant or the Association, send to statutory agent: Scott Peterson, c/o Coventry Homes, 6001 North 24th Street, Phoenix, AZ 85016. Notices shall be deemed delivered when mailed by United States registered or certified mail, addressed as provided above, or when hand delivered to the addressee.

Section 7. Rule Against Perpetuities. If any of the 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.

Section 8. FHA/VA Approval. As long as there is a Class "B" Membership, after the first closing the following will require the prior written approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"), except to make clerical or technical corrections: annexation of additional properties, dedication of any Common Area, and any amendment of this Declaration of Covenants, Conditions and Restrictions. The Declarant may amend this Declaration, without obtaining approval or consent of any Owner or First Mortgagee, in order to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state, or local governmental agency whose approval of this Declaration is required by law or is requested by the Declarant.

IN WITNESS WHEREOF, DEL WEBB'S COVENTRY HOMES CONSTRUCTION CO., an Arizona corporation, as Declarant, has caused its corporate name to be signed by the undersigned officer thereunto duly authorized this 30 day of July, 1998.

DEL WEBB'S COVENTRY HOMES
CONSTRUCTION CO., an Arizona corporation

By: Jeffrey A. Harris
Jeffrey A. Harris
Its: Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 30 day of July, 1998, before me, the undersigned Notary Public, personally appeared Jeffrey A. Harris, who acknowledged himself to be the Vice President of Del Webb's Coventry Homes Construction Co., an Arizona corporation, and that he as such Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation, by himself, as such Officer.

K. Snitko
Notary Public

My Commission Expires:

