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RECORDING REQUESTED BY:

GAROLD C. BROWN FAMILY LIMITED PARTNERSHIP  
8325 E. Golf Links Road  
Tucson, AZ 85730

and when Recorded mail to:

GAROLD C. BROWN FAMILY LIMITED PARTNERSHIP  
8325 E. Golf Links Road  
Tucson, AZ 85730



FEE # 010101458  
OFFICIAL RECORDS  
COCHISE COUNTY  
DATE HOUR  
01/01/18 4

REQUEST OF  
GAROLD C BROWN FAMILY LIMITE  
CHRISTINE RHODES-RECORDER  
FEE : 16.00 PAGES : 11

**DECLARATION OF AMENDED AND RESTATED COVENANTS, CONDITIONS**

**RESTRICTIONS & EASEMENTS**

FOR:

**VISTAVIEW ESTATES SUBDIVISION**

HIGHWAY 90

COCHISE COUNTY, ARIZONA

Amended 01/18/2001

010101458

**DECLARATION OF AMENDED AND RESTATED  
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS**

**VISTAVIEW ESTATES SUBDIVISION  
COCHISE COUNTY, ARIZONA**

THIS DECLARATION OF AMENDED AND RESTATED COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS (hereinafter the "Declaration") is made as of this 18th day of January, 2001, by Garold C. Brown and Carol A. Brown, General Partners and Trustees of the Garold C. Brown Family Limited Partnership (hereinafter the "Declarants"), as Beneficiaries of the Land Trust referenced herein with reference to the following recitals:

WHEREAS, the Declarant is the Beneficiary of that certain Fidelity National Title Company Trust No. 30,014 with respect to that property situated in the Northwest ¼ of Section 4, T 22S, R 21 E, G&S.R.B.&M., County of Cochise, State of Arizona, being more particularly described as follows:

Lots No. 1 through and including Lot No. 355 (Lots 1-355) and Common Areas A, B, & C, and Parcel C, all according to the plat of Vistaview Estates as recorded in the Official Records of Cochise County in Book 14 of Maps, at Pages 33, 33A, 33B, 33C & 33D on the 26th day of January, 2000 as Fee No. 000102163, (hereinafter the "Project"); and

WHEREAS, the Declarant did also cause to be recorded in the Official Records of Cochise County, a Declaration of Covenants, Conditions and Restrictions (hereinafter the "C.C.&R's") as Fee No. 000102162, which C.C.&R's were intended to provide governing guidelines integrating the Project as a single property in furtherance of a common plan for the use, ownership, leasing, transferring, and/or occupation of the Project; and

WHEREAS, said C.C.&R's did provide for any amendments to and/or any revocations, cancellations, or recessions of any of the C.C.&R's terms and provisions prior to the first fee simple sale of any lot in the Project to a Purchaser other than the Declarants or any of the Declarant's affiliates, subsidiaries, or successors in interest as to the project or a substantial portion thereof; and

WHEREAS, it is the desire of the Declarants to now Amend and Restate said C.C.&R's by revoking the instrument recorded as Fee No. 000102162 and setting forth new terms and conditions for the Management of the project by the new terms of this Amended and Restated Declaration;

NOW THEREFORE, DECLARANT hereby declares that the Project shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied and improved subject to the following limitations, covenants, conditions, restrictions, reservations and easements, all of which are declared and agreed to be in furtherance of a plan for the Project as a single integrated development and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project, and every part thereof.

All of the RESTRICTIONS, COVENANTS, CONDITIONS AND EASEMENTS contained herein shall run with the Project and shall be binding on all parties having or acquiring any right, title or interest of any kind herein or thereto and shall be for the benefit of each OWNER or LESSEE of any portion thereof, and shall inure to the benefit of and be binding upon any successor in interest of any such OWNER or LESSEE.

Notwithstanding the foregoing, no provision of this DECLARATION shall be construed as to prevent or limit DECLARANT'S right to complete the development of the Project and the construction of improvements thereon, nor DECLARANT'S right to maintain model homes, construction, sales or leasing offices or similar facilities on the Project nor DECLARANT'S right to post signs incidental to construction, sales or leasing.

**ARTICLE I**  
**DEFINITIONS**

1.00 C.C.&R's. "C.C.&R's" shall mean the original document entitled Declaration of Covenants, Conditions, Restrictions, and Easements as recorded in Cochise County Official Records on the 26th day of January, 2000 in Docket No. 000102162.

1.01 COMMUNITY RULES. "COMMUNITY RULES" shall mean the General and Special Rules and Regulations governing the use and occupancy of the Project from time to time in effect.

1.02 COMMON AREA. "COMMON AREA" shall mean all real and personal property for the common use and enjoyment of the Declarant, Owners, Lessees, and their occasional visitors, guests, and/or invitees.

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1.03 DECLARATION. "DECLARATION" shall mean this instrument, the Amended and Restated Covenants, Conditions, Easements and Restrictions.

1.04 DECLARANT. "DECLARANT" shall mean GAROLD C. BROWN and CAROL A. BROWN, General Partners and Trustees of the Garold C. Brown Family Limited Partnership being the Beneficiaries of that certain Fidelity Land Title Trust No. 30,014, and their successors and/or assigns, if such successors or assigns are assigned the rights of DECLARANT under this DECLARATION.

1.05 OWNER. "OWNER" shall mean and refer to the record owners or lessees (including Declarant) of a recorded fee simple title or leasehold estate to any Residence Lot which is a part of the Project, excluding those persons or entities having such interest merely as security for the performance of an obligation.

1.06 PARTY IMPROVEMENTS. "PARTY IMPROVEMENTS" is defined as all improvements, including but not limited to walls, roofs, fences, planters, driveways and walkways built as part of the original construction of a residential unit or manufactured home in THE PROJECT and such improvements are placed on the dividing line between two Adjoining Lots.

1.07 THE PROJECT. "THE PROJECT" shall mean and refer to any portion of the Property developed as herein described, including COMMON AREAS, OUTLOTS, Residential Lots and each residential dwelling placed or constructed thereon.

1.08 RESIDENCE. "RESIDENCE" for purposes of this Declaration shall include all Building improvements and appurtenances upon a Residential LOT.

1.09 COUNTY. "COUNTY" shall mean and refer to the County of Cochise, State of Arizona.

1.10 MANAGEMENT. "Management" shall mean and refer to any entities or personnel employed by the Declarant for purposes of the on going, day-to-day operation and management of the Project and all portions thereof.

## ARTICLE II ASSESSMENTS.

2.01 CREATION OF LIEN AND OBLIGATION OF ASSESSMENTS. The DECLARANT, for each Residential LOT owned by it within the Project hereby consents, and each OWNER or LESSEE of a Residential LOT within the Project by acceptance of a lease or a deed therefor, is deemed to covenant and agree to pay the MANAGEMENT the following assessments when applicable:

2.02 INDIVIDUAL ASSESSMENT. Each OWNER or LESSEE of a Residential LOT may be assessed from time to time for all fines, penalties and damages to which its OWNER or LESSEE is subject as a result of (i) A violation of the terms of this DECLARATION; (ii) A violation of any of the General or Special Rules or Regulations of the Project as prescribed by THE MANAGEMENT for use of the COMMON AREA; (iii) For damages caused to the COMMON AREA by the negligence or willful misconduct of such OWNER; (iv) A violation of the Statement of Policy; (v) A violation of the Land Rental Agreement, and; (vi) For any other liability, indebtedness or other obligation of the OWNER or LESSEE to THE MANAGEMENT arising under the provisions of governing documents specified herein.

Notice of all INDIVIDUAL ASSESSMENTS shall be given by THE MANAGEMENT to the OWNER or LESSEE of each Residential LOT assessed within fifteen (15) days of the adoption of the INDIVIDUAL ASSESSMENT. INDIVIDUAL ASSESSMENTS shall be due and payable within thirty (30) days following written notice thereof by THE MANAGEMENT.

2.02.1 INDIVIDUAL ASSESSMENTS. Assessments provided for by this DECLARATION, together with such interest thereon and the cost for collection thereof shall be a charge on the Residential LOT against which each assessment is made, which lien shall be created and enforced in accordance with the provisions of this Article. Each assessment prescribed by this Article, together with interest and the cost of collection thereof, shall further be the joint and several personal obligation of each person who was an OWNER or LESSEE of such RESIDENTIAL LOT at the time when such assessment fell due.

2.03 DELINQUENCY. Any assessment provided for in this DECLARATION which is not paid when due shall become delinquent on the date on which such assessment is due ("DATE OF DELINQUENCY"). A late charge of \$10.00 or 10% of the delinquent assessment, whichever is greater, shall be payable with respect to each assessment not paid within fifteen (15) days after the DATE OF DELINQUENCY. Assessments not paid within (30) days after the DATE OF DELINQUENCY shall thereafter bear interest at the maximum allowable lawful rate per annum from the DATE OF

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DELINQUENCY, and THE MANAGEMENT, its attorney or other authorized representative may, at its option at any time after such thirty (30) day period, in addition to any other remedies herein set forth or granted by law or in equity, enforce the obligation to pay assessments in any manner provided by law or in equity, and without limiting the generality of the foregoing, by any and all of the following methods:

2.03.1 ENFORCEMENT BY SUIT. THE MANAGEMENT may cause a suit at law to be commenced and maintained in the name of the PROJECT against any OWNER or LESSEE, personally obligated by pay assessments for such delinquent assessments, late charges and interest allowed by Paragraph 2.03 of this DECLARATION, together with court costs and reasonable attorney's fees in such amount as the court may award. A suit to recover a money judgment for unpaid assessments shall be maintained by THE MANAGEMENT, or its authorized agent, without foreclosing or waiving the lien hereinafter provided for.

2.03.2 ENFORCEMENT BY LIEN. THE MANAGEMENT may proceed to record, or cause to be recorded, a Notice of Delinquent Assessment with respect to the RESIDENCE LOT as to which ASSESSMENTS are delinquent. Such Notice of Delinquent Assessment shall be recorded in the Office of The County Recorder and shall set forth all ASSESSMENTS which have been delinquent as of the date thereof, together with all costs (including a reasonable attorney's fee) and all late charges and interest accrued thereon. The Notice of Delinquent Assessment shall set forth the description of the Residential LOT, the name of the record owner or lessee thereof, and the name and address of the trustee for foreclosure, and the name and address of the PROJECT. Immediately upon the recordation of a Notice of Delinquent Assessment, the amount set forth in the Notice shall be a lien upon the RESIDENCE described therein, which lien shall also secure all other ASSESSMENTS which shall become due and payable with respect to the RESIDENCE as to which the Notice of Delinquent Assessments was recorded following the date of the recordation of the Notice, together with all costs (including reasonable attorney's fees) and all late charges and interest as prescribed by this Section. The Notice of Delinquent Assessment may thereafter be enforced by foreclosure sale by THE MANAGEMENT, its attorneys, or any person authorized by THE MANAGEMENT, as trustee, to make the sale.

2.03.3 CURING OF DEFAULT. Upon the timely payment, or other satisfaction, of all delinquent assessments, late charges, interest and attorney's fees, if any, included within the Notice of Delinquent Assessments in accordance with this Paragraph 2.03.2 recorded with respect to a Residential Lot, THE MANAGEMENT shall cause to be filed and recorded a further notice stating the satisfaction from the release of the lien created by the Notice of Delinquent Assessments. A fee in the amount of \$15.00 covering the cost of the preparation and recordation of the Notice of Release and Satisfaction shall be paid to the PROJECT prior to the execution, filing and recordation of such Notice of Release and Satisfaction by MANAGEMENT. For the purposes of this Paragraph, the term "costs" shall include costs and expenses actually incurred or expended by THE MANAGEMENT in connection with the cost of preparation and recordation of the Notice of Delinquent Assessments and in efforts to collect the delinquent assessment secured by the lien created by the Notice of Delinquent Assessments, and shall also include a reasonable sum for attorney's fees actually incurred in an amount not to exceed 20% of the delinquent assessment secured by the lien created by the recordation of the Notice of Delinquent Assessments.

### ARTICLE III OCCUPANCY AND USE OF RESIDENTIAL LOTS AND COMMON AREAS

In addition to all other covenants contained herein, the occupancy and use of THE PROJECT and each RESIDENCE and Residential LOT thereon and the COMMON AREA is subject to the following:

3.01 USE AND OCCUPANCY OF RESIDENCE. With the exception of any uses by the Declarant in connection with the development of the Project, No LOT in THE PROJECT shall be used for other than residential purposes.

3.02 BUSINESS USAGE PROHIBITED. There shall be no gainful occupation, profession, or trade maintained upon or in any RESIDENCE or the COMMON AREA without the express permission of MANAGEMENT and the COUNTY, if a special use permit is required for such use; provided, however, that this provision shall in no way limit or restrict DECLARANT in its activities prior to and during the sale, lease, management and improvement of lots and/or RESIDENCES within THE PROJECT.

3.03 NOXIOUS OR OFFENSIVE ACTIVITIES. No noxious or offensive activity or nuisance shall be carried on or maintained within the project nor shall anything be done or placed upon any property within the project which shall cause unreasonable embarrassment, disturbance or annoyance to other OWNERS or other LESSEES.

3.04 SIGNS. No signs of any kind shall be displayed in the public view on or about any RESIDENCE or upon any RESIDENCE LOT in THE PROJECT, except:

3.04.1 DECLARANT may place signs for the use by DECLARANT and its agents in connection with the original construction and sale, leasing or management of RESIDENTIAL LOTS in THE PROJECT, and

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3.04.2. **LESSEE** may place one sign on his **RESIDENCE LOT** of customary size and shape in the community, not to exceed 3.75 square feet of surface area, advertising his **RESIDENCE** for sale, lease or exchange, the name of the **LESSEE** or his agent. Except as permitted **DECLARANT** in Section 3.04.1 above, **LESSEES** may not place any signs in the **COMMON AREA**.

3.05 **PETS**. Subject to the Project Rules and Regulations from time to time, no animals may be kept upon **THE PROJECT** except a reasonable number of generally recognized house pets weighing 25 lbs or less and only after the Lessee and the Owner have entered into and executed a Pet Agreement as referenced herein. No animals shall be permitted outside of any **RESIDENTIAL LOT**, except on an 8-foot long leash (or less) and under the control of a responsible person. Prior to the occupation of any Residence by a pet, the Owner or Lessee shall secure written approval by the management and shall execute a Pet Addendum to their Rental Agreement.

3.06 **STORAGE**. There shall be no unreasonable storage of any item in or upon the **RESIDENTIAL LOT** except in an enclosed area not visible from adjoining streets or the **COMMON AREA**.

3.07 **GARBAGE, RUBBISH AND TRASH**. All rubbish, trash and garbage shall be regularly removed from the **RESIDENTIAL LOT** by the **OWNER** or **LESSEE** thereof, and shall not be allowed to accumulate on the **RESIDENTIAL LOT** or upon the **COMMON AREA**.

3.08 **STRUCTURAL CHANGES**. No **LESSEE** shall make or cause to be made any structural alterations or modifications to the exterior of his **RESIDENCE** or any improvements upon his **RESIDENTIAL LOT** without the prior written approval of **THE MANAGEMENT**, which approval shall not be unreasonably withheld.

3.09 **LAUNDRY**. No laundry or wash shall be dried or hung upon any **RESIDENTIAL LOT** so as to be visible from view of a neighboring lot, public streets or the **COMMON AREA**.

3.10 **PARKING WITHIN THE PROJECT.**

3.10.1 **ASSIGNED PARKING**. **THE MANAGEMENT** may assign and designate guest or transient parking areas within the **COMMON AREA** of **THE PROJECT** for use by an **OWNER**, a **LESSEE**, his family members, guests, tenants and servants.

3.10.2 **GUEST AND VISITOR PARKING**. **THE MANAGEMENT** may establish reasonable rules and regulations governing the use of parking areas within **THE PROJECT** by guests and visitors, in order to preserve the health, safety and welfare of all persons in **THE PROJECT** at any time, and in order to preserve the aesthetic values of **THE PROJECT**. Included in such rules and regulations, **THE MANAGEMENT** shall be authorized to issue guest passes, to limit the time for guest and visitor parking, and to limit the number of guests' and/or visitor vehicles per **RESIDENCE**.

3.10.3 **VEHICLES**. Except to the extent desired by the **DECLARANT** to be used during the development and/or lease of **RESIDENTIAL LOTS** within **THE PROJECT**, no mobile home, travel trailer, truck, camper, house trailer, boat, boat trailer, or similar item of equipment, shall be kept, parked, stored, or maintained within **THE PROJECT**, except within the designated area assigned to an **OWNER** or a **LESSEE** by **THE MANAGEMENT** within the **COMMON AREA** (R.V.) parking area. No such vehicle so placed shall be used for living purposes. No stripped down, wrecked or junked motor vehicle shall be kept parked, stored or maintained within **THE PROJECT** unless previously approved by **THE MANAGEMENT**. Any vehicle or trailer so parked in the RV parking area shall be vested/titled to the **OWNER** and/or **TENANT** of the parking space. No automobile overhaul work shall be permitted in **THE PROJECT**.

3.11 **ANTENNAE**. No television antenna or antennae, poles, wires, machines, equipment, or similar objects shall be allowed on the exterior or roofs of any **RESIDENCE**, or any part thereof, except such as are installed as part of the initial construction of **THE PROJECT** by the **DECLARANT**, or replacements to the initial construction, or such as are approved in writing by **THE MANAGEMENT**.

3.12 **COMMON AREA**. The **COMMON AREA** of **THE PROJECT**, subject to this **DECLARATION** and the Project Rules and Regulations and any other agreements relating thereto, shall be improved, maintained and used as follows:

3.12.1 The use of the **COMMON AREA** shall be available for, and limited to **LESSEES** or **OWNERS** of a **RESIDENCE** and their accompanying guests and visitors as defined by the Project Rules and Regulations.

3.12.2 Affording vehicular parking and vehicular and pedestrian movement within **THE PROJECT**, including access to the **RESIDENCES**.

3.12.3 Affording recreational activity within **THE PROJECT** subject to and in accordance with the Project Rules and Regulations and this Declaration.

3.12.4 Affording easements in order to facilitate the service of utilities to **RESIDENTIAL LOTS** and the **COMMON AREA**.

3.12.5 Affording easements to the **LESSOR**, **THE MANAGEMENT** and/or the **DECLARANT** for the operation repair, and maintenance of all **DRAINAGE IMPROVEMENTS** situated within the **COMMON AREA** or within drainage or other easements situated on specific lots.

3.13 UTILITY CHARGES. Each LESSEE shall pay any and all utility charges separately metered or charged against his RESIDENCE and the RESIDENTIAL LOT, and such payment shall be made by each LESSEE or OWNER in addition to and separately from any assessments otherwise payable by such LESSEE or OWNER to THE MANAGEMENT pursuant to the terms and provisions of this DECLARATION, the General and Special Project Rules and Regulation, and/or the Land Rental Agreement.

#### ARTICLE IV ARCHITECTURAL CONTROL

4.01 AUTHORITY. Except as to construction of improvements by DECLARANT in THE PROJECT, no residential structure, building, fence, awning, wall or other structure shall be commenced, erected, placed, altered, or maintained in THE PROJECT on any RESIDENTIAL LOT until the construction plans, specifications, construction materials and exterior colors have been approved by THE MANAGEMENT as to quality of workmanship and materials, harmony of exterior design with existing structure, and as to location with respect to topography and finish grade elevation.

4.02 FUTURE CONSTRUCTION. Nothing in this DECLARATION shall limit the right of DECLARANT to complete construction of improvements to the COMMON AREA and all LOTS owned by DECLARANT or to alter them or construct additional improvements as DECLARANT deems advisable before the completion and FEE SIMPLE SALE of all LOTS within the PROJECT. The rights of DECLARANT in this DECLARATION may be assigned to DECLARANT or to any successor to all or any part of any of DECLARANT'S interest in the PROJECT.

#### ARTICLE V INSURANCE

5.01 THE MANAGEMENT shall purchase, carry and at all times maintain in force with such carriers, in such amounts, in such policy form, and with such deductibles as the DECLARANT and the federal agencies and corporations described herein may from time to time determine or establish insurance as follows:

5.01.1 PUBLIC LIABILITY. A comprehensive policy of public liability insurance covering all of the COMMON AREA of the PROJECT, with limits not less than Five Hundred Thousand (\$500,000.00) Dollars per person and One Million (\$1,000,000.00) Dollars per occurrence and property damage liability insurance insuring THE MANAGEMENT, THE DECLARANTS, DECLARANT'S AGENTS, OWNERS, and LESSORS. Such Coverage shall include protection against lightning and water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as are customarily covered in similar projects.

5.01.2 FIRE AND EXTENDED COVERAGE. Fire and extended insurance on all improvements owned by the LESSOR or leased to THE MANAGEMENT, the amount of such insurance to be not less than Ninety (90%) Percent of current "replacement cost" (meaning actual replacement value, exclusive of the cost of land, excavations, foundations and footings). Coverage shall include loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, lightning storm and water damage and such other risks customarily covered in similar projects.

5.01.3 ADDITIONAL INSURANCE. Such additional insurance as THE MANAGEMENT may in its discretion deem necessary or appropriate, including workman's compensation insurance, insurance on commonly owned personal property and demolition insurance.

5.02 LESSEE INSURANCE. Each LESSEE or OWNER shall maintain, at its sole cost and expense, fire insurance with special form coverage included, insuring all structures and improvements upon his RESIDENCE LOT in an amount at least equal to 95% of the full insurable value thereof, or more, together with so-called "homeowners" or "tenants forms" personal liability insurance with an occurrence limit of not less than \$300,000.00. Each LESSEE shall promptly furnish to THE MANAGEMENT a certificate from his insurance carrier or carriers certifying that such insurance coverage is in existence and in full force and effect, and that it is evidenced by a policy with premiums payable at not less than annual intervals and that it cannot be cancelled without ten (10) days prior written notice to THE MANAGEMENT.

#### ARTICLE VI MAINTENANCE, REPAIR AND RESTORATION

6.01 MAINTENANCE, REPAIR AND RESTORATION. Notwithstanding the provisions for insurance in Article V of this DECLARATION, the MANAGEMENT and the LESSEES shall have the respective obligations of maintenance, repair and restoration as set forth herein. Provided, however, that all expenses to the extent covered by insurance shall be paid from such insurance proceeds:

6.01.1 LESSEES. Each LESSEE shall, at his sole cost and expense:

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(a) Maintain, repair, replace, restore, rebuild and decorate its RESIDENCE and all improvements situated upon and within its RESIDENTIAL LOT in a neat, sanitary, workable and attractive condition as may be reasonably necessary to protect and preserve the appearance and value of THE PROJECT.

(b) Maintain the landscaping and generally maintain his RESIDENTIAL LOT.

(c) Paint its RESIDENCE at such times as THE MANAGEMENT may determine to be necessary in order to protect the overall appearance of THE PROJECT with such color or colors as shall have been approved by THE MANAGEMENT.

(d) Re-roof its RESIDENCE and otherwise maintain the exterior thereof at such times and in such manner as THE MANAGEMENT may determine in order to protect the overall appearance of THE PROJECT and preserve the desirability and attractiveness thereof.

**6.02 PARTY IMPROVEMENTS.** To the extent PARTY IMPROVEMENTS are not maintained by THE MANAGEMENT as a Management expense, the maintenance, repair, replacement or restoration of PARTY IMPROVEMENTS shall be governed by the general rules of Arizona Law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to such improvements.

**6.02.1** The cost of reasonable maintenance of PARTY IMPROVEMENTS shall be borne proportionately by the respective LESSEES of the RESIDENCE LOTS sharing such improvements.

**6.02.2** The right of any LESSEE or OWNER of a RESIDENCE LOT to contribution from any other LESSEE or OWNER under this Paragraph shall be appurtenant to such RESIDENTIAL LOT.

**6.02.3** Any dispute between OWNERS or LESSEES regarding the allocation of the expenses of such maintenance, repair, restoration or replacement shall be resolved by a decision of THE MANAGEMENT.

**6.03 COMMON AREAS.** The MANAGEMENT shall maintain, repair, and/or restore all of the Common Areas of the Project, including, but not limited to the streets and sidewalks, all drainage improvements, the Clubhouse and all recreational facilities in or about the Clubhouse area, the Project Entry Gates, and all Vehicular or Storage Parking areas.

#### **ARTICLE VII** **DESTRUCTION OF IMPROVEMENTS**

**7.01 RESIDENCE.** In the event that all or any part of a RESIDENCE (including any PARTY IMPROVEMENTS utilized by such RESIDENCE), is destroyed or damaged by any cause, the LESSEE or OWNER of the improvements thereof shall clear away any broken, burned, or other debris or unsightly material within two weeks, and shall diligently commence the repair or reconstruction of such RESIDENCE as nearly as possible to the condition immediately prior to such damage or destruction and in substantial conformance with the original plans thereof.

**7.01.1 PARTY IMPROVEMENTS.** To the extent the reconstruction or repairs herein described requires the repair or reconstruction of PARTY IMPROVEMENTS, the LESSEES or OWNERS of the RESIDENCE LOTS sharing such improvements shall bear a pro-rata share of the expenses thereof.

**7.01.2 APPORTIONMENT OF EXPENSES.** If any debris is not removed within two weeks, or if two or more LESSEES or OWNERS cannot agree on the apportionment of expenses of maintenance, repair or restoration, such expenses shall be conclusively apportioned by THE MANAGEMENT.

**7.02 COMPLETION BY MANAGEMENT.** If any repair or reconstruction required of an OWNER or LESSEE by this Article is not commenced within (60) days after written notice by THE MANAGEMENT to the LESSEES of the RESIDENCE involved of the need therefor, or if the work once commenced is not diligently pursued to completion, THE MANAGEMENT may, by written notice to such LESSEE or OWNER elect to undertake the work on behalf of and at the expense of said LESSEE or OWNER.

#### **ARTICLE VIII** **EASEMENTS**

**8.01 APPURTENANT EASEMENTS.** There shall be the following easements appurtenant to each RESIDENTIAL LOT:

**8.01.1** Reciprocal easements between all adjacent RESIDENTIAL LOTS for surface drainage and for the maintenance, replacement and repair of all Utilities and/or Party Improvements situated upon the common boundary of said adjacent RESIDENTIAL LOTS.

**8.02 LESSEES OR OWNERS EASEMENT OF ENJOYMENT.** Every LESSEE or OWNER, and his tenants, servants, family members, guests and invitees, shall have a non-exclusive easement of access to, use and enjoyment of, and

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ingress and egress through the COMMON AREA and such easement shall be appurtenant to and shall pass with the fee simple title or leasehold estate to every RESIDENTIAL LOT subject to the following provisions:

8.02.1 The right of THE MANAGEMENT to reasonably limit the number of guests of LESSEES or OWNERS using the COMMON AREA.

8.02.2 The right of THE MANAGEMENT and the DECLARANT to establish Project Rules and Regulations pertaining to the use of the common area.

8.02.3 The right of THE MANAGEMENT to regulate the parking of vehicles within THE PROJECT as provided for in this DECLARATION and the Project Rules and Regulations.

8.02.4 The right of the DECLARANT, its agents and representatives, to the non-exclusive use of the COMMON AREA and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes in connection with the sale or lease of all or any portion of THE PROPERTY, which rights DECLARANT hereby expressly reserves. This section will allow DELCARANT to place signage in the COMMON AREA, and allow customers and perspective customers of DECLARANT to traverse the roadways with THE PROJECT, to examine the facilities located within the COMMON AREA.

8.03 UTILITY SERVICE. There is reserved for the benefit of each LESSEE or OWNER, THE MANAGEMENT, and all utilities, persons and municipalities rendering services to THE PROJECT, an easement over, under, upon and through each, RESIDENCE LOT and the COMMON AREA for the installation, use, maintenance and repair of each and every utility service, including but not limited to sewage, storm drainage, water, electricity, gas, solid waste collection, telephone and television service for THE PROJECT, and all necessary meters and gauges registering the use of such services, (including the incidental easement of ingress and egress for the purpose of reading such meters); provided, however, that the exercise of this easement shall not result in damage to existing improvements upon any RESIDENTIAL LOT or the COMMON AREA, including the RESIDENCES, lawns, shrubbery or trees unless adequate compensation is made for any such damage by the LESSEE or OWNER, the utility, the municipality or THE MANAGEMENT exercising the rights granted by this Paragraph.

8.04 UTILITIES-COMMON AREA. Within the easements existing or created for the installation and maintenance of drainage, utilities, utility structures, and other common facilities, no STRUCTURE, planting or material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere or change the direction or flow of the drainage facilities in the COMMON AREA or over and upon specific designated lots. The easement areas in the COMMON AREA and all improvements located thereon, shall be maintained by THE MANAGEMENT, except for those improvements for which a public authority or utility company is responsible.

Utility easements in the COMMON AREA shall at all times be open and accessible to public and quasi-public utility corporations and other persons erecting, constructing, or servicing such utilities and to DECLARANT and its successors and assigns, all of whom shall have the right of ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary in, under and upon said locations for the carrying out of any of the purposes for which said easements, reservations and rights-of-way are reserved or granted.

8.05 CONSTRUCTION EASEMENT. The DECLARANT, its contractors and subcontractors shall have a non-exclusive easement and right-of-way for ingress and egress over and upon the COMMON AREA to and from any portion of THE PROJECT and for temporary storage of construction materials, equipment and vehicles thereon, until construction and development of THE PROJECT is completed, provided further, that such use by the DECLARANT, its agents or representatives shall not restrict the LESSEE'S or OWNER'S in their use and enjoyment of the COMMON AREA.

## ARTICLE IX POWERS AND DUTIES OF THE MANAGEMENT

9.01 ADMINISTRATION OF PROJECT. The OWNERS or LESSEES, and each of them, together with all parties bound by this DECLARATION covenant and agree that the administration of THE PROJECT shall be in accordance with the provisions of this DECLARATION, and such rules and regulations as may be adopted by THE MANAGEMENT, and all amendments and modifications as may be adopted from time to time.

The primary purpose of THE MANAGEMENT is to further and promote the common interests and welfare of the LESSEES and OWNERS and to provide ownership, management, maintenance, preservation and control of the COMMON AREA and maintenance, preservation and control of the RESIDENCES and RESIDENCE LOTS. THE MANAGEMENT shall also be the sole and exclusive means for the regulation and enforcement of all rules necessary to govern the use and enjoyment of private roads, walkways, recreational facilities and the entire COMMON AREA of THE PROJECT.

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9.02 GRANT EASEMENTS. THE MANAGEMENT shall have the power to grant permits, licenses and easements over the COMMON AREA for utilities, roads and/or other purposes reasonably necessary or useful for the proper maintenance or operation of THE PROJECT.

9.03 VIOLATION OF GOVERNING DOCUMENTS. THE MANAGEMENT shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of the DECLARATION and Community Rules and Regulations by any LESSEE, his family, guests, licensees, visitors or invitees. Any schedule of penalties so adopted and specified in the project governing documents shall include the power of THE MANAGEMENT to suspend the rights of LESSEE, his family, guests, visitors or invitees to use the recreational facilities upon the COMMON AREA of THE PROJECT.

## ARTICLE X MISCELLANEOUS

10.01 ACCEPTANCE OF PROVISIONS BY LESSEES OR OWNER. THE MANAGEMENT and each LESSEE or OWNER of any part or portion of or interest in THE PROJECT hereby agree and promise to keep, observe and comply with this DECLARATION, and to perform all obligations on his part thereunder.

10.02 ENFORCEMENT OF DECLARATION. The following persons or entities shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, conditions and reservations now or hereafter imposed by the provisions of this DECLARATION or any amendments thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation.

10.02.1 The DECLARANT, so long as DECLARANT owns a RESIDENCE LOT in THE PROJECT;

10.02.2 Any LESSEE of a RESIDENCE LOT within THE PROJECT, and

10.02.3 THE MANAGEMENT

10.03 TERM This DECLARATION and the Covenants, Conditions, Easements and Restrictions contained herein shall be and remain in full force and effect for a term of five (5) years from the date this DECLARATION is recorded in the office of the County Recorder, after which time such DECLARATION and the covenants, conditions, provisions, easements and restrictions contained therein shall be automatically extended for successive periods of one (1) year each unless an instrument has been recorded at least ninety (90) days prior to the end of such period in the office of the County Recorder, agreeing to change this DECLARATION in whole or in part.

10.04 AMENDMENTS.

10.04.1 BEFORE CLOSE OF THE FIRST INDIVIDUAL LOT SALE. Before the close of the first FEE SIMPLE SALE of a LOT in THE PROJECT to a purchaser other than any of the DECLARANT'S affiliates, subsidiaries, or successors in interest as owner of the entire project or a substantial portion thereof, this DECLARATION and any amendments to it may be amended in any respect whatsoever or revoked by the execution of an instrument facilitating same by DECLARANT. The amending or revoking instrument shall make appropriate reference to this DECLARATION and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

10.05 CONSTRUCTION. The provisions of this DECLARATION shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a mixed use Residential Development upon the property, the subject of this DECLARATION, and this DECLARATION shall be construed and governed in accordance with Arizona law.

10.06 SEVERABILITY. The provisions of this DECLARATION shall be deemed independent and severable. The invalidity or partial invalidity or unenforceability of any of the provisions of the DECLARATION shall not affect the validity of the remaining provisions.

10.07 SUCCESSORS AND ASSIGNS. This DECLARATION shall inure to the benefit of and be binding upon the successors and assigns of DECLARANT, and to the heirs, personal representatives, successors and assigns of the OWNERS or LESSEES.

10.08 REMEDIES CUMULATIVE. Each remedy provided for by this DECLARATION for the breach of any of the covenants, conditions, restrictions, reservations, easements, liens or charges contained herein shall be in addition to any other available remedy whether provided for by law or in equity, and all of such remedies whether provided for by this DECLARATION or otherwise shall be cumulative and not exclusive.

10.09 DELIVERY OF NOTICES AND DOCUMENTS. Any written notice or other document relating to or required by this DECLARATION may be delivered personally or by mail. If by mail, such notice, shall be deemed to have been delivered and received forty-eight (48) hours after a copy thereof is deposited in the United States mail, postage and fees prepaid, addressed as follows:

10.09.1 If to a LESSEE or OWNER, other than DECLARANT, to the address of any RESIDENTIAL LOT in THE PROJECT owned by him, in whole or in part, or to the address last furnished by such LESSEE to THE MANAGEMENT for the purpose of giving notice and delivering documents. Each LESSEE or OWNER, other than DECLARANT, shall file in writing with THE MANAGEMENT promptly upon becoming a LESSEE or OWNER his address for the purpose of giving notice and delivering documents, and shall promptly notify THE MANAGEMENT in writing of any subsequent change of address.

10.09.2 If to the DECLARANT, whether in his capacity as an OWNER, or in any other capacity:

GAROLD C. BROWN, General Partner & Trustee of the  
Garold C. Brown Family Limited Partnership  
8325 E. Golf Links Road  
Tucson, AZ 85730  
Phone: (520) 293-7441  
Fax: (520) 696-3250

10.10 NOTIFICATION OF ASSIGNMENT OF A RESIDENTIAL LOT. Concurrently with the consummation of the sale or lease assignment of any RESIDENTIAL LOT under circumstances whereby the transferee becomes the new LESSEE or OWNER thereof, the transferee shall notify THE MANAGEMENT in writing of such sale. Such notification shall set forth (i) the name of the transferee and the transferor, (ii) the street address or unit number of the RESIDENTIAL LOT purchased or leased by the transferee or assignee, (iii) the transferee's or assignee's mailing address, and (iv) the date of sale or assignment. Prior to receipt of such notification, any and all communication required or permitted to be given by DECLARANT, or THE MANAGEMENT shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

10.11 JOINT AND SEVERAL LIABILITY. In the event of joint ownership of a RESIDENTIAL LOT, the liability of each of the LESSEES or OWNERS thereof in connection with the liability and obligations of LESSEES or OWNERS set forth in or imposed by this DECLARATION shall be joint and several.

10.12 ARBITRATION.

10.12.1 BETWEEN LESSEES OR OWNERS. If two or more LESSEES or OWNERS are unable to agree on the meaning or effect of any part of this DECLARATION, the dispute shall, on written request of one party served upon the other party or parties, be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the Arizona Arbitration Act.

10.12.2 BETWEEN THE MANAGEMENT AND A LESSEE OR OWNER. If THE MANAGEMENT and one or more LESSEES or OWNERS are unable to agree on the meaning or effect of any part of this DECLARATION, the dispute shall, on written request of one party served upon the other, be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the Arizona Arbitration Act.

10.13 SINGULAR AND PLURAL. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall each include the masculine or feminine or neuter, as the context requires.

10.14 TITLES. All titles used in this DECLARATION are intended solely for convenience of reference, and the same shall not affect that which is set forth in this DECLARATION nor the meaning thereof.

10.15 INTERPRETATION OF RESTRICTIONS. It is not the intent of this DECLARATION to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued or which may be adopted or issued pursuant to law relating to the use of buildings or premises; provided, however, that where this DECLARATION imposes a greater restriction upon the use or occupancy of any RESIDENCE or the COMMON AREA, or upon construction of buildings or structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, then the provisions of this DECLARATION shall control.

10.16 LIABILITY AND INDEMNIFICATION. No officer or employee of THE MANAGEMENT shall be personally liable for any act, error or omission, and THE MANAGEMENT shall and hereby does indemnify, defend and hold harmless said person, provided the action or inaction has been in good faith and within the scope and performance of his duties.

10.17 ASSIGNMENT OF POWERS. Any and all rights and powers of DECLARANT relative to THE PROJECT provided for in this DECLARATION, and any modification or amendment thereof, may be delegated, transferred, assigned, conveyed or released by DECLARANT to THE MANAGEMENT or to any other entity controlled by DECLARANT engaged in THE PROJECT and THE MANAGEMENT or such assignee entity shall accept the same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein.

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10.18 APPLICABILITY. This DECLARATION shall apply to all RESIDENCES and RESIDENCE LOTS within THE PROJECT, the COMMON AREA and any easements shown on the Subdivision Map for THE PROJECT.

IN WITNESS WHEREOF, GAROLD C. BROWN and CAROL A. BROWN, as General Partners and Trustees of the Garold C. Brown Family Limited Partnership and as Declarants and Beneficiaries of Fidelity National Title company Trust No. 30014 have executed this DECLARATION this 18th day of January, 2001, at Tucson, Arizona.

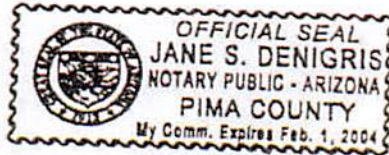
Garold C. Brown  
GAROLD C. BROWN, General Partner  
Carol A. Brown  
CAROL A. BROWN, General Partner

STATE OF ARIZONA )  
                                  ) ss.  
COUNTY OF PIMA )

On January 18, 2001 before me Garold C. Brown + Carol A. Brown personally appeared and personally know to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person of the entity upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Signature Jane S. Denigris



In Witness Whereof, the Trustee of Fidelity National Title Agency Land Trust No. 30014 has caused this instrument to be executed this 18th day of January, 2001, at Tucson, Arizona. Fidelity National Title Agency, Inc. as Trustee under Trust No. 30014 only and not in its corporate capacity.

By: Martha L. Hill  
Martha L. Hill, Trust Officer

Date: 1-18-01

STATE OF ARIZONA )  
                                  ) ss.  
COUNTY OF PIMA )

On January 18th, 2001 before me MARHTA L. HILL, TRUST OFFICER personally appeared and personally know to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person of the entity upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Signature Londa Rhyne

