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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE COTTAGES AT SIERRA VERDE**

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FOR
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE COTTAGES AT SIERRA VERDE**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE COTTAGES AT SIERRA VERDE is made as of the ____ day of _____, 2005, by ENGLE SIERRA VERDE P4, LLC, a Delaware limited liability company (“**Declarant**”).

ARTICLE 1

DEFINITIONS

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

1.1 “**Annual Assessment**” means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration, in addition to the assessments provided for under the Master Declaration.

1.2 “**Annual Budget**” has the meaning set forth in Section 6.2.1 of this Declaration.

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

1.4 “**Architectural Committee Rules**” means any rules, guidelines, standards and procedures adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.5 “**Areas of Association Responsibility**” means (a) all Common Area except for (1) any portions thereof which any governmental entity is maintaining or is obligated to maintain, and (2) such portions thereof as Owners may be obligated to maintain, repair and/or replace pursuant to the terms of this Declaration or of another document executed by Declarant or the Association and recorded with the County Recorder of Maricopa County, Arizona subsequent to the recordation of this Declaration; (b) all walls which border a Common Area or street except for routine maintenance, repair, cleaning and painting of the side of such wall facing an Owner’s Lot, which routine maintenance, repair, cleaning and painting shall be the responsibility of the Owner of the Lot; (c) all community mailboxes and the concrete slabs on which same are situated or to be situated; (d) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another document executed by Declarant or the Association and recorded with the County Recorder of Maricopa County, Arizona subsequent to the recordation of this Declaration, including, without limitation, the following: (i) all portions of Lots designated on the Plat as being subject to a 30’ shared driveway easement and all improvements thereon (collectively, the “**Driveway Easements**”), (ii) all portions of Lots designated on the Plat as being subject to a 5’ pedestrian access and storm drain easement and all improvements thereon, (iii) all sidewalks and walkways on Lots situated similarly to those designated on Exhibits “D-1” or “D-2”

as being the responsibility of the "Home Owners Association" (some of which may be within the Driveway Easements or the 5' pedestrian access and storm drain easement), (iv) all landscaping on Lots in the areas designated on Exhibit "E-1" or "E-2" as being the responsibility of the "Home Owners Association," and (v) all walls and columns situated similarly to those designated on Exhibits "C-1A" or "C-2A" as being the responsibility of the "Home Owners Association" or "H.O.A.," except for routine maintenance, repair, cleaning and painting of the side of such walls (but not the columns) designated on Exhibits "C-1B" or "C-2B" as being the responsibility of the "Home Owner Unit _____" or "H.O.____", which routine maintenance, repair, cleaning and painting shall be the responsibility of the Owner of the Lot; and (e) landscaping within dedicated rights-of-way adjacent to Lots in the Project except any portion which any governmental entity is maintaining or is obligated to maintain.

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

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

1.8 "Assessment Lien" means the lien created and imposed by Section 6.9.2 of this Declaration.

1.9 "Assessment Period" means the period set forth in Section 6.7 of this Declaration.

1.10 "Association" means The Cottages at Sierra Verde Community Association, an Arizona nonprofit corporation, and its successors and assigns.

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

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

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

1.14 "Common Area" means (a) Tract B shown on the Plat, and (b) any other land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

1.15 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves but does not include any expense to be paid by any Special Assessment to the extent such Special Assessment is paid.

1.16 "Declarant" means Engle Sierra Verde P4, LLC, a Delaware limited liability company, and any Person to whom it may expressly assign any or all of its rights as Declarant under this Declaration by an instrument recorded with the County Recorder of Maricopa County, Arizona.

1.17 **“Declaration”** means this Declaration of Covenants, Conditions, and Restrictions for the Cottages at Sierra Verde, as amended from time to time.

1.18 **“Designated Homebuilder”** means any homebuilder owning one or more Lots and designated as a Designated Homebuilder in an instrument executed and acknowledged by Declarant and recorded with the County Recorder of Maricopa County, Arizona.

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

1.20 **“First Mortgagee”** means the holder or beneficiary of any First Mortgage.

1.21 **“Improvement”** means any building, fence, wall, gazebo or other structure, any swimming pool, any playground or other recreational equipment, any road, driveway, or parking area or any tree, plant, shrub, planter, sculpture, monument or sign or any grass or other landscaping or hardscaping improvements of any type or kind, whether in the front, rear, or side yard of a Lot.

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

1.23 **“Lot”** means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat by Declarant and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot. The term “Lot” shall specifically include any lot appearing as a residential lot on the most current applicable master plan, preliminary plat, site plan or other map approved by Declarant of all or any portion of the Project for which no final plat has been recorded.

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

1.25 **“Master Association”** means the Sierra Verde Community Association, an Arizona non-profit corporation.

1.26 **“Master Association Documents”** means the Master Declaration and the Articles of Incorporation, Bylaws and Rules and Regulations of the Master Association, as each may be amended from time to time.

1.27 **“Master Common Area”** means the “Common Area” as defined in the Master Declaration.

1.28 **“Master Declaration”** means the Declaration of Covenants, Conditions and Restrictions for Sierra Verde, dated July 24, 2003, recorded July 24, 2003 at Recording No. 2003-0984966, records of Maricopa County, Arizona, as amended from time-to-time.

1.29 **“Member”** means any Person who is a Member of the Association.

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

1.31 **“Person”** means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.32 **“Plat”** means the Final Plat of “Sierra Verde Parcel 4” recorded at Book 721 of Maps, Page 45, in the records of the Maricopa County, Arizona Recorder’s Office, and all amendments, supplements, affidavits of correction and other modifications thereto.

1.33 **“Project”** or **“Property”** means the real property described on Exhibit “A” attached to this Declaration together with all Improvements located thereon.

1.34 **“Project Documents”** means this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Committee Rules and any Tract Declarations.

1.35 **“Purchaser”** means any Person, other than Declarant or a Designated Homebuilder, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to Declarant or a Designated Homebuilder for use as a model in connection with the sale or lease of other Lots (until such time as the lease terminates); or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of Declarant’s rights under this Declaration.

1.36 **“Recording”** means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and **“Recorded”** means having been so placed of public record.

1.37 **“Resident”** means each individual residing in any Residential Unit.

1.38 **“Residential Unit”** means any building, or portion of a building, situated upon a Lot and designed and intended (with the Lot) for independent ownership and for use and occupancy as a residence.

1.39 “Special Assessment” means any Assessment levied and assessed pursuant to Section 6.5, 6.5.1 or 7.5.1.7 of this Declaration.

1.40 “Visible From Neighboring Property” means, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any part of any other Lot or Common Area.

1.41 “Work” means any construction, erection, installation, addition, alteration, repair, change, replacement or other work.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 Property Subject to the Declaration. Declarant, as the Owner of the Property, intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of development and desire to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value and desirability of and which shall run with the Property. Declarant further declares that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, and their successors, successors in title and assigns and shall inure to the benefit of each Owner thereof. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and for his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, and his, her and 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 plan for the development, sale, lease and use of the Property and hereby evidences his, her or its agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, and his, her and its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association, easements and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with his, her or its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Master Declaration. In addition to this Declaration, all Lots are subject to the Master Declaration including, without limitation, all restrictions and approvals provided for and assessments payable thereunder. The Master Association may, but is not obligated to, delegate to the Association the power to collect, on behalf of the Master Association, any assessments or charges payable to the Master Association with respect to the Lots. Each Owner shall be a

“Member” (as defined in the Master Declaration) of the Master Association pursuant to and in accordance with the terms of the Master Declaration and shall remain a Member of the Master Association for so long as such Person continues to be an Owner. Each Owner will be obligated to pay assessments and other charges to the Master Association in accordance with the Master Association Documents. All Assessments and other charges due to the Association under this Declaration shall be in addition to the assessments and other charges payable to the Master Association pursuant to the Master Association Documents. All consents or approvals of the Board, Architectural Committee or Declarant required by this Declaration shall be in addition to any consents or approvals required under the terms of the Master Association Documents. In the event of any conflict or inconsistency between any term or provision of this Declaration and the Master Declaration, the term or provision of the Master Declaration shall supercede and control.

2.3 Master Common Areas. Each member of the Master Association and the occupants and lessees of any lot or unit subject to the Master Declaration shall have the right and privilege to use all Master Common Areas and all Owners and Residents of Residential Units shall have a non-exclusive right to use all Master Common Areas. An easement is hereby created over the Common Areas in favor of the Master Association and its agents, employees and contractors as may be necessary or appropriate for the Master Association any street lights on the Common Areas and for the purpose of exercising all rights of the Master Association and discharging its obligations under the Master Declaration.

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

ARTICLE 3

USE RESTRICTIONS

In addition to the restrictions contained in the Master Declaration, all Lots are subject to the restrictions set forth below. To the extent there is any conflict between a restriction contained herein and one in the Master Declaration, the more restrictive provision shall control.

3.1 Architectural Control.

3.1.1 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.2 No Improvement which would be Visible From Neighboring Property shall be constructed, erected, installed, placed or maintained on any Lot without the prior written approval of the Architectural Committee. No Work which in any way alters (a) the exterior appearance, including, but without limitation, the exterior color scheme of any part of a Lot, or (b) any Improvement located on a Lot, which in either case is Visible From Neighboring Property, shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for Improvements or Work 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 Work which the Owner desires to perform, any fee payable pursuant to Section 3.1.6 of this Declaration and any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the foregoing have been submitted to the Architectural Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Architectural Committee of any Work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Work subsequently submitted for approval.

3.1.3 In reviewing plans and specifications for any Work which is subject to approval by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural Committee may disapprove plans and specifications for any Work which is subject to approval by the Architectural Committee pursuant to this Section 3.1 if the Architectural Committee determines, in its sole and absolute discretion, that: (a) the proposed Work would violate any provision of this Declaration; (b) the proposed Work does not comply with an Architectural Committee Rule; (c) the proposed Work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (d) the proposed Work is not aesthetically acceptable; (e) the proposed Work would be detrimental to or adversely affect the appearance of the Project; or (f) the proposed Work is otherwise not in accord with the general plan of development for the Project.

3.1.4 Upon receipt of approval from the Architectural Committee for any Work, the Owner who had requested such approval shall proceed to perform, construct or do the Work approved by the Architectural Committee as soon as practicable and shall diligently pursue such Work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

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

3.1.6 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any Work pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.7 All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

3.1.8 Notwithstanding anything to the contrary, the provisions of this Section 3.1 do not apply to, and approval of the Architectural Committee shall not be required for, any Work done by, or on behalf of Declarant.

3.1.9 The approval required of the Architectural Committee pursuant to this Section 3.1 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.10 The approval by the Architectural Committee of any Work pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such Work or that such Work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.1.11 The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to: (a) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) repair any damage which might be caused to any Area of Association Responsibility as a result of such Work.

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

3.2 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Architectural Committee or required by the City of Surprise, Arizona, which containers shall be kept in the locations designated for same, except to make them available for collection and then only for the shortest time reasonably necessary to effect such collection and in the location designated for collection. Typical locations for the storage and collection of trash containers are shown on Exhibits "F-1" and "F-2" attached hereto. All rubbish, trash, or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot. The foregoing provisions shall not apply to construction bins used by a Designated Homebuilder during periods of construction by such Designated Homebuilder.

3.3 Vehicles and Parking.

3.3.1 As used in this Section 3.3, the term "Motor Vehicle" means, whether motorized or not, a car, van, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck, other motor vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, or boat trailer or other similar equipment.

3.3.2 Except as permitted by Subsections 3.3.3 or 3.3.4 or applicable Arizona law, no Motor Vehicle may be parked, kept or stored on any Lot, the Common Area, or any street within the Property without the prior written approval of the Architectural Committee.

3.3.3 Motor Vehicles owned or leased by an Owner, Lessee or other Resident of a Lot may be parked (a) on any street within the Property for no more than 24 consecutive hours, and

(b) on a Lot as long as same are parked in the garage of the Residential Unit. No Motor Vehicle of any kind may be stored on a Lot except in a garage; and no Motor Vehicle of any kind may be stored on the Common Area or any street within the Property. For purposes of this Subsection 3.3.3, a Motor Vehicle shall be deemed stored if it is covered by a cover, tarp or other material or parked within the Property for more than twenty-four (24) consecutive hours or for more than seventy-two (72) hours within any seven (7) day period.

3.3.4 Motor Vehicles owned by guests or invitees of an Owner, Lessee or other Resident may be parked on a street in the Project for a period not to exceed 72 hours within any seven (7) day period or such longer period as may be consented to in writing by the Architectural Committee.

3.3.5 The Board shall have the right and power to adopt rules and regulations governing the parking of Motor Vehicles on Lots and the Common Area and implementing the provisions of this Section 3.3. In the event of any conflict or inconsistency between the provisions of this Section 3.3 and the rules and regulations adopted by the Board, the more restrictive shall control.

3.3.6 No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot or Common Area or street within the Property in such a manner as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked on any Lot or Common Area or street within the Property in such a manner as to be Visible From Neighboring Property; provided, however, that this provision shall not apply to emergency vehicle repairs completed within seventy-two (72) hours.

3.3.7 Anything herein to the contrary notwithstanding, no Motor Vehicle shall be parked or stored in any Driveway Easement.

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

3.3.9 Anything herein to the contrary notwithstanding, this Section 3.3 shall not prohibit the reasonable parking on a Lot of vehicles belonging to the employees or agents of a Designated Homebuilder in connection with and during periods of construction by such Designated Homebuilder.

3.4 Garage Doors. Garage doors shall be kept closed at all times except as when in use.

3.5 Basketball Hoops and Backboards. No basketball backboard, hoop or similar structure or device shall be attached to a Residential Unit or other building or situated on a Lot at any time.

3.6 Declarant Exemption. Notwithstanding anything to the contrary, the provisions of Sections 3.1 to 3.5, inclusive, and 7.2 of this Declaration do not apply to Declarant.

3.7 Variances. The Architectural Committee may, at its option and in extenuating circumstances, grant waivers or variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (a) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete or otherwise inappropriate, and (b) that the activity permitted under the variance (i) will not have any substantial adverse affect on the Owners, Lessees and Residents of the Project, (ii) is consistent with the high quality of life intended for Residents of the Project, (iii) does not result in an unsafe, unsanitary or aesthetically displeasing condition, and (iv) does not result in a substantial departure from the common plan of development contemplated by this Declaration. In addition, all portions of the Property shall continue at all times to be subject to any and all applicable zoning laws and ordinances, provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control. A variance granted to an Owner by the Architectural Committee shall not set a precedent for such variance being granted to that Owner in the future or to any other Owner.

ARTICLE 4.

EASEMENTS

4.1 Owners' Easements of Enjoyment.

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

(a) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.11 of this Declaration.

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

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

4.1.2 Each Owner and Resident of a Lot, together with all persons residing at the Lot with such Owner or Resident, and their employees, agents, guests and invitees, whose access to his or her Lot is over access easements shown on the Plat shall have perpetual, non-exclusive easements for ingress and egress over, upon and across such portion(s) of any 30' shared driveway easement shown on the Plat and such portion(s) of any 5' pedestrian access and storm drain easement shown on the Plat as is necessary to gain access to such Owner's or Resident's Lot, which easements are appurtenant to such Lot. Each Lot is subject to all access and other easements shown on the Plat.

4.1.3 (a) Each Lot is hereby made subject to and there is hereby created a perpetual use and benefit easement (a "UBE") over a portion of the Lot for the benefit of the adjacent Lot. The Plat and Exhibits "B-1" and "B-2" attached hereto show the general, typical and approximate locations of the UBE's. The length and width of each UBE will be determined by the location of the Residential Unit constructed or to be constructed on the adjoining Lot, its setbacks and the placement of the side yard return walls. The initial location and dimensions of each UBE will be as shown on the building permit plans submitted to the City of Peoria for the construction of a Residential Unit on a Lot; provided, however, the final location and dimensions of each UBE will be determined by the as-built location of (a) the walls of the adjoining Residential Unit, and (b) the side yard return walls of the adjoining Residential Unit, although Declarant shall have no obligation to prepare, obtain or record any as-built surveys of the Lots. The effect of the UBE is to subject a portion of each Lot to an easement in favor of the adjacent Lot, and each Lot also benefits from a similar easement over portions of an adjacent Lot. Each middle Lot in each cluster of six (6) Lots (see Lots 2 and 5 on Exhibit "B-1", for example) is subject to and benefited by two (2) UBE's.

(b) When a Lot is benefited by a particular UBE, the Lot is referred to herein as a "Benefited Lot" with respect to such UBE. When a Lot is subject to a particular UBE in favor of another Lot, the Lot which is subject to such UBE is referred to herein as a "Burdened Lot" with respect to such UBE. The Benefited Lot and Burdened Lot with respect to each typical UBE are designated on Exhibits "B-1" and "B-2".

(c) The UBE benefiting Lots situated similarly to Lot 2 or Lot 5 and burdening Lots situated similarly to Lots 1 and 4 on Exhibit "B-1" shall be for purposes of a courtyard, patio, garden, back yard, utility and drainage purposes (a "Courtyard UBE"). The Owner of the Benefited Lot benefiting from a Courtyard UBE shall have the exclusive right to use the area subject to such easement except as set forth below. Landscaping (including flowers, plants, lawn and sprinklers) and patio decking may be installed, kept and maintained within the Courtyard UBE but the top surface of any patio decking must be at least six inches (6") below the top of the foundation of the Residential Unit on the Burdened Lot and no landscaping may be planted within three feet (3') of the exterior wall of the Residential Unit on the Burdened Lot. In no event shall a Courtyard UBE be used in such a manner as to damage the Residential Unit constructed on the Burdened Lot including, without limitation, the foundation of same. The Courtyard UBE may also be used to locate air conditioning equipment and readily movable outdoor furniture, portable barbecue equipment and other portable items. Except as provided below, the Owner of a Burdened Lot subject to a Courtyard UBE shall not use the Courtyard UBE or interfere with the use of the Courtyard UBE by the Owner of the adjacent Benefited Lot. The Owner of a Benefited Lot benefited by a Courtyard UBE shall be responsible for the upkeep

and repair of the Courtyard UBE, including the walls described in Section 7.5 below. Except as provided above, without the consent of the Architectural Committee, a Courtyard UBE shall not be used for (i) any permanent installation of any kind, including, but not limited to, a swimming pool, swimming pool heating or filtering equipment, spa or plumbing fixtures or equipment other than sprinklers, or (ii) the erection or maintenance of any structure which may impede or interfere with any necessary maintenance, repair or restoration of any wall. No use shall be made of a Courtyard UBE which will become an annoyance or nuisance to the Owner of the adjacent Burdened Lot. The Owner of a Benefited Lot shall not construct a fireplace, planter box, barbecue, wall, fence, fountain or other structure which is to attach or connect to the wall of the Residential Unit on a Burdened Lot. Without the prior written approval of the Architectural Committee, no landscaping, walls or other improvements shall be constructed within any Courtyard UBE before the Residential Unit on the adjoining Burdened Lot has been constructed.

(d) The grant of each Courtyard UBE is subject to the right of the Burdened Lot Owner to utilize the Courtyard UBE for (i) drainage from the roof of the Residential Unit constructed on the Burdened Lot onto the Courtyard UBE; (ii) maintenance, repair and replacement of any wall and roof eaves of the Residential Unit constructed on the Burdened Lot; and (iii) drainage over, across and upon the Courtyard UBE for water resulting from the normal use of the Burdened Lot. There is hereby granted by each Owner of a Benefited Lot benefited by a Courtyard UBE in favor of the Owner of the adjacent Burdened Lot burdened by the Courtyard UBE, an access easement over, upon and across the Benefited Lot for purposes of maintenance and repair by the Owner of the Burdened Lot of any wall such Owner is responsible for maintaining including the portion of the exterior wall of such Owner's Residential Unit bordering the Courtyard UBE. Except in the event of an emergency, prior to entering a Courtyard UBE or the Benefited Lot for permitted maintenance purposes, the Owner of the Burdened Lot shall notify the Owner of the Benefited Lot and shall schedule a mutually convenient time to perform said maintenance. The Owner of the Burdened Lot shall have no liability for damage to or removal of any improvement, decoration or landscaping within the Courtyard UBE which is necessarily occasioned by such repair, maintenance or restoration, but the Owner of the Burdened Lot shall use reasonable care to avoid damage to any furniture, fixtures or equipment and landscaping within the Courtyard UBE. Any improvements which are permitted to be constructed or installed in a Courtyard UBE must be constructed or installed in a manner that will not impede drainage from the Burdened Lot. Except as may be initially constructed by Declarant, no doors, windows or openings of any kind shall be constructed, kept or maintained in any portion of a wall of a Residential Unit which adjoins a Courtyard UBE.

(e) Anything herein to the contrary notwithstanding, the Owner of a Benefited Lot benefited by a Courtyard UBE shall not construct any Improvements on, in or about the Courtyard UBE without the approval of the Architectural Committee. The Benefited Lot Owner shall also obtain whatever permits or other consents may be required by law to construct such Improvements.

(f) The UBE benefiting Lots situated similarly to Lots 1 and 4 on Exhibit "B-1" and burdening Lots situated similarly to Lots 2 and 5 on Exhibit "B-1" shall be exclusively for purposes of trash container storage, drainage and the placement of utilities, air conditioning equipment and electric and gas meters to serve the Benefited Lot (a "Trash/Utility UBE"). No Improvements or items of personal property (other than trash containers in the

locations permitted hereunder) shall be placed within a Trash/Utility UBE. Except as provided below, the Owner of a Burdened Lot burdened by a Trash/Utility UBE shall not use the Trash/Utility UBE or interfere with the use of the Trash/Utility UBE by the Owner of the adjacent Benefited Lot. The Owner of a Benefited Lot benefited by a Trash/Utility UBE shall be responsible for the upkeep and repair of the Trash/Utility UBE including the walls described in Section 7.5 below. No use shall be made of a Trash/Utility UBE which will become an annoyance or nuisance to the Owner of the adjacent Burdened Lot.

(g) The grant of each Trash/Utility UBE is subject to the right of the Burdened Lot Owner to utilize the Trash/Utility UBE for (i) drainage from the roof of the Residential Unit constructed on the Burdened Lot onto the Trash/Utility UBE; (ii) maintenance, repair and replacement of the wall and roof eaves of the Residential Unit constructed on the Burdened Lot; and (iii) drainage over, across and upon the Trash/Utility UBE for water resulting from the normal use of the Burdened Lot. There is hereby granted by each Owner of a Benefited Lot benefited by a Trash/Utility UBE in favor of the Owner of the adjacent Burdened Lot burdened by the Trash/Utility UBE, an access easement over, upon and across the Benefited Lot for purposes of maintenance and repair by the Owner of the Burdened Lot of any wall such Owner is responsible for maintaining including the portion of the exterior wall of such Owner's Residential Unit bordering the Trash/Utility UBE. Except in the event of an emergency, prior to entering a Trash/Utility UBE or the Benefited Lot for permitted maintenance purposes, the Owner of the Burdened Lot shall notify the Owner of the Benefited Lot and shall schedule a mutually convenient time to perform said maintenance. No doors, windows or openings of any kind shall be constructed, kept or maintained in any portion of a wall of a Residential Unit which adjoins a Trash/Utility UBE.

(h) Each Owner of a Benefited Lot benefited by a Courtyard UBE or a Trash/Utility UBE shall obtain and maintain in force at all times a comprehensive general liability insurance policy insuring against liability incident to the use and occupancy of the Courtyard UBE or Trash/Utility UBE by the Owner of the Benefited Lot and that Owner's Residents, family members, invitees, employees, agents and contractors. Said policy shall designate as additional named insured(s) the Owner of the adjoining Burdened Lot. The limit of such insurance shall be not less than Three Hundred Thousand Dollars (\$300,000.00) covering all claims for death of or injury to any person and/or property damage in any single occurrence, but the Board may from time to time, in its discretion, by written notice to all applicable Owners, require that the amount of such insurance be increased.

(i) The Owner of a Burdened Lot subject to a Courtyard UBE or a Trash/Utility UBE shall not be liable for any loss, cost, damage or expense arising out of any accident or other occurrence causing death of or injury to any person and/or damage to any property (including without limitation, the Residential Unit located on the Burdened Lot) unless due directly to the Burdened Lot Owner's act or failure to act, and the Owner of the adjoining Benefited Lot benefited by the Courtyard UBE or Trash/Utility UBE agrees to indemnify and hold harmless the Owner of the adjoining Burdened Lot, its heirs, successors and assigns for, from and against each and every loss, cost, damage and expense, including attorneys' fees, arising from such accident and occurrence.

(j) Each UBE other than a Courtyard UBE or a Trash/Utility UBE (an "Access UBE") shall be exclusively for purposes of access, drainage, and the placement of utilities, air conditioning equipment and electric and gas meters to serve the Benefited Lot. No Improvements or items of personal property (other than trash containers belonging to the Owner of the Burdened Lot) shall be placed within an Access UBE. The Owner of a Burdened Lot burdened by an Access UBE shall have the right to use the Access UBE for any purpose(s) not inconsistent with the Access UBE, including, without limitation, storage of trash containers, drainage and the placement of utilities, air conditioning equipment and electric and gas meters to serve the Burdened Lot; provided, however, the Owner of the Burdened Lot shall not interfere with the use of the Access UBE by the Owner of the adjacent Benefited Lot. The Owner of the Burdened Lot subject to an Access UBE shall be responsible for the upkeep and repair of the Access UBE including the walls described in Section 7.5 below. An Access UBE shall be covered by any liability insurance policy insuring the remainder of the Burdened Lot.

(k) Each UBE shall be appurtenant to the applicable Benefited Lot, shall run with the ownership of the applicable Burdened Lot and shall inure to the benefit of the Owner of the applicable Benefited Lot, its heirs, successors and assigns. The rights and obligations of the Owner of the applicable Burdened Lot shall run with the ownership of the applicable Burdened Lot.

(l) Each Owner of a Lot shall have any and all rights and easements necessary to allow such Owner to maintain any UBE or walls surrounding same that such Owner is responsible for maintaining.

(m) The Association may, from time to time, adopt rules and regulations governing UBEs consistent with the provisions of this Section 4.1.3. Notwithstanding any provisions of this Declaration to the contrary and notwithstanding any provision of applicable law regarding the enforcement of this Declaration by Declarant or the Association, the terms and provisions of this Section 4.1.3 shall not create, impose or imply any duty or obligation of either Declarant or the Association to enforce or compel compliance with the provisions of this Section 4.1.3 by any Owner or group of Owners. Any Owner may seek to enforce or compel compliance with the provisions of this Section 4.1.3 as its individual power or right. Declarant or the Association, as applicable, may enforce or compel compliance with the terms and provisions of this Section 4.1.3 without any obligation to do so.

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

4.3 Declarant's Use for Sales, Construction and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices or trailers (temporary or

otherwise), construction and management offices or trailers (temporary or otherwise) and models and parking areas related to same throughout the Project including on the Common Area or Lots owned by Declarant, in such number, of such size and in such locations as Declarant deems appropriate, and to maintain one or more advertising, identification or directional signs on the Common Area or on Lots owned by Declarant while Declarant is selling Lots. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control. Declarant's rights under this Section 4.3 can be assigned on an exclusive or non-exclusive basis to any Designated Homebuilder, provided, however, any assignment may be qualified in any manner Declarant deems appropriate in its sole and absolute discretion.

4.4 Declarant's Easements. Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct and maintain all Improvements Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots of which Declarant is the Owner for construction or renovation and related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control. Declarant's rights under this Section 4.4 can be assigned on an exclusive or non-exclusive basis to any Designated Homebuilder, provided, however, any assignment may be qualified in any manner Declarant deems appropriate in its sole and absolute discretion.

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

4.5.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.5.2 For use, inspection, maintenance, repair and replacement of the Areas of Association Responsibility, including, without limitation, all 30' shared driveway easements and 5' pedestrian access and storm drain easements and all improvements thereto and for all landscaping on Lots other than landscaping to be maintained by the Owner of the Lot;

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

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

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

4.5.6 For construction, operation and maintenance of a storm drain system.

Any Person exercising any of the foregoing rights shall not be deemed guilty of trespass by reason of entering a Lot.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot.

5.3 The Association Rules. The Board may (but is under no obligation to), from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (b) minimum standards for the maintenance and landscaping of Lots; or (c) restrictions on the use of Lots. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration, subject to the provision on conflict set forth in Section 9.5.

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

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

5.6 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as he, she or it is no longer an Owner for any reason, at which time his, her or its membership in the Association shall automatically cease.

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

(a) **Class A.** Class A Members are all Owners, with the exception of Declarant and any Designated Homebuilders until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each Lot with respect to which it is the Owner. Upon the termination of the Class B membership, Declarant and any Designated Homebuilder shall be a Class A Member so long as Declarant and any Designated Homebuilders own any Lot.

(b) **Class B.** The Class B Members shall be Declarant and each Designated Homebuilder, if any. The Class B Members shall each be entitled to three (3) votes for each Lot with respect to which such Member is the Owner. The Class B membership shall cease and be converted to Class A membership on the earlier of (i) the date on which the votes entitled to be cast by the Class A Members equals or exceeds the total votes entitled to be cast by all the Class B Members; (ii) the date which is seven (7) years after the recording of this Declaration; or (iii) when all Class B Members notify the Association in writing that they relinquish their Class B memberships.

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

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

5.10 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as Declarant is the Owner of any Lot, Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as Declarant is no longer the Owner of any Lot, the members of the Architectural Committee

shall be appointed by the Board. Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event Declarant may require, for so long as Declarant is the Owner of any Lot, that specified actions of the Architectural Committee, as described in a recorded instrument executed by Declarant be approved by Declarant before they become effective. The Architectural Committee may (but is under no obligation to) adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (a) the size of Residential Units; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (c) placement of Residential Units and other buildings; (d) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; and (g) perimeter and screen wall design and appearance. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

5.11 Conveyance or Encumbrance of Common Area. Except for the initial transfer or dedication of Common Areas to the Association, the Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Members of the Association, if any, and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Association.

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

5.13 Legal Proceedings. Except for any legal proceedings initiated to (a) enforce any use restrictions, easement rights or nonmonetary obligations of Owners (other than legal proceedings against Declarant or a Designated Homebuilder) expressly set out in this Declaration; (b) enforce any Association Rules (other than legal proceedings against Declarant or a Designated Homebuilder); (c) enforce any Architectural Committee Rules (other than legal proceedings against Declarant or a Designated Homebuilder); (d) collect any unpaid assessments levied pursuant to this Declaration; or (e) pursue or resolve any "small claims" (i.e., matters in which the amount in controversy could not reasonably be expected to exceed \$25,000.00), the Association (and Board) shall not initiate legal proceedings or join as a plaintiff in legal proceedings without the prior approval of Owners representing seventy-five percent (75%) or more of the votes in the Association. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be funded by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds or use monies collected for other specific Association obligations for such purpose. With respect to matters involving property or improvements to property, the Association (and the Board) additionally shall not initiate legal proceedings or pay for legal proceedings or join as a plaintiff in legal proceedings unless (1) such property or improvements

is owned by the Association; (2) the Association has the maintenance responsibility for such property or improvements pursuant to this Declaration; or (3) the Owner who owns such property or improvements consents in writing to the Association initiating or joining such legal proceeding. Nothing in this section shall preclude the Board from incurring expenses for legal advice in complying with statutes or regulations related to the operation of the Association or otherwise in the normal course of operating the Association when legal proceedings are not involved. In any event, no action may be filed by any Owner to enforce the Project Documents and no action may be filed by the Association in any court against Declarant or any Designated Homebuilder, until the Association, following written notice of such meeting, meets as an Association, obtains the affirmative vote of Owners representing ninety percent (90%) or more of the votes in the Association to file such an action, and provides Declarant or Designated Homebuilder written notice of such vote and at least 30 days following such written notice to cure any claimed failure, breach, or other default prior to the filing of any such action. Notwithstanding anything herein to the contrary, this section may not be modified or amended without the prior approval of Owners representing ninety percent (90%) or more of the votes in the Association.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

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

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and other expenses to perform the Association duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess against each Lot an Annual Assessment. The total amount to be assessed against the Lots as an Annual Assessment shall be the amount which is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses and all other expenses to perform the Association's duties and obligations under the Project Documents, including the establishment of

replacement and maintenance reserves, taking into account other sources of funds available to the Association (the "Annual Budget").

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

6.2.3 The maximum Annual Assessment for each fiscal year of the Association shall be as follows:

(a) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum Annual Assessment for each Lot shall be \$70.00 per month for a total of \$840.00. Said maximum Annual Assessment shall continue to increase as set forth in Section 6.2.3(b) of this Declaration, whether or not said maximum is actually assessed.

(b) For the Assessment Period beginning January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, and for any subsequent Assessment Period, the Board may, without a vote of the Members, increase the maximum Annual Assessment by the greater of (i) 10% of the maximum Annual Assessment for the immediately preceding Assessment Period or (ii) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each Assessment Period for the subsequent Assessment Period in accordance with the following formula:

X = Consumer Price Index for July of the calendar year immediately preceding the calendar year which immediately precedes the calendar year for which the maximum Annual Assessments is to be determined.

Y = Consumer Price Index for July of the calendar year immediately preceding the calendar year for which the maximum Annual Assessment is to be determined.

$\frac{Y-X}{X}$ multiplied by the maximum Annual Assessment for the then current calendar year equals the amount by which the maximum Annual Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the maximum Annual Assessment permitted under this Section 6.2 shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such substitute index is recommended by the United States government, the index selected by the Board.

(c) For the Assessment Period beginning on January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, and for any subsequent Assessment Period, the maximum Annual Assessment may be increased with the approval of the majority of the Members of the Association by an amount greater than the maximum increase allowed pursuant to (b) above but in no event greater than the amount permitted by law.

6.3 Rate of Assessment. The amount of the Annual Assessment shall be the same for each Lot other than Lots with respect to which Declarant or any Designated Homebuilder is the Owner, for which the amount of the Annual Assessment shall be determined as provided in Section 6.4.

6.4 Obligation of Class B Members. So long as there is a Class B membership in the Association, the Class B Members shall have no obligation to pay any Assessments; however, each Class B Member, on a pro rata basis determined by the respective number of Lots with respect to which each Class B Member is the Owner, shall contribute to the Association an amount equal to the difference between (a) the sum of the actual expenses of the Association as permitted hereunder and the budgeted reserves reasonably established by the management company retained by the Association and (b) the total amount of the Annual Assessment actually collected from Class A members.

6.5 Special Assessments. The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area or Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment (other than those contemplated by Section 7.5.1.7) shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

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

6.7 Commencement Date of Assessment Obligation. All Lots within the real property described on Exhibit "A" to this Declaration shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

6.8 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments, if any, shall be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than fifteen (15) days written notice prior to such foreclosure that the Assessment or any installation thereof is more than fifteen (15) days in arrears and of the amount owing. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

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

6.9.1 Any Assessment (or any installment of an Assessment) not paid within fifteen (15) days after the Assessment (or the installment of the Assessment) first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum or such other rate of interest as may be set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due. Notwithstanding the foregoing, or anything herein to the contrary, charges for the late payment of Assessments shall not exceed the maximum amount allowed by law.

6.9.2 The Association shall have a lien (an "Assessment Lien") on each Lot for (and the following shall be enforceable as Assessments): (a) all Assessments levied against the Lot; (b) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; and (c) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments due to the Association by the Owner of a Lot, whether or not suit is filed by the Association. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within fifteen (15) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

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

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

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

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

6.9.7 Notwithstanding anything herein to the contrary, the Association shall have a lien for (a) any fines levied against the Owner of the Lot; (b) any amounts payable to the Association pursuant to Section 7.3 or 7.4; (c) any amounts payable to the Association which are not enforceable as assessments as provided by Arizona law; and (d) all attorneys' fees, court costs, title report fees and other costs and fees incurred in attempting to collect such amounts after entry of a judgment in a civil suit and the recording of that judgment in the office of the county recorder as provided by law.

6.10 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person approved in writing by the Member, the Association, within fifteen (15) days after receipt of the request, shall issue to such Member or other Person a written certificate stating that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments and other amounts have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such

date. The Association may make a reasonable charge for the issuance of such certificates, which charge must be paid at the time the request for any such certificate is made.

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

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

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

6.14 Transfer Fee. Each Person who purchases a Lot from a Person other than Declarant or a Designated Homebuilder shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board, but not to exceed an amount equal to one-half (1/2) of the annual Assessments then payable with respect to such Lot.

ARTICLE 7

MAINTENANCE

7.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association

Responsibility, and all Improvements located thereon. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board and the Architectural Committee. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility, and the Improvements located thereon.

7.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing and replacing the (a) Owner's Lot except for any portion of the Lot which is an Area of Association Responsibility, (b) all buildings, Residential Units (including, without limitation, the exterior thereof), landscaping or other Improvements situated thereon, except for any portion thereof which is an Area of Association Responsibility, and (c) all walls or portions thereof for which the Owner is responsible according to Section 7.5.2 or 7.5.3 below. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. An Owner shall be required to complete landscaping within areas of the Lot fully enclosed by walls or nearly fully enclosed by walls (e.g., see the front and side yards of Lots 2 and 5 on Exhibit "E-1" which are enclosed by walls except where the front walkway cuts through) within ninety (90) days of the earlier of (i) the closing of a purchase by an Owner other than Declarant or a Designated Homebuilder of a Lot improved with a residence, or (ii) Owner's occupancy of the residence on a Lot. All grass, hedges, shrubs, vines and plants of any type on a Lot that are not within the Areas of Association Responsibility shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass that are not within the Areas of Association Responsibility which die shall be promptly removed and replaced with living foliage of like kind or other foliage on an approved plant list, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or from streets within the Project.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner or the Owner's family, lessees, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and subject to enforcement as provided by law.

7.4 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project (other than as a result of and during any period of construction by Declarant or a Designated Homebuilder), in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen (15) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken (including, without limitation, having the Association perform any maintenance obligations not being properly

performed by the Owner) and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.5 Walls.

7.5.1 Each wall or fence which is located between two Lots shall constitute a shared wall and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding shared walls or boundary walls shall apply. Typical locations of shared walls are shown on Exhibits "C-1A" and "C-1B".

7.5.1.1 The Owners of contiguous Lots who have a shared wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

7.5.1.2 In the event that any shared wall is damaged or destroyed through the act of an Owner or the Owner's agents, lessees, licensees, guests or family members, it shall be the obligation of such Owner to rebuild and repair the shared wall without cost to the other Owner or Owners.

7.5.1.3 In the event any shared wall is damaged or destroyed by some cause other than the act of an Owner or the Owner's agents, lessees, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), it shall be the joint obligation of all Owners whose Lots adjoin such shared wall to rebuild and repair such wall, with the expense to be divided among the Owners in accordance with the frontage of their Lot on the shared wall.

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

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

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

7.5.1.7 In the event adjoining Owners cannot agree on issues involving the maintenance, repair or rebuilding of, or other matters relating to, a shared wall, the Board shall have the right, but not the obligation, to resolve the disagreement and, in connection therewith, to levy a Special Assessment against an Owner for the Owner's required contribution to the cost of such maintenance, repair, rebuilding or other matter.

7.5.1.8 Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any shared wall without the prior written consent of the Board.

7.5.1.9 Each Owner shall permit the Owners of adjoining Lots, or their representatives, when reasonably required, to enter his Lot for the purpose of repairing or maintaining a shared wall, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this Section shall not be deemed guilty of trespass by reason of such entry.

7.5.1.10 Surfaces of shared walls which are generally accessible or viewable from only the adjoining Lot may be planted against, painted, maintained and used by the adjoining Owners. If such surfaces are viewable from locations other than the adjoining Lot, the color scheme shall not be changed without the prior written consent of the Architectural Committee.

7.5.2 With respect to a wall which borders a Common Area or dedicated street, an Owner with a Lot adjacent to same shall be responsible for routine maintenance, repair, cleaning and painting of the side of such wall facing the Owner's Lot; provided, however, that all wrought iron portions of such wall shall remain an Area of Association Responsibility.

7.5.3 Exhibits "C-1A" and "C-1B" designate who is responsible for maintenance of walls on similarly situated Lots in the Project. For walls, both sides of which are to be maintained by the Lot Owner, *i.e.*, the "Home Owner Unit ____" or "H.O.____," according to Exhibit "C-1B", the Lot Owner is responsible for all maintenance, repair, replacement and rebuilding of such walls. Any such repair, replacement and rebuilding shall be subject to the approval of the Architectural Committee as contemplated by Section 3.1. For walls, one side of which is to be maintained by the Lot Owner, according to Exhibit "C-1B" and the other side of which is to be maintained by the Association, *i.e.*, the "Home Owners Association" or "H.O.A.," according to Exhibit "C-1A", the Association is responsible for all maintenance, repair, replacement and rebuilding of such walls and columns; provided that the Lot Owner designated on the applicable exhibit is responsible for routine maintenance, repair, cleaning and painting of the side of such walls (but not the columns) designated on the applicable exhibit as being the responsibility of such Lot Owner.

7.5.4 Anything to the contrary notwithstanding, each Lot Owner is responsible for the maintenance, repair, replacement and rebuilding of all exterior walls of any structure situated on the Lot, subject to the approval of the Architectural Committee as contemplated by Section 3.1.

7.5.5 Any Designated Homebuilder who constructs a common boundary wall between his Lots and the Lots of another Designated Homebuilder shall be entitled to pro rata reimbursement for the costs thereof from the adjoining Designated Homebuilder or Designated Homebuilders. The Designated Homebuilder which constructs the common boundary wall shall provide written notice of the costs of the construction of the boundary wall along with reasonable documentation supporting the costs and a statement for the amount due from the adjoining Designated Homebuilder or Designated Homebuilders for reimbursement. If the adjoining Designated Homebuilder or Designated Homebuilders dispute the amount asserted due to the Designated Homebuilder which constructed the common boundary wall, the adjoining Designated Homebuilder or Designated Homebuilders shall provide written notice on or before

ten (10) days from the date of the written notice from the Designated Homebuilder which constructed the common boundary wall providing reasonable detail of the nature of the dispute to the Designated Homebuilder which constructed the common boundary wall and to the Board. The Board shall decide the dispute and its decision shall be final and enforceable.

ARTICLE 8

INSURANCE

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

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

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

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

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

8.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (a) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (b) no act or omission by any Owner will void the policy or be a condition to recovery on the policy; (c) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (d) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; and (e) a statement of the name of the insured as the Association.

8.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon

request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association.

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

8.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

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

ARTICLE 9

GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or by any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Board shall have the power to impose reasonable monetary penalties (not in excess of the maximum amount allowed by

law) against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or a Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

9.2 Term; Method of Termination. This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if but only if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. This Section 9.2 shall not obligate or be construed to obligate Declarant or its respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, or any provision hereof, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof.

9.3 Amendments.

9.3.1 Except for amendments made pursuant to Section 9.3.2 or 9.3.4 of this Declaration, the Declaration may be amended at any time by but only by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots and, to the extent required by Section 9.3.3, Declarant.

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

9.3.3 Notwithstanding anything herein to the contrary, so long as Declarant or a Designated Homebuilder is the Owner of any Lot, any amendment to this Declaration must be approved in writing by Declarant.

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

9.3.5 So long as Declarant and/or any Designated Homebuilders are the Owners of in the aggregate more than seventy-five percent (75%) of the Lots subject to this Declaration, any amendment to this Declaration shall be signed by Declarant and recorded in the records of Maricopa County, Arizona. At any time Declarant and any Designated Homebuilders are not the Owners of

at least seventy-five percent (75%) of the Lots subject to this Declaration, any amendment approved pursuant to Section 9.3.1 of this Declaration or by the Board pursuant to Section 9.3.2 or 9.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by Declarant pursuant to Section 9.3.2 or 9.3.4 of this Declaration shall be signed by Declarant and recorded with the County Recorder of Maricopa County, Arizona. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

9.4 Rights of First Mortgagees.

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

9.4.2 No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot in addition to all other approvals required hereunder or by applicable law.

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

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

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

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

9.7 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

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

9.9 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner, Lessee or Resident of any provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Project Documents; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner, Lessee and Resident, and any subsequent purchaser of the Lot that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

9.10 Laws, Ordinances and Regulations.

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

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

9.11 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions, and restrictions herein set

forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any such instrument and the grantee-Owner's heirs, executors, administrators, personal representatives, successors and assignees.

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

9.13 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

9.14 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or Lots caused by the Owners' negligence or intentional acts.

ARTICLE 10

RESOLUTION OF DISPUTES REGARDING DEVELOPMENT AND CONSTRUCTION MATTERS

It is the intent of Declarant that all disputes and claims regarding Alleged Defects (as defined below) be resolved amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, the Board, Declarant, all Builders (as defined below) and all Owners shall be bound by the following provisions, claim resolution procedures and limitations:

10.1 Limited Warranty. Declarant presently intends, but shall not have any obligation whatsoever, that Declarant or other homebuilder (each which shall be collectively referred to in this ARTICLE 10 as a "**Builder**") shall extend to every original Purchaser who purchases a Residential Unit in the Project, a Home Builder's Limited Warranty, PWC Form 117 (the "**Limited Warranty**") which is administered by Professional Warranty Service Corporation, P. O. Box 800, Annandale, Virginia 22003-0800. Every such original Purchaser and every successive Owner of such original Purchaser's Residential Unit or Lot shall be bound by and a beneficiary of the Limited Warranty (but only to the extent the Limited Warranty is actually issued and in effect at the time of the particular claim and with respect to the particular Residential Unit, Improvement or Lot at issue). Notwithstanding any other provision of this Declaration, the provisions of the Limited Warranty, including, without limitation, the binding arbitration procedures and its limitation of statutory and common law remedies described therein, shall control with respect to every dispute with a Builder related to or arising out of the construction of a Residential Unit or any Improvement on a Lot. SAID LIMITED WARRANTY, WHEN ISSUED, SHALL BE THE ONLY WARRANTY, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY

IMPLIED WARRANTY OF CONDITION, GOOD AND WORKMANLIKE MANNER, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND NEGATED BY BUILDER. This Section shall not be amended without the written consent of Declarant.

10.2 Common Area Warranty. Declarant presently intends, but shall not have any obligation whatsoever, to extend to the Association a Common Area Builder's Limited Warranty (the "**Common Area Warranty**") for all or a portion of the Common Area in the Project that is conveyed by Declarant to the Association. If Declarant extends a Common Area Warranty to the Association, a copy of the form of the Common Area Warranty issued for the Common Area (or portions thereof) will be available from Professional Warranty Service Corporation, P. O. Box 800, Annandale, Virginia 22003-0800. To the extent Declarant conveys Common Area to the Association, the Association shall be bound by and a beneficiary of the Common Area Warranty (but only to the extent a Common Area Warranty is actually issued and in effect at the time of the particular claim and with respect to the particular portion of the Common Area at issue). Notwithstanding any other provision of this Declaration (including the attached Exhibits), the provisions of the Common Area Warranty, including, without limitation, its binding arbitration procedures and its limitation of statutory and common law remedies as described therein, shall control with respect to every dispute with Declarant, its agents, contractors, subcontractors, employees, successors or assigns related to or arising out of the Common Area. SAID COMMON AREA WARRANTY, WHEN ISSUED, SHALL BE THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY DECLARANT WITH REGARD TO THE COMMON AREA, AND ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF CONDITION, GOOD AND WORKMANLIKE MANNER, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND NEGATED BY DECLARANT. This Section shall not be amended without the written consent of Declarant.

10.3 Limitation on Remedies. In the event that the Association, the Board or any Owner (each referred to in this Section as a "**Claimant**") claims, contends or alleges that any portion of a Residential Unit, Common Area or any other Improvement constructed within the Project is defective or that one or more of the Builders or their respective agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "**Alleged Defect**"), Claimant shall first notify the Builder which constructed the Residential Unit, Common Area or any other Improvement which is the subject of the Alleged Defect, in writing within thirty (30) days of discovery of the Alleged Defect, and of the specific nature of such Alleged Defect ("**Notice of Alleged Defect**").

10.4 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by a Builder of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Builder, such Builder shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Residential Unit, Lot, Common Area or other part of the Project as may be necessary or appropriate for the purposes of inspecting and/or conducting testing and, if deemed necessary by the Builder, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs

and/or replacements, Builder shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances to repair or correct any such Alleged Defect.

10.5 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this ARTICLE 10 shall be construed to impose any obligation on Builders to inspect, test, repair or replace any item or Alleged Defect for which Builders are not otherwise obligated under any applicable rules, regulations and guidelines imposed by the Arizona Registrar of Contractors (the "**Applicable Laws**") or contract. Specifically, a Builder's obligation to repair and/or replace an Alleged Defect shall expire on the applicable date which the Applicable Laws state or impose as the date(s) through which a contractor is responsible for such Alleged Defect. The right of Builders to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Builders.

10.6 Tolling of Statutes of Limitations. In no event shall any statutes of limitations be tolled during the period in which a Builder conducts any inspection or testing of any Alleged Defects.

10.7 Binding Arbitration. In the event of a dispute between or among a Builder, its contractors, subcontractors or brokers or their agents or employees (a "**Constructing Party**"), on the one hand, and any Owner or the Association, on the other hand, regarding any controversy or claim between the parties, including any claim based on contract, tort, statute or any other theory of liability arising out of or relating to the design or construction of the Project, any Residential Unit, Improvement, Common Area or Alleged Defect, such dispute shall be submitted to and resolved by binding arbitration conducted in accordance with the Limited Warranty or Common Area Warranty, as the case may be, but only to the extent the Limited Warranty or Common Area Warranty is actually issued and in effect at the time of the particular claim and with respect to the particular Residential Unit, Common Area or Lot at issue. All other disputes regarding the rights or responsibilities under this Declaration or arising out of or relating to the design or construction of the Project, any Residential Unit, Improvement, Common Area or Alleged Defect in the event a Limited Warranty or Common Area Warranty has not been issued or is not in effect, shall be submitted to and resolved by binding arbitration conducted in accordance with the following rules:

10.7.1 Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "**AAA Rules**").

10.7.2 Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. §12-1501 et seq. In the event of a conflict between the AAA Rules and this Section, the provisions of this Section shall govern.

10.7.3 Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall

appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection is referred to in this Section as the "Arbitrator".

10.7.4 Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

10.7.5 Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in subsection Section 10.7.3 above.

10.7.6 Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's standard hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

10.7.7 Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Guidelines, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious and cost-effective conduct of the proceeding.

10.7.8 Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

10.7.9 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties and the parties attorneys and expert witnesses (where applicable to their testimony), except that, upon the prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

10.7.10 Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

10.7.11 Final Award. The Arbitrator shall promptly, within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree, determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

10.7.12 Statute of Limitations. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section 10.7 shall apply to the commencement of arbitration proceedings under this Section 10.7. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

10.8 As-Built Conditions. Various engineering and architectural plans pertaining to the Project, including, but not limited to, plats, drawings, subdivision maps, grading plans, plot plans, improvement plans and building plans (collectively, the "Plans"), contain dimensions regarding certain aspects of the Lots, Residential Units, Common Areas and other parts and aspects of the Project. By accepting a deed to a Lot, each Owner shall be deemed to have acknowledged and agreed that (a) if there is a discrepancy between the Plans and the actual as-built conditions of any Residential Unit, Common Area or any other Improvement within the Project, the as-built conditions will control and be deemed to be accepted as-is by the Owner of the Residential Unit; (b) the usable or buildable area, location and configuration of the Residential Units, Common Areas and any other Improvements located within the Project may deviate from the Plans or from any other display or configuration related thereto; (c) the location, size, height and composition of all walls and fences to be constructed on or as part of a Residential Unit or adjacent thereto shall be determined by Builders in their sole and absolute discretion. Despite the Plans or any other materials that may exist, neither Declarant nor any other Builder shall be deemed to have made any representations, warranties or assurances with respect to any such matters or with respect to the size, height, location or composition of any wall or fence to be constructed on or adjacent to any Residential Units; and (d) each Owner waives the right to make any demands of or claims against Builders as a result of any discrepancies between the Plans any actual as-built conditions on any Residential Unit.

10.9 Limitation on Declarant's and Builders' Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner, and each other person, by acquiring any interest in the Project, acknowledges and agrees, that neither Declarant nor any other Builder (including, but not limited

to, any assignee of the interest of a Declarant or a Builder) nor any partner, shareholder, officer, director, employee or affiliate of a Declarant or a Builder shall have any personal liability to the Association, or to any Owner, Member or other person, arising under or in connection with this Declaration or resulting from any action or failure to act with respect to this Declaration, the Association except, in the case of Declarant and Builders (or their assignees), to the extent of their respective interests in the Property; and, in the event of a judgment against any such parties no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor. Declarant, Builder and the Association shall not be liable for any theft, vandalism, disturbance, accident, unauthorized entrance or other similar occurrence or breach of the peace or security which may occur or take place within the Project.

10.10 Declarant's Option to Litigate. Subject to the provisions of Section 10.11 below, Declarant shall, in its sole and absolute discretion, have the right to elect to waive the Binding Arbitration provisions set forth in Section 10.7 and require that any Claim be resolved in a court of law rather than by Binding Arbitration. Declarant shall make such election on or before the fifteenth (15th) day of its receipt of notice from a Claimant of Claimant's decision to submit the Claim to binding arbitration.

10.11 Limited Warranty/Common Area Warranty Agreement Provisions Control. Notwithstanding anything in this Declaration to the contrary, in the event of a dispute between or among a Constructing Party and any Owner or the Association with respect to construction defects in any Residential Unit, Improvement, or Common Areas that are covered by a Limited Warranty or Common Area Warranty, the dispute resolution processes and procedures, including notice requirements set forth in such warranty agreement shall control and supercede the dispute resolution processes and procedures set forth in this ARTICLE 10.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 10 AND WAIVES THE RIGHT TO PURSUE DECLARANT, ITS CONTRACTORS, SUBCONTRACTORS, AGENTS OR EMPLOYEES OR ANY OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 10. THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGES THAT, BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 10, IT IS GIVING UP ITS RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION AND EACH OWNER FURTHER WAIVES ITS RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT IT IS GIVING UP ANY RIGHTS IT MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

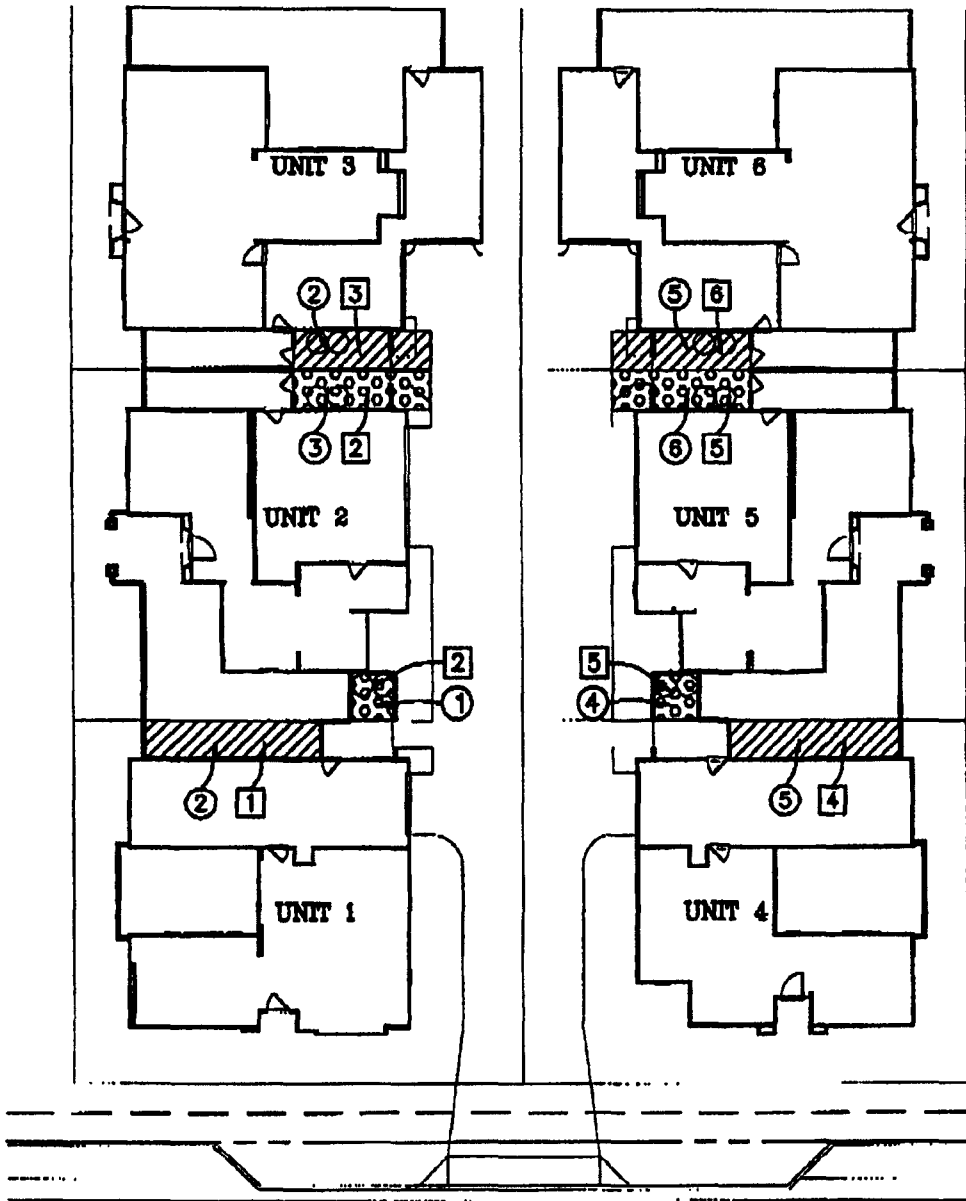
EXHIBIT "A"

DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

Lots 1 through 147, inclusive, and Tract B, of Sierra Verde Parcel 4, according to the Final Plat of Sierra Verde Parcel 4 recorded at Book 721 of Maps, Page 45, in the Official Records of Maricopa County, Arizona.

EXHIBIT B-1

UBE LOCATIONS (6-PACK)



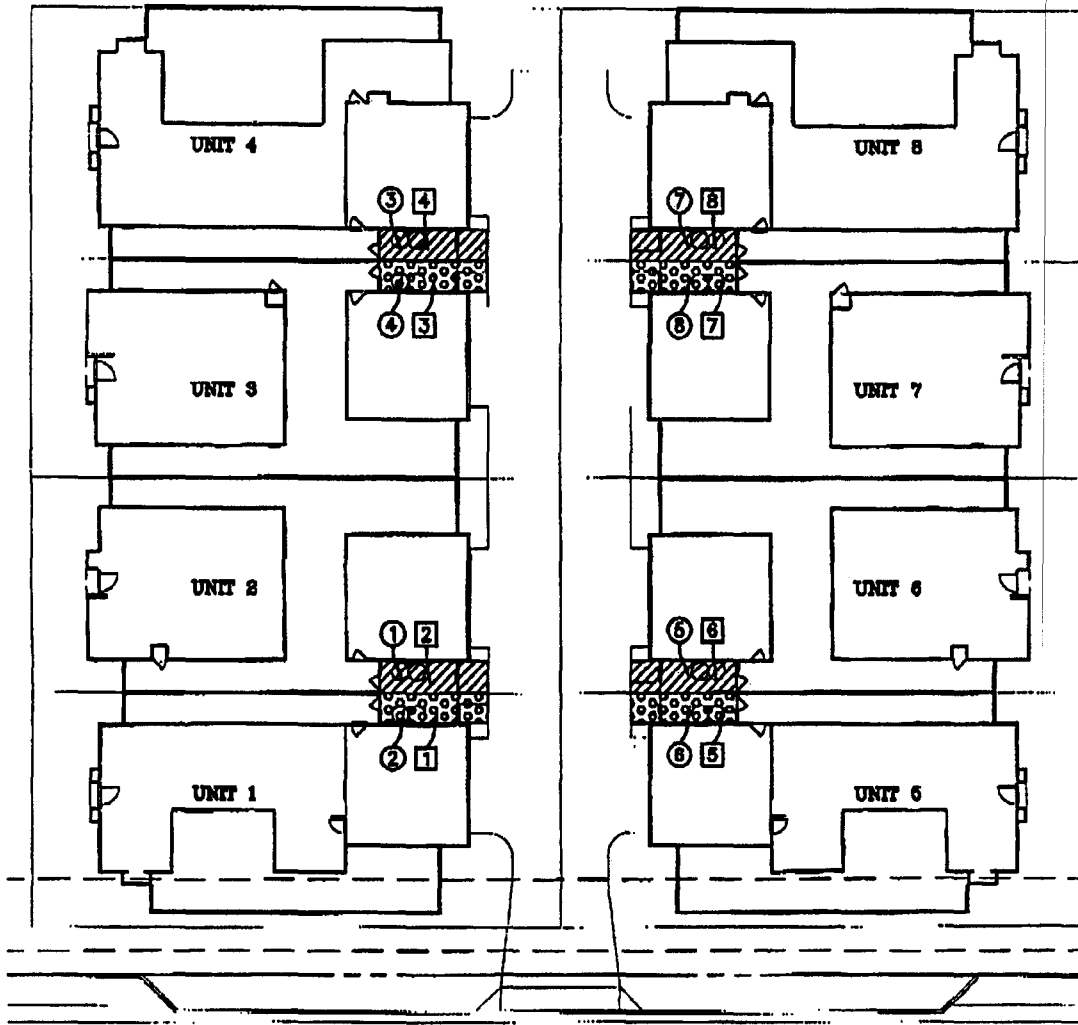
UBE EASEMENT
 BENEFITED LOT
 THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL.

UBE EASEMENT
 BURDENED LOT

EXHIBIT B-1 (6-PACK)
UBE LOCATIONS

EXHIBIT B-2

UBE LOCATIONS (8-PACK)



 UBE EASEMENT  BENEFITED LOT
 UBE EASEMENT  BURDENED LOT

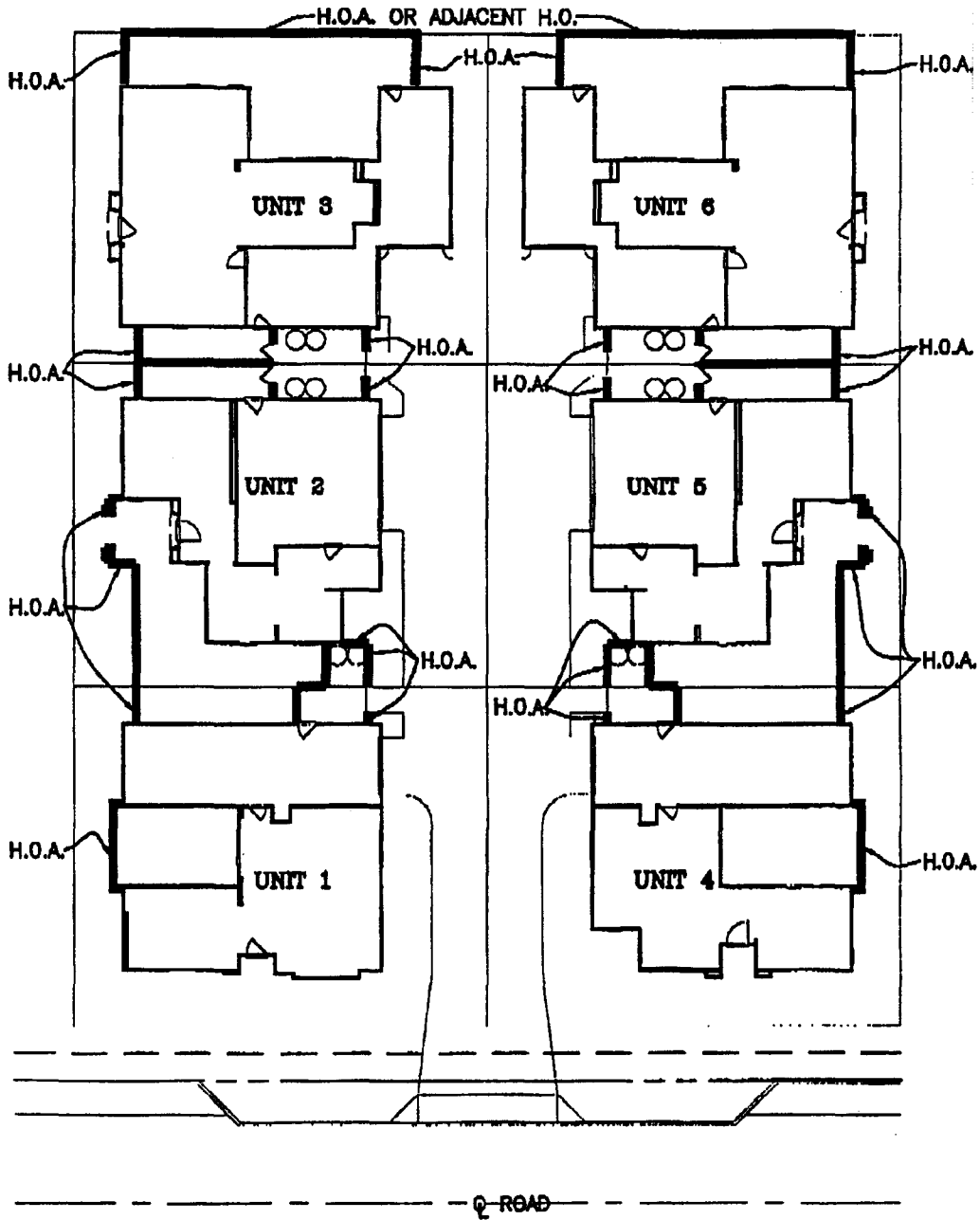
ROAD

THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL.

EXHIBIT B-2 (8-PACK)
UBE LOCATIONS

EXHIBIT C-1A

HOA WALL MAINTENANCE RESPONSIBILITY (6-PACK)



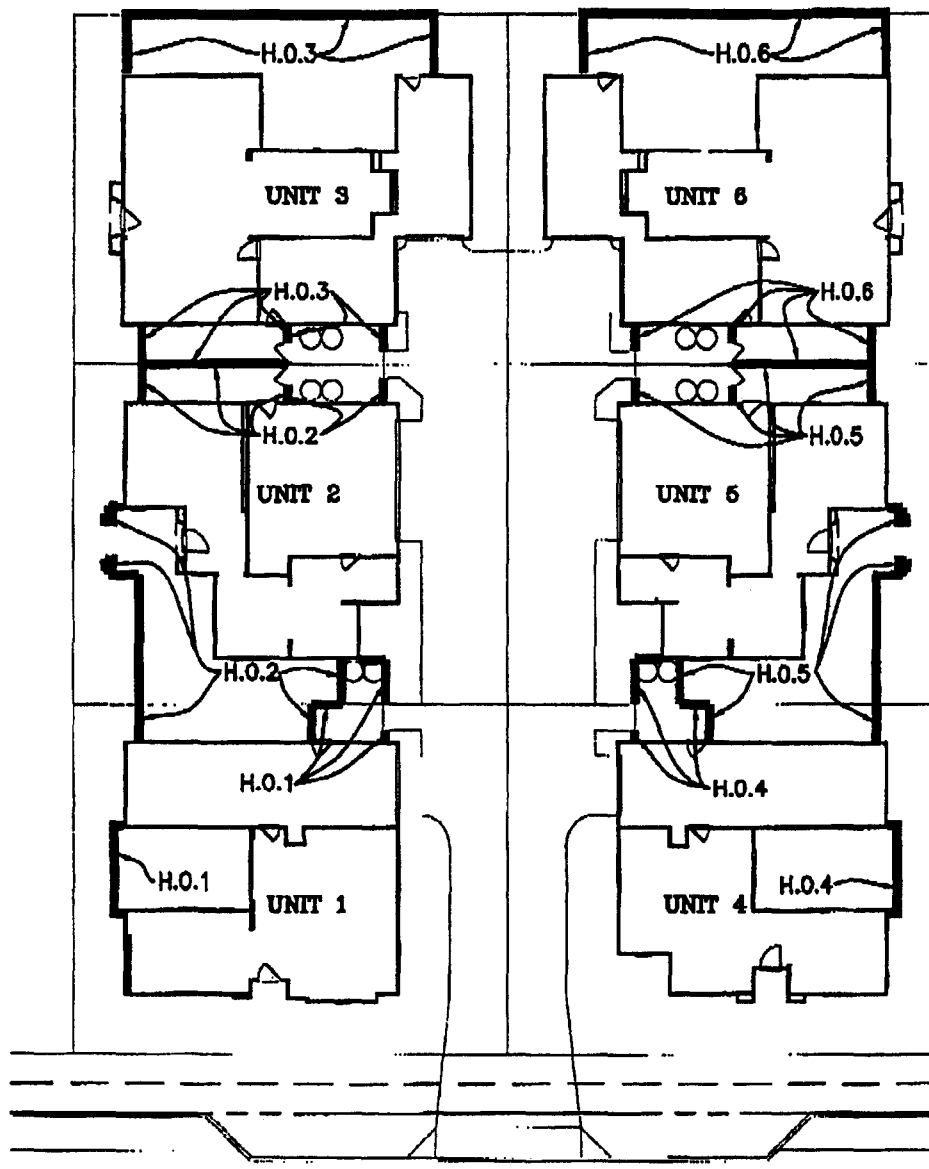
H.O.A. - HOME OWNERS ASSOCIATION

THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL.

EXHIBIT C-1A (6-PACK)
WALL REPLACEMENT & EXTERIOR
MAINTENANCE RESPONSIBILITY

EXHIBIT C-1B

LOT OWNER WALL MAINTENANCE RESPONSIBILITY (6-PACK)



- H.O.1 - HOME OWNER UNIT 1
- H.O.2 - HOME OWNER UNIT 2
- H.O.3 - HOME OWNER UNIT 3
- H.O.4 - HOME OWNER UNIT 4
- H.O.5 - HOME OWNER UNIT 5
- H.O.6 - HOME OWNER UNIT 6

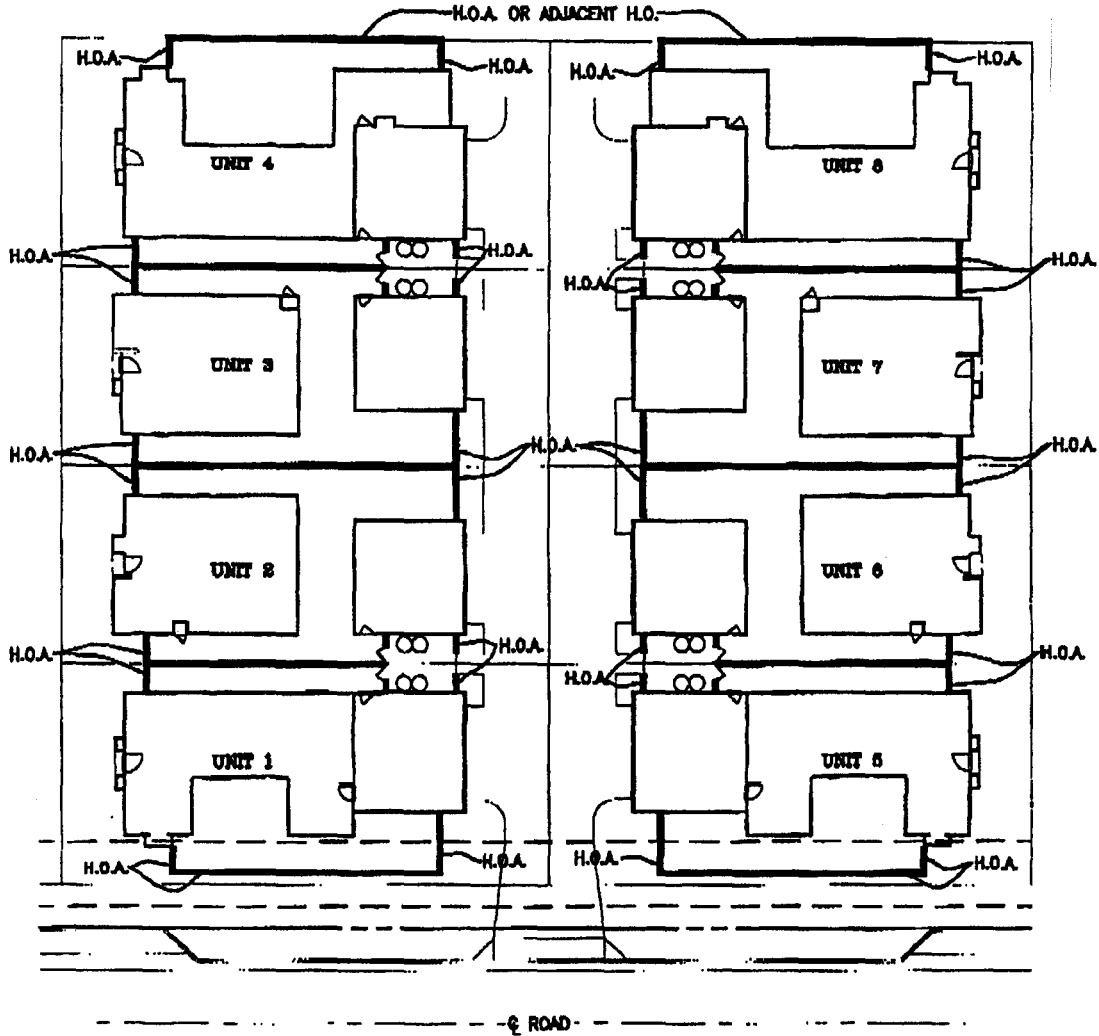
⊕ ROAD

THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL

EXHIBIT C-1B (6-PACK)
WALL MAINTENANCE HOME OWNER RESPONSIBILITY

EXHIBIT C-2A

HOA WALL MAINTENANCE RESPONSIBILITY (8-PACK)



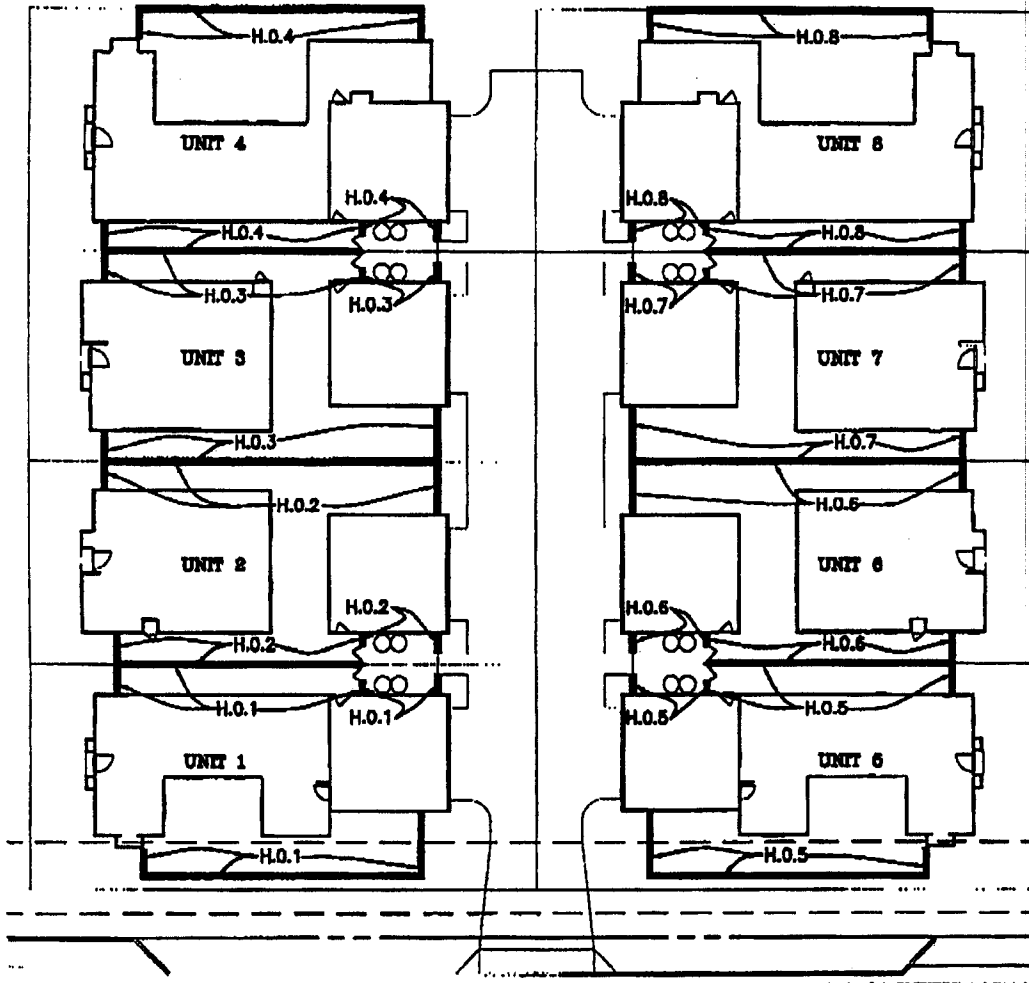
H.O.A. - HOME OWNERS ASSOCIATION

THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL.

EXHIBIT C-2A (8-PACK)
WALL REPLACEMENT & EXTERIOR MAINTENANCE RESPONSIBILITY

EXHIBIT C-2B

LOT OWNER WALL MAINTENANCE RESPONSIBILITY (8-PACK)

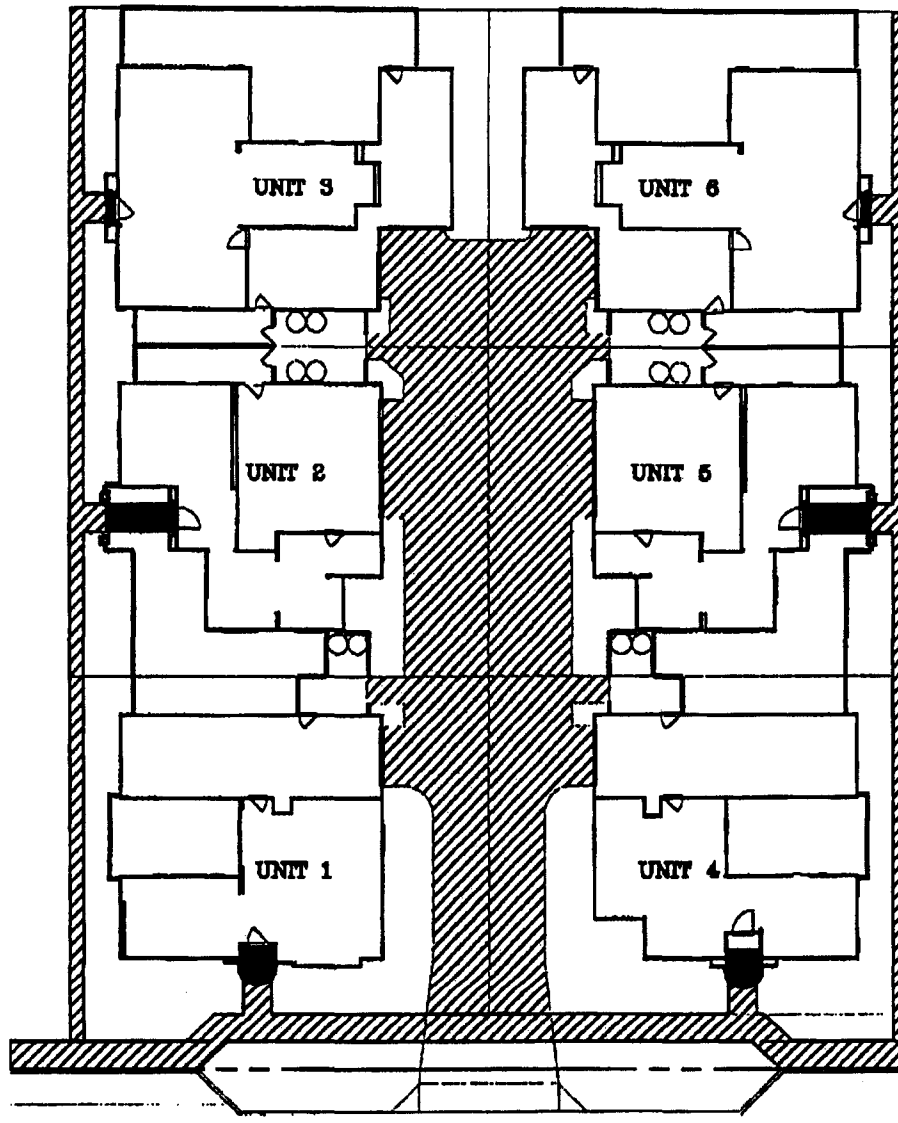


- ROAD
- | | |
|---------------------------|---------------------------|
| H.O.1 - HOME OWNER UNIT 1 | H.O.5 - HOME OWNER UNIT 5 |
| H.O.2 - HOME OWNER UNIT 2 | H.O.6 - HOME OWNER UNIT 6 |
| H.O.3 - HOME OWNER UNIT 3 | H.O.7 - HOME OWNER UNIT 7 |
| H.O.4 - HOME OWNER UNIT 4 | H.O.8 - HOME OWNER UNIT 8 |

THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL.

EXHIBIT C-2B (8-PACK)
WALL MAINTENANCE HOME OWNER RESPONSIBILITY

**EXHIBIT D-1
SIDEWALK/AUTOCOURT MAINTENANCE RESPONSIBILITY (6-PACK)**



ROAD

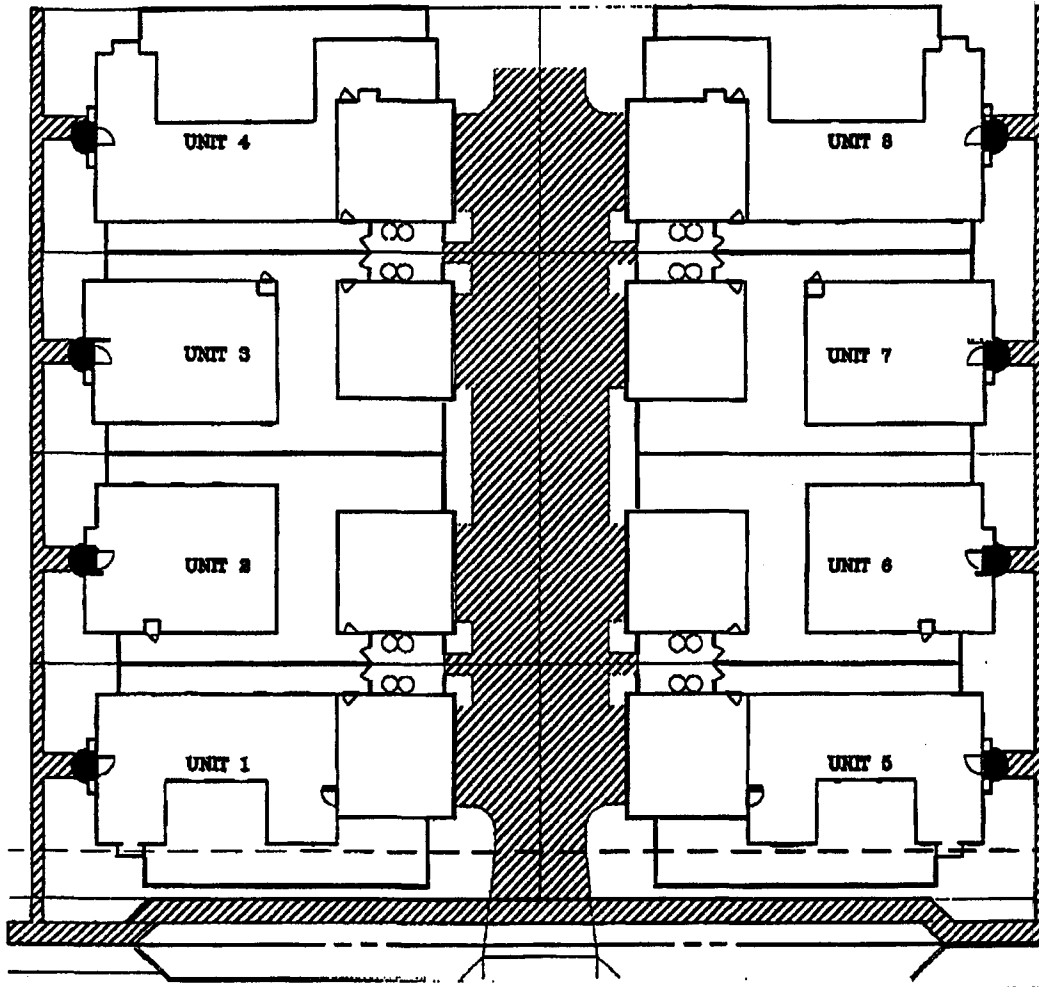
HOME OWNERS ASSOCIATION
 HOME OWNER

THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL.

**EXHIBIT D-1 (6-PACK)
SIDEWALK/AUTOCOURT MAINTENANCE RESPONSIBILITY**

EXHIBIT D-2

SIDEWALK/AUTOCOURT MAINTENANCE RESPONSIBILITY (8-PACK)



▨ HOME OWNERS ASSOCIATION
■ HOME OWNER

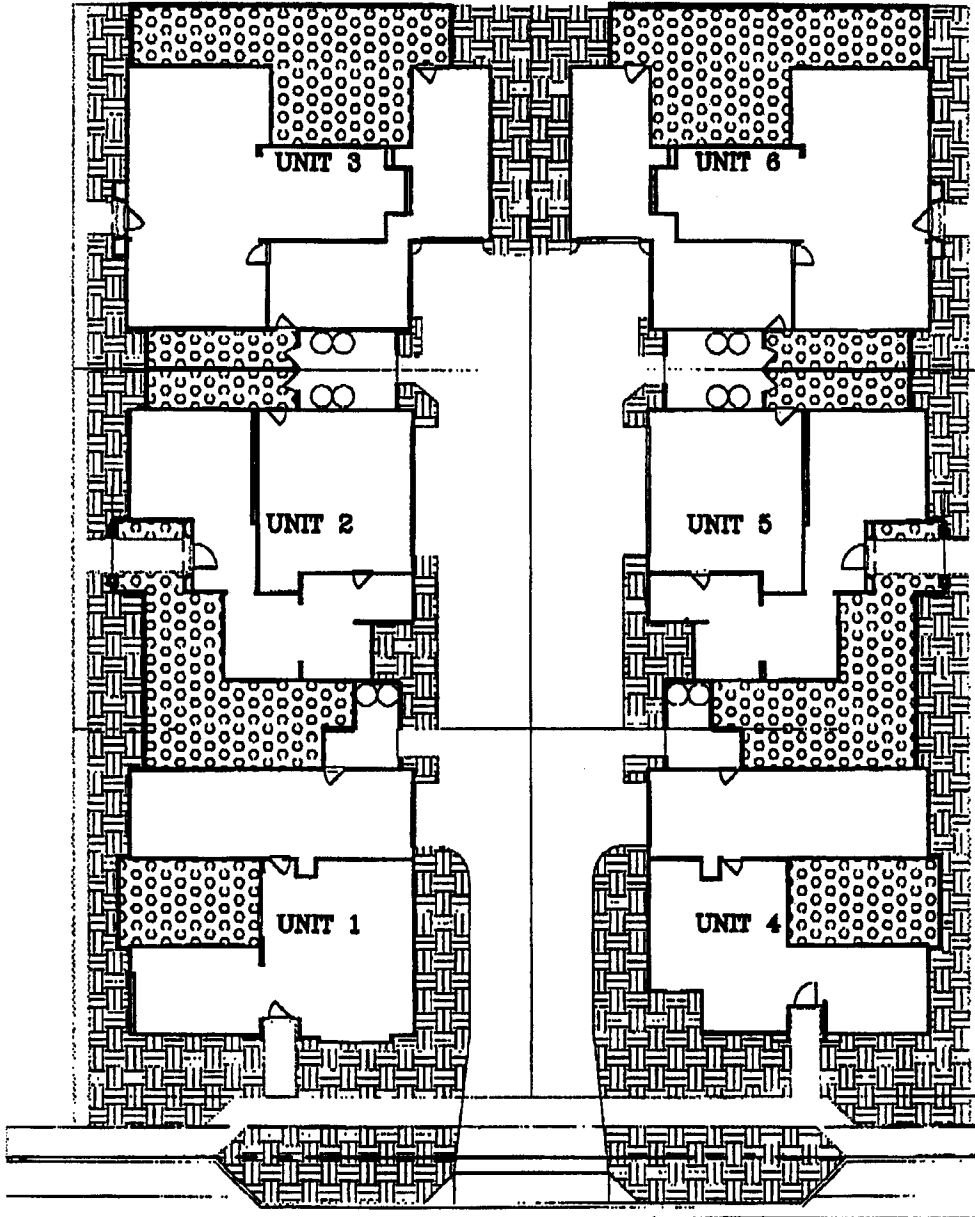
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THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL.

EXHIBIT D-2 (8-PACK)
SIDEWALK/AUTOCOURT MAINTENANCE RESPONSIBILITY

EXHIBIT E-1

LANDSCAPING MAINTENANCE RESPONSIBILITY (6-PACK)



— — — — —
⊕ ROAD

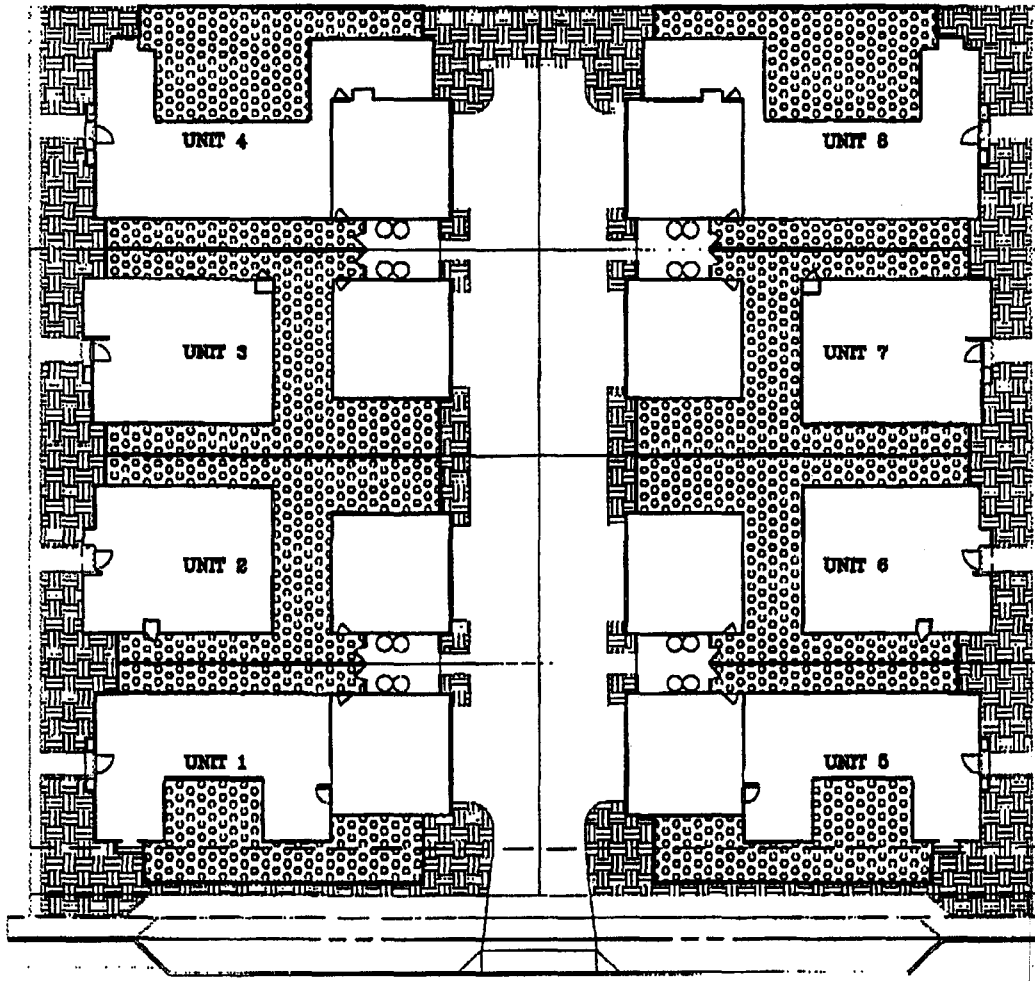
 HOME OWNERS ASSOCIATION
 HOME OWNER

THIS DEPICTION IS FOR ILLUSTRATED
PURPOSES ONLY AND THE ACTUAL
AS-BUILT CONDITION WILL CONTROL.

EXHIBIT E-1 (6-PACK)
LANDSCAPE MAINTENANCE RESPONSIBILITY

EXHIBIT E-2

LANDSCAPING MAINTENANCE RESPONSIBILITY (8-PACK)



⊕ ROAD

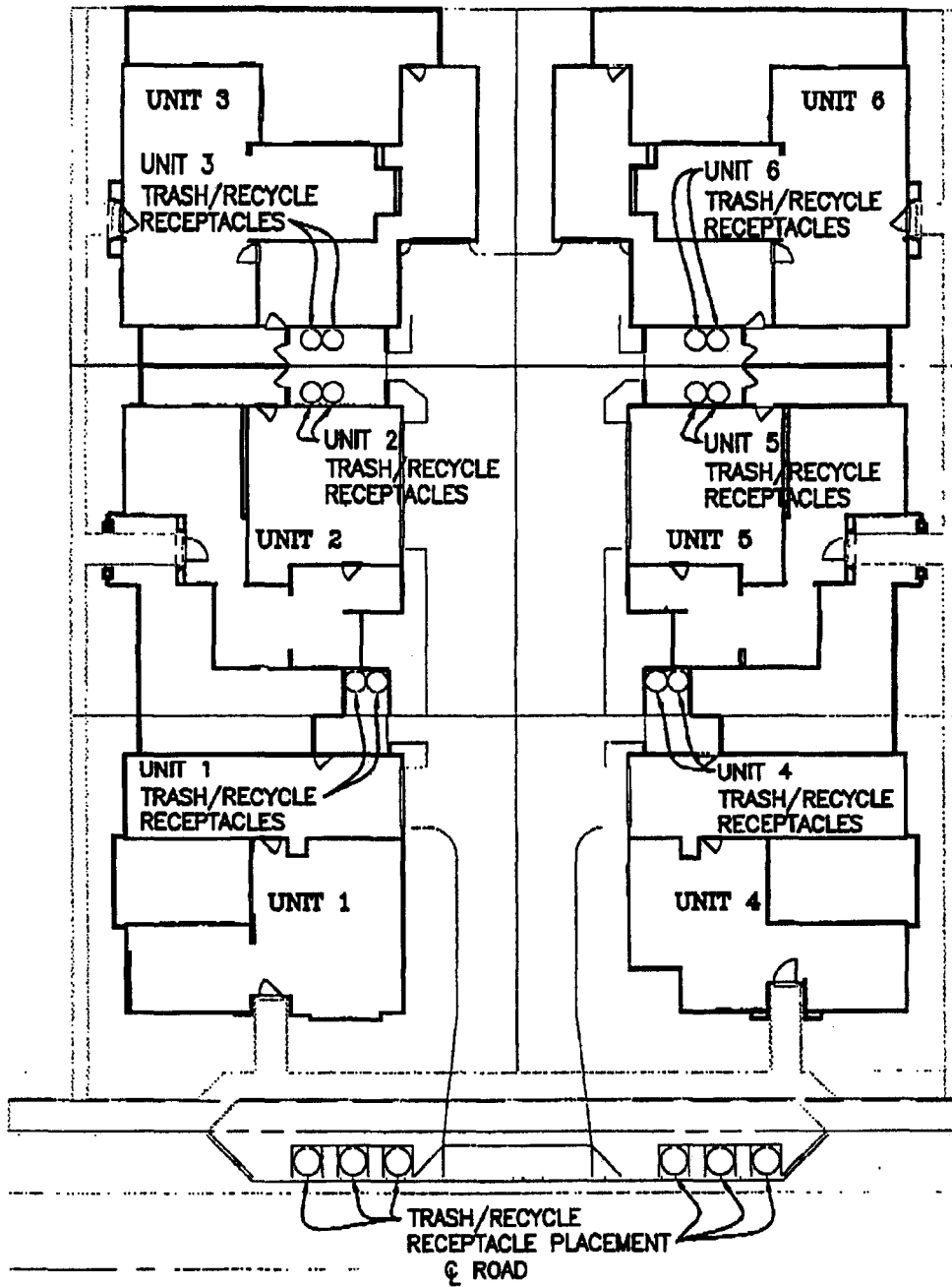
 HOME OWNERS ASSOCIATION
 HOME OWNER

THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL.

EXHIBIT E-2 (8-PACK)
LANDSCAPE MAINTENANCE RESPONSIBILITY

EXHIBIT F-1

TRASH RECEPTACLE STORAGE/COLLECTION LOCATIONS (6-PACK)

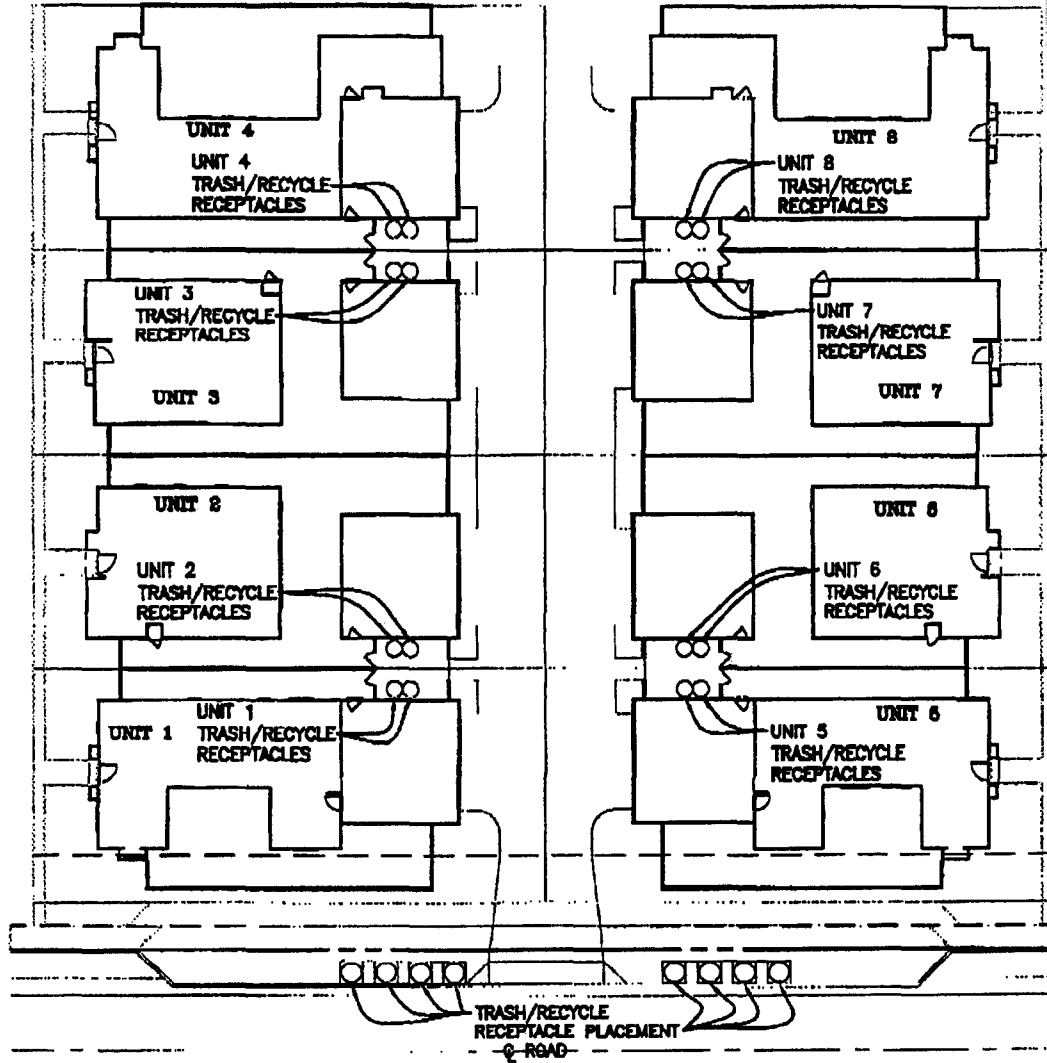


THIS DEPICTION IS FOR ILLUSTRATED PURPOSES ONLY AND THE ACTUAL AS-BUILT CONDITION WILL CONTROL

EXHIBIT F-1 (6-PACK)
TRASH/RECYCLE LOCATIONS

EXHIBIT F-2

TRASH RECEPTACLE STORAGE/COLLECTION LOCATIONS (8-PACK)



THIS DEPICTION IS FOR ILLUSTRATED
PURPOSES ONLY AND THE ACTUAL
AS-BUILT CONDITION WILL CONTROL.

EXHIBIT F-2 (8-PACK)
TRASH/RECYCLE LOCATIONS