

**MASTER DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS,
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,
RESERVATIONS AND EASEMENTS
FOR
FOX CROSSING**

INDEX

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
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	<u>Page</u>
1) DEFINITIONS	2
2) PLAN OF DEVELOPMENT	7
2.1 General Declaration Creating Fox Crossing	7
2.2 Master Association Bound	8
2.3 Subsidiary Associations Bound	8
2.4 Disclaimer of Representations	8
2.5 Designated Builders	8
3) EASEMENTS AND RIGHTS OF ENJOYMENT IN MASTER COMMON AREAS.....	8
3.1 Easements of Enjoyment	8
3.2 Easements to Facilitate Development	10
3.3 Utility Easements	10
3.4 Easements for Encroachments	11
3.5 Delegation of Use	11
4) PERMITTED USES AND RESTRICTIONS	11
4.1 Residential Use	11
4.2 Animals	11
4.3 Temporary Occupancy and Temporary Building	12
4.4 Diseases and Insects	12
4.5 Antennas	12
4.6 Mineral Exploration	13
4.7 Trash Containers and Collection	13
4.8 Clothes Drying Facilities	13
4.9 Party Walls	13
4.10 Overhead Encroachments	14
4.11 Window Coverings	14
4.12 Garages and Driveways	14

(continued)

	<u>Page</u>
4.13 Heating, Ventilating and Air Conditioning Units	14
4.14 Solar Collection Panels or Devices.....	15
4.15 Basketball Goals	15
4.16 Vehicles	15
4.17 Landscaping and Maintenance; Reconstruction	16
4.18 Prohibited Uses	17
4.19 Dust Control	17
4.20 Nuisances	17
4.21 Drainage	17
4.22 Health, Safety and Welfare	18
4.23 Leasing; Obligations of Tenants and Other Occupants	18
4.24 Environmental Protections	18
4.25 Property. Restrictions	19
4.26 Model Homes	19
4.27 Repair of Building	19
4.28 Signs	20
4.29 Utility Service	20
4.30 Right of Entry	20
4.31 Declarant's and Designated Builders' Exemption	20
5) ARCHITECTURAL CONTROL	21
5.1 Approval Required	21
5.2 Review of Plans	22
5.3 Architectural Committee	23
5.4 Exclusions	23
6) ORGANIZATION OF MASTER ASSOCIATION	23
6.1. Formation of Master Association	23
6.2. Board of Directors and Officers	24
6.3. Role of Master Association	24
6.4. The Fox Crossing Rules	24
6.5. Personal Liability	24
6.6. Subsidiary Associations	25

7) MEMBERSHIPS AND VOTING	25
7.1 Owners of Lots	25
7.2 Right to Vote	25
7.3 Membership Rights	26
7.4 Transfer of Membership	26
8) COVENANT FOR ASSESSMENTS AND CREATION OF LIEN	26
8.1 Creation of Assessment Right; Covenants to Pay	26
8.2 Lien for Assessments; Foreclosure	27
8.3 Reduced Assessments; Deficiency Assessments	29
8.4 Computation of Annual Assessments; Annual Budget	29
8.5 Due Dates	29
8.6 Maximum Annual Assessment	30
8.7 Special Assessments	30
8.8 Transfer Fee	30
8.9 Capital Fund	30
9) USE OF FUNDS; BORROWING POWER	31
9.1 Purposes for which Master Association's Funds May Be Used.....	31
9.2 Borrowing Power	31
9.3 Master Association's Rights in Spending Funds From Year to Year	31
9.4 Insurance	32
10) MAINTENANCE	32
10.1 Master Common Areas and Public Rights-of-Way	32
10.2 Assessment of Certain Costs of Maintenance and Repair of Master Common Areas and Public Areas	33
10.3 Improper Maintenance and Use of Lots	33
10.4 Conveyance of Master Common Areas	34

11)	RIGHTS AND POWERS OF MASTER ASSOCIATION	34
11.1	Master Association's Rights and Powers as Set Forth in Articles and Bylaws	34
11.2	Rights of Enforcement of Provisions of This and Other Instruments	34
11.3	Contracts with Others for Performance of Master Association's Duties	34
12)	ANNEXATION AND DEANNEXATION	35
12.1	Annexation of Other Real Property	35
12.2	Limitations on and Effect of Annexation	35
12.3	Deannexation Without Approval	35
12.4	Supplementary Declarations and Certificates of Deannexation.....	36
13)	TERM; AMENDMENTS; TERMINATION	36
13.1	Term; Method of Termination	36
13.2	Amendments	37
13.3	Right of Amendment if Requested by Governmental Agency or Lending Institutions	37
14)	MISCELLANEOUS:	38
14.1	Interpretation of the Covenants	38
14.2	Severability	38
14.3	Perpetuities and Restraints on Alienation	38
14.4	Rules and Regulations	38
14.5	References to the Covenants in Deeds	38
14.6	Gender and Number	38
14.7	Captions and Titles	38
14.8	Notices	39
14.9	FHA/VA Approval	39

**MASTER DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES,
LIENS, RESERVATIONS AND EASEMENTS
FOR**

FOX CROSSING

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS FOR FOX CROSSING (hereinafter termed this "Declaration") is made as of the 24th day of November, 1997, by and among SHAMROCK FOODS COMPANY, an Arizona corporation (termed "Declarant"), MORRISON HOMES, INC., a Delaware corporation ("Morrison"), U.S. HOME CORPORATION, a Delaware corporation (U.S. Home"), and WOODSIDE HOMES SALES CORPORATION an Arizona corporation ("Woodside").

WITNESSETH:

A. Declarant is the owner of that certain real property located in the County of Maricopa, State of Arizona, legally described in Exhibit "A" attached hereto and incorporated herein by this reference, and as shown on the Master Plan and Project Plat described herein, which property is commonly known as Fox Crossing (hereinafter sometimes referred to as "Fox Crossing").

B. Declarant and the Designated Builders defined below desire to develop Fox Crossing or cause Fox Crossing to be developed into a planned community of single-family residential homes, park and recreational areas and open areas and related uses. ..

C. As part of the various stages of development of Fox Crossing, Declarant and the Designated Builders intend, without obligation, (i) that portions of Fox Crossing will be dedicated to the public for streets, roadways, drainage, flood control and general/public use, and (ii) that Parcels within Fox Crossing will be sold or otherwise conveyed to the Designated Builders and to other Builder/Developers for the construction and sale of single-family homes, and (iii) that Subsidiary Declarations may be recorded, which Subsidiary Declarations may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to Lots within such Parcels.

D. Declarant and the Designated Builders also desire to form a nonprofit corporation for the purpose of benefiting Fox Crossing, the Owners, the Lessees and the Residents, which nonprofit corporation (hereinafter termed the "Master Association") will (i) acquire, construct, operate, manage and maintain any Master Common Areas in Fox Crossing, (ii) establish, levy, collect and disburse the Assessments and other charges

imposed hereunder, and (iii) as the agent and representative of the Members of the Master Association and of the Owners, the Lessees and the Residents of Fox Crossing, administer and enforce this Declaration and enforce the use and other restrictions imposed on various parts of Fox Crossing.

E. Declarant and the Designated Builders are preparing the necessary documents for the incorporation and organization of the Master Association and may, without obligation, seek approval of the Fox Crossing development by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or by any other governmental agencies or financial institutions whose approval Declarant and the Designated Builders deem necessary and desirable (each an "Agency")..

F. In order to cause the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements (hereinafter collectively called the "Covenants") to run with the Property and to be binding upon the Property, the Owners, the Lessees and the Residents thereof from, and after the date of the Recording of this Declaration, Declarant hereby makes all conveyances of the Property, whether or not so provided therein, subject to the Covenants herein set forth, and by accepting Deeds, leases, easements or other grants or conveyances to any portion of the Property, the Owners, the Lessees, the Residents 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, except to the extent such persons are specifically excepted herefrom.

NOW, THEREFORE, Declarant and the Designated Builders hereby declare, covenant and agree as follows:

ARTICLE 1

DEFINITIONS

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

"Agency" has the meaning given to it in the Recital hereto.

"Approved Builder" means each of Kaufman and Broad of Arizona, Inc., an Arizona corporation, Cresleigh Homes Arizona, Inc., an Arizona corporation and Engle Homes/Arizona, Inc., a Florida corporation.

"Architectural Committee" shall mean the committee to be created pursuant to *Article 5* of this Declaration.

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

"**Assessable Property**" shall mean any Lot within the Property, except such part or parts thereof as may from time to time constitute Exempt Property.

"**Assessment**" shall mean the charges levied and assessed each year against each Membership pursuant to *Article 8* hereof.

"**Assessment Lien**" shall mean the lien created and imposed by *Article 8*.

"**Annual Assessment**" shall mean the Assessments imposed for annual expenses pursuant to Section 8. 4.

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

"**Builder/Developer**" shall mean an Owner which is in the business of constructing homes and which intends to construct homes on the Lots it owns.

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

"**Common Expenses**" shall mean the expenses of operating the Master Association.

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

"**Declarant**" shall mean and refer to the above recited Declarant or any person or persons to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned. In addition to the express assignment set forth in this Declaration, the Declarant's rights shall only be assigned by a written, Recorded instrument expressly assigning those rights.

"**Declaration**" shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented from time to time.

"**Deed**" shall mean a Deed or other instrument conveying the fee simple title in a Parcel or a Lot.

"**Deficiency Assessments**" shall mean Assessments which are imposed against Lots owned by Declarant or any Designated Builder pursuant to the provisions of *Section 8.3 below*.

"**Design Guidelines**" shall mean those architectural and design guidelines established by the Architectural Committee pursuant to the provisions of *Article 5* below.

"Designated Builder" shall mean a Builder/Developer who is: (a) a Designated Builder in the introductory paragraph of this Declaration, or (b) an Approved Builder which has acquired title to a Parcel or one or more Lots, or (c) a Builder/Developer approved by Declarant and a majority of the then Designated Builders owning at least one Lot, such approval not to be unreasonably withheld.

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

"Exempt Property" shall mean the following parts of the Property:

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

(b) All Master Association Land, for as long as the Master Association is the owner thereof.

"First Mortgage" shall mean a deed of trust or mortgage Recorded against a Lot which has priority over all other deeds of trust or mortgages recorded against the same Lot.

"Fox Crossing Rules" shall mean those rules applicable to the Property and adopted and implemented by the Board from time to time pursuant to the provisions of *Section 6.4* below.

"Lessee" shall mean the Lessee under a lease, including an assignee of a lease but excluding any person who has assigned all of his interest in a lease.

"Lot" shall mean any pan of the Property designated as a Lot on any Plat which has been .Recorded against a Parcel and, where the context indicates or requires, any improvements constructed from time to time thereon. For purposes of voting, permitted uses and restrictions, maintenance and Assessments, each Parcel which is intended to contain Lots

pursuant to the Master Plan, but which is not yet subject to a Plat, shall be deemed to have that number of Lots for such Parcel as are permitted by the Master Plan for such Parcel.

"Maintenance Charges" shall mean any and all costs assessed pursuant to *Article 10* hereof.

"Master Association" shall mean the Arizona nonprofit corporation to be organized by Declarant and the Designated Builders to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its

successors and assigns. Declarant and the Designated Builders hereby reserve the exclusive right to cause such Master Association to be incorporated. It is the intent of the Declarant and the Designated Builders that the Master Association shall be named the "Fox Crossing Homeowners Association."

"Master Association Land" shall mean and consist of the real property legally described as "Tract A", "Tract E", "Tract F", "Tract L" and "Tract O" of the Project Plat and all tracts shown on any Plat other than any private streets, Subject to such tracts being conveyed to and accepted by the Master Association.

"Master Common Area" and "Master Common Areas" shall mean all Master Association Land and any other property used in connection with the Master Association Land benefiting the Members generally which the Master Association owns.

"Master Plan" shall mean the Master Plan for Fox Crossing approved by the City of Chandler, as the same may be from time to time amended.

"Member" shall mean any person holding a Membership in the Master Association pursuant to this Declaration.

"Membership" shall mean a Membership in the Master Association and the rights granted to the Owners pursuant to *Article 7* hereof to participate in the Master Association.

"Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot, but excluding those who hold such title merely as security for the performance of an obligation. In the case of a Lot, the fee simple title to which- is vested of Record in a seller under a valid and outstanding Agreement or Contract of Sale, as defined in A.R.S. 33-741, legal title shall be deemed to be in the purchaser under such Agreement or Contract of Sale. In the case of a Lot, the fee simple title to which is vested of Record in a trustee pursuant to A.R.S. 33-801, et seq., legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or who holds an undivided fee interest in any Lot.

"Parcel" shall mean a contiguous area of real property within the Property, shown on the Master Plan, containing or intended to contain Lots created by one or more Plats.

"Park Site" shall mean the real property legally described as "Tract C" of the Project Plat.

"Plat" shall mean those subdivision plats previously approved by the City Council of Chandler for portions of the Property in connection with approval of the Project Plat, and all amendments, supplements and corrections thereto. It shall also include any other subdivision plats recorded against the Property and approved by Chandler and the Master Association, approval of the Master Association not to be unreasonably withheld.

"Project Plat" shall mean the "Final Plat of Fox Crossing", Recorded in Book 455 of Maps, Page 13, Document No. 97-0819016, Maricopa County, Arizona Recorder's Office.

"Property" shall mean all of the real property legally described in *Exhibit "A"* attached hereto and incorporated herein by this reference, together with all improvements constructed thereon from time to time, and includes .all property on the Project Plat other than the School Site and the Park Site.

"Recording" or "Recordation" shall mean placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and "Recorded" shall mean having been so placed of public record.

"Resident" shall mean each natural person legally occupying or residing in a Dwelling Unit.

"School Site" shall mean the real property legally described as "Tract N" of the Project Plat.

"Special Assessment" shall mean any Assessment levied and assessed pursuant to Section 8. 7thereof.

"Subsidiary Association" shall mean an Arizona nonprofit corporation, its successors and assigns, established for the purpose of administering and enforcing the provisions of any Subsidiary Declaration.

"Subsidiary Declaration" shall mean any declaration of covenants, conditions and restrictions Recorded after the Recording of this Declaration with respect to any Parcel (or portion thereof) by the Owners thereof and meeting the requirements of

Section 6.6 hereof. All Subsidiary Declarations shall in all cases be consistent with and subordinate to this Declaration.

"Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on the same plane as the object being viewed at a distance of one hundred (100) feet or less from the nearest boundary of the property being viewed.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 General Declaration Creating Fox Crossing. Declarant intends that all of the Property be developed, used and enjoyed in accordance with and pursuant to the Master Plan by subdividing the Property into various Parcels and selling and conveying such Parcels to Builder/Developers. Declarant hereby declares that all of the Property is, and Shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that such portions of the Property which are dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration and the Covenants herein contained while owned by the public or the governmental entity, although any restrictions imposed in this Declaration upon the Owners, the Lessees or the Residents concerning the use and maintenance of such portion or portions of the Property shall at all times apply to the Owners, the Lessees and the Residents. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property, and is established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Master Association, all Owners, Lessees and Residents and their successors in interest. By acceptance of a Deed or by acquiring any interest in any of the Property, each person, 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 Covenants 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 interest that all Covenants contained in this Declaration shall run with the land and be binding upon all subsequent and future owners, grantees, purchasers, assignees, lessees and transferees thereof. Each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Master Association and all Owners. Declarant, its successors, assigns and grantees, covenant and agree that the Lots and the Memberships in the Master Association and the other rights appurtenant to such Lots shall not be separated or separately conveyed, and each shall be deemed to be conveyed or

encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Master Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Master Association, the Covenants shall be binding upon and shall benefit the Master Association.

2.3 Subsidiary Associations Bound. Any and all Subsidiary Associations created pursuant to *Section 6.6* of this Declaration shall be bound by and, to the extent specifically set forth in this Declaration, benefited by the Covenants.

2.4 Disclaimer of Representations. Notwithstanding anything to the contrary herein, neither the Declarant nor any Designated Builder makes any warranty or representation whatsoever that the plans presently envisioned for the complete development

of the Property can or will be carried out, or that the Property is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant and the Designated Builders have no reason to believe that any of the restrictive covenants contained in this Declaration are or 'may be invalid or unenforceable, neither the Declarant nor any Designated Builder makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to a Lot agrees that neither the Declarant nor any Designated Builder shall have any liability with respect thereto.

2.5 Designated Builders. Each Designated Builder shall have all rights of Declarant hereunder.

ARTICLE 3

EASEMENTS AND RIGHTS OF ENJOYMENT IN MASTER COMMON AREAS

3.1 Easements of Enjoyment. Declarant and every Owner, Lessee and Resident of the Property shall have a right and easement of enjoyment in and to the Master Common Areas which shall be appurtenant to, and shall pass with, the title to every Lot subject to the following provisions:

(a) The right of the Master Association to charge reasonable admission and other Special Use Fees for the use of the Master Common Areas or any facilities constructed thereon.

(b) The right of the Master Association to suspend the voting rights and right to use of the facilities and other Master Common Areas by any Member (i) for any period during which any Assessment against his Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Fox Crossing Rules, and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period.

(c) The right of the Master Association to regulate the use of the Master Common Areas through the Fox Crossing Rules and to prohibit or limit access to certain Master Common Areas, such as specified landscaped areas. The Fox Crossing Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Master Common Areas for the safety and convenience of the users thereof, and otherwise shall serve to promote the best interests of the Owners, Lessees and Residents.

(d) The right of the Master Association to dedicate or transfer all or any part of the Master Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Master Association. Unless otherwise required by zoning stipulations or other agreements with applicable governing municipalities effective prior to the date hereof or specified on a Recorded Plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners of at least two thirds (2/3) of the Memberships in the Master Association agreeing to Such dedication or transfer has been Recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit the Property and which do not have any substantial adverse effect on the enjoyment of the Master Common Areas by the Members.

(e) The right of the Master Association to change the use of the Master Common Areas in accordance with this Declaration.

(f) The right of the Master Association to change the size, shape or location of Master Common Areas, to exchange Master Common Areas for other lands or interests therein which become Master Common Areas and to abandon or otherwise transfer Master Common Areas so long as, in each case, either (i) the Board determines that the Members are not materially or adversely affected, or (ii) Members holding at least two-thirds (2/3) of the Memberships in the Master Association have executed an instrument agreeing to such change in size, shape or location, exchange, abandonment or transfer.

3.2 Easements to Facilitate Development.

3.2.1 Each Designated Builder shall have a blanket easement over Master Common Area and over Lots it has conveyed to home purchasers, in order to construct improvements related to homes it has constructed or will construct within the Property.

3.2.2 Neither the Declarant nor any Designated Builder shall exercise any of the rights or easements reserved by or granted pursuant to this Section 3.2 in such a manner as to unreasonably interfere with the construction, development or occupancy of any part of the Property.

3.2.3 The rights and easements reserved by or granted pursuant to this *Section 3.2* shall continue so long as the Declarant or any Designated Builder, as the case may, owns any Lot. Declarant and the Designated Builders may make limited temporary assignments of their easement rights under this Declaration to any person performing construction, installation or maintenance on any portion of the Property.

3.3 Utility Easements.

3.3.1 A nonexclusive, perpetual blanket easement is hereby granted over and through the Master Common Areas and a limited, specific easement over and through the portions of the Lots shown as public utility easement areas on a Plat for the purpose of:

(a) Installing constructing operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private;

(b) Ingress and egress to install, construct, operate, maintain, repair and replace such equipment;

(c) Exercising the rights under the easement.

Such easement is hereby granted to any person providing such utilities or installing constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant or the Designated Builders, where contemplated on any Recorded Hat or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed aboveground during periods of construction if approved by the Declarant and the Designated Builders. The person providing the service or installing a utility pursuant to this

easement shall install, construct, maintain, repair or replace the equipment used to provide or meter utilities as promptly and expeditiously as possible, and shall restore the surface of the land and the improvements situated thereon to their original condition as soon as possible.

3.4 Easements for Encroachments. If any improvement constructed by or for a Designated Builder or Declarant on any Lot or Parcel or on the Master Common Area now or hereafter encroaches on any other portion of the Property by an amount of deviation permitted by customary construction tolerances, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists, and the Owner of the encroaching improvement shall also have an easement for the limited purpose of maintenance of the encroaching improvement.

3.5 Delegation of Use. Any Member may, in accordance with this Declaration and the Fox Crossing Rules and the limitations therein contained, delegate his right of enjoyment in the Master Common Areas and facilities to the members of his family, his Lessees or his Residents.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

4.1 Residential Use. No Lot within the Property shall be used or improved for any purpose except for residential use. No gainful occupation; profession, trade or other nonresidential use, other than the keeping of an office for private use, shall be conducted on any Lot and no person shall enter into any Lot for the purpose of engaging in such uses or for the purpose of receiving products or services arising out of such usage.

4.2 Animals. No animal, bird, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purpose. No animal, bird, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, poultry or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, poultry or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions contained herein and in this Declaration.

4.3 Temporary Occupancy and Temporary Building. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings

or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures may be used during the construction of a Dwelling Unit on any Lot, provided that they shall be removed immediately after the completion of construction.

4.4 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

4.5 Antennas. No antenna, aerial, satellite dish or other device for the transmission or reception of television or radio (including amateur or ham radio) signals of any kind (collectively referred to herein as "antennas") will be allowed outside the Dwelling Unit, except:

(a) Those antennas whose installation and use is protected under federal law or regulations (generally, certain antennas under one meter in diameter), provided that an application for such an antenna must be submitted to the Architectural Committee and such application will be approved only if:

(i) the antenna is designed to assure the minimal visual intrusion possible (i.e., is located in a manner that minimizes visibility from the street); and

(ii) the antenna complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations, (i.e., without precluding reception of quality signal, or unreasonably increasing the cost of the antenna).

Upon the written request of the Owner when submitting the application, the Architectural Committee shall consider such an application on an expedited basis and shall strive to render a decision within seven days, but in no event later than fourteen days, from the date the applicant submits a complete application.

or

(b) Dishes 18" in diameter or smaller in locations approved by the Architectural Committee for rear or side yard locations and appropriately screened.

Any transmission cable for a receiver to the house must be underground. The restrictions in this **Section 4.5** shall be subject to any limitations imposed by law.

4.6 Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

4.7 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, and except on a temporary basis during any period of construction of improvements on any Lot. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be promptly removed from all Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

4.8 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and are not Visible From Neighboring Property.

4.9 Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots, or party fences between Lots, shall be as follows:

(a) The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(b) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his Residents, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in **Subsection (e)** below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(c) In the event any party wall or party fence is destroyed or damaged) including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Residents, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such party wall or party fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall or party fence (with expenses related to walls or fences between

Lots and Master Common Area be divided between the Lot Owner and the Association on such basis).

(d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein whether by way of easement or in fee.

(e) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Architectural Committee, the decision of which shall be binding.

(f) Anything in the foregoing to the contrary notwithstanding, in walls or fences constructed by the Declarant, the Designated Builders or the Master Association on Master Common Areas where the wall or fence does not border on a Lot, the Master Association shall be responsible for all maintenance thereof, subject to the provisions of **Section 10.2** of this Declaration, except that each Owner of a Lot shall be responsible for painting the portion of the party wall or party fence facing his Lot or the portion thereof which is not a portion of the Master Common Area.

4.10 Overhead Encroachments. No tree, shrub or planting of any kind of any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, Master Common Area or other Lot from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

4.11 Window Coverings. In no event shall the interior or exterior of any windows be covered with reflective material, such as foil, or with paper, bed sheets or other temporary coverings.

4.12 Garages and Driveways. The interior of all garages situated upon the Property shall be maintained by the respective Owners thereof in a neat and clean condition. Such garages shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons. All driveways on Lots shall be of concrete construction. Detached garages shall not be permitted.

4.13 Heating, Ventilation, and Air Conditioning Units. No heating air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Property, including but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened

from view from any adjacent Lots by a parapet wall which conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Architectural Committee, provided, however, that where such unit or equipment as Visible From Neighboring Property solely through a "view fence", no screening or concealment shall be required.

4.14 Solar Collection Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Architectural Committee, such approval to be subject to the restrictions of applicable law, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot); so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Architectural Committee may reasonably deem appropriate' to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a person six (6) feet tall standing at Found level on adjacent properties. The restrictions in this Section 4.14 shall be subject to any limitations imposed by law.

4.15 Basketball Goals. Except as permitted by the next sentence, no basketball goal or similar structure or device (whether mounted on a pole, wall or roof) shall be placed

or constructed upon the front yard, front elevation or front roof surface of any structure on any part of the Property. A basketball goal may be permitted which is mounted on a freestanding pole and which complies with the Fox Crossing Rules adopted by the Architectural Committee. The Fox Crossing Rules may be amended by the Board from time to time. For purposes of the foregoing sentence, the term "front" shall be deemed to mean visible from ground level view from the street(s) running immediately in front of or along the side of a Dwelling Unit or other structure.

4.16 Vehicles. Private, non-commercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or width or two hundred twenty-two (222) inches in length, may be parked on the Property within a garage or in a private driveway appurtenant to a Dwelling Unit but, except as provided in the next sentence, may not be parked elsewhere on the Property or streets adjoining the Property. The preceding sentence shall not preclude occasional overflow parking in a street right-of-way for guests or other reasonable purposes provided that no

inconvenience is imposed on the Owners, Lessees or Residents of other Lots for a period not to exceed twenty-four (24) hours or such more restrictive period as may be: (a) imposed by the City of Chandler or (b) set by the Architectural Committee from time to time. No other vehicle (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents, or similar vehicles or equipment, commercial vehicles, or vehicles exceeding one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or width, or two hundred twenty-two (222) inches in length or similar vehicles or equipment) shall be kept, placed or maintained upon the Property or any roadway adjacent thereto, except: (a) within a fully-enclosed garage appurtenant to a Dwelling Unit; or (b) in such areas and subject to such rules and regulations as the Architectural Committee may designate and adopt in its sole discretion (and the Architectural Committee in its sole discretion may prohibit such other vehicles and equipment completely). No vehicle (including, but not limited to, those enumerated in the preceding sentences) shall be constructed, reconstructed or repaired on the Property or any roadway therein or adjacent thereto except within a fully enclosed garage. No motor vehicles of any kind which are not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit). The provisions of this **Section 4.16** shall not apply to vehicles of Declarant, any Designated Builder, any Builder/Developer or their respective employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property.

4.17 Landscaping and Maintenance: Reconstruction. Within ninety (90) days of acquiring an improved Lot, each Owner (other than Declarant or any Designated Builder) shall landscape (if not already landscaped) such Lot and any public right-of way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and an adjacent street and, if such Lot has a "view fence", then between the back boundary of such Lot and such view fence. Each Owner shall maintain the landscaping on

such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent Street and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Landscaping shall be installed under this **Section 4.17** as to be consistent, in terms of general appearance and level of care and attention, with other normal completed residential landscaping within the Property and within other residential properties in the vicinity of the Property. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean and attractive condition consistent in appearance with other properly-maintained, improved Lots within the Property. In the event any Dwelling Unit or other structure is totally or partially damaged or destroyed by fire, Act of God or any other cause, the Owner shall fully repair the damage and complete reconstruction of the Dwelling Unit or other structure within eighteen (18) months after occurrence of the damage or destruction. The provisions of this **Section 4.17** shall not apply to any Lot or other property owned by Declarant or any Designated Builder.

4.18 Prohibited Uses. No use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance or unreasonable source of annoyance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Owner shall be permitted on any Lot. No use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the City of Chandler or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot.

4.19 Dust Control. The areas on each Lot which are not improved with buildings ("Clear Areas") shall be landscaped as provided in **Section 4.17**. After a sale of the Lot by Declarant or any Designated Builder, until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain its Lot in a manner which minimizes the possibility of dust being transmitted into the air and over adjacent properties.

4.20 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property for any unreasonable time, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other portion of the Property in the vicinity thereof or to its Owners, Residents or Lessees. No loud, noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to persons or property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners, Residents and Lessees. The Architectural Committee shall have the right to determine, in its sole discretion, whether the provisions of this Section 4.20 have been

violated. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions in this Declaration.

4.21 Drainage. No Owner, Resident, Lessee or other person shall interfere with the drainage established for the Property by Declarant and the Designated Builders as approved by Chandler. No Owner, Resident, Lessee or other person shall obstruct, divert, alter or interfere, including but not limited to any type of structure or vegetation, in any way with the drainage of ground and surface water upon, across or over any portion of the Lots, right-of-way, Master Common Area(s) or other part of the Property. Each Owner shall, at its own expense, maintain the drainage ways and channels on its Lot in proper condition free from obstruction. The Association shall have the right, after ten (10) days notice to an Owner, except in the case of emergency (in which case the Association shall have an immediate right of access), to repair or otherwise maintain the drainage way or channel on said Owner's Lot, which the Association, acting through the Architectural Committee,

determines has not been maintained by the Owner in compliance with this provision. All costs and expenses, including, but not limited to, reasonable attorney's fees and costs incurred by the Association shall be borne by the Owner, and shall be paid to the Association upon demand, plus interest at an annual rate of twelve percent (12%) from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in like manner as assessments levied pursuant to this Declaration. For the purpose of this clause, "drainage" means the drainage that exists at the time the overall grading of the Lots, right-of-way, and Master Common Area(s) were completed by the Declarant or any Builder/Developer in accordance with plans approved by the City of Chandler.

4.22 Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Architectural Committee to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents, the Architectural Committee may make rules restricting or regulating their presence on the Lot as part of the Fox Crossing Rules.

4.23 Leasing: Obligations of Tenants and Other Occupants. All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws and the rules and regulations of the Association. Each Owner shall cause his, her or its Residents, Lessees or other occupants to comply with this Declaration, the Articles, the Bylaws and the rules and regulations of the Association and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by Such Residents, Lessees or other occupants, notwithstanding the fact that such Residents, Lessees or other occupants are also fully liable for any violation of each and all of those documents. No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. The provisions of this **Section 4.23** shall not apply to the use of Lots owned by (or leased to) Declarant or any Builder/Developer as a model home or for marketing purposes.

4.24 Environmental Protections. No Lot nor any facilities on any Lot or Parcel shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this Section, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

4.25 Property Restrictions. No further covenants, conditions, restrictions or easements ("Subsidiary Declaration") shall be Recorded by any Builder/Developer, Owner, Lessee, Resident or other person against any Lot without the provisions thereof having been first approved in writing by the Board, and any Subsidiary Declaration which is Recorded without such approval being evidenced thereon shall be null and void; provided, however, that a Designated Builder may record a Subsidiary Declaration on any Lot or Parcel owned by the Designated Builder without obtaining the prior consent or approval of the Board or any other Owner. Notwithstanding the foregoing or anything else in this Declaration to the contrary, no Subsidiary Declaration Recorded by an Owner, including, without limitation, a Designated Builder, shall operate to modify or amend this Declaration but, in the event that such covenants, conditions and restrictions impose restrictions on the use or occupancy of the real property subject to the Subsidiary Declaration which are more restrictive than the restrictions set forth in this Declaration, the more restrictive provisions shall prevail. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any person unless the application has first been approved by the Board and the proposed use otherwise complies with this Declaration.

4.26 Model Homes. The provisions of this Declaration which prohibit nonresidential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction and/or sale of Dwelling Units within the Property and parking incidental to the visiting of such model homes so long as the location of such model homes are approved by the Architectural Committee, which approval shall not be unreasonably withheld, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. It shall be deemed reasonable for the Architectural Committee to withhold its approval of the location of any such model homes to the extent that the location of such model homes materially and adversely interferes with the free-flow of pedestrian or vehicular traffic, creates an unreasonable amount of dust and debris or otherwise constitutes a public or private nuisance to other residents within the Property. The Architectural Committee may also permit other areas to be used for parking in connection with the showing of model homes provided such parking and parking areas are in compliance with the ordinances of the governing municipality, other applicable

governmental agencies and any rules of the Board. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or builder thereof is not actively engaged in the construction and/or sale of single-family residences within the Property, and no home shall be used as a model home for the sale of homes not located within the Property.

4.27 Repair of Building. No building or structure on any Lot shall be permitted to fail 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 approvals required by *Article 5* below, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

4.28 Signs. No signs whatsoever (including, but not limited to, commercial political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- (a) Signs required by legal proceedings.
- (b) No more than two (2) identification signs for individual residences, each with a face area of seventy-two (72) square inches or less.
- (c) "For Sale" and "For Lease" signs temporarily erected in connection with the marketing of any Lot.
- (d) Signs and notices erected or posted in connection with the provision of building security.
- (e) Promotional and advertising signs of Builder/Developers on any Lot, approved from time to time in advance and in writing by the Architectural Committee as to number, size, color, design, message content, location and type.
- (f) Such other signs (including, but not limited to, construction job identification signs, builder identification signs and subdivision identification signs) which are in conformance with the applicable requirements of the City of Chandler or other applicable governmental agencies and which have been approved in advance and in writing by the Architectural Committee as to size, color, design, message content and location.

4.29 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by the Designated Builders or as may be otherwise approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of

temporary power or telephone structures incident to the construction of buildings or structures.

4.30 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Resident of a Lot, any Member of the Architectural Committee or the Board, or any authorized representative thereof, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration

have been, or are being, complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

4.31 Declarant's and Designated Builders' Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or any Designated Builder, or their duly authorized agents, of structures, improvements or signs necessary or convenient to the development or sale of Lots within the Property and, in connection therewith, Declarant and the Designated Builders shall have the right and authority to permit and authorize other Builder/Developers to construct and install temporary signage which is necessary or convenient to the development and sale of any Lots within the Property, so long as such rights are exercised in a fair, equitable and nondiscriminatory manner.

ARTICLE 5

ARCHITECTURAL CONTROL

5.1 Approval Required. No improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee which shall have the authority to regulate the external design and appearance of the Lots and all improvements constructed thereon. No addition, alteration, repair, change or other work which in any way alters the exterior appearance of any part of a Lot, or any improvements located thereon, which are or would be 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 the construction, installation, addition, alteration, repair, change or replacement of any improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee their written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may reasonably request.' If the Architectural Committee falls to approve or disapprove an application for approval within forty-five (45) days after an application meeting all of the requirements of this Declaration and of the Design Guidelines, together with any fee required to be paid and any additional information, plans

and specifications requested by the Architectural Committee have been submitted to the Architectural Committee, the application will be deemed to have been approved. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

5.2 Review of Plans. In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved 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 construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Article 5 if the Architectural Committee determines, in its sole and absolute discretion, that:

- (a) The proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration;
- (b) The proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline;
- (c) The proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing improvements in the Property or with improvements previously approved by the Architectural Committee but not yet constructed;
- (d) The proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable;
- (e) The proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect the appearance of the Property; or
- (f) The proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Property.

The approval required by the Architectural Committee pursuant to this **Article 5** 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. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this **Article 5** shall not be deemed a warranty or

representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

5.3 Architectural Committee. Declarant may appoint one representative to the Architectural Committee for so long as Declarant owns a Lot, and each Designated Builder may appoint a representative to the Architectural Committee for as long as such Designated Builder owns a Lot. A party who can appoint a representative may also remove such representative. When a party no longer has the right to appoint a representative, its representative shall automatically cease to be a member. When the number of Members of the Architectural Committee has been reduced to less than three (3) as a result of the sale or conveyance of Lots owned by the Declarant and the Designated Builders, as the case may be, the Board shall appoint such individuals as may be necessary so that there are at all times at least three (3) members of the Architectural Committee." A member of the Architectural Committee need not be an Owner or Resident in the Property. The Architectural Committee may adopt, mend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures ("Design Guidelines") may include, without limitation, provisions regarding (a) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography, (b) placement of Dwelling Units and other buildings, (c) landscape design, content and conformance with the character of the Property and permitted and prohibited plants, (d) requirements concerning exterior color schemes, exterior finishes and materials, (e) signage, and (f) perimeter and screen wall design and appearance. The decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration shall be subject to appeal to the Board unless Architectural Committee is designated as the final arbiter; the decision of the Board in all cases shall be final.

5.4 Exclusions. The provisions of this Article 5 shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by or on behalf of Declarant, any of the initial Designated Builders listed in the introductory paragraph of this Declaration or any Approved Builder.

ARTICLE 6

ORGANIZATION OF MASTER ASSOCIATION

6.1 Formation of Master Association. The Master 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. Neither the Articles nor Bylaws shall, for any reason, be mended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Master Association shall be conducted by the Board elected in accordance with this Declaration and the Articles and Bylaws, and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be mended from time to time. The initial

Board shall be composed of at least six (6) members. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Master Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Master Association.

6.3 Role of Master Association. The Master Association is intended to be an "umbrella" organization whose primary responsibilities will be:

(a) The maintenance of all Master Common Areas within the Property;

(b) Appointment of individuals to serve on the Architectural Committee pursuant to the provisions of *Section 5.3* above;

(c) The enforcement of the Covenants contained in this Declaration;

and

(d) The approval, coordination and oversight of any Subsidiary Association.

6.4 The Fox Crossing Rules. By a majority vote of the Board, the Master 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 Fox Crossing Rules, which shall apply to, restrict and govern the use of any Master Common Areas, Lots or Parcels by any Member, Lessee or Resident; provided, however, that the Fox Crossing Rules shall not be inconsistent with this Declaration, the Articles or the Bylaws of the Master Association. Upon adoption, the Fox Crossing Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

6.5 Personal Liability. No Member of the Board or of any committee of the Master Association, no officer of the Master Association, and no manager or other employee of the Master Association shall be personally liable to any Member, or to any other person, including the Master Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Master Association, the Board, the manager, any representative or employee of the Master Association or any committee, committee member or officer of the Master Association; provided, however, the limitations set forth in this *Section 6.5* shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.6 **Subsidiary Associations.** If any Subsidiary Association is to be formed by any Builder/Developer or any group of Owners within the Property, then, unless formed by Declarant or a Designated Builder, the Subsidiary Association, the Subsidiary

Declaration, the articles of incorporation, the bylaws and all other governing documents for such Subsidiary Association shall not be effective unless approved by the Board, such approval not to be unreasonably withheld. The governing documents of any Subsidiary Association shall specify that such association and the rights of its members are subject and subordinate to this Declaration, the Articles and Bylaws of the Master Association and the Fox Crossing Rules.

ARTICLE 7

MEMBERSHIPS AND VOTING

7.1 Owners of Lots. Each Owner of a Lot shall automatically be a Member of the Master Association. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not come there to be more Memberships than the number established for purposes of this *Section 7.1*. Each Member shall have one (1) Membership for each Lot owned by such Owner as shown on a Recorded Plat of any Parcel or on the Master Plan of the Property with respect to any Parcel not yet subjected to a Recorded Plat.

7.2 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void. The Association shall have two classes of voting Members. Class A Members shall be all Owners except Declarant and Designated Builders. A Class A Member shall have one vote for each Lot owned by such Member. The Class B Members shall be Declarant and Designated Builders. The Class B Members shall have three (3) votes for each Lot owned. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives satisfactory evidence thereof. Fractional votes shall not be allowed. The Class B Membership shall automatically cease and be converted to a Class A Membership upon the happening of the first of the following events:

- (a) the date which is 120 days after the date on which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Membership;

(b) the date which is twenty (20) years after the date this Declaration is Recorded; or

(c) the date on which Declarant and Designated Builders relinquishes the Class B Membership by notifying the Class A Members in writing

7.3 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 the Bylaws, as the same may be amended from time to time.

7.4 Transfer of Membership. The rights and obligations of the Owner of a Membership in the Master Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot. A transfer of ownership to a Lot may be effectuated 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 the ownership of the Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

ARTICLE 8

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Right: Covenants to Pay. In order to provide funds to enable the Master Association to meet its obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Master Association by the Board. Assessments shall be for Common Expenses and shall be allocated equally among all Lots. Each Owner, by acceptance of his, her or its deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot. Each Owner falling to pay an Assessment within thirty (30) days of the date that the Assessment is due shall also pay a late charge as set by the Board from time to time. The initial late charge shall be the greater of Ten Dollars (\$10.00) per month or ten percent (10%) of the unpaid Assessment. Late charges shall be subject to any limitations imposed by A.R.S. §33-1803 or other applicable law, as amended from time to time. The Owner shall also pay all costs and reasonable attorneys' fees incurred by the Association in seeking to collect such Assessments and other amounts. The Assessments with respect to a Lot, together with interest, costs and reasonable attorneys' fees as provided in this *Section 8.1*, shall also be the personal obligation of the person who was the Owner of such Lot at the time such Assessments arose with respect to such Lot; provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of the

obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Master Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Master Association or Board to take some action or perform some function required to be taken or performed by the Master Association or Board under this Declaration, the Articles or the Bylaws.

8.2 Lien for Assessments: Foreclosure. (a) There is hereby created and established a lien in favor of the Association against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any other mounts levied against such Lot or the Owner thereof pursuant to the Declaration or the Articles, the Bylaws or the rules and regulations of the Master Association). Such lien shall be prior and superior to all other liens affecting the Lot in question, except: (a) taxes, bonds assessments and other levies which, by law, are superior thereto; and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Master Association shall have the power to bid for any Lot at any sale to foreclose the Master Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period the Lot is owned by the Master Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Master Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Master Common Areas. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

(b) The Board may invoke any or all of the sanctions provided for herein or in the Declaration, or any other reasonable sanction, to compel payment of any Assessment or installment thereof, not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

(i) Interest and Late Fees. The Board may impose late fees and interest in such amounts as it determines are appropriate from time to time, subject to any limitations stated herein or imposed by law which such amounts shall be secured by the aforementioned liens;

(ii) Suspension of Rights. The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights and rights to use and enjoy the Master Common Areas;

(iii) Collection of Delinquent Amount. The Board may institute an action at law for a money judgment or any other proceeding to recover the Delinquent Amount;

(iv) Recording of Notice. The Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in the Declaration. The Board may establish a fixed fee to reimburse the Master Association or its representative for the cost of recording the notice, processing the delinquency and recording a notice of satisfaction of the lien; and

(v) Foreclosure of Lien. The Board may foreclose the Recorded lien against the Lot in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency).

(c) It shall be the duty of every Owner to pay all Assessments with respect to the Owner's Lot in the manner provided herein. Such Assessments, together with interest and costs of collection as provided for herein and in the Declaration, shall, until paid, be a charge and continuing servitude and lien upon the Lot against which such Assessments are made, provided, however, that the lien for such Assessments shall be subordinate to only those matters identified in this Declaration. The Master Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided for in this Declaration or these Bylaws, or otherwise available at law or in equity for the collection of all unpaid Assessments, interest thereon, costs of collection thereof and reasonable collection agency fees and attorneys' fees.

(d) The Master Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments without a foreclosure of the lien for such Assessments, and the same shall not constitute a waiver of the lien for such Assessments.

8.3 Reduced Assessments; Deficiency Assessments. Declarant and the Designated Builders shall pay Annual Assessments with respect to Lots owned by Declarant and the Designated Builders which are twenty-five percent (25%) of the Annual Assessment payable by other Owners, provided that Declarant and the Designated Builders shall pay or contribute to the Master Association cash as may be necessary to make up any budget shortfalls of the Master Association resulting from the reduced assessment paid by Declarant and the Designated Builders on a proportionate basis within fifteen (15) days of request based upon the number of Lots owned by the Declarant and each Designated Builder, as of the end of the period for which the Deficiency has been calculated (hereinafter referred to as "Deficiency Assessments"). In no event, however, shall Declarant or any Designated Builder be required to pay Deficiency Assessments for a period which when added to the reduced Annual Assessment (or prorata portion thereof) paid for such period exceeds the Annual Assessments or prorata portion thereof that would be payable by an Owner other than Declarant or a Designated Builder. (As an example of the effect of the foregoing, if the Annual Assessment per Lot was \$240.00, the reduced Annual Assessment was consequently \$60.00, and there was a short fall in the first quarter of such year, the maximum Deficiency Assessment for the first quarter will be Forty-Five Dollars (\$45.00), calculated by taking the prorata full Annual Assessment (\$60.00) and subtracting the prorata reduced Annual Assessment (\$15.00)).

8.4 Computation of Annual Assessments: Annual Budget. The Board shall adopt a budget for each fiscal year of the Master Association, which budget should serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations of *Section 8.6* hereof). Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall deliver or mail to each Owner a copy of the budget and a statement of the amount of Annual Assessments to be levied against such Owner's Lot for that year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided in *Section 8.6*, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners.

8.5 Due Dates. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Master Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

8.6 Maximum Annual Assessment. The Assessments provided for under *Section 8.4* shall not at any time exceed the "Maximum Annual Assessment," as determined

in accordance with this *Section 8.6*. For the fiscal year ending December 31, 1997, the Maximum Annual Assessment for each Lot shall be determined by the Board. Thereafter,

except as provided below, unless a greater increase is approved by a vote of two-thirds (2/3) of the votes of each class of Members represented in person or by proxy at a meeting of Members called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index-- All Urban Consumers- All Items (1982-1984 Average = 100 Base) published by the Bureau Of Labor Statistics of the U.S. Department of Labor (or its successor); or (b) ten percent (10%). Further, notwithstanding the foregoing the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by this Declaration to be maintained by the Master Association; and (ii) charges for utility services necessary to the Master Association's performance of its obligations under this Declaration, notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is greater than otherwise permitted under the third sentence of this **Section 8.6**. Increases in annual Assessments shall be subject to any limitations imposed by A.R.S. §33-1803 or other law as such may be amended from time to time.

8.7 Special Assessments. The Master Association may in addition to the Annual Assessments under Section 8.4 levy a Special Assessment but only for the purpose of defraying, in whole or in part, the cost of any Construction, reconstruction, repair or replacement of a capital improvement owned by the Master Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment must be approved by at least two-thirds (2/3rds) of the votes of the Members voting in person or by proxy at a meeting of the Master Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners.

8.8 Transfer Fee. Each person, other than Declarant or any Designated Builder, who purchases a Lot from a person other than Declarant or any Designated Builder shall pay to the Master 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.

8.9 Working Capital Fund. To insure that the Master Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each person, with the exception of Declarant and the Designated Builders, who purchases a Lot shall pay to the Master Association immediately upon becoming the Owner of a Lot a sum equal to one-sixth (1/6) of the current annual Assessment for the Lot. Funds paid to the Master Association pursuant to this **Section 8.9** may be used by the Master Association for payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this **Section 8.9** shall be nonrefundable and shall not be offset or

credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Master Association pursuant to this Declaration. Payments made pursuant to this **Section 8.9** shall not be used in calculating the Maximum Annual Assessment pursuant to **Section 8.6** hereof.

ARTICLE 9

USE OF FUNDS: BORROWING POWER

9.1 Purposes for which Master Association's Funds May Be Used. The Master Association shall apply all funds and property collected and received by it (including the annual Assessments, Special Assessments and Deficiency 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 the Property and the Members 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, projects, programs, studies and systems, within or without the Property, which may be necessary, desirable or beneficial to the general common interests of the Property, the Members and the Residents. The following are some, but not all, of the areas in which the Master Association may seek to aid, promote and provide for such common benefit: maintenance of landscaping on Master Common Areas and public right-of-way and drainage areas within or serving the Property, obtaining of liability insurance, supplying of utilities and other public services, providing for communication and transportation within and dissemination of information concerning the Property, indemnification of officers and directors of the Master Association and generally protecting the health and safety of the Members and the Residents. The Master Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

9.2 Borrowing Power. The Master Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that no portion of the Master Common Areas shall be mortgaged or otherwise encumbered without the approval of at least two-thirds (2/3) of the Memberships in the Association.

9.3 Master Association's Rights in Spending Funds From Year to Year. The Master Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Assessments, Deficiency Assessments, Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Master 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 Master 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 Master Association and the accomplishment of its purposes.

9.4 Insurance. The Master Association may maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Master Common Areas, directors and officers liability insurance, and/or such other

insurance as the Board determines appropriate with the amount and type of coverage to be determined by the Board.

ARTICLE 10

MAINTENANCE

10.1 Master Common Areas and Public Rights-of-Way. The Master Association, or its duly delegated representative, shall maintain and otherwise manage, all Master Common Areas, including but not limited to, landscaping walkways, parks, paths, greenbelts, parking areas, drives and other facilities. The Master Association may also maintain any landscaping and other improvements not on Lots which are within the exterior boundaries of the Property within areas shown on a Plat for any Parcel within Fox Crossing and which are intended for the general benefit of the Owners and Residents of the Property, except the Master Association shall not maintain areas which (i) the City of Chandler or other governmental entity is maintaining, or (ii) are to be maintained by the Owners of a Lot, either through a Subsidiary Association or otherwise. The Master Association may, in the discretion of the Board:

(A) Reconstruct, repair, replace or refinish any improvement or portion thereof upon Master Association Land;

(B) Replace injured and diseased trees and other vegetation in any Master Common Area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(C) Place and maintain upon any Master Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(D) Do all such other and further acts which the Board deems necessary to preserve and protect the Master Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Master Common Areas and other properties maintained by the Master Association. Any cooperative action

necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any Plat, deed restriction or this Declaration permits the Board to determine whether Owners of certain Lots will be responsible for maintenance of certain Master Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, Lessees and Residents of the Property for the Master Association or an individual Owner to

be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Master Association to contract with others for the performance of the maintenance and other obligations of the Master Association under this *Article 10* and, in order to promote uniformity and harmony of appearance, the Board may also cause the Master Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Master Association and Owner may agree upon.

10.2 Assessment of Certain Costs of Maintenance and Repair of Master Common Areas and Public Areas. In the event that the need for maintenance or repair of Master Common Areas and other areas maintained by the Master Association is caused through the willful or negligent act of any Member, his family, guests or invitees, the cost of such maintenance or repairs shall be due within thirty (30) days of notice and shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject, and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot in connection with a contract entered into by the Master Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

10.3 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 Fox Crossing which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration or the Fox Crossing Rules, the Board may by resolution 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 fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) 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 (either by undertaking such corrective actions or bringing suit to compel the offending Owner to undertake such corrective action) and the cost thereof, together with any attorney's fees expended by the Association in connection therewith, shall be added to, and become a part of, the Assessment

to which the offending Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien.

10.4 Conveyance of Master Common Areas. Immediately upon the Recording of this Declaration, the Declarant shall execute and deliver to the Master Association a special warranty deed of conveyance for all Master Common Areas. After completion of all improvements to the Master Common Areas, as contemplated by the Master Plan, by the Designated Builders, the Master Association shall be deemed to have assumed all responsibility for the ongoing maintenance, repair and restoration of such

Master Common Areas. After conveyance of any Master Common Area to the Master Association, the Master Association shall not further convey the Master Common Area without the consent of at least two-thirds (2/3) of the Memberships of the Association.

ARTICLE 11

RIGHTS AND POWERS OF MASTER ASSOCIATION

11.1 Master Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Master Association set forth in this Declaration, the Master 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 or the Designated Builders, 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 and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Master Association, a copy of the Articles and Bylaws of the Master Association shall be available for inspection at the office of the Master Association during reasonable business hours.

11.2 Rights of Enforcement of Provisions of This and Other Instruments. The Declarant and each Designated Builder, for so long as each holds at least one (1) Membership, and the Master Association, as the agent and representative of the Members, shall each have the right to enforce the provisions of this Declaration. However, if the Declarant, the Designated Builders or the Master 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 Master Association, by any appropriate action, whether in law or in equity, but not at the expense of the Master Association.

11.3 Contracts with Others for Performance of Master Association's Duties. Subject to the restrictions and limitations contained herein, the Master Association may enter into contracts and transactions with others, including Declarant, the Designated Builders and their affiliated companies, and such contracts or transactions shall not be

invalidated or in any way affected by the fact that one (1) or more directors or officers of the Master Association, or members of any committee, is employed by, or otherwise connected with, Declarant, the Designated Builders or their affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, the Designated Builders or their affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

ARTICLE 12

ANNEXATION AND DEANNEXATION

12.1 Annexation of Other Real Property. Any real property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Master Association only with the prior written consent of at least seventy-five percent (75%) of the Memberships of the Master Association. In the event that any additional real property is annexed to the Property, such annexation shall be effected by the Recordation of a Supplementary Declaration covering the real property sought to be annexed and executed and Recorded by the Board and by the fee title holders of the real property sought to be annexed.

12.2 Limitations on and Effect of Annexation. No Supplementary Declaration shall be executed and Recorded pursuant to this *Article 12* more than twelve (12) years subsequent to the Recording of this Declaration. Such execution and Recording of a Supplementary Declaration shall constitute and effectuate the annexation of said portion of the or other real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Master Association, and thereafter the other real property so annexed shall be part of the Property and all of the Owners of Lots in the other real property so annexed shall automatically be Members of the Master Association.

12.3 Deannexation Without Approval. A portion or portions of the Property may be deannexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Master Association, provided that a Certificate of Deannexation covering the portion of the Property sought to be deannexed shall be executed and Recorded by Declarant or its successors and assigns, and by at least seventy-five percent (75%) of the Memberships of the Master Association. No Certificate of Deannexation shall be so executed and Recorded pursuant to this Section more than twelve (12) years subsequent to the Recording of this Declaration.

12.4 Supplementary Declarations and Certificates of Deannexation. The annexations and deannexations authorized under the foregoing Sections shall be made by Recording in the office of the County Recorder of Maricopa County, Arizona, a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, which shall extend the plan of this Declaration to such property or a Certificate of Deannexation which shall remove the portion of the Property covered thereby from the plan of this Declaration. The Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, revoke, modify or add to the covenants established by this Declaration within the existing Property.

ARTICLE 13

TERM: AMENDMENTS; TERMINATION

13.1 Term: Method of Termination. This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods often (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) Of the total votes cast at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension and by the Declarant and each of the Designated Builders, to the extent Declarant and or Designated Builder continues to own a Lot in the Property. This Declaration may be terminated at any time if ninety percent (90%) of the votes cast by the Members shall be cast in favor of termination at a meeting held for such purpose and the Declarant and each of the Designated Builders, to the extent they continue to own a Lot in the Property, have voted in favor of termination. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of First Mortgages to which the Assessment Lien is subordinate pursuant to **Section 8.2** above, on seventy-five percent (75%) of the Lots or Parcels upon which there are such First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Master Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Master Association shall be dissolved pursuant to the terms set forth in its Articles.

13.2 Amendments. This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in **Section 13.3** of this Article, shall certify that, at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws, the Owners casting at least ninety percent (90%) of the votes then entitled to be cast voted affirmatively for the adoption of the Amendment and by Declarant and each of the Designated Builders, to the extent Declarant and any Designated Builders continue to own a Lot in the Property; provided, however, after twenty-five (25) years from the date of the Recording of this Declaration, the affirmative vote of the Owners casting at least seventy-five percent (75%) of the votes then entitled to be cast at a duly called meeting shall be necessary to amend this Declaration, together with the affirmative vote of Declarant and the Designated Builders, to the extent Declarant and the Designated Builders continue to own a Lot in the Property.

13.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant

and the Designated Builders reserve the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the FHA, VA, FNMA, FHLMC, the City of Chandler or any other governmental or quasi-governmental entity in connection with any government-sponsored loan programs, and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Parcel(s) or Lot(s) or any portions thereof. Any such amendment shall be effected by the Recording of a Certificate of Amendment duly signed by or on behalf of Declarant or a majority of the Designated Builders who then own any portion of the Property, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of the Property and all persons having an interest therein. It is the desire of Declarant and the Designated Builders to retain control of the Master Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant and the Designated Builders shall have the right to prepare, provide for and adopt, as an amendment hereto, other and different control provisions. Except as provided in this *Section 13.3*, Declarant and the Designated Builders shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of *Section 13.2* of this Article.

ARTICLE 14

MISCELLANEOUS

14.1 Interpretation of the Covenants. Except for judicial construction, the Master Association by its 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 Master Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof:

14.2 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.

14.3 Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful; void or voidable for violation of the rule against perpetuities, then such provision shall continue

until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States on the date hereof.

14.4 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Master Association shall have the right to adopt rules and regulations with respect to all other aspects of the Master Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

14.5 References to the Covenants in Deeds. Deeds to, and instruments affecting, any Lot or Parcel or any part of the Property may contain the Covenants 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 Covenants shall be binding upon the grantee/Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

14.6 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.

14.7 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 or context thereof.

14.8 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City of Chandler. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

14.9 FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as the Designated Builders have the right to exercise Declarant's rights hereunder, the following actions will require the prior approval of the FHA and VA, as applicable, unless the need for such approval has been waived by the FHA and VA: (a) Dedications of Master Common Areas (except where such dedication is required as of the date hereof to the City of Chandler or other applicable government subdivision); (b) amendment of this Declaration; and (c) the Annexation of additional real property to the Property.

