

**RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF HIGHGATE**

THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HIGHGATE (hereinafter termed the "Declaration"), is made this 31st day of December, 1996, by Fidelity National Title Agency, Inc., an Arizona corporation as Trustee under Trust No. 10752 (hereinafter referred to as "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real property in Pima County, Arizona, known as Highgate described in that certain subdivision plat (the "Plat"): under the name of "Highgate, Lots 1-41 and Common Area 'A' (private streets), Common Area 'B' (open space), Common Area 'C' (recreation area) and Common Area 'D' (drainage facilities)", recorded in Book 48 of Maps and Plats at Page 41, in the Pima County Recorder's Office, State of Arizona (hereinafter referred to as the "Property"); and

**WHEREAS**, The Genesee Company is a Colorado corporation authorized to do and doing business in the State of Arizona as a foreign corporation and is herein referred to at various times as the Developer; and

**WHEREAS**, said Plat designates the area and dimensions for each lot numbered 1 through 41, boundary lines, common elements and easements; and Declarant and Developer desire to develop the Property and subject the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements as described in this Declaration (hereinafter collectively called the "CCR's"); and

**WHEREAS**, Declarant desires to form a non-profit corporation for the purpose of benefiting Highgate, the Owners and the Lots as said terms are defined in this Declaration, which non-profit corporation (hereinafter termed the "Association") will acquire, construct, operate, manage and maintain any Common Easement Areas, certain private streets, certain private easements, certain rights of way; and establish, levy, collect and disburse the assessments and other charges imposed hereunder; and as the agent and representative of the Members of the Association and Owners of Highgate, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of Highgate; and

**WHEREAS**, Declarant is preparing the necessary documents for the incorporation and organization of the Association; and

**WHEREAS**, in order to cause the CCR's to run with Highgate and to be binding upon Highgate and the Owners and Lots thereof from and after the date of recordation of this Declaration, Declarant hereby makes all conveyances of Highgate Property, whether or not provided so therein, subject to the CCR's set forth herein and by accepting deeds, leases, easements or other grants or conveyances to any portion of Highgate, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns agree that they shall be personally bound by all of the covenants (including, but not limited to, the obligation to pay Assessments) hereinafter set forth; and

**WHEREAS**, Declarant proposes to sell individual lots and to sell and convey the same subject to the CCR's, limitations, obligations, easements, equitable servitudes, charges and liens hereinafter set forth which is for the benefit of the Property and any subsequent Owners;

**WHEREAS**, Declarant and Developer recorded that certain Declaration of Covenants, Conditions and Restrictions of Highgate ("Original Declaration") dated May 21, 1996, and recorded in the Pima County Recorder's Office at Docket 10299, Pages 879, *et al*; and

**WHEREAS**, Declarant and Developer recorded that certain First Amended Declaration of Covenants, Conditions and Restrictions of Highgate ("Amended Declaration") dated October 23, 1996, and recorded in the Pima County Recorder's Office at Docket 10409, Page 1199, *et al*; and

**WHEREAS**, Declarant and Developer recorded that certain Declaration of Conditions, Covenants And Restrictions Running With The Land (hereinafter "Rezoning Declaration") dated December 5, 1996, and recorded in the Pima County Recorder's Office at Docket 10444, Pages 750, *et al*; and

**WHEREAS**, Declarant and Developer wish to terminate and declare null and void the Original Declaration and the Amended Declaration and substitute this Declaration for the Original Declaration and the Amended Declaration; and

**NOW, THEREFORE**, Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and: protecting the value, desirability and attractiveness of the Property. The covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth herein shall run with the Property; shall be binding upon all persons having or acquiring any interests in the Property or any part thereof; shall inure to the benefit of and be binding upon Declarant, its successors in interest, each owner and his respective successors in interest, and may be enforced by Declarant, or its successors in interest, any Owner or its successors in interest.

No provision contained herein shall be construed to prevent or limit Declarant's or Developer's right to complete development of the Property and construction of improvements thereon, nor Developer's right to construction of sales offices or similar facilities on the Property, nor Developer's right to post signs incidental to sales, nor Developer's right to do anything that it may, in its sole discretion, deem necessary and proper for the full development and sale of the Property.

## **1. DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned:

**1.1 "Annual Assessment"** shall mean the charge levied and assessed each year against each Lot and/or Owner pursuant to Paragraph 6 below.

**1.2 "Architectural Review Committee"** shall mean the Committee of the Association to be created pursuant to Paragraph 9 below.

**1.3 "Articles"** shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

**1.4 "Assessable Property"** shall mean any Lot except such part or parts thereof as may from time to time constitute Exempt Property as herein defined.

**1.5 "Assessment"** shall mean an Annual Assessment, Special Assessment, Maintenance Charge and/or other Association levy.

**1.6 "Assessment Lien"** shall mean the lien created and imposed by Paragraph 6 below.

**1.7 "Assessment Period"** shall mean the term set forth in Paragraph 6 below.

**1.8 "Association"** shall mean the Arizona non-profit corporation to be organized by Declarant to administer and enforce the CCR's and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association "Highgate Homeowner's Association, Inc."

**1.9 "Association Land"** shall mean such part or parts of Highgate, together with the buildings, structures and improvements thereon and other real property which the Association may at any time own in fee or in which the Association at any time may have a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

**1.10 "Board"** shall mean the Board of Directors of the Association.

**1.11 "Bylaws"** shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

**1.12 "Common Easement Area"** shall mean:

- a) All Association Land;
- b) All land within Highgate which the Declarant, by this Declaration or other recorded instrument makes available for use by Members of the Association, and evidences its intent to convey to the Association at a later date;
- c) All land within Highgate which the Declarant indicates on the Plat is to be used for landscaping, drainage and/or flood control for the benefit of Highgate;
- d) All other lands within the drainage easement areas set forth by the Plat or other recorded instruments;
- e) Areas on a Lot within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of improvements, utilities, ingress and egress; .
- f) All private roads and shared driveway areas which are deeded to the Association or the use of which is given to the Association by easement and by agreement for which the Association accepts responsibility for maintenance;
- g) All common areas which the Declarant indicates on the Plat intended to be used for private streets, open space, recreation area and drainage facilities.

**1.13 "CCR's"** shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

**1.14 "Declarant"** shall mean Fidelity National Title Agency, Inc., an Arizona corporation as Trustee under Trust No. 10752 and its successors or assigns while title holder of any Lot, either as the original Owner or by reacquisition.

**1.15 "Declaration"** shall mean this Restated Declaration of Covenants, Conditions, Restrictions of Highgate as amended or supplemented from time to time.

**1.16 "Developer"** shall mean The Genesee Company, a Colorado corporation authorized to do and doing business as a foreign corporation in the State of Arizona and its successors or assigns.

**1.17 "Dwelling Unit"** shall mean a Lot, together with the improvements placed within the confines of said boundary.

**1.18 "Exempt Property"** shall mean the following parts of Highgate:

(i) All land and improvements owned by or dedicated to and accepted by the United States, State of Arizona, Pima County or any political subdivision thereof for as long as any such entity or political subdivision is the owner thereof or for as long as said dedication remains effective;

(ii) All Association Land, for as long as the Association is the Owner thereof.

**1.19 "Maintenance Charge"** shall mean any and all costs assessed pursuant to Paragraphs 6 and 8 below.

**1.20 "Member"** shall mean any person holding a membership in the Association pursuant to this Declaration.

**1.21 "Majority of Owners"** shall mean Owners owning a majority of the Lots.

**1.22 "Owner(s)"** shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (legal title if same has merged) of any Lot or Dwelling Unit. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation.

**1.23 "Person"** shall mean a natural individual or any other entity with the legal right to hold title to real property.

**1.24 "Plat"** shall mean the plat prepared by David Evans & Associates, Inc. under the name of "Highgate, Lots 1-41 and Common Area 'A' (private streets), Common Area 'B' (open space), Common Area 'C' (recreation area) and Common area 'D' (drainage facilities)", recorded in Book 48 of Maps and Plats at Page 41, in the Pima County Recorder's Office, State of Arizona,

**1.25 "The Property" or "the Subdivision"** shall mean all that real property identified in the Plat.

**1.2.6 "Special Assessment"** shall mean any assessment levied and assessed pursuant to Paragraph 6 below.

**1.27 "Highgate"** shall mean the Property described in this Declaration and the development to be completed thereon.

**1.28 "Highgate Rules"** shall mean the rules for Highgate adopted by the Board pursuant to Paragraph 4 below.

**1.29 "Highgate Architectural Rules"** shall mean the rules established by the Highgate Architectural Review Committee which rules shall become a part of this Declaration enforceable in the same manner as this Declaration.

## **2. GENERAL RESTRICTIONS**

All property within Highgate shall be subject to the CCR's, and this Declaration, and this Declaration, the Plat and the CCR's are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of lots in Highgate and are established for the purpose of enhancing and perfecting the value, desirability and

attractiveness of Highgate and every part thereof. All of this Declaration, the Plat and CCR's shall run with all Lots and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, this Declaration and the CCR's shall be binding upon and shall benefit the Association. All property within Highgate shall be held, used and enjoyed subject to the following limitations and restrictions:

**2.1 Private Residence.** Each and every Lot shall be used for private residential purposes only, and no structure whatever other than one first-class, private, single family residence, together with attached private garage and appurtenant structures shall be erected, placed or maintained on any Lot.

**2.2 Antennas and Exterior Additions.** No satellite dishes and no exposed mechanical or solar equipment shall be erected or maintained on the roof of any Dwelling on any Lot. Further, no other exterior devices or additions shall be constructed on the exterior of the Dwelling Unit (including roof) without the written authorization of the Board or the Architectural Review Committee.

**2.3 Sign.** No signs of any kind shall be displayed which are visible from neighboring property without the approval of the Board, except:

1. Such signs as may be required by legal proceedings; and
2. Such signs as may be used by Developer in connection with the sale of Lots; and
3. Such signs as may be approved by the Board indicating a Dwelling Unit or Lot is for sale or lease.

Where the Board's approval is required, it shall approve the nature, composition, number, size and location of all signs, unless excepted hereunder.

**2.4 Animal.** No animals of any kind shall be raised, bred, or kept, except that a reasonable number of generally recognized house or yard pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. All dogs must be kept under leash or controlled at all times so that they will not interfere with any Member's use and enjoyment of the Lots or Dwelling Units, and it shall be the responsibility of each pet owner to clean up after their pets. No animal shall be allowed to become a nuisance and must be kept inside a Dwelling Unit or in an enclosed area at all times. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per household; provided, however, the Board may determine that a reasonable number in any instance may be more or less. Upon the written request of any Member, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Paragraph, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable. All pets required by government authority to be licensed must be licensed.

**2.5 Nuisances.** After completion of construction of a Dwelling Unit upon a Lot and landscaping of Lots, no rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot within the Property, and no odors shall be permitted to arise therefrom so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Lot or to its occupants. Storage or disposal of garbage, rubbish or debris shall be done in a clean and sanitary manner and maintained in such a fashion so as not to be offensive to Owners of adjacent Lots. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or

detrimental to any other Lot or to its occupants. Without, limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot without the prior written approval of the Board. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance. Wood piles or other materials shall be stored in a manner so as not to be attractive to native rodents, snakes and other animals and to minimize the potential danger from fires. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods. Trash and debris shall not be permitted to accumulate and supplies of building materials will be piled only in such areas as may be approved by the Architectural Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Architectural Review Committee, which may also require screening of the storage area. .

**2.6 Native Growth and Planting.** All landscaping shall first be approved before installation by the Architectural Review Committee. The theme for landscaping shall emphasize plantings and other features which will compliment and enhance the native existing character. Approved landscaping after installation will be maintained as required to provide a neat and attractive appearance. Removal of dead bushes and trees and removal of trash and debris will be accomplished as required to this effect. The Architectural Review Committee will be the sole and final judge as to whether or not landscaping after installation has met the approved criteria and whether or not it is at any given time maintained properly. The native growth on any Lot shall not be destroyed or removed unless pursuant to a plan approved by the Architectural Review Committee. Native growth on any Lot or the Property shall not be removed or destroyed except such native growth as may be necessary for the construction or maintenance of roads, driveways, sidewalks, Dwelling Units, walled-in patio yards, and the recreation area described as Common Area (C) as described on the Plat. Notwithstanding anything to the contrary contained herein, this Paragraph 2.6 does not affect the TR portion of the Property as shown on the Plat..

**2.7 No Business Use.** No business or professional service of any nature, whether for profit or non-profit, shall be conducted on any Lot, except the business of the Association and the Developer while developing, constructing and selling Lots. No building or structure intended for, or adapted to business or professional or any non-residential purposes, shall be erected, placed, permitted or maintained on any Lot.

**2.8 Rental.** No room or rooms in any residence, or parts thereof, may be rented or leased to others by any Homeowner. Nothing in this paragraph, however, shall be construed as preventing the renting or leasing of an entire Dwelling Unit.

**2.9 Outbuildings.** No tent or outbuilding of any kind shall be placed or erected on any part of the Property for more than forty-eight (48) hours. Notwithstanding anything to the contrary above, no structure of any kind shall be permitted or placed upon Common Area "B" or Common Area "D".

**2.10 Materials.** All buildings of any nature constructed hereon shall be constructed of new materials. No building shall be removed from without said Property to any Lot within said Property.

**2.11 Wells.** No derrick or other structure designed for use in boring for water, oil, natural gas, or any other substance, or for any other purpose, shall be erected, placed or permitted upon any part of said property, nor shall any water, oil, natural gas, petroleum, asphaltum, minerals or hydrocarbon products or substances be produced or extracted therefrom.

**2.12 Tanks, Exposed Coolers and Other Materials.** No elevated tanks of any kind shall be erected, placed or permitted upon any part of said property. Any tanks for use in connection with any Dwelling Unit constructed on any Lot, including, but not limited to, tanks for the storage of gas and fuel, oil, gasoline or oil, must be buried or walled in, or kept screened by adequate planting to conceal them from the neighboring lots, roads or streets. The term, "adequate planting", as used herein shall mean transplantings which provide immediate and effective concealment of the object being screened.. No evaporative coolers, air conditioning units, heating units, air conditioning towers, or compressor units shall be placed on the roof or attached to exterior walls or windows of any structure and any such units without approval of the Board. Equipment, gas meters, electric meters, wood piles or storage piles shall be kept within an area which is walled in such a manner as to conceal same from the view of the neighboring Lots, roads or streets, or shall be kept within a service room. Clotheslines shall not be permitted at any time on any Lot or the Property.

**2.13 Grass.** No bermuda grass shall be sown, planted, cultivated or maintained on any Lot, except those varieties known and recognized as being pollen-free.

**2.14 Further Subdivision.** No Lots shall be subdivided, except for the purpose of combining the resubdivided portions with another adjoining Lot (provided that no additional Lot is created thereby), without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the Subdivision, easement or other interest. Any ownership or single holding by any person comprising parts of two (2) adjoining Lot or Lots or of the whole of one Lot and part or parts of one or more adjoining Lots, for all purposes of this Declaration and CCR's, shall be deemed as constituting ownership of a single Lot. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot and no applications for variances or use permits shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Board and the proposed use of the Lot complies with this Declaration and CCR's.

**2.15 Topography.** No Dwelling Unit shall include a two-story structure on any Lot of the Property.

**2.16 Masonry and Frame Stucco.** At least seventy-five percent (75%) of the area of exterior walls of the Dwelling Unit (exclusive of glass areas) must be constructed of slump block or frame stucco as approved by the Architectural Review Committee. Not more than two (2) of the foregoing materials shall be used for visible exterior surfaces of

the structure, including patio walls, on any one Lot, and one (1) of the materials shall be predominant. If frame stucco is used for the exterior walls of the Dwelling Unit, stucco coverage must be at least one-half (1/2) of an inch.

**2.17 Driveways.** All private driveways and parking areas must be paved with concrete and shall connect with the paved portion of the road in front of the Lot.

**2.18 Roof Material.** In order to prevent excessive sun glare to neighboring property or Lots, no roofing finish material shall be of a lighter color value than the exposed roof material. No asphalt-shingled roofs shall be permitted.

**2.19 Set Backs, Definition.** For the purpose of this Declaration, "set back" shall be defined as the minimum horizontal distance between a point on a building or structure (other than a wall, fence, unroofed terrace, steps, and/or roof projections at the eaves) to the nearest property line or lines.

**2.20 Set Back.** Any building or structure shall be set back to the appropriate distances from Lot lines as identified on the Plat or in conformance with Pima County laws, rules and regulations, whichever is more restrictive.

**2.21 Pools.** A pond, swimming pool, body of water, play courts, outside barbecue facilities or shower, dressing rooms, outside toilet facilities may be erected or placed on any Lot within a walled patio, subject to Board approval.

**2.22 Patio Walls.** No patio or other exterior wall shall be constructed of any material other than masonry or frame stucco as approved by the Board and any such wall shall not be more than six (6) feet in height. Notwithstanding anything to the contrary contained herein, no patio or other wall shall be placed within five (5) feet of the northern boundary line of any Lot numbered 15, 16, 17, 19, 20, 21, 22, 23, 24. Furthermore, no patio or other exterior wall constructed on Lots 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26 and 27 shall exceed five (5) feet in height. As to the patio or exterior walls constructed on Lots 24, 25, 26 and 27, any walls so constructed shall not be removed and if destroyed shall be replaced by the then Lot Owner(s) of said Lots 24, 25, 26 and 27, respectively in a reasonable time thereafter.

**2.23 Variance.** If any Lot covered by these restrictions includes major surface irregularities directly affecting the buildable area of said Lot in such manner as to make normal development extremely difficult or impossible, or if natural growth now existing on any Lot is of such character as to constitute a desirable or unique asset for the Lot on which it is located, the Board shall have the authority to grant a variance for the location of pools and barbecue facilities herein set forth, so that said Lot may be developed to its maximum usage.

**2.24 Fences.** Except for the purpose of ingress and egress access to the front yard of any Lot, and notwithstanding anything contained to the contrary herein, no gates or other openings shall be permitted or allowed in any patio or other exterior walls constructed in the rear yards of Lots 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26 and 27.

**2.25 Utility Lines.** All telephone, power and utility lines located in the road in front of the Lots or utility easement on the Lots shall be underground, and service from any of these to any structure shall be by buried service lines. This provision shall not, however, prohibit the erection of temporary overhead power or telephone lines incident to construction. All costs for such work done which is performed between the easement line on the Lot and any point or points on the Lot shall be borne by the Owner of the Lot.

There is hereby created a blanket easement upon, across, over and under each Lot for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. as such utilities are installed in connection with the initial development of the Lot and the construction of a Dwelling Unit or building thereon. Pursuant to the easement, a providing utility or service company may install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roof and exterior walls of buildings on the Lots. Notwithstanding anything to the contrary contained herein, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on any Lot except as initially programmed and approved by the Declarant or the Architectural Review Committee, or, if installed after recordation of this Declaration, approved by the Owner and Architectural Review Committee in writing. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in and upon any Lot, unless the same shall be contained in conduits or cables installed and maintained underground and concealed in, under or on buildings or other structures approved in writing by the Architectural Review Committee. No provision hereof shall be deemed to prevent the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Review Committee in writing.

**2.26 Exemption of Developer.** Nothing in these CCR's shall limit the right of Developer to complete excavation, grading, and construction of improvements to any Lot within the subdivision owned by Declarant, or to alter the foregoing or to construct such additional improvements as Developer deems advisable in the course of the sale of the subdivision, so long as any Lot therein remains unsold, or to use any structure in the subdivision as real estate sales or leasing office. .Developer need not seek or obtain the Board's approval for the installation of any improvements, including landscaping. The rights of Developer hereunder or elsewhere in these Restrictions may be assigned.

**2.27 Drainage.** There shall be no interference with the established drainage pattern over any Lot within the Property unless adequate provision is made by submitting a drainage plan for approval by the Board for proper drainage conforming to government rules, regulations, ordinances ;and drainage criteria, and is approved by the Board. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Property is completed, or which is shown on any plans conforming to government rules, regulations, ordinances and drainage criteria approved by the Board.

**2.28 Unsightly Articles.** No unsightly articles shall be permitted to remain so as to be visible from adjoining Lots, Dwelling Units or from the road in front of the Lots. At no time shall there be any outside storage of commercial vehicles, boats, trailers, campers, motor coaches, mobile homes or house trailers of any type on any Lot. At no time shall there be any outside storage of motor vehicle in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories. Any and all items stored in a garage area shall be stored so as to conceal the same from view from adjoining property or from the streets or public way. Grass, shrub or tree clippings, garbage or trash containers shall be

kept within an enclosed structure or appropriately screened from view of adjoining Dwelling Units, except when necessary to make available for collection and then, only the shortest time reasonably necessary to effect such collection. The Board shall have sole discretion in determining if any activity by an Owner is in violation of this Paragraph 2.28.

**2.29 Trash Containers.** No garbage or trash shall be placed or kept on any Lot or Dwelling Unit within the subdivision, except in covered containers of a type, size and style which have been installed by Developer or approved by the Board. All rubbish, trash or garbage shall be removed from Lots and Dwelling Units and shall not be allowed to accumulate thereon. No incinerators shall be allowed. All rubbish, trash, garbage or wood storage will be maintained in a clean and orderly manner so as not to be offensive to Owners of adjacent Lots or the Property. Said rubbish, garbage and trash shall be maintained in such a manner so as not to create any obnoxious odor which might disturb the peace, quiet, comfort or serenity of any Owners of any Lots or the Property and storage and disposal of said garbage, rubbish and trash will be done in a clean and sanitary manner.

**2.30 Mail Boxes.** The Board shall determine the location, color, size, design, lettering and all other particulars of all mail and paper delivery boxes, and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

**2.31 Easement of Enjoyment.** Every Owner and other Member of the Association shall have a right and easement of enjoyment in and to the Common Easement Area which shall be appurtenant to and shall pass with the title to every Lot subject to the right of the Association to suspend the voting rights and right to use Common Easement Area by any Member for any period during which any Assessment against his Lot remains delinquent. The Association shall maintain the right to regulate the use of the Common Easement Area through the Highgate Rules and to provide access to those Common Easement Area such as landscape right-of-ways not intended for use by the Members. The Highgate Rules shall be intended in the absolute discretion of the Board to enhance the preservation of Common Easement Area and Highgate for the safety and convenience of the users and shall otherwise be used to promote the best interests of the Owners of the Lots.

**2.32 Architectural Control.** No improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any Property within Highgate or the improvements located thereon shall be made or done without prior approval of the Architectural Review Committee in writing except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Architectural Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots shall be subject to the prior written approval of the Architectural Review Committee and no changes or deviations in or from the plans and specifications once approved by the Architectural Review Committee shall be made without prior written approval of the Architectural Review Committee.

**2.33 Repair of Building.** No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approval of the Architectural Review Committee, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

**2.34 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or other improvements or that which Declarant or the Association may require for the operation and maintenance of Highgate.

**2.35 Motor Vehicles.** No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street in Highgate and no inoperable vehicle may be stored or parked on any such Lot or street so as to be visible from any other Lot or from Common Easement Area or streets; provided, however, that the provisions of this Paragraph shall not apply to emergency vehicle repairs.

**2.36 Parking.** It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners and of their guests and invitees are to be kept in garages, residential driveways of the Owner and/or other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot; provided, however, that this Paragraph shall not be construed to permit parking in the above-described areas and any vehicle whose parking at Highgate is otherwise prohibited or the parking of any inoperable vehicle.

**2.37 Right of Entry.** During reasonable hours and upon reasonable notice to the Owner or other Occupant of a Lot, any member of the Architectural Review Committee, any member of the Board or any authorized representative of either of them shall have the right to enter upon and inspect any Lot and improvements thereon except for the interior portions of any completed residence for the purpose of ascertaining whether or not the provisions of this Declaration and CCR's have been or are being complied with and such person shall not be deemed guilty of trespass by reason of such entry.

**2.38 Health, Safety and Welfare.** In the event additional uses, activities and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, the Board may make further rules restricting or regulating their presence at Highgate as part of the Highgate Rules or may direct the Architectural Review Committee to make rules governing their presence on Lots.

**2.39 Outside Lighting.** All outside lighting on any Lot or the Property shall be directed down or shall be shielded from adjacent properties in accordance with Pima County laws, rules and regulations and subject to the written approval of the Board.

**2.40 Open Space.** As described on the Plat, Common Area "B" (open space) shall be maintained and used only as shown on the Plat and the only use of Common Area "B" (open space) will be for trail, enhancement of natural desert vegetation and the construction of utilities, all in conformance with the Plat and the laws, rules and regulations of Pima County. No portion of Common Area "B" (open space) shall be used

for any type of storage, including, but not limited to, waste containers, wood piles, compost piles, grass cuttings or vegetation trimmings and the Association shall be responsible for maintaining said area in a clean and natural state. The Common Area "B" (open space) shall be enhanced with natural desert-type vegetation along the Northern and Eastern boundary lines of the Property; in accordance with the laws, rules, regulations and orders of Pima County. Furthermore, Common Area "B" (open space) shall remain in perpetuity as a natural, undisturbed area subject to construction of utilities as described above and enhancement of desert-type vegetation through revegetation of Common Area "B" with existing desert-type vegetation from other portions of the Property during the initial development phase.

**2.41 Size of Dwelling Unit.** No Dwelling Unit shall contain less than 1,500 square feet of livable area, inclusive of roofed porch areas but exclusive of guesthouses and garages.

### **3 . PERMITTED USES, RESTRICTIONS AND RIGHTS— DWELLING UNITS**

**3.1 Business Uses Prohibited.** No gainful occupation, professional trade or other non-residential use shall be conducted on any Lot except that Developer may maintain sales on a Lot.

**3.2 Renting.** Homeowners shall have the right to lease or rent their Dwelling Units; provided, however, that any lease agreement shall be in writing, shall be for a term of at least six (6) months, and shall provide that any such tenant shall abide by the Highgate Rules, Bylaws, Articles and this Declaration and the CCR's.

### **4. ORGANIZATION OF ASSOCIATION**

**4.1 Formation of Association.** The Association shall be a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration and CCR's. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration and the CCR's.

**4.2 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 Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) members. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

**4.3 The Highgate Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, .adopt, amend and repeal rules and regulations to be known as the Highgate Rules. The Highgate Rules may restrict and govern the use of any area by any Member or resident; provided, however, that the Highgate Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Highgate Rules shall have the same force and effect as if they were set forth and were a part of this Declaration.

**4.4 Personal Liability.** No member of the Board or any committee of the Association, no officer of the Association and no manager or other 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 Association, the Board, the manager, any representative or employee of the Association. or any committee member or officer of the Association; provided, however, the limitations set forth above shall not apply to any person who has failed to act in good faith or is engaged in willful or intentional misconduct.

## **5. MEMBERSHIP AND VOTING**

**5.1 Owners of Lots.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Each such Owner shall have one Membership for each Lot owned by the Member. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

**5.2 Declarant.** The Declarant shall be a Member of the Association for so long as it holds a Class B membership described below or owns any Lot in Highgate.

**5.3 Voting.** The Association shall have two (2) classes of voting memberships:

- a) Class A Membership: Class A Membership shall be all memberships except the Class B Membership held by the Declarant and each Owner shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration;
- b) Class B Membership: There shall be one Class B Membership which shall be held by the Declarant and the Class B Membership shall be entitled to three (3) votes for each Class A Membership in existence as long as there is a Class B Membership. The Class B Membership shall cease and be converted to Class A Membership when the Declarant no longer owns property at Highgate.

**5.4 Right to Vote.** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board has given actual written notice of such change and has provided satisfactory proof thereof. Fractional votes shall not be allowed.

**5.5 Non-Cumulative Voting for Board Members.** In any election of the members of the Board, every Owner of a Membership entitled to vote at such election shall cast said vote or votes in a non-cumulative fashion as provided by Arizona law.

**5.6 Membership Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws as the same may be amended from time to time.

**5.7 Transfer Membership.** The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to a Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record or such other legal process as now in effect or as may hereafter be established under Arizona law. Any attempt to make a prohibited transfer shall be void.

## **6. ASSESSMENTS AND CREATION OF LIEN**

### **6.1 Creation of Lien and Personal Obligation of Assessments and Maintenance Charges.**

The Declarant, for each Lot established in Highgate, hereby covenants and agrees and each Owner by acceptance of a Deed therefor, whether or not expressed in the Deed, is deemed to covenant and agree to pay to the Association the following assessments and charges:

- a) Annual Assessments;
- b) Special Assessments;
- c) Maintenance Charges as described in this Declaration.

The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, costs and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing servitude and lien upon the Lot against which such Assessment is made. The Annual and Special Assessments against each Lot shall be based upon the number of Memberships appurtenant to the Lot. Each such Annual and Special Assessment and Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of the Lot at the time the Assessment was due. The personal obligation for delinquent assessments shall not pass to the successors and title to the Owner unless expressly assumed by them.

**6.2 Annual Assessments.** In order to provide for the uses and purposes of the Association, including the establishment and replacement of maintenance reserves, the Board each year, commencing with the year in which the Plat is recorded, shall assess against each Lot an Annual Assessment. The amount of the Annual Assessment shall be in the sole discretion of the Board and shall be determined with the objective of fulfilling the Association's obligations under this Declaration.

**6.3 Uniform Rate of Assessment.** The amount of any Annual or Special Assessment or Maintenance Charge against each Lot shall be fixed as a uniform rate for Membership. Notwithstanding anything to the contrary herein, Declarant and/or Developer shall not be responsible for payment of any Annual and Special Assessments or Maintenance Charges established pursuant to this Declaration or the Articles or Bylaws of the Association except that Declarant and/or Developer shall pay Annual and Special Assessments and/or Maintenance Charges on Completed Lots owned by Declarant and/or Developer. For purposes of this Declaration, "Completed Lots" shall mean any Lot with a Dwelling Unit thereon ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living on the Property (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed) but shall not include any Lots with improvements thereon used by Declarant and/or Developer as models or sales offices.

Although Declarant and/or Developer may contribute to the expenses of the Association and the maintenance of the Common Easement Area, it is understood that Declarant and/or Developer are not and shall not be held liable for the payment of any Annual and Special Assessments and/or Maintenance Charges provided for in this Declaration and/or Articles and Bylaws of the Association by virtue of the ownership or development of Lots within the Property unless such ownership is of Completed Lots as herein defined, and that the failure to pay any Annual and Special Assessments and/or Maintenance Charges shall not give rise to any right of imposing any lien or encumbrance upon said Lots and by Declarant and/or Developer as security for the payment of said Annual and Special Assessments and/or Maintenance Charges unless Declarant and/or Developer have failed to paid same on Completed Lots as herein defined.

**6.4 Maximum Annual Assessment.** The Annual Assessment to be established by the Board may not exceed a certain amount hereinafter referred to as the "Maximum Annual Assessment" which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

- a) Until January 1 of the year following the recordation of the Plat, the Maximum Annual Assessment against each Owner shall be Twelve Hundred Dollars (\$1,200.00) for each Membership;
- a) From and after January 1 of the year immediately following recordation of the Plat, and during such year, the Maximum Annual Assessment cannot be increased more than ten percent (10%) each year;
- b) From and after January 1 of the year immediately following the recordation of the Plat, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under subsection (b) above by a vote of two-thirds (2/3) of each Class of Members who are voting in person or by proxy at a meeting duly called for such purpose.
- c) At the time of conveyance of a Lot by Declarant to an Owner, the Owner (not Declarant) thereof shall pay the equivalent of two (2) months of the Annual Assessment then applicable to that Lot into the working capital fund of the Association. At the same time, Developer and/or Declarant shall match the equivalent payment made by Owner. Said working capital funds shall be used by the Association to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the working capital fund are not to be considered as advance payment of Annual and Special Assessments or Maintenance Charges.

**6.5 Special Assessments for Capital Improvements and Extraordinary Expenses.**

In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying the whole or any part of the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land or Common Easement Area, including fixtures or personal property related thereto or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of each Class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

**6.6 Notice and Quorum.** Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 4.5 of this Declaration shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of the Members or proxies entitled to cast fifty percent (50%) of all of the votes. (exclusive of suspended voting rights) of each Class of Membership shall constitute a quorum. If the required quorum is not present., another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**6.7 Establishment of Annual 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 shall commence upon the filing of the Plat and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the Pima County Recorder's Office an instrument specifying the new Assessment Period.

**6.8 Billing and Collection Procedures.** The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of. making the Assessments provided herein and for the billing and collection of the Annual and Special Assessments and Maintenance Charges provided said procedures are not inconsistent with these provisions. The failure of the Association to send a bill to a Member shall not relieve any Member of its liability for any Assessment or charge under this Declaration but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement at the address of the Member on the records of the Association that the Assessment or any installation thereof is or will be due and owing. Such notice may be given at any time prior to or after delinquency of such payment. Any Assessment or installment thereof not paid when due shall be deemed delinquent and bear interest thirty (30) days after its due date until paid at a rate of twelve percent (12%) per annum. A Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The Board may also record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording the notice, processing the delinquency and recording the notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the assessment lien. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or any other person a written certificate stating that all Annual and Special Assessments and Maintenance Charges (including interest, costs and attorney's fees, if any, as provided above) have been paid with respect to any Lot or if not paid, the amount then due and owing. The Association may make a reasonable charge for the issuance of such certificates which shall be paid at the time of request.

## **6.9 Enforcement of Annual and Special Assessments and Maintenance Charges and of Assessment Lien.**

1. Association as Enforcing Body. The Association as the agent and representative of the Members shall have the right to enforce the provisions of this Declaration and CCR's. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, but not at the expense of the Association, by any appropriate action.

2. Remedies of Enforcement. If any Member fails to pay the Annual or Special Assessments or Maintenance Charges, the Association may enforce the payment of the Annual or Special Assessments and/or Maintenance Charges, including the Assessment Lien, by any manner provided by law. All costs of enforcement shall be borne by the Member who is delinquent.

## **7. USE OF FUNDS**

**7.1 Association's Funds Purposes.** The Association shall apply all funds and property collected and received by it, including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source for the common good and benefit of Highgate and the Members by devoting said funds and property to the acquisition, construction, alteration, maintenance, repair and operation by any manner or method whatsoever of any and all land, properties, improvements and services within or without Highgate which may be necessary or desirable or beneficial to the general common interests of Highgate and its Members. The Association may borrow money in such amounts and at such rates upon such terms as is necessary or appropriate. The Association shall not be obligated to spend in any year any or all of the funds received by it in such year and may carry forward as surplus any balance 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. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property or the Common Elements and shall maintain insurance for the Board for errors and omissions. The Association shall accept full and complete responsibility for control, management, maintenance and liability of all Common Easement Area including, but not limited to, Association Land.

## **8. MAINTENANCE**

**8.1 Common Easement Areas and Rights of Way.** The Association shall maintain and otherwise manage all of the Common Easement Areas; including, but not limited to, the landscape in walkways, paths and parking areas.

**8.2 Front Yard Landscaping and Maintenance.** The Front Yard of any Lot shall at all times be owned in fee simple by the Owner. Each Owner shall be liable for all costs of landscape, irrigation, design, planting, installation of landscape, irrigation and vegetation except for initial landscaping and irrigation provided by Declarant and/or Developer; provided, however, that no landscaping or irrigation shall be commenced,

installed or maintained upon a Lot until plans and specifications for same shall have been submitted to and approved in writing by the Board or by the Architectural Control Committee of the Association.

**8.3 Rear Yard Landscaping and Maintenance.** The Rear Yard of any Lot shall at all times be owned in fee simple and maintained solely and exclusively by the Owner of the Lot and no maintenance or other obligations regarding the Rear Yard of a Lot shall be assumed or borne by the Association. Notwithstanding anything to the contrary above, any Rear Yard landscaping or irrigation shall not be commenced, installed or maintained until plans and specifications for same shall have been submitted to and approved in writing by the Board and the Architectural Control Committee of the Association.

## **9. ARCHITECTURAL REVIEW COMMITTEE**

**9.1 Establishment.** The Declarant shall establish an Architectural Review Committee to perform the functions of the Architectural Review Committee as described in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the Architectural Review Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration, the Plat or CCR's. The Architectural Review Committee shall consist of such number of regular members as the Declarant may designate and such members shall be appointed by the Declarant. The appointees need not be architects or Owners and do not need to possess any special qualifications of any type except as the Declarant in its discretion may require. The Architectural Review Committee shall hold regular meetings and a quorum for such meetings shall consist of a quorum of the regular members and a concurrence of a majority of the regular members shall be necessary for any decision of the Architectural Review Committee. The Architectural Review Committee shall follow the guidelines as set forth in this Declaration and CCR's in rendering its decisions and developing its rules and the decision of the Architectural Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

**9.2 Fee.** The Board may establish reasonable processing fees to defer the cost of the Architectural Review Committee in considering any requests for approval submitted to it which fee shall be paid at the time the request for approval is submitted.

**9.3 Appointment of Architectural Review Committee Members.** Architectural Review Committee members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's right to appoint Architectural Review Committee members shall cease and the Board shall be vested in that right and all of the rights of the Declarant pertaining to the Architectural Review Committee at such time as the Declarant no longer owns any property at Highgate or when such right is expressly relinquished by Declarant to Board in writing, whichever first occurs.

## **10. RIGHTS AND POWERS OF ASSOCIATION**

**10.1 Association's Rights and Powers as Set Forth in Articles and Bylaws.** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its

Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration, that are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. The Association, as the agent and representative of the Owners, shall have the right to enforce the CCR's set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which shall have been executed pursuant to or subject to the provisions of this Declaration or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

### ***10.2 Contracts With Others for Performance of Association's***

***Duties.*** Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee as employed by or otherwise connected with Declarant through its affiliates, provided such fact is disclosed and the contract is fair and reasonable.

### ***10.3 Change of Use of Association Land and Procedure***

***Therefor.*** Upon the adoption of a resolution by the Board stating that in the Board's opinion the then-present use of a designated part of the Association Land or the Association's interest in the Common Easement Area is no longer in the best interests of the Owners and upon the approval of such resolution by a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use and in connection therewith construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use, provided such use shall be for the benefit of the Owners and consistent with the CCR's or zoning regulations restricting the use of the Association Land and Common Easement Area.

***10.4 Ad Valorem Taxes.*** The Association shall be responsible for the payment of taxes on the Common Easement Area. Each Lot shall be responsible for their pro-rata share of any taxes so assessed and said taxes may be added to the Assessment as that term is used herein.

## **11. GENERAL PROVISIONS**

***11.1 Term.*** The covenants, conditions and restrictions of this Declaration shall remain in full force and effect for a period of ninety-nine (99) years from the date this Declaration is recorded. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each unless terminated by a written and recorded instrument approved by the Owners pursuant to the procedure set forth below for amendments to this Declaration.

**11.2 Amendments.** This Declaration may be amended by an instrument in writing signed and acknowledged by the Owners of two-thirds (2/3) of the Lots, and such amendment shall be effective upon its recordation with the Pima County Recorder. Notwithstanding anything in this Declaration to the contrary, Declarant shall have the superior right, so long as Declarant is the Owner of at least one (1) Lot to amend this Declaration by a written amendment signed only by the Declarant and then recorded.

### **11.3 Enforcement and Non-Waiver.**

1. Enforcement. Except as otherwise provided herein, any Owner or Declarant (so long as Declarant owns at least one (1) Lot), shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations or liens, now or hereafter imposed by provision of this Declaration.
2. Violations and Nuisances. Every act or omission whereby any provision of this Declaration *is* violated in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by Declarant, or any Owner or group of Owners within the subdivision.
3. Violation of Law. Each and every provision of this Declaration and any amendment hereto, shall be subject to all governmental zoning and building ordinances and subdivision regulations and any future amendments thereto.
4. Remedies Cumulative. Each remedy provided by these CCR's is cumulative and not exclusive.
5. Waiver. Failure by Declarant or by any Owner to enforce any of the provisions of these CCR's at any time, shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of these CCR's.

**11.4 Mortgage Protection.** Notwithstanding any other provisions of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid the rights of the beneficiary under any deed of trust or mortgage upon a Lot or Dwelling Unit made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust or mortgage, such Lot or Dwelling Unit shall remain subject to this Declaration, *as* amended.

### **11.5 Construction.**

- A. Governing Law. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the subdivision. This Declaration shall be construed and governed by the laws of the State of Arizona.
- B. Restriction Severable. Notwithstanding the provisions of the foregoing paragraph, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- C. Rule Against Perpetuities. In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event, said periods of time shall be reduced to a period of time which shall not violate the rules against perpetuities as set forth in the laws of the State of Arizona.

D. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

E. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only, and in no way define, limit or describe the true intent and meaning of the provisions hereof.

**11.6 Savings Clause.** Notwithstanding anything herein to the contrary, Developer shall have full and complete authority to perform such acts which it deems necessary for the development and sale of Lots within the subdivision.

**11.7 Binding Effect.** By acceptance of a deed or acquiring any ownership interest in any of the Property included within this Declaration, each Person or entity, for himself, or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his 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 amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Property and hereby evidences his interest that all restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

## **12. TERMINATION OF ORIGINAL DECLARATION AND AMENDED DECLARATION**

By recording this Rested Declaration, it is the intent and purpose and Declarant hereby terminates, revokes and renders null and void the Original Declaration and the Amended Declaration from and after the date of recordation of this Declaration.

## **13. INTERPRETATION OF REZONING DECLARATION**

In order to satisfy Declarant's obligations arising from rezoning approval, Pima County File No. Co 9-88-18, Stickler-La Cholla Blvd., Declarant caused to be recorded the Rezoning Declaration. To the extent any term, condition or covenant of this Restated Declaration and CC&Rs is more restrictive than a similar term, condition or Covenant of the Rezoning Declaration, the terms, conditions and covenants of this Restated Declaration and CC&Rs shall prevail. To the extent that any term, condition or covenant of this Restated Declaration and CC&Rs is less restrictive than a similar term, condition or covenant of the Rezoning Declaration, the terms, conditions or covenants of the Rezoning Declaration shall prevail.

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

DECLARANT :

FIDELITY NATIONAL TITLE AGENCY, INC.

By \_\_\_\_\_

Its: \_\_\_\_\_

AS TRUSTEE UNDER TRUST NUMBER 10752  
DEVELOPER:  
THE GENESEE COMPANY

By \_\_\_\_\_

Its: \_\_\_\_\_