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9 **SUPERIOR COURT OF ARIZONA**
10 **COCONINO COUNTY**

11 **ROBERT R. HAWK and CECELIA J. HAWK, husband and wife,**)

Case No.: CV 2011-00775

12 Plaintiffs/Counter Defendant,)

13 vs.)

MOTION FOR SUMMARY JUDGMENT

14 **PC VILLAGE ASSOCIATION INC., an Arizona Corporation,**)

(the Honorable Mark Moran)

15 Defendant/Counter Plaintiff.)

16 Pursuant to Civil Rule 56, Plaintiff moves for summary judgment. As can be
17 seen by the pleadings and the facts, there are no material facts in dispute and summary
18 judgment is proper as a matter of law. The main issue between the parties is an issue of
19 statutory and contract interpretation. Both interpretations are purely matters of law and
20 solely within this Court's province. A recent decision from the Court of Appeals stated:

21 The interpretation of a statute is a question of law. *Citation*
22 *omitted.* We review *de novo* the interpretation of a statute
23 and in doing so, our foremost goal is to discern and give
24 effect to legislative intent. To that end, we interpret the
25 language of the statute "to give it a fair and sensible
26 meaning." We consider individual sections of a statute in the
context of the whole statute, and construe statutory provisions
in light of the entire statutory scheme "so they may be
harmonious and consistent." We may also look to the policy

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1 behind the statute and to its legislative history. (citations
2 omitted).

3 *Cypress on Sunland Homeowners*
4 *Ass'n. Orlandini*, 227 Ariz. 288,
5 ___, ¶30, 257 P.3d 1168, 1176-77
6 (App. 2011).

7 The same principles apply to the interpretation of a contract. *See, Chandler*
8 *Medical Bldg. Partners v. Chandler Dental Grp.*, 175 Ariz. 273, 855 P.2d 787 (App.
9 1993).

10 STATEMENT OF FACTS

- 11
- 12 1. The Plaintiffs, Robert and Cecelia Hawk ("Hawks") own real property in Coconino
13 County located in the Pine Canyon Subdivision ("Pine Canyon") and more
14 specifically identified as:

15 Lot 197 of the Estates at Pine Canyon Unit Two as shown on the plat
16 thereof, recorded in Case 9, Maps 28, 28A and 28B, records of
17 Coconino County Arizona.

18 *See*, Complaint ¶2, Admitted by Answer.

- 19 2. PC Village Association Inc., ("PC HOA") is an Arizona non-profit corporation. *See*,
20 Complaint ¶3, Admitted by Answer.
- 21 3. The Pine Canyon Subdivision is subject to a Declaration of Covenants Conditions
22 and Restrictions recorded at instrument number 3171314 as amended by a First
23 Amendment to Declaration of Covenants Conditions and Restrictions at instrument
24 number 3261475 (collectively, "CC&R's"), both matters being recorded in
25
26

1 Coconino County Public Records. *See*, Complaint ¶6, Admitted by Answer. *See*
2 *also, Ex. 1.*

3 4. The Original CC&R's were recorded in 2002 and the First Amendment was
4 recorded in 2004. *See, Ex. 1.*

5 5. The legislative history of A.R.S. 33-1808 is found at SB 1062. *Ex. 2.* (Judicial
6 Notice Requested).

7 6. The legislative history of A.R.S. 33-441 is found at SB 1148. *Ex. 3.* (Judicial
8 Notice Requested).

9 7. A case and controversy exists as to whether or not Plaintiffs can post a conforming
10 "for sale" sign on a lot which they own in Pine Canyon. *See* Complaint ¶ 15,
11 Admitted by Answer. *See generally*, all pleadings.
12
13

14
15 **MEMORANDUM OF LAW**

16 Defendant argues that Plaintiffs are prohibited from posting a "for sale" sign on
17 property that the Plaintiffs own in Pine Canyon. Two statutes allow Plaintiffs the legal
18 right to post a for sale sign on their lot, regardless of what the conflicting CC&R's say.
19 These statutes are set forth below.
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A.R.S. § 33-1808¹. Flag display; political signs; caution signs; for sale signs; political activities

F. Notwithstanding any provision in the community documents, an association shall not prohibit the indoor or outdoor display of a for sale sign and a sign rider by an association member on that member's property, including a sign that indicates the member is offering the property for sale by owner. The size of a sign offering a property for sale shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. With respect to real estate for sale or lease in the planned community, an association shall not prohibit or otherwise regulate any of the following:

1. Temporary open house signs or a member's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

33-441. For sale signs; restrictions unenforceable

A. A covenant, restriction or condition contained in any deed, contract, security agreement or other instrument affecting the transfer or sale of any interest in real property shall not be applied to prohibit the indoor or outdoor display of a for sale sign and a sign rider by a property owner on that person's property, including a sign that indicates the person is offering the property for sale by owner. The size of a sign offering a property for sale shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches.

B. This section applies to any covenant, restriction or condition without regard to the date the covenant, restriction or condition was created, signed or recorded. This section does not apply to timeshare property and timeshare interest as defined in § 33-2202.

¹ Another related statute is A.R.S. 33-1261 which applies to condominiums whereas 33-1808 applies to Planned Communities. The statutes are nearly *identical*.

1 C. This section does not apply to a covenant, restriction or condition
2 in a deed, contract, security agreement or other instrument affecting
3 the transfer or sale of an interest in real property that does not
4 prohibit or restrict the display of a for sale sign or a sign rider on the
5 real property.

6 Defendant is likely to argue that the posting of a for sale sign is prohibited by
7 Section 12.3 of the CC&R's which states:

8 12.3 Signs

9 No sign of any kind shall be Visible from Neighboring Property
10 without the approval of the Village Association or the Design
11 Review Committee, except: (a) signs used by Developer or any
12 Related Party in connection with the development or sale of Lots,
13 Tracts or Condominium Property of the Property; (b) signs required
14 by legal proceedings, or the prohibition of which is precluded by
15 law; or, (c) signs required for traffic control and regulation of
16 Common Areas. No "For Sale" or "For Rent" sign may be posted
17 on any Lot, Tract or Condominium Property.

18 **A. The Court Should Interpret The Controlling Statutes According To
19 Their Clear And Unambiguous Language And In Accordance With
20 The Intent Of The Legislature.**

21 "In interpreting a statute, we first look to the language of the statute itself."

22 *Lincoln v. Hold*, 215 Ariz. 21, 24, ¶ 7, 156 P.3d 438, 441 (App. 2007). "Words are given
23 their ordinary meaning unless the context of the statute requires otherwise." *HCZ Const.,*

24 *Inc. v. First Franklin Fin. Corp.*, 199 Ariz. 361, 364, ¶ 10, 18 P.3d 155, 158 (App. 2001).

25 "[A] Statute should be construed in conjunction with other statutes that relate to the same
26 subject or purpose..." *Johnson v. Mohave Cnty.*, 206 Ariz. 330, 333, ¶ 11, 78, P.3d 1051

(App. 2003). "If the statutes relate to the same subject or have the same general purpose-
that is, statutes which are in pari materia-they should be read in connection with, or

1 should be construed together with other related statutes, as though they constituted one
2 law.” *Moreno v. Jones*, 213 Ariz. 94, 99, ¶ 28, 139 P.3d 612, 617 (2006). “[T]hough we
3 most commonly examine legislative history due to statutory ambiguity or absurdity, it is
4 also well established that even where statutory language is “clear and unambiguous,” we
5 will not employ a plain meaning interpretation that would lead to a result at odds with the
6 legislature's intent.” *Resolution Trust Corp. v. Western Technologies, Inc.*, 179 Ariz.
7 195, 201, 877 P.2d 294, 300 (App.1994). “Courts should avoid hypertechnical
8 constructions that frustrate legislative intent.” *Calik v. Kongable*, 195 Ariz. 496, 501,
9 990 P.2d 1055, 1061 ¶ 20 (1999). “Where language is unambiguous, it is normally
10 conclusive, absent a clearly expressed legislative intent to the contrary.” *Mail Boxes,*
11 *Etc., U.S.A. v. Industrial Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995)

14 In this case, the language of A.R.S. § 33-1808 (F) and § 33-441 is clear and
15 unambiguous. A.R.S. § 33-1808 (F) begins with: “Notwithstanding any provision in the
16 community documents... an association shall not prohibit the ...display of a for sale
17 sign...” The word “notwithstanding” is defined as: “in spite of; despite, despite the fact;
18 although; nevertheless.”² This has a clear meaning which means that regardless of what
19 the community documents say, an association shall not prohibit the display of a for sale
20 sign.
21

23 Similarly, § 33-441(A) states that the language in a governing document, such as
24 the CC&R's here, “shall not be applied to prohibit the...display of a for sale sign...”

25
26 ² <http://www.thefreedictionary.com/notwithstanding> See also, BLACKS LAW DICTIONARY, 7th Ed. Pg. 1091 (1999)
 (“Despite; in spite of, notwithstanding the conditions listed above, the landlord can terminate the lease if the tenant
 defaults.>”)

1 The legislature further clarifies that “[t]his section applies to any covenant, restriction or
2 condition without regard to the date the covenant, restriction or condition was created,
3 signed or recorded.” A.R.S. 33-441(B). There is little argument that the CC&R’s, which
4 are titled “Declaration of Covenants, Conditions and Restrictions”, are encompassed
5 within the intent of this statute. *See, Ex. 1.* The language of the statute is clear, and
6 Defendants cannot argue otherwise.
7

8 **a. Even If The Statutes Were Somehow Ambiguous (Which**
9 **They Are Not) The Legislative Intent Clarifies Any**
10 **Ambiguity.**

11 The legislative intent is also clear. SB 1062 which is the legislative history for
12 A.R.S. § 33-1808 states that the purpose of the law “denies an association the authority to
13 prohibit the indoor or outdoor display of a for sale sign.” *Ex. 2.* Similarly, SB 1148
14 which is the legislative history for A.R.S. 33-441 states that its purpose is to “prohibit[]
15 various real estate instruments from preventing the display of a for sale sign and rider.”
16 *Ex. 3.* The legislature cannot express its intent and purpose any clearer. The
17 interpretation of the statute should be consistent with the intent of the legislature and
18 under no circumstances, should the statutory construction inflict violence on the
19 legislature’s overall intent.
20
21

22 **B. The Portion Of The CC&R’s That Prohibit The Display Of A “For**
23 **Sale” Sign Is Illegal And Unenforceable.**

24 As a result of the foregoing statutes, the CC&R’s which prohibit the display of a
25 for sale sign are illegal, unenforceable and contrary to public policy. “Parties have the
26 legal right to make whatever contracts they desire, provided only that the contract is not

1 for illegal purposes or against public policy.” *Pioneer Annuity Life Ins. Co. by Childers*
2 *v. National Equity Life Ins. Co.*, 159 Ariz. 148, 156, 765 P.2d 550, 558 (App. 1988).
3 “Generally, an agreement which cannot be performed without violating applicable law, is
4 illegal and void.” *Mountain States Bolt, Nut & Screw Co. v. Best-Way Transportation*,
5 116 Ariz. 123, 568 P.2d 430 (App.1977). “Thus if the acts to be performed under the
6 contract are themselves illegal or contrary to public policy, or if the legislature has clearly
7 demonstrated its intent to prohibit maintenance of a cause of action, then recovery should
8 be denied.” *Id.*

9
10 In this case, the two statutes make section 12.3 of the CC&R’s illegal,
11 unenforceable and void. The legislature has clearly demonstrated its intent to prohibit an
12 association from precluding the display of a for sale sign. The intent is equally as clear
13 that the legislature wants to prevent various real estate instruments, including CC&R’s,
14 from preventing a property owner from displaying a for sale sign.

15
16 In the current state of the real-estate depression, there are strong policy
17 considerations favoring owners the right to display a for sale sign and market their
18 property. In some instances, the sale of realty may avoid a short sale or a foreclosure that
19 would occur if a sale did not take place. In some instances it allows a homeowner to
20 market their property themselves for the cheapest amount, without being forced to pay a
21 realtor and incur the associated expense. It also allows an owner to advertise the sale of
22 their property in a manner that is best calculated to reach a potential buyer. Our U.S.
23 Supreme Court has discussed some of these public policy considerations inherent in this
24 case in *Linmark Assoc., Inc., v. Willingboro Tp.*, 431 U.S. 85, 97 S.Ct. 1614 (1977). In
25
26

1 *Linmark*, the U.S. Supreme Court struck down a New Jersey Ordinance that prohibited
2 the display of “for sale” signs, a provision that is similar to the provision in the CC&R’s
3 here. *Id.* at 91, 1617. The court noted:

4 Although in theory sellers remain free to employ a number of
5 different alternatives, in practice realty is not marketed
6 through leaflets, sound trucks, demonstrations, or the like.
7 The options to which sellers realistically are relegated
8 primarily newspaper advertising and listing with real estate
9 agents involve more cost and less autonomy than “For Sale”
10 signs are less likely to reach persons not deliberately seeking
11 sales information, and may be less effective media for
12 communicating the message that is conveyed by a “For Sale”
13 sign in front of the house to be sold. The alternatives, then,
14 are far from satisfactory.

Id. at 91, 1617

12 **CONCLUSION**

13 The facts here are not in dispute. The question to be determined on Summary
14 Judgment is a question involving statutory and contract interpretation. This is a matter of
15 law left entirely to the court and accordingly, summary judgment is proper.

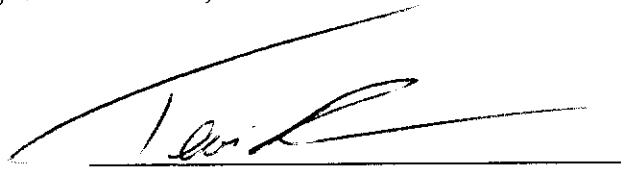
16 **WHEREFORE**, Plaintiffs respectfully request that this Court enter summary
17 judgment in favor of Plaintiffs and find that A.R.S. § 33-1808(F) and § 33-414 permits
18 Plaintiffs to post a for sale sign and rider, of the size designated by statute, on the
19 property which Plaintiffs own in Pine Canyon. Plaintiffs further request declaratory
20 relief finding that section 12.3 of the CC&R’s, as they relate to for sale signs, are illegal,
21 void and unenforceable. Plaintiffs further request an injunction prohibiting Defendant
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from removing a compliant for sale sign and rider from Plaintiff's lot. Finally, Plaintiffs request an award of their attorney's fees and costs.

Respectfully submitted this 15th day of November, 2011.

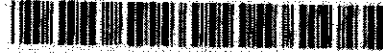

Tevis Reich

A copy of the foregoing mailed this 15th day of November, 2011 to:

Edward G. Hochuli
J. Gary Linder
Jones, Skelton & Hochuli, P.L.C.
2901 N. Central Ave., Suite 800
Phoenix, AZ 85012

By: 

When recorded, please return to:



**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration of Covenants, Conditions and Restrictions ("Village Declaration") is made and entered into as of the 14 day of November, 2002, by LONE TREE INVESTMENTS, L.L.C., an Arizona limited liability company.

This Village Declaration provides for an extensive degree of control by "Developer" including, but not limited to, (a) control of the "Village Association", the type and design of improvements which may be built upon "Lots" and "Tracts" with fines for non-compliance, and the use, and limitations upon use, of the "Common Areas"; (b) the right to amend this Village Declaration; and (c) substantial flexibility in developing the "Property". Developer's control is an integral part of this Village Declaration and the general scheme of development and operation of the Property. Section 16.6 contains a limitation on the liability of Developer and its members and principals. Each "Owner", by accepting title to a Lot, and all other "Persons" hereafter acquiring any other interest in any of the Property, acknowledge and agree to and accept Developer's control of the Property and the limited liability of Developer, and its members and principals, as provided in this Village Declaration. Capitalized terms used in this paragraph are defined below in this Village Declaration.

Recitals

A. Developer is the record owner of the tracts and parcels of real property in Coconino County, Arizona, described on Exhibit "A" hereto (collectively defined as the "Parcel" below).

B. The Parcel is the master-planned community known as Pine Canyon in Flagstaff, Arizona (the "City").

C. Developer desires to submit and subject the Parcel (and any other real property annexed to it pursuant to the provisions of this Village Declaration), together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein.

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1. Definitions

Unless the context clearly requires otherwise, the following terms used in this Village Declaration are defined as follows. Defined terms appear throughout this Village Declaration with the initial letter of each word in the term capitalized.

1.1 "Annexation Property" means any additional real property which is annexed to the Parcel in accordance with Section 14, thereby becoming a part of the Property and subject to the Village Declaration.

1.2 "Areas of Common Responsibility" means any portions of the Property not owned by the Village Association (and, thus, not Common Areas) for which the Village Association has maintenance and/or repair responsibility pursuant to this Village Declaration, a recorded subdivision plat or other recorded instrument, or by contract.

1.3 "Articles" means the Articles of Incorporation of the Village Association, as they may be amended from time to time, or of any successor thereto.

1.4 "Board" means the Board of Directors of the Village Association, or any successor thereto.

1.5 "Bylaws" means the bylaws of the Village Association adopted in accordance with the Articles, as the bylaws may be amended from time to time, or of any successor thereto.

1.6 "City" means the City of Flagstaff, Arizona, a municipal corporation of the State of Arizona.

1.7 "Common Areas" means all real property (and the improvements or amenities thereon) which may from time to time be owned by the Village Association expressly for the common use and enjoyment of the Owners. The Common Areas include, but are not limited to, any "Private Roads". Any real property, and improvements or amenities thereon, which are described as "common areas" in a Supplemental Village Declaration or a plat or other instrument recorded by Developer with respect to any portion of the Property shall be deemed to be "Common Areas" as that term is defined herein for the common use and enjoyment of the Owners, and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Village Declaration. Common Areas may be abandoned as provided in Section 12.14.

1.8 "Common Expenses" means the actual and estimated costs incurred by the Village Association in administering, maintaining and operating the Property, and in owning or leasing any portions thereof, and in otherwise performing its rights and responsibilities including, but not limited to, the following:

(a) The costs of maintenance, management, operation, repair and replacement of the Common Areas (including any Private Roads) and all other areas in the Property which are



(n) The costs of, or the subsidization of, recreation, cultural, health-related or similar facilities or enterprises available to or for the benefit of all Owners; and

(o) Other expenses incurred by the Village Association for any reason whatsoever in connection with the Common Areas or Areas of Responsibility (excepting reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other item or items designated by, or to be provided or performed by the Village Association pursuant to, this Village Declaration, the Articles, Bylaws, "Village Association Rules" or "Design Guidelines", or in furtherance of the purposes of the Village Association or in the discharge of any duties or powers of the Village Association.

Common Expenses do not include costs of owning, administering, maintaining and operating the "Golf Club Facilities" described in Section 4.

1.9 "Compound" means a consolidation of Lots by re-platting, or a re-platting of two or more contiguous Lots to permit a clustering or other relocation of dwellings. A Compound may have commonly owned amenities as permitted in Section 12.14, and in accordance with the Design Guidelines.

1.10 "Condominium Association" means and refers to any condominium association which governs and controls any "Condominium Property".

1.11 "Condominium Declaration" means and refers to the condominium declaration establishing, governing and controlling a Condominium Property.

1.12 "Condominium Property" means and refers to those portions of the Property which are developed and established from time to time as a condominium pursuant to the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.

1.13 "Condominium Unit" means and refer to any condominium unit created as part of any Condominium Property.

1.14 "Default Rate of Interest" means 12% per annum, or such other rate as may be specified by the Board from time to time. Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may, under applicable law, be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the Default Rate of Interest payable during those periods shall be the highest lawful rate.

1.15 "Design Guidelines" means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted by the Design Review Committee, or by Developer prior to the "Transition Date", pursuant to Section 11.3.

1.16 "Design Review Committee" means the committee provided for in Section 11.2.

1.17 "Developer" means LONE TREE INVESTMENTS, LLC, an Arizona limited liability company, its successors and assigns, or any Person to whom Developer's rights



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law) as security for the performance of an obligation including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.25 "Mortgagee" means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

1.26 "Mortgagor" means the party executing a Mortgage as obligor.

1.27 "Neighborhood Assessment" means a charge against each Lot within a particular portion of the Property (a "Neighborhood"), representing the Lot's share of incremental costs incurred by the Village Association in connection with a particular feature or characteristic of, or service to, the Neighborhood which is substantially different from other Lots not within the Neighborhood (as determined from time to time by the Board).

1.28 "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether an Owner's immediate family member, guest, tenant or other individual.

1.29 "Owner" means the record owner of fee simple title to any Lot or Tract which is a part of the Property, whether or not title is held by more than one Person or is subject to a Mortgage. The term also includes Condominium Associations to the extent of their control over Condominium Property and contract sellers, but excludes those having an interest in a Lot merely as security for the performance of an obligation. If a Lot is subject to a deed of trust as described in Arizona Revised Statutes, Section 33-801 et. seq., legal title shall be deemed to be in the trustor under the deed of trust.

1.30 "Parcel" means the parcels and tracts of real property referred to in the recitals hereof and described in Exhibit "A" hereto.

1.31 "Person" means an individual, corporation, partnership, limited liability company, trustee or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.32 "Plat" means the plat of subdivision which includes the Parcel thereon recorded in the official records of Coconino County, Arizona, on 11-22-02, 2002, in Book 8 of Maps and Plats, at page and as thereafter from time to time amended or supplemented, together with all subsequently recorded plats for real property annexed to the Property.

1.33 "Private Road" means any street or roadway within the Property which has not expressly been dedicated to public use.

1.34 "Property" means the Parcel and any additional real property made subject to this Village Declaration by annexation pursuant to Section 14, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining



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charges payable by the Owner or chargeable to the Lot pursuant to the provisions of this Village Declaration, as provided in Section 6.5.

1.41.3 "Village Reconstruction Assessment" or "Reconstruction Assessment" means the amount which is to be paid by each Owner representing the Owner's Proportionate Share of the cost to the Village Association for reconstruction of any portion of the Common Areas or the Village Association's interest in any Areas of Common Responsibility, as provided in Section 8.

1.41.4 "Village Capital Improvement Assessment" means the amount which is to be paid by each Owner representing the Owner's Proportionate Share of the cost to the Village Association for the installation or construction of any capital improvements on any of the Common Areas or Areas of Common Responsibility which the Village Association may from time to time authorize pursuant to the provisions of Section 6.6.

1.42 "Village Association" means PC Village Association, Inc., an Arizona nonprofit corporation, (or a similarly named entity), its successors and assigns.

1.43 "Village Association Rules" means the rules and regulations adopted by the Board pursuant to Section 3.10.

1.44 "Village Declaration" means this instrument, as from time to time amended.

1.45 "Visible from Neighboring Property" means, with respect to any given object, that it is visible to an individual six feet tall (without artificial vision enhancement devices), standing on any part of the Property or the Golf Club Facilities at an elevation no greater than ground level where the object is located.

2. Rights of Enjoyment

2.1 Owners' Right of Enjoyment

Every Owner and Occupant shall have a non-exclusive easement for use and enjoyment of the Common Areas, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Village Declaration including, but not limited to, the following provisions:

2.1.1 The right of the Village Association to limit the number of guests of Owners and Occupants and to limit the use of the Common Areas by Persons who are not Owners, but who are in possession of a Lot or own a portion of, or less than the entire ownership interest of, a Lot.

2.1.2 The right of the Village Association to establish reasonable rules and regulations pertaining to or restricting the use of the Common Areas by Owners, Occupants and other Persons, including restricting certain areas to drainage, utility or similar uses.



not be deemed to be conducting a business of any kind and all funds received by the Village Association shall be held and applied by it for the Owners in accordance with the provisions of this Village Declaration, the Articles and the Bylaws.

3.2 Membership in Village Association

Except as provided in Sections 3.5 and 3.17, there shall be one Membership in the Village Association with one Membership vote for each Lot. Each Membership shall be entitled to one vote on each matter to be decided by the Members. If the Owner of a Lot is other than one individual, each individual and entity comprising the Owner shall be considered a Member but the number of Memberships or votes attributable to the Lot shall not be increased by the fact of multiple ownership. In the case of multiple ownership, the Owner shall give the Village Association notice identifying the individual who is entitled to cast the Membership vote for the Lot. In the absence of such a notice, Village Assessments shall nevertheless be charged against the Lot and the Owner thereof but there shall be no right to cast the Membership vote. The individual entitled to cast the Membership vote must be an Owner, or, if the Owner is or includes a Person other than an individual, must be an individual who is (a) a member of the limited liability company, if the Owner is or includes a limited liability company, or (b) a partner in the partnership, if the Owner is or includes a partnership, or (c) an officer of the corporation, if the Owner is or includes a corporation, or (d) a beneficiary of the trust, if the Owner is or includes a trust, or (e) an owner of the entity, if the Owner is or includes a Person other than an individual, a limited liability company, a partnership, a corporation or a trust. The individual, as so specified, shall be the only Person entitled to vote for the Owner of the Lot at Village Association meetings and elections. An Owner may change the individual who is designated for his Lot, provided the individual is eligible to cast the Membership vote hereunder. The Board may establish reasonable processing fees and reasonable procedures for changing the designated individual including rules governing the manner and frequency in which designations can be made. An Owner shall remain a Member of the Village Association until he ceases to be an Owner, at which time his Membership in the Village Association shall automatically cease.

3.3 Suspension of Voting Rights

No Owner shall be entitled to exercise any voting rights as a Member in the Village Association during any period in which the Owner is delinquent in the payment of any Village Assessments.

3.4 Pledge of Voting Rights

Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his Lot to a Mortgagee as additional security, only the vote of the Mortgagee will be recognized in regard to the designated matters if a copy of the proxy or other instrument pledging the vote has been filed with the Village Association. In the event that more than one proxy or pledge has been filed, the Village Association shall recognize the rights of the first Mortgagee to file, regardless of the priority of the Mortgagees themselves.



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(a) The vote in person or by proxy of the specified percentage of Members at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings of the Members.

(b) Written consents signed by the specified percentage of Members as provided in the Bylaws following notice to all Members.

(c) If no percentage of Members is otherwise specified then the vote or written assent of a Majority of Members shall be required.

3.9 Additional Provisions in Articles and Bylaws

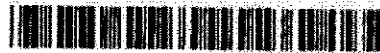
The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Village Association and the rights and powers of its directors, officers, employees, agents and members not inconsistent with law or this Village Declaration.

3.10 Village Association Rules

The Board shall be empowered to adopt, amend or repeal rules and regulations which it deems reasonable and appropriate (the "Village Association Rules"), binding upon all Persons subject to this Village Declaration and governing the use and/or occupancy of the Common Areas or any other part of the Property. The Village Association Rules may establish a system of fines and penalties enforceable as Village Special Assessments. The Village Association Rules shall govern all matters pertaining to the purposes of the Village Association including, but not limited to, the use of the Common Areas; provided, however, that the Village Association Rules may not discriminate among similarly situated Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Village Declaration, the Articles, Bylaws or Design Guidelines. The Village Association Rules shall have the same force and effect as if they were set forth in and were part of this Village Declaration and shall be binding on the Owners, and all other Persons having any interest in, or making any use of, the Property, whether or not actually received thereby. The Village Association Rules, as adopted and amended, shall be available at the principal office of the Village Association to each Owner and other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Village Association Rules and any provisions of this Village Declaration, or the Articles, Bylaws or Design Guidelines, the provisions of the Village Association Rules shall be deemed to be superseded by the provisions of this Village Declaration, the Articles, Bylaws or Design Guidelines to the extent of the conflict. Additional rules and regulations may be adopted by Condominium Associations or other homeowners associations which are to apply only to the Condominium Property or other portions of the Property, as applicable, relating thereto.

3.11 Indemnification

To the fullest extent permitted by law, every director and every officer of the Village Association, and the members of the Design Review Committee and Developer (to the extent a claim may be brought against Developer by reason of its appointment, removal or control over members of the Board or the Design Review Committee) shall be indemnified by the Village



the Village Association to be audited on an annual basis by an accounting firm selected by the Board.

3.15 Records

Upon reasonable written request and during reasonable business hours, the Village Association shall make the books, records and financial statements of the Village Association available for inspection by each Owner, at the Village Association's office, together with current copies of this Village Declaration and the Articles, Bylaws, Village Association Rules and Design Guidelines. Notwithstanding the foregoing to the contrary, until the Transition Date, the Village Association shall not be required to make its books and records available for inspection except as required by law. Developer shall be under no obligation to make its own books or records available for inspection by any Owner or other Person.

3.16 Managing Agent

All powers, duties and rights of the Village Association, the President and the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement, provided, however, that no delegation shall relieve the Village Association of its obligation to cause the delegated duty to be performed.

3.17 Developer's Control of Village Association

Notwithstanding anything in this Village Declaration to the contrary, Developer shall maintain absolute control over the Village Association, including appointment of the President and the members of the Board, until the Transition Date. In addition, until the Transition Date, Developer shall have exclusive jurisdiction over architectural and design matters and shall be entitled to exercise the architectural and design review powers reserved to Developer under this Village Declaration as provided in Section 11.8. Until the Transition Date, only Developer will be entitled to cast any vote with respect to any matter requiring the approval of the Members except referendums of the Members with respect to certain provisions of this Village Declaration as set forth in Sections 6.8, 6.19, 8.3, and 17.4. Developer voluntarily may (but shall not be required to) permit the Members to assume control of the Village Association at any time. Developer may also allow the Members to vote on particular matters without relinquishing Developer's absolute control of the Village Association.

4. Golf Club Facilities

4.1 General

The Golf Club Facilities are not Common Areas and are not subject to this Village Declaration; and no provision of this Village Declaration gives, or shall be deemed to give, any Owner or Occupant the right to use the Golf Club Facilities. Rights to use the Golf Club Facilities will be granted only to those Persons, and on those terms and conditions, as may be determined from time to time by the Golf Club Owner. By way of example, but not limitation, the Golf Club Owner shall have the right to approve users and determine eligibility for use, to



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Facilities shall be completely exempt from any of the provisions of this Village Declaration pertaining to the payment of Village Assessments and liens in favor of the Village Association. If the Golf Club Owner enters into a cost-sharing (or similar) agreement with the Village Association requiring a contribution by the Golf Club Owner toward the costs of maintenance and repair of those Common Areas used by the Golf Club Owner, payments due thereunder may be enforced only by an action at law to collect the debt. Use of Common Areas provided for herein may not be denied or limited as a way of collecting sums owed or of enforcing other terms and conditions of this Village Declaration or any cost-sharing (or similar) agreement with the Golf Club Owner.

4.5 Golf Club Facilities Easements

4.5.1 There are hereby established non-exclusive easements over the Common Areas for ingress and egress, utilities, and other purposes reasonably necessary or convenient to the development, maintenance, preservation, administration, advertisement, or operation of the Golf Club Facilities and the sale of memberships to, or the grant of rights to use, the Golf Club Facilities. The easements created by this Section shall be in favor of the Golf Club Owner, the members of the Golf Club Facilities (regardless of whether the members are Owners), others who are granted rights to use the Golf Club Facilities, and all of their guests and invitees, licensees, and the employees, agents, contractors and designees of the Golf Club Owner, and shall be appurtenant to the Golf Club Facilities. The easements created by this Section shall include, but are not limited to, easements for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment (including wells, pumps, and pipelines), utility lines, wires, and drainage pipelines, and for ingress and egress for storage and maintenance vehicles and equipment, including transportation of chemicals and other items.

4.5.2 The easement for ingress and egress established by this Section shall include the use of the Common Areas (including access through control points) as reasonably necessary to travel from the entrance to the Property to the Golf Club Facilities and to and from portions of the Golf Course to other portions of the Golf Course, including in connection with public or private functions held at the Golf Club Facilities. Without limiting the generality of the foregoing, the Golf Club Owner, members of the Golf Club Facilities, others who are granted rights to use the Golf Club Facilities, and all of their guests and invitees, licensees and permitted members of the public shall have the right to park their vehicles on the Private Roads at reasonable times before, during, and after tournaments and other similar functions or other events held at the Golf Club Facilities. The easement created in this Section includes the right of golfers playing the Golf Course to drive their golf carts along or across the Private Roads within the Property during play (but not as transportation to or from a Lot in the Property prior to or after play).

4.5.3 In no event shall the Village Association exercise its authority over the Common Areas (including, but not limited to, entrances and similar controls on access to the Property) in any manner that would deny or impede access to the Golf Club Facilities, including through access control points and other security points, or to otherwise materially frustrate the rights of the Golf Club Owner and its guests, invitees, licensees, employees, agents, contractors,



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any loss or damage including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the Golf Club Facilities including, but not limited to, any claim arising in whole or in part from the negligence of Developer, the Village Association, the Golf Club Owner or any other entity owning or managing the Golf Course.

5. Easements

5.1 Blanket Easements

A blanket easement is hereby created upon, across, over and under the Property for ingress and egress (over roadways existing from time to time), and for installing, constructing, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the utility provider to erect (including, but not limited to, underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by Developer or thereafter created or approved by the Developer of the Village Association. This provision shall in no way affect any other recorded easements on the Property.

5.2 Use of Common Areas

Except for the use limitations provided in this Section and in the Sections titled Owners' Right of Enjoyment and Exclusive Use Rights, each Owner shall have the non-exclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and ingress and egress to (and use, occupancy and enjoyment of) any Lot owned by the Owner or other Common Areas available for the use of the Owner. This right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Village Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees and licensees of each Owner. The right to use the Common Areas shall be perpetual and appurtenant to each Lot, but shall be subject to and governed by the provisions of this Village Declaration, the Articles, Bylaws and Village Association Rules, and the reasonable limitations and restrictions as are from time to time contained therein. The Board may limit or restrict the right of Owners and other Persons to use portions of the Common Area which exist for the benefit of the Village Association but which, by their nature, are not intended for access and ingress and egress including, but not limited to, drainage, utility or similar easements or rights.

5.3 Exclusive Use Rights

Certain portions of the Common Areas may be reserved by the Board for the exclusive control, possession and use of the Owner of a Lot. If any portion of the Common Area serves as



5.7 Shared Driveway Access Easement

Each access easement shown on the Plat and located within the boundaries of a Lot shall be non-exclusive and for the benefit of the contiguous Lot served thereby only each Owner and Occupant thereof, and all of their respective employees, invitees, licensees and agents; and by acceptance of a deed or other conveyance of an interest in a Lot, each Owner acknowledges and consents to such easement.

5.8 Specific Public Utility Easement

There is hereby created a non-exclusive easement for the sole and limited purpose of installing, constructing, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, upon, over and across that portion of (a) each Lot which is within ten (10) feet of Clubhouse Circle, (b) all other portions of the Property which are within ten (10) feet of Clubhouse Circle, and (c) all portions of the Golf Course which are within ten (10) feet of Clubhouse Circle. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by Developer or thereafter created or approved by the Developer of the Village Association. This provision shall in no way affect any other recorded easements on the Property.

6. Assessments

6.1 Village Assessments in General

This Village Declaration provides for Village Assessments which are payable by all Owners.

6.2 Creation of Lien and Personal Obligation

Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay to the Village Association: Village Regular Assessments; Village Special Assessments; Village Capital Improvement Assessments, if applicable; Reconstruction Assessments, if applicable; and Neighborhood Assessments, if applicable. All Assessments shall be established and collected from time to time as provided in this Village Declaration. All Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as herein provided, shall be a continuing lien upon the Owner's Lot (or combined Lots as provided in Section 12.14) against which the Village Assessments are made. Each Village Assessment, together with interest and other costs, shall also be the personal obligation of the Owner to whom the Village Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed thereby.



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preceding year or (b) the increase during the preceding year of the Consumer Price Index for All Urban Consumers - U.S. Cities Average - All Items (the "CPI") published by the United States Department of Labor, Bureau of Labor Statistics (1982-84=100), from one fiscal year to the next without a vote or written consent by a Majority of Members unless required or requested by the Developer (so long as Developer or any Related Party owns any Lot within the Property). In the event the Bureau of Labor Statistics ceases to publish the CPI and such information is not available from any other source, public or private, then a new formula for determining the maximum annual increase without a vote or written consent of the Members shall be adopted by the Board.

6.5 Village Special Assessments

Village Special Assessments shall be levied by the Village Association against an Owner and his Lot to compensate the Village Association for:

6.5.1 Costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Village Declaration, or the Articles, Bylaws, Village Association Rules or Design Guidelines;

6.5.2 Any increased maintenance costs to the Village Association caused by the use or treatment of the Owner's Lot by the Owner or Occupant, or any guest, family member, invitee, licensee or other Person present on the Lot with the consent of the Owner or Occupant;

6.5.3 Any other charge designated as a Village Special Assessment in this Village Declaration, the Articles, Bylaws, Village Association Rules or the Design Guidelines;

6.5.4 Fines levied or fixed by the Board under Section 11.10 or as otherwise provided herein; and

6.5.5 Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, a Village Special Assessment in accordance with this Village Declaration, the Articles, Bylaws, Village Association Rules or Design Guidelines.

Notwithstanding any other provision hereof, the Village Association, through the Board, shall have the authority to identify a single source of material or service providers for the entire Property and all of the Owners. Upon notice from time to time from the Board to the Owners, the Owners shall only utilize the material or service provider identified by the Board and each Owner shall, as determined by the Board, either pay for the materials or services therefrom directly to said material or service provider and be responsible for all charges relating thereto or, the costs thereof shall be a Village Special Assessment; and in any such event, no other similar material or service provider shall be allowed onto the Property.

6.6 Village Capital Improvement Assessments

In addition to the Village Regular Assessments, the Village Association may levy a Village Capital Improvement Assessment in any calendar year after 2002, applicable to that year



6.10 Exempt Property

All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Village Assessments created herein.

6.11 Date of Commencement of Village Regular Assessments

Village Regular Assessments for Lots which are subject to Assessment shall commence on the first day of the month following the date of conveyance of the first Lot to be conveyed by Developer to anyone other than a Related Party. Village Regular Assessments for Lots within any Annexation Property which are subject to Village Assessments shall commence upon the effective date of the annexation.

6.12 Time and Manner of Payment, Late Charges and Interest

Payment of Village Assessments shall be as designated by the Board. The Board may, at its discretion, establish late fees and charge interest on any Village Assessment not paid by its due date. The Board may, at its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A Member who is delinquent in payment of Village Assessments shall also be liable for attorneys' fees and other related costs incurred by the Village Association as a result of the delinquency. If any suit, action or other proceeding is brought to collect any delinquent Village Assessment or charge, the costs of suit and reasonable attorneys' fees (to be fixed by the court) shall be added to the amount due and included in any judgment or award rendered thereon.

6.13 No Offsets

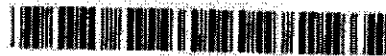
All Village Assessments shall be payable in the amount specified in the Village Assessment or notice of Village Assessment and no offsets against the specified amount shall be permitted for any reason including, but not limited to, a claim that (a) the Village Association, the Board, the President or Developer is not properly exercising its duties or powers as provided in this Village Declaration; (b) Village Assessments for any period exceed Common Expenses; or (c) a Member has made, and elects to make, no use of the Common Areas.

6.14 Homestead Waiver

Each Owner, to the extent permitted by law, hereby waives the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter, to the extent of any liens created pursuant to this Village Declaration, whether the liens are now in existence or are created at any time in the future.

6.15 Reserves

When title to a Lot is conveyed by Developer to anyone other than a Related Party, Developer may require the new Owner of the Lot to make a contribution to the capital of the Village Association, in an amount to be determined from time to time by Developer, to establish reserves of the Village Association. Notwithstanding the foregoing, Developer shall have no



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become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to those Village Assessments.

6.18 Enforcement of Lien

The lien provided for in this Section 6 may be foreclosed by the Board in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 6 relating to the enforcement of the lien provided for herein (including, but not limited to, the subordination provisions in Section 6.16 or the provisions of this Section 6.18 shall apply with equal force in each other instance provided for in this Village Declaration, the Village Association Rules or Design Guidelines wherein it is stated that payment of a particular Village Assessment, charge or other sum shall be secured by the lien provided for in this Section 6. Nothing in this Section shall be construed as requiring that the Village Association take any action in any particular instance, and the failure of the Village Association to take action at any time shall not constitute a waiver of the right to take action at a later time or in a different instance.

6.19 Pledge of Assessment Rights as Security

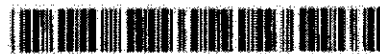
The Board shall have the power to pledge the Village Association's assessment powers and rights provided for in this Village Declaration as security for any obligation of the Village Association; provided, however, that any pledge of the Village Association's assessment powers and rights shall require the prior affirmative vote or written assent of a Majority of Members and, so long as Developer or any Related Party owns any portion of the Property, shall also require the consent of Developer. The Board's power to pledge the Village Association's assessment powers shall include, but not be limited to, the ability to make an assignment of Village Assessments which are then payable to, or which will become payable to, the Village Association; provided the assignment, although presently effective, allows Village Assessments to continue to be paid to the Village Association and used by the Village Association as set forth in this Village Declaration, unless and until the Village Association defaults on its obligations secured by the assignment.

6.20 Exemption of Unsold Lots

Notwithstanding anything in this Section 6 to the contrary, prior to the Transition Date, no Village Assessments shall be levied upon, or payable with respect to, any Lot owned by Developer, any Related Party or any member in Developer (or the member's successors, heirs or devisees) to whom the Lot has been distributed by Developer (as distinguished from having been purchased by the member), until the Lot has been conveyed by Developer (or such other Person) to an unaffiliated purchaser.

6.21 Lots on Public Roads

In the event that any Lots are accessed by public roads rather than by Private Roads (for example, are outside any access control point), the portion of the Village Regular Assessments



kinds and amounts customarily acquired or required for projects similar in construction, location and use including, but not limited to, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the Common Areas or Areas of Common Responsibility, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Village Association.

7.3.3 Fidelity insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or other individuals responsible for handling funds belonging to or administered by the Village Association. If funds of the Village Association are handled by a management agent, fidelity insurance coverage shall also be obtained for the officers, employees or agents thereof handling or responsible for Village Association funds. Any fidelity insurance must name the Village Association as the named insured and be written to provide protection in an amount not less than the least of (a) one-half times the Village Association's estimated annual operating expenses and reserves, (b) a sum equal to three months' aggregate Village Regular Assessments plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the Village Association (and its management agent) at any one time. In connection with the coverage, an appropriate endorsement to the policy to cover any individual who serves without compensation shall be added if the policy would not otherwise cover volunteers. Any such coverage must also name the Village Association as an obligee.

7.3.4 A worker's compensation policy, if necessary to meet the requirements of applicable law.

7.3.5 A policy of "directors and officers" liability insurance, including errors and omissions coverage.

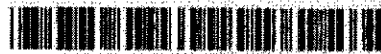
7.3.6 Other insurance, in such amounts, as the Board may determine from time to time to be desirable or in the best interest of the Village Association.

If at any time any of these types of coverage are not reasonably available, the Village Association shall maintain the most nearly equivalent coverages that are reasonably available. The Village Association may maintain and pay for policies of such other insurance, in such amounts, as the Board may determine from time to time to be desirable or in the best interest of the Village Association.

7.4 Required Provisions

The insurance policies purchased by the Village Association shall, to the extent reasonable and available, contain the following provisions:

7.4.1 The coverage afforded by the policies purchased by the Village Association shall not be brought into contribution or proration with any insurance which may be purchased by any Owner or Mortgagee.



7.5 Non-Liability of Village Association/Board/President

Notwithstanding the duty of the Village Association to obtain insurance coverage as stated herein, neither the Village Association nor any Board member, nor the President or any other officer of the Village Association, nor Developer shall be liable to any Owner, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Village Association's insurance and to procure and pay for additional insurance coverage and protection as the Owner may desire.

7.6 Premiums

Premiums for insurance policies purchased by the Village Association shall be paid by the Village Association as a Common Expense, except that the amount of increase over any annual or other premium arising from the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas or Areas of Common Responsibility, by an Owner (or the Occupant of an Owner's Lot, or the family member, guest, invitee, licensee or other Person on the Lot or Common Areas with the consent of the Owner) shall be assessed against that particular Owner.

7.7 Insurance Claims

The Board, acting for the Village Association, is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Village Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Village Association in this regard and may, at its discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Village Association.

7.8 Benefit

Except as otherwise provided herein, all insurance policies purchased by the Village Association shall be for the benefit of, and any proceeds of insurance received by the Village Association or any insurance trustee shall be held or disposed of in trust for, the Village Association or the Owners, as their interests may appear.

8. Damage and Destruction

8.1 Duty of Village Association

In the event of partial or total destruction of the Common Areas, or any improvements thereon, or property of the Village Association in any Areas of Common Responsibility, it shall be the duty of the Village Association to restore and repair or clear and landscape the destroyed area as promptly as practical pursuant to this Section 8. The proceeds of any casualty insurance



of the Village Association by the Owners. Any Reconstruction Assessment shall be secured by the lien provided for in Section 6.

8.6 Contract for Reconstruction

In the event the Village Association undertakes the repair and restoration of Common Areas or Areas of Common Responsibility, the Village Association shall contract with a licensed contractor or contractors who may be required by the Board to post a suitable performance or completion bond. The contract with the contractor or contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, subject to the prior presentation of an architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board.

8.7 Insurance Proceeds Trust

Upon receipt by the Village Association of any insurance proceeds, the Village Association may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Coconino County, Arizona, designated by the Village Association to be a trustee (the "Insurance Trustee"). The insurance proceeds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Village Declaration and which shall be entered into between the Insurance Trustee and the Village Association. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Coconino County, Arizona.

9. Eminent Domain

9.1 Definition of Taking

The term "taking" as used in this Section 9 shall mean condemnation by eminent domain or sale or conveyance under threat of condemnation of all or any portion of the Common Areas or the Village Association's interest in any Areas of Common Responsibility.

9.2 Representation in Condemnation Proceedings

In the event of a threatened taking, the Owners hereby appoint the Village Association (through individuals designated by the Board) to represent itself and all of the Owners in connection therewith. The Board shall act at its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

9.3 Award for Taking

Any awards received by the Village Association on account any taking shall be paid to the Village Association. The Board may, at its sole discretion, retain any award in the general



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serving other Lots and the Common Areas or Areas of Common Responsibility, or to perform any of the Village Association's duties or responsibilities hereunder.

11. Architectural and Landscape Control

11.1 Village Aesthetic Controls

This Village Declaration establishes a system of controls and approvals with respect to landscaping, structures, and other improvements within the Property.

11.2 Appointment of Design Review Committee

Subject to Section 11.8, the Village Association shall have a Design Review Committee consisting of not less than three nor more than five individuals, as specified from time to time by resolution of the Board. After the Transition Date or such earlier date as Developer elects to delegate the design review powers to the Design Review Committee, members of the Design Review Committee shall be appointed by the Board. Individuals appointed to the Design Review Committee must be Owners or Related Parties or satisfy any other requirements designated by the Board.

11.3 Design Guidelines

The Design Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"). The Design Review Committee may, from time to time at its sole discretion, amend, repeal or augment the Design Guidelines. The Design Guidelines are hereby incorporated herein and shall be deemed to be a part of this Village Declaration and shall be binding on all Owners, Condominium Associations (as well as developers of any Condominium Property) and other Persons having any interest in the Property as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Village Association's records. The Design Guidelines may include, among other things, the following restrictions and limitations:

11.3.1 Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines.

11.3.2 Designation of a "building envelope" within a Lot, Tract or Condominium Property, thereby establishing the maximum developable area of the Lot, Tract or Condominium Property.

11.3.3 Conformity of completed improvements to plans and specifications approved by the Design Review Committee. For purchasers and encumbrancers in good faith and for value, however, unless (a) a notice of noncompletion or nonconformance identifying the violating Lot, Tract or Condominium Property and specifying the reason for the notice, executed by the Design Review Committee, is recorded with the County Recorder of Coconino County, Arizona, and (b) the notice is given to the Owner of the Lot, Tract or Condominium Property within one year following the expiration of the time limitation described in Section 11.3.1, or, if



Condominium Property or the landscaping, grading or drainage thereof, including, but not limited to, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with the Design Guidelines as to harmony of external design and location in relation to surrounding structures and topography.

11.6 Non-Liability for Approval of Plans

Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning or building ordinances (or other governmental requirements). By approving plans and specifications, the Design Review Committee, the members thereof, the Village Association, the President and the Board assume no liability or responsibility therefor, or for any defect in any structure constructed from the plans and specifications. Neither the Design Review Committee, nor any member thereof, nor the Village Association, the President, or the Board shall be liable to any Owner, Condominium Association or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications; (c) the development, or manner of development, of any property within the Property; or (d) the execution and filing of an estoppel certificate pursuant to the Design Guidelines, whether or not the facts therein are correct; provided, however, that the action or inaction, with the actual knowledge possessed by the Person taking or not taking it, was taken or not taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that the plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, applicable zoning ordinances and building codes.

11.7 Inspection and Recording of Approval

Without being deemed guilty of trespass, any member or authorized consultant of the Design Review Committee, and any authorized officer, director, employee or agent of the Village Association, may enter upon any Lot, Tract or Condominium Property at any reasonable time after reasonable notice to the Owner or Condominium Association as provided herein in order to inspect improvements constructed or being constructed on the Lot, Tract or Condominium Property to ascertain that the improvements have been or are being built in compliance with the Design Guidelines and this Village Declaration. The Design Review Committee shall cause an inspection to be undertaken within 30 days following a request from any Owner or Condominium Association concerning his own Lot or Tract or Condominium Property. If such an inspection reveals that the improvements located on the Lot, Tract or Condominium Property have been completed in compliance with this Section 11.7 and the Design Guidelines, the Design Review Committee shall provide the Owner or Condominium Association a notice of approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this Section 11.7 and the Design Guidelines as to the improvements described in the recorded notice, but only as to the described improvements.



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on any Lot, Tract or Condominium Property except as expressly permitted by, and in compliance with, the Design Guidelines. The restriction on use of any Lot, Tract or Condominium Property for business or commercial enterprise shall not prohibit an activity if it meets all of the following requirements: (a) is not apparent or detectable by sight, sound or smell from outside the Lot, Tract or Condominium Property on which it occurs, (b) does not involve individuals coming onto the Lot, Tract or Condominium Property who do not reside on the Lot, Tract or Condominium Property or solicitation of residents of the Property by anyone, whether or not a resident, and (c) is consistent with the residential character of the Lot, Tract or Condominium Property and the Property and is not a nuisance, a hazardous or offensive use, as may be determined at the sole discretion of the Board. By way of illustration, but not limitation, activities conducted from within a residence solely by telephone, facsimile, or computer, without the use of employees other than those who reside on the Lot, Tract or Condominium Property, to outside parties off of the Property (or wholly without communication to outside parties) are not considered prohibited, but the activity shall be prohibited if it involves or requires visits to the Lot, Tract or Condominium Property by actual or prospective customers, clients, or patients, or by others (excluding once-a-day document delivery services such as Federal Express), as a result of business activities by the Owner or Occupant of the Lot, Tract or Condominium Property. Similarly, the fact that family members or other occupants of a residence are employed in business affairs within the Lot, Tract or Condominium Property will not make employment a prohibited business use of the Lot, Tract or Condominium Property, but visits to the Lot, Tract or Condominium Property by employees who do not reside there shall be prohibited if the individuals are employed for the business purposes of the Owner or Occupant of the Lot, Tract or Condominium Property. The scope of the types of activities that are prohibited by this Section may be clarified, supplemented and interpreted by the Board (or by Developer prior to the Transition Date) from time to time, as it may choose at its sole discretion, so long as not materially inconsistent with the terms set forth above. Notwithstanding anything in the foregoing, nothing herein contained shall be deemed to limit Developer's rights and exemptions as set forth in Section 15.

12.2 Violation of Law or Insurance

No Owner or Occupant of any Lot, Tract or Condominium Property shall permit anything to be done or kept thereon or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any applicable law.

12.3 Signs

No sign of any kind shall be visible from Neighboring Property without the approval of the Village Association or the Design Review Committee, except: (a) signs used by Developer or any Related Party in connection with the development or sale of Lots, Tracts or Condominium Property of the Property; (b) signs required by legal proceedings, or the prohibition of which is precluded by law; or, (c) signs required for traffic control and regulation of Common Areas. No "For Sale" or "For Rent" sign may be posted on any Lot, Tract or Condominium Property.



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12.8 Antennas

Subject to the provisions of any applicable law from time to time, no radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any Lot, Tract or Condominium Property except as may be permitted by the Village Association Rules or in accordance with the Design Guidelines.

12.9 Garbage

No garbage or trash shall be kept, maintained or contained in any Lot, Tract or Condominium Property so as to be Visible from Neighboring Property. No incinerators shall be kept or maintained in any Lot, Tract or Condominium Property. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot, Tract or Condominium Property. As provided above, the Village Association shall have the authority and power to designate a single provider of garbage and/or trash collection services for the Property from time to time, if the Board deems such a designation to be necessary or desirable. In the event the Board makes such a designation, an Owner requiring service shall use the designated provider.

12.10 Mining

No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

12.11 Safe Condition

Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot, Tract or Condominium Property at all times in a safe, sound and sanitary condition, and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots, Tracts or Condominium Properties or the Common Areas.

12.12 Fires

Other than barbecues, in properly constructed barbecue pits or grills, and firepits in compliance with the Village Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Village Association Rules, no open fires shall be permitted on the Lots, Tracts or Condominium Properties nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Areas, or for other Owners.

12.13 Clothes Drying Area

No portion of any Lot, Tract or Condominium Property shall be used as a drying or hanging area for laundry of any kind. All laundry facilities shall be provided within the buildings to be constructed on each Lot, Tract or Condominium Property.



for its successors in interest as to any portions of the Property owned by Developer or a Related Party and for their employees, agents, invitees, licensees, and guests. The Village Association may make reasonable rules relating to the right of entry through the entrance, but none restricting entry to Owners or Occupants or their tenants and guests or to prospective purchasers of homes or Lots invited by an Owner. Any entrance may be abandoned, or its hours of manned operation reduced to less than 24 hours per day, at the discretion of the Village Association.

12.17 Use of Lots, Tracts and Condominium Property

An Owner shall be responsible for assuring compliance by any Occupants of his Lot, Tract or Condominium Property including, but not limited to, any lessee or other Person who the Owner allows to use his Lot, Tract or Condominium Property with all of the provisions of this Village Declaration, the Articles, Bylaws, Village Association Rules or Design Guidelines, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations of this Village Declaration, the Articles, Bylaws, Village Association Rules or Design Guidelines by the lessee or other Person.

12.18 Enforcement

The Village Association and its authorized agents may enter any Lot, Tract or Condominium Property in which a violation of these restrictions exists and may correct the violation at the expense of the Owner of the Lot, Tract or Condominium Property. Any expenses, and any fines imposed pursuant to the Bylaws, Village Association Rules or Design Guidelines, shall be a Village Special Assessment secured by a lien upon the Lot, Tract or Condominium Property enforceable in accordance with the provisions of Section 4. All remedies described in Section 16 and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant or other Person of any provision of this Section 12, except as otherwise expressly limited herein.

12.19 Driveway Access Restriction

No driveway on any Lot or serving any Lot may connect directly to Clubhouse Circle if any portion of said Lot connects to any other roadway within the Property which connects to Clubhouse Circle.

12.20 Modification

The Board may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Lots, Tracts and Condominium Property by reasonable rules and regulations of general application adopted by the Board from time to time which shall be incorporated into the Village Association Rules.



13.5 Exercise of Owner's Rights

During the pendency of any foreclosure or other equivalent proceedings (including any period of redemption) or from the time a trustee under a deed of trust has given notice of sale pursuant to power of sale conferred under the deed of trust or pursuant to law, the Mortgagee, or a receiver appointed in any such action, may (but need not) exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Village Association in the place and stead of the defaulting Owner.

13.6 Subject to Village Declaration

At such time as a Mortgagee comes into possession of or becomes record Owner of a Lot, the Mortgagee shall be subject to all of the terms and conditions of this Village Declaration including, but not limited to, the obligation to pay all Village Assessments and charges accruing thereafter, in the same manner as any other Owner.

14. Annexation of Additional Property

Additional real property may be annexed to and become subject to this Village Declaration as hereinafter set forth in this Section 14.

14.1 Development of the Project

Developer intends to develop sequentially on a phased basis. Developer may, however, elect not to develop all or any part of the additional real property anticipated to be included within the project as shown on the Plat, to annex the real property to this Village Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. In addition to the foregoing, Developer reserves the right to subject all or any portion of the property as shown on the Plat (other than the Parcel) to the plan of this Village Declaration or to one or more separate declarations of covenants, conditions and restrictions which subjects any such property to the jurisdiction and powers of a homeowners association or other entity with powers and obligations similar to the Village Association and which is not subject to the provisions of this Village Declaration. Although Developer shall have the ability to annex additional property as provided in this Section 14.1, Developer shall not be obligated to annex all or any portion of any property shown on the Plat, and such property shall not become subject to this Village Declaration except as provided in this Section 14.

14.2 Supplemental Village Declarations

A Supplemental Village Declaration shall be a writing in recordable form which annexes additional real property (the "Annexation Property") to the plan of this Village Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Village Declaration. Supplemental Village Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Village Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not materially inconsistent with the plan of this



the Articles, Bylaws, Village Association Rules or Design Guidelines, unless expressly limited as provided herein, or which may be available at law or equity, and may prosecute any action or other proceedings against the defaulting Owner, Occupant or other Person for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Village Assessments and interest accrued thereon, and to sell the Lot as provided in this Section 16.1, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of the Owner. The proceeds of any such rental or sale shall first be paid to discharge court costs and other litigation costs including, but not limited to, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in any final judgment. Any balance of proceeds after satisfaction of unpaid charges and Assessments and any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Village Declaration.

16.2 Rights of Golf Club Owner

Developer and each Owner and Occupant acknowledge that this Village Declaration is intended to be relied upon by the Golf Club Owner, and that the Golf Club Owner is an express beneficiary of this Village Declaration. In the event of any default by any Owner, Occupant or other Person of provisions which materially affect the Golf Club Owner, the Golf Club Owner shall have each and all of the rights and remedies which may be available to the Golf Club Owner hereunder or at law or equity (except as expressly provided or limited herein), including, but not limited to, an action or other proceedings for an injunction, whether affirmative or negative, or for damages, or specific performance. If the Golf Club Owner prevails in any action or proceeding to enforce this Village Declaration described or permitted by this Section 16.2, all expenses of the Golf Club Owner in connection with the action or proceeding, including court costs and reasonable attorneys' fees and other fees and expenses, together with interest thereon until paid at the Default Rate of Interest, shall be charged to the defaulting Owner.

16.3 Expenses of Enforcement

All expenses, if any, of the Village Association and Developer in connection with any action or proceeding described or permitted by this Section 16, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the defaulting Owner and shall be a Village Special Assessment against the Owner, and the Village Association shall have a lien therefor as provided in Section 6. In the event of any such default by an Owner, the Village Association and Developer, and the manager or managing agent of the Village Association, if so authorized by the Board, shall have the authority to correct the default and to do whatever may be necessary to correct the default, and all expenses in connection therewith shall be charged to and assessed against the defaulting



17. Amendment

17.1 Amendment to Village Declaration

Amendments to this Village Declaration shall be made by an instrument in writing entitled "Amendment to Village Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Village Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a meeting of the Members upon the approval thereof of two-thirds of all of the Members or without any meeting if all Members have been duly notified and if two-thirds of all of the Members consent in writing to the amendment. In all events, the amendment when adopted shall bear the signature of the President and shall be attested to by the secretary, and shall be acknowledged by them as officers of the Village Association. Amendments once properly adopted shall be effective upon the recording thereof in the Cocorino County Recorder's Office.

17.2 Effect of Amendment

It is specifically covenanted and agreed that any amendment to this Village Declaration, properly adopted, will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Village Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

17.3 Additional Required Approvals

Notwithstanding the provisions of the foregoing Sections of this Section 17:

(a) If this Village Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Village Declaration, then any instrument changing, modifying or rescinding any provision of this Village Declaration with respect to the action shall be signed by all of the Members and/or all Owners and/or all lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Village Declaration or by law.

(b) Until the Transition Date, this Village Declaration may not be amended by the Members pursuant to Section 17.1 without the written consent of Developer, which may be withheld in its sole and absolute discretion.

(c) The following provisions of this Village Declaration may not be amended at any time without the consent of Developer which may be withheld in its sole and absolute discretion: Sections 5.5, 14, 15, this Section 17.3 (e), and Section 17.4.

(d) The following provisions of this Village Declaration may not be amended at any time in any manner which materially changes or reduces any rights of the Golf Club Owner



Declaration shall be liberally construed to effectuate its purpose and intent of creating a uniform plan for the development and operation of the Property as hereinabove set forth. The Recitals set forth are incorporated herein and are expressly made a part hereof.

18.3 Severability

If any provision of this Village Declaration, the Articles, Bylaws, Village Association Rules or Design Guidelines, or any Section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Village Declaration, the Articles, Bylaws, Village Association Rules or Design Guidelines, and of the application of any such provision, Section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Village Declaration, the Articles, Bylaws, Village Association Rules or Design Guidelines shall be construed as if the invalid part was never included therein or herein.

18.4 Rule Against Perpetuities

If any of the options, privileges, covenants or rights created by this Village Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then the provision shall continue until 21 years after the death of the survivor of the now living descendants of President George W. Bush, United States Senator John McCain and United States Senator Jon Kyl.

18.5 Mortgage of Lots

Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot.

18.6 Power of Attorney

Whenever the Village Association is granted rights, privileges or duties in this Village Declaration, the Board shall have the authority to act for the Village Association. In addition to the foregoing, unless otherwise specifically restricted by the provisions of this Village Declaration, wherever the Village Association is empowered to take any action or do any act including, but not limited to, actions in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner, the Owners and each of them hereby constitute and appoint the Village Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest, and by the acceptance of a deed for a Lot, Tract or Condominium Property, or by signing a contract for purchase of a Lot, Tract or Condominium Property or by succeeding in any other manner to the ownership of a Lot, Tract or Condominium Property or any interest therein, each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.



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ARBITRATION IS FINAL AND BINDING ON THE PARTIES AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.

IN ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.

DISCOVERY IN ARBITRATION IS MORE LIMITED THAN DISCOVERY IN COURT.

ARBITRATORS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING IN THEIR AWARDS. THE RIGHT TO APPEAL OR SEEK MODIFICATION OF ARBITRATORS' RULINGS IS VERY LIMITED.

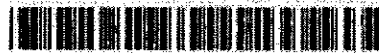
A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE HOUSING OR CONSTRUCTION INDUSTRY.

ARBITRATION WILL APPLY TO ALL DISPUTES BETWEEN ANY OWNER OR THE VILLAGE ASSOCIATION, OR BOTH, AND THE DEVELOPER OR ANY RELATED PARTY, OR ANY AGENT, BENEFICIARY, EMPLOYEE, OFFICER, DIRECTOR, MEMBER OR CONTRACTOR THEREOF, OR ANY COMBINATION THEREOF; AND NOT JUST THOSE CONCERNING THIS VILLAGE DECLARATION.

IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

(a) Any claim or action ("Dispute") by any Owner or the Village Association against the Developer or a Related Party, or any agent, beneficiary, employee, officer, director, member or contractor thereof, or any combination thereof (all of whom are made a third party beneficiary of this provision), including, but not limited to, Disputes arising out of or relating to this Village Declaration, any Lot, Tract, Condominium Property, any Common Area, this arbitration provision ("arbitration clause"), or any related agreements or instruments relating hereto ("Related Agreements"), and including, but not limited to, a Dispute based on or arising from an alleged tort, shall at the request of any party be resolved by binding arbitration in accordance with the applicable arbitration rules of the American Arbitration Association (the "Administrator").

(b) The arbitration proceedings shall be conducted in a city mutually agreed by the parties. Absent such an agreement, arbitration will be conducted in Phoenix, Arizona or such other place as may be determined by the Administrator. The Administrator and the arbitrator(s) shall have the authority to the extent practicable to take any action to require the arbitration proceeding to be completed and the arbitrator(s) award issued within 150 days after the filing of the Dispute with the Administrator. The arbitrator(s) shall have the authority to impose sanctions on any party that fails to comply with time periods imposed by the Administrator or the



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IN WITNESS WHEREOF, Developer has caused this Declaration of Covenants, Conditions and Restrictions for Pine Canyon to be duly executed.

LONE TREE INVESTMENTS L.L.C., an Arizona limited liability company

By: LONE TREE DEVELOPERS, L.L.C., an Arizona limited liability company, Managing Member

By: JB HOLDINGS, INC., an Arizona corporation, Managing Member

By: 
John Beerling, President

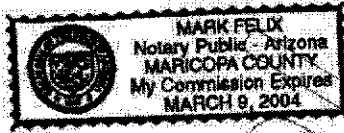
State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this 14 day of November, 2002 by John Beerling as President of JB Holdings, Inc., an Arizona corporation, Managing Member of Lone Tree Developers, L.L.C., an Arizona limited liability company, Managing Member of Lone Tree Investments, L.L.C., an Arizona limited liability company.



Notary Public

Notary Seal:



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When recorded, please return to:

Lone Tree Investments, LLC
Attention: John Boelling
1121 W. Niagara Rd #109
Tempe, AZ 85284

AMENDMENT TO VILLAGE DECLARATION

FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDMENT is made effective as of April 26, 2004, by LONE TREE INVESTMENTS, LLC, an Arizona limited liability company, hereinafter referred to as "Developer", in recognition of the following facts and intentions:

A. The Developer executed that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Village Declaration") dated as of November 14, 2002, and recorded on November 22, 2002 as Instrument No. 3171314 in the records of the Coconino County, Arizona Recorder's Office. The Village Declaration affects the real property described in Exhibit A attached hereto and made a part hereof.

B. The undersigned Developer desires to amend the Village Declaration according to the terms and provisions of this Amendment.

NOW, THEREFORE, the undersigned Developer hereby amends the Village Declaration and confirms as follows:

1. Section 5.8, Specific Public Utility Easement. Section 5.8 is hereby deleted in its entirety and replaced with the following:

There is hereby created a non-exclusive easement for the sole and limited purpose of installing, constructing, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, upon, over and across that portion of (a) each Lot which is within eight (8) feet of all public and private roadways shown on the Plat, (b) all other portions of the Property which are within eight (8) feet of all public and private roadways shown on the Plat, and (c) all portions of the Golf Course which are within eight (8) feet of all public and private roadways shown on the Plat. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any

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Members. The responsibility of the Board (whether while controlled by Developer or the Members) shall be only to provide for an amount of reserves as the Board in good faith deems reasonable, and neither Developer, nor the Board, nor any member thereof, shall have any liability to any Owner, to the Village Association, or to any other Person if the reserves prove to be inadequate.

4. Section 6.11, Date of Commencement of Village Regular Assessments. Section 6.11 is hereby deleted in its entirety and replaced with the following:

Village Regular Assessments for Lots which are subject to Assessment shall commence on the first day of the month following the date of conveyance of the first Lot to be conveyed by Developer to anyone other than a Related Party. Village Regular Assessments for Lots within any Annexation Property which are subject to Village Assessments shall commence upon the effective date of the annexation. Notwithstanding the foregoing provisions of this Section 6.11, no Village Regular Assessments shall commence as to any Lot which is not accessible by substantially completed roadways. The Board's determination from time to time of the date of the substantial completion of roadways within the Property (including portions thereof) shall be binding upon all Owners.

5. Section 6.20, Exemption of Unsold Lots. Section 6.20 is hereby deleted in its entirety and replaced with the following:

Notwithstanding anything in this Section 6 to the contrary, prior to the Transition Date, no Village Assessments shall be levied upon, or payable with respect to, any Lot owned by Developer, any Related Party or any member of Developer (or the member's successors, heirs or devisees) to whom the Lot has been distributed by Developer (as distinguished from having been purchased by the member), until the Lot has been conveyed by Developer (or such other Person) to an unaffiliated purchaser; provided, however, that in the event Developer, any Related Party or such member of Developer is contractually obligated after such conveyance to construct a residence thereon, then no Village Assessments shall be levied upon, or payable with respect thereto, until the date of the substantial completion of such residence as determined by the Board.

6. Section 1, Definitions; Subsection 1.41, "Village Assessments" or "Assessments". Section 1.41 is hereby amended by adding the following subsection thereto:

1.41.5 "Village Enhancement Assessment" means the amounts which are to be paid by each Owner as provided in Section 6.8.

7. Section 6.8, Transfer Fee. Section 6.8 is hereby deleted in its entirety and is retitled as "Village Enhancement Assessment and Transfer Fees" and replaced with the following:



ceases to publish the CPI and such information is not available from any other source, public or private, then a new formula for determining the maximum annual increase shall be adopted by the Board.

6.8.4 Village Enhancement Assessments shall be in addition to all other Assessments; and shall not be credited against any other past, present or future Assessments.

6.8.5 When title to a Lot is conveyed by any Owner (including Developer) to any other Person (except to or by Developer or a Related Party), in addition to the Village Enhancement Assessment, the new Owner shall pay the Village Association, a transfer fee in whatever amount may be required by the Board from time to time. The transfer fee shall be used to defray costs of the Village Association arising from or related to any such change of ownership.

8. All words with initial capital letters herein shall have the meaning ascribed to them as set forth in the Village Declaration, unless otherwise defined herein. Except as amended by this Amendment, the Village Declaration shall remain in full force and effect. In the event of a conflict between the terms and conditions of this Amendment and either the Village Declaration, the Articles or the Bylaws, the terms and conditions of this Amendment shall govern and control.

IN WITNESS WHEREOF, the undersigned has executed this Amendment to be effective as of the day and year first above written.

LONE TREE INVESTMENTS, LLC, an Arizona limited liability company

By: LONE TREE DEVELOPERS, LLC, an Arizona limited liability company, manager

By: JB Holdings, Inc., an Arizona corporation, its authorized member

By


John Beerling, President



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EXHIBIT "A"
LEGAL DESCRIPTION

Parcel No. 1 :

All of Section 34, Township 21 North, Range 7 East, Gila and Salt River Base and Meridian, within the limits of the City of Flagstaff, Coconino County, Arizona;

EXCEPT the Southwest Quarter of the Southwest Quarter of said Section 34.

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thence South 38 degrees 34 minutes 31 seconds West a distance of 350.00 feet to a point of curvature of a curve to the right, having a radius of 1140.00 feet;

thence 673.85 feet along the arc of said curve, through a central angle of 33 degrees 52 minutes 02 seconds to a point of tangency;

thence South 72 degrees 26 minutes 33 seconds West a distance of 387.89 feet to a point of curvature of a curve to the right, having a radius of 4375.80 feet;

thence 419.47 feet along the arc of said curve, through a central angle of 05 degrees 29 minutes 33 seconds to the Point of Beginning being a point on the South line of the said Southeast 1/4 of Section 27, also being a point on the South boundary of that parcel of land described in said Docket 1551, Page 396, R.C.C.;

PARCEL NO. 3

A portion of that parcel of land described in Docket 1551, Page 396, Records of Coconino County, Arizona, located in the Southeast quarter of Section 27, Township 21 North, Range 7 East, Gila and Salt River Base and Meridian, within the limits of the CITY OF FLAGSTAFF, Coconino County (R.C.C), Arizona, more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 27, from whence the South quarter corner (South 1/4 Cor) of said Section 27 bears South 89 degrees 58 minutes 18 seconds West a distance of 2656.62 feet (Basis of Bearings);

thence South 89 degrees 58 minutes 16 seconds West, along the South line of the said Southeast quarter, a distance of 1,455.78 feet;

thence North 72 degrees 26 minutes 33 seconds East a distance of 363.19 feet to a point of curvature of a curve to the left having a radius of 1,260.00 feet;

thence 744.78 feet along the arc of said curve through a central angle of 33 degrees 52 minutes 02 seconds to a point of tangency;

thence North 38 degrees 34 minutes 31 seconds East a distance of 350.00 feet to a point of curvature of a curve to the right, having a radius of 1,836.75 Feet;

thence along the arc of said curve a distance of 369.84 feet more or less, through a central angle of 12 degrees 47 minutes 24 seconds more or less, to a point on the East line of the said Southeast 1/4 of Section 27, being also a point on the East boundary of that parcel of land described in said Docket 1551, Page 396, R.C.C.;

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EXCEPT THE FOLLOWING DESCRIBED PROPERTY, AS FOLLOWS:

Parcels of land in Sections 27 and 34 of Township 21 North, Range 7 East, Gila and Salt River Meridian, being located in the City of Flagstaff, Coconino County, Arizona, more particularly described as follows:

Portions of THE ESTATES AT PINE CANYON - UNIT ONE, as shown on the Final Plat thereof, recorded in Case 8, Maps 92, 92A, 92B, 92C, 92D, 92E, 92F, 92G, and 92H, Records of Coconino County, shown and described thereon as: Tracts "C", "D", "E", "F", "G", "H", "J", "K", "L", "P", "Q", "R", "S", "T", and Tracts "2" and "22".

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Arizona State Legislature

Bill Number Search

Forty-eighth Legislature - First Regular Session

[change session](#) | [printer friendly version](#)[Email a Member](#) | [Email Webmaster](#)[Senate](#)[House](#)[Legislative Council](#)[JLBC](#)[More Agencies](#)[Bills](#)[Committees](#)[Calendars/News](#)**HOUSE OF REPRESENTATIVES****SB 1062**

homeowners' associations; for sale signs

Sponsor: Senator TibshraenyX [Committee on Homeland Security and Property Rights](#)[Caucus and COW](#)[House Engrossed](#)**SB 1062 denies an association the authority to prohibit the indoor or outdoor display of a for sale sign.****History**

Title 33, Chapters 9 and 16, Arizona Revised Statutes (A.R.S), outline the regulatory requirements for condominiums and Planned Communities (single-family homes) respectively, and are commonly known as homeowners' associations (HOAs). The codes, covenants and restrictions (CC&Rs) provide direction to the HOA, and a board of directors (board) duly elected by the membership varies accordingly. Statute requires the board to manage the activities of the HOA including adopting and amending bylaws/rules, requirements for casting votes, holding open meetings, hiring and discharging managing agents and imposing and receiving fees, fines and assessments. The HOA's board is responsible for maintenance, repair and replacement of the common elements within the association, as well as imposing penalties for violations of bylaws and rules.

A.R.S. § 33-1808 Subsection C, explains that an association can not prohibit any member of the association from displaying a political sign on their own property forty five days before and seven days after an election. However, an association can regulate the size and number of political signs on a member's property, complying with the already implemented restrictions set forth by the applicable city, town or county ordinance.

A.R.S. § 33-1261 and § 33-1808 denies associations the authority to prohibit the outdoor display of the American flag, the official or replica of the United States Army flag, Navy flag, Air Force flag, Marine Corps flag, Coast Guard flag, the POW/MIA flag, the Arizona state flag, and an Arizona Indian nations flag. Associations must adopt reasonable rules and regulations regarding the placement and manner of the specified flags.

Provisions

- Stipulates that a condominium association cannot prohibit the indoor or outdoor display of a for sale sign, including for sale by owner signs, by a unit owner on that owner's property.
- Specifies that a planned community association cannot prohibit the indoor or outdoor display of a for sale sign by an association member on that member's property, including signs that indicate for sale by owner.
- Requires for sale signs to be in conformance with industry standards in relation to size restrictions.
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- Forty-eighth Legislature
- First Regular Session 2

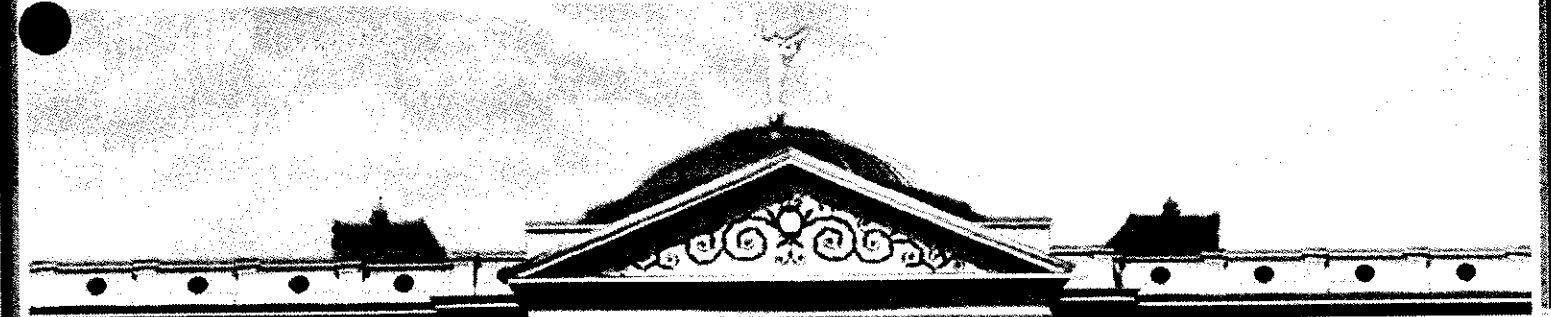
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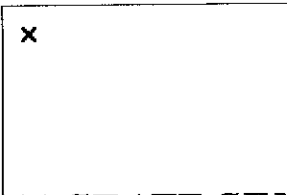
Forty-eighth Legislature - First Regular Session

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COMMITTEE



FOR

ARIZONA STATE SENATE *Forty-eighth Legislature, First Regular Session*

FACT SHEET FOR S.B. 1062

[homeowners' associations: for sale signs](#)

Purpose

Authorizes a unit owner or association member to display an indoor or outdoor "for sale" sign, including a "for sale by owner" sign, on that person's property.

Background

Governing documents create the legal foundation and organizational framework of a homeowners' association (HOA). They consist of the declaration of covenants, conditions and restrictions (CC&Rs), the articles of incorporation, the bylaws, and the rules and regulations. The CC&Rs constitute the enabling document, which is recorded with the county recorder and empowers the HOA to control certain aspects of property use within the development, often including oversight and approval authority over the construction and alteration of homes. When a person buys a home in such a development, the person receives a copy of the CC&Rs and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable contract between the HOA and the individual homeowner. The articles of incorporation are required of incorporated HOAs and establish the HOA as a legal entity. They constitute the corporate charter and are filed with the Arizona Corporation Commission.

Many aspects of HOAs are directly governed by Arizona statute, such as the Planned Communities statutes, the Arizona Condominium Act and the Nonprofit Corporations Act. The Planned Communities statutes took effect in 1994 and constitute the first regulations pertaining specifically to the formation and operation of master planned community HOAs. Currently, these statutes address assessment increases, penalties, open meetings, disclosure of association records, resale disclosure, penalty and assessment liens, foreclosures, flag and political sign display, vehicle parking and certain affairs of the boards of directors.

Condominiums that are established beginning January 1, 1986, are regulated by the Arizona Condominium Act, which is more extensive in scope and detail than the Planned Community statutes. It deals with, among other things, the creation, alteration, management and termination of condominiums, the imposition of monetary penalties, open meetings, resale disclosure, flag display, penalty and assessment liens and foreclosures. Several exceptions allow the establishment of differing regulations within the condominium documents.

There is no anticipated fiscal impact to the state General Fund.

Provisions

1. Allows a unit owner or association member to display an indoor or outdoor "for sale" sign on his/her property.
2. Permits an association to set reasonable regulations regarding the size and number of "for sale" signs that may be placed on a unit owner's or member's own property.
3. Makes conforming changes.
4. Becomes effective on the general effective date.

Prepared by Senate Research
January 25, 2007
CN/JA/jas

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HOUSE OF REPRESENTATIVES
SB 1148
deed restrictions; for sale signs
Sponsor: Senator Allen S

- DP Committee on Government
- DP Caucus and COW
- X** House Engrossed

SB 1148 prohibits various real estate instruments from preventing the display of a for sale sign and sign rider.

History

Title 33 of the Arizona Revised Statutes (A.R.S.) relates to property in Arizona. Specifically, Title 33, Chapter 4 covers conveyances and deeds in Arizona. Article 3 of this Chapter specifically addresses the rules of construction and interpretation and includes statutes relating to handling grants, conveyances and covenants involving property.

Laws 2007, Chapter 228 enacted provisions that preclude a condominium or planned community association from prohibiting the indoor or outdoor display of a for sale sign, including for sale by owner signs, by a unit owner on that owner's property. It requires for sale signs to be in conformance with industry standards in relation to size restrictions, specifying that the sign cannot exceed 18" by 24" and the sign rider cannot exceed 6" by 24."

Provisions

- Stipulates that a covenant, restriction or condition contained in any deed, contract, security agreement or other instrument affecting the sale or transfer of any interest in real property cannot prohibit the indoor or outdoor display of a for sale sign and a sign rider by a property owner on their property, including a sign that indicates the person is offering the property for sale by owner.
- Specifies that the sign must be in conformance with the industry standard sign, which cannot exceed 18" x 24."
- Specifies that the sign rider must be in conformance with the industry standard sign rider, which cannot exceed 6" x 24."
- Clarifies that these provisions apply to covenants, restrictions or conditions without regard to the creation date.
- Exempts timeshare properties from these provisions.
- Stipulates that these provisions do not apply to covenants, restrictions or conditions in a deed, contract, security agreement or other instrument affecting the transfer or sale of an interest in real property that does not prohibit or restrict the display of a for sale sign or sign rider.

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• Forty-ninth Legislature

• First Regular Session 2 July 2, 2009

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FOR CAUCUS & FLOOR ACTION

ARIZONA STATE SENATE
Forty-ninth Legislature, First Regular Session

AMENDED
FACT SHEET FOR S.B. 1148

deed restrictions; for sale signs

Purpose

Specifies that an instrument of conveyance of real property may not contain any restrictions on the display of for sale signs or sign riders by the property owner.

Background

Condominium associations and planned community associations are statutorily restricted from prohibiting indoor or outdoor displays of for sale signs and sign riders by property owners. This prohibition includes signage that indicates the property is for sale by owner. For sale signs and sign riders must conform to custom in the industry size specifications. (A.R.S. § 33-1261, 33-1808).

There is no anticipated fiscal impact to the state General Fund.

Provisions

1. Prohibits a deed, contract, security agreement or other instrument affecting the conveyance of real property from containing a restriction on indoor or outdoor displays of for sale signs and sign riders by the owner of the property.
2. Requires that signs offering property for sale conform to the industry standard size of not more than:
 - a) 18 x 24 inches for signs.
 - b) 6 x 24 inches for sign riders.
3. Exempts timeshare property and timeshare interests from being required to permit the indoor or outdoor display of a for sale sign and sign rider.
4. Applies retroactively to any covenant, restriction or condition attached to an instrument of conveyance of real property.
5. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Exempts timeshare property and timeshare interests from being required to permit the indoor or outdoor display of a for sale sign and sign rider.

Senate Action

GOV 6/11/09 DPA 7-0-1-0

Prepared by Senate Research
June 15, 2009
DPH/jas

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AS PASSED BY THE SENATE

ARIZONA STATE SENATE
Forty-ninth Legislature, First Regular Session

AMENDED
FACT SHEET FOR S.B. 1148

deed restrictions; for sale signs

Purpose

Stipulates, with certain exceptions, that an instrument of conveyance of real property may not contain any restrictions on the display of for sale signs or sign riders by the property owner.

Background

Condominium associations and planned community associations are statutorily restricted from prohibiting indoor or outdoor displays of for sale signs and sign riders by property owners. This prohibition includes signage that indicates the property is for sale by owner. For sale signs and sign riders must conform to custom in the industry size specifications. (A.R.S. § 33-1261, 33-1808).

There is no anticipated fiscal impact to the state General Fund.

Provisions

1. Prohibits a deed, contract, security agreement or other instrument affecting the conveyance of real property from containing a restriction on indoor or outdoor displays of for sale signs and sign riders by the owner of the property.
2. Requires that signs offering property for sale conform to the industry standard size of not more than:
 - a) 18 x 24 inches for signs.
 - b) 6 x 24 inches for sign riders.
3. Excludes a covenant, restriction or condition in a deed or other instrument affecting the transfer or sale of real property that does not prohibit or restrict displays of for sale signs or sign riders on the property.
4. Exempts timeshare property and timeshare interests from being required to permit the indoor or outdoor display of a for sale sign and sign rider.
5. Applies retroactively to any covenant, restriction or condition attached to an instrument of conveyance of real property.
6. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Exempts timeshare property and timeshare interest from being required to permit the indoor or outdoor display of a for sale sign and sign rider.

Amendments Adopted by Committee of the Whole

- Excludes a covenant, restriction or condition in a deed or other instrument affecting the transfer or sale of real property that does not prohibit or restrict displays of for sale signs or sign riders on the property.

Senate Action

GOV	6/11/09	DPA	7-0-1-0
3 rd Read	6/18/09		27-0-3-0

Prepared by Senate Research
 July 21, 2009
 DPH/ly

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