

ARTICLE III

EASEMENTS, ARCHITECTURAL CONTROL, COMMON WALLS

Section 3.01 Easements Encroachments. Each Dwelling Unit and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer, including footings and walls thereon. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event Dwelling Units are partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on parts of the adjacent Dwelling Units or Common Area due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 3.02 Private Drainage Easements. Private drainage easements may have been established as shown on the Plat or by separate instrument duly recorded over and across certain Lots for the exclusive use and benefit of other Lot Owners. Each Owner of a Lot on which a private drainage easement is located shall be responsible for maintaining

that easement and keeping it free and clear from all debris, refuse and any other foreign matter which shall in any way interfere with or hinder the free flow of water in the easement as originally constructed. In the event of the failure of any Lot Owner to so maintain an easement, other Lot Owners benefited by such easements shall have no cause of action against the Association, but shall proceed solely against that Lot Owner.

Section 3.03 Utility Easements. In addition to those specific easements shown on the Plat, there is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communications lines and systems, etc.. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Common Area and to affix and maintain wire, circuits and conduits on, in, and under the roofs and walls of Common Areas. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Property except as initially designed and installed by developer or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Property. In no event shall any portion of the above-mentioned easements for utilities be constructed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Property. This easement shall be limited to improvements as originally constructed. There shall be an access easement for delivery and collection of the U.S. Mail.

Section 3.04 Easement for Perimeter walls and Other Improvement. Developer may construct perimeter walls and other improvements, including but not limited to, driveways, walkways, exterior lighting (metered to a particular dwelling unit), drainage structures, etc., as a part of, or for the use of, a particular Dwelling Unit which may encroach upon or encompass portions of the Common Area or Adjacent Lots. Wherever such encroachments on the Common Area or adjacent lots should occur, the Owner of the Dwelling Unit involved shall have, subject to the conditions hereinafter set forth, a perpetual permanent right for such perimeter walls to encompass portions of the Common Area or adjacent lots and for such other improvements to encroach upon portions of the Common Area or adjacent lots. In consideration thereof, such Owners agree to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent lots which were constructed for the use of their Dwelling Unit, unless such maintenance and

repairs are the responsibility of the Association as set forth in Section 4.04 B of this Declaration. In the event any such Owners should make demand upon the Association to maintain any Common Area within the confines of such perimeter wall, or to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent lots which is the responsibility of the Owner to repair as set forth in Section 4.04 A of the Declaration, then the Association of adjacent lot Owners, as the case may be, shall have the absolute right, and may cause the Owner making such demand to remove at his/her expense, any improvement, including the perimeter wall, encroaching upon the Common Area or Adjacent lot, and to replace and rebuild such improvement or perimeter wall as to be within such Owner's lot.

Declarant hereby acknowledges that the right granted Owners under this Section is a property right of the Owner, and such property right any not be revoked or rescinded by Declarant, its successors or assigns, or by the Association, once such right has vested in an Owner, except upon an Owner's breach of the conditions set forth in the preceding sentence.

Section 3.05 Entry Easements. Developer may create a front yard and entry easement through the construction of a patio wall connecting a Dwelling Unit with the Dwelling Unit constructed on an adjacent lot. In the event said front yard encroaches upon a Common Area and/or adjacent lot, the Lot Owner benefited from the front yard shall have a perpetual easement for use of said area. The construction location of each patio wall shall be at the sole discretion of the Developer and once constructed, Section 3.04 shall apply.

Section 3.06 Side and Rear Easements. Each Dwelling Unit shall have an enclosed rear yard which may include a side yard (at the discretion of the Developer) created by Developer through the construction of a patio wall connecting the Dwelling Unit with the Dwelling Unit constructed on an adjacent lot. In the event said rear or side yard encroaches upon a Common Area and/or adjacent lot, the Lot Owner benefited from the rear or side yard shall have a perpetual easement for use of said area. The construction location of each patio wall shall be at the sole discretion of the Developer and once constructed, Section 3.04 shall apply.

Section 3.07 Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, except existing overhead lines; provided that no provisions hereof shall prohibit the erection of temporary power or telephone structures incident to construction.

Section 3.08 Common Walls. The rights duties of Owners with respect to common walls or fences shall be as follows:

A. Each wall, including patio walls and fences, which is constructed as a part of the original construction of the Dwelling Unit, any part of which is placed on or over the dividing line between separate Dwelling Units or on or over the boundary lines of the Entryway Easement and side and rear patio easements provided for in Section 3.05 and 3.06, above, shall constitute a common wall. With respect to any such wall, each of the adjoining Unit Owners shall assume the burden and be entitled to the benefits recited in this Section 3.08 and to the extent not inconsistent herewith, the general rules of law regarding common walls shall be applied thereto.

B. The Owners of contiguous Dwelling Units who have a common wall shall have reciprocal easements for support and an equal right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

C. Unless other provisions of this Section 3.06 are applicable, the costs of reasonable repair and maintenance of a common wall shall be shared equally by the Owners who make use of the common wall in proportion to such use.

D. In the event any common wall is damaged or destroyed through the act of one adjoining owner, or any of his guests or agents or members of his family so as to deprive the other Owner of the full use and enjoyment of such wall, then the first of such Owners, is required under local law, shall forthwith proceed to rebuild and repair the same to a good condition as formerly without cost to the other Owner.

E. In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his/her agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining Owners shall, if required under local law, proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

F. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall without prior consent of the Board. In addition to meeting the other requirements of the Restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his/her Dwelling Unit in any manner which requires the extension or other alteration of any common wall shall first obtain the written consent of the Board which shall determine the adjoining Owner's preference concerning the proposed modification, extension or alteration of the common wall prior to giving any written consent thereto.

G. In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of cost thereof, then upon written request of one of such Owners delivered to the Association, the matter shall be heard and determined by the Board.

Section 3.09 Architectural Control. Subsequent to the closing of the sale of a Dwelling Unit by Declarant to an Owner, no building, fence, wall, or other structure shall be commenced, created, erected or maintained upon said owner's Lot, nor shall any exterior addition to, or change in, or alteration of, said Owner's Dwelling Unit, or any common wall, or the exterior color scheme thereof, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated Committee fails to approve or disapprove such design and location within (30) days after said plans and specifications have been submitted to it, approval will not be required and this Section will be deemed to have been fully complied with. Notwithstanding anything contained to the contrary in the Section, no additions or modifications to any improvement or structure shall be made by an Owner subsequent to the closing of a sale of a Dwelling Unit to an Owner unless such addition or modification has been first reviewed and approved by the applicable governing body.

ARTICLE IV

THE ASSOCIATION, MEMBERSHIP, MAINTENANCE

Section 4.01 Organization.

A. Association. The Association is or shall be an Arizona non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-Laws, and this Declaration. The Association shall be legally constituted and in existence prior to the conveyance of the first Dwelling Unit by Declarant.

B. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time to time. The composition of the Board shall be defined in the By-Laws.

C. Personal Liability. No member of the Board or any Committee of the Association or any officer or

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