

95-078674

GRANT OF EASEMENT

MARK J. FUMUSA and SUZANNE A. FUMUSA, husband and wife, as to an undivided 1/2 interest; and IVAN H. BIGELOW and ANNETTE BIGELOW, husband and wife, as to an undivided 1/2 interest, are the owners of Parcels 1, 2, 3, 4, and 5, and Tract A, as shown on Record of Survey No. 1085.

The purpose of this document is to dedicate all easements shown on said Record of Survey No. 1085 to the present and future owners of Parcels 1, 2, 3, 4, and 5, and Tract A, as shown on Record of Survey No. 1085; without need of any further grant.

For and in consideration of the mutual benefits accruing to the parties, the undersigned MARK J. FUMUSA and SUZANNE A. FUMUSA, husband and wife, as to an undivided 1/2 interest; and IVAN H. BIGELOW and ANNETTE BIGELOW, husband and wife, as to an undivided 1/2 interest, do hereby grant, bargain, sell, convey, and dedicate all easements shown on said Record of Survey No. 1085, to the present and future owners of Parcels 1, 2, 3, 4, and 5, and Tract A, of Record of Survey No. 1085.

This document is intended to convey these easements for the use and benefit of the present and future owners of Parcels 1, 2, 3, 4, and 5, and Tract A, of Record of Survey No. 1085, their guests and invitees and each owner will take subject to the rights of the others and title to the easements shall be vested in the present and future owners without need of further conveyance.

Dated this 15th day of December, 1995.

\_\_\_\_\_  
Mark J. Fumusa

\_\_\_\_\_  
Ivan H. Bigelow

\_\_\_\_\_  
Suzanne A. Fumusa

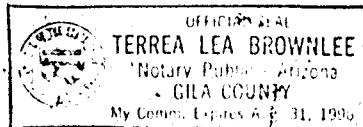
\_\_\_\_\_  
Annette Bigelow

STATE OF ARIZONA )  
STATE OF ARIZONA )  
County of Gila ) ss:

This instrument was acknowledged before me this 15th day of Dec, 1995, by Mark J. Fumusa, Suzanne A. Fumusa, Ivan H. Bigelow and Annette Bigelow.

\_\_\_\_\_  
Notary Public

My commission expires:



X

When Recorded Return To:

David E. Shein, Esq.  
David E. Shein, P.C.  
8 North Roosevelt Avenue  
Chandler, Arizona 85226

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ck# 62903  
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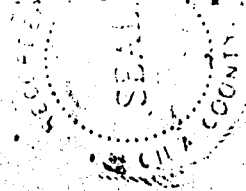
RECORDED AT THE REQUEST OF

PIONEER TITLE AGENCY

DATE DEC 22 1995 TIME 4:00

OFFICIAL RECORDS OF GILA COUNTY, AZ  
LINDA HAUGHT ORTEGA, RECORDER

BY Susan Dickey, Deputy



**DECLARATION OF COVENANTS, CONDITIONS,**

**RESTRICTIONS, AND EASEMENTS**

**FOR**

**THE BROOK AT**

**CHRISTOPHER CREEK**

X  
95-076015

DECLARATION OF COVENANTS, CONDITIONS,

RESTRICTIONS, AND EASEMENTS

FOR

THE BROOK AT

CHRISTOPHER CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR THE BROOK AT CHRISTOPHER CREEK ("Declaration") is executed to be effective as of \_\_\_\_\_, 1995, by IVAN H. BIGELOW and ANNETTE BIGELOW and MARK J. FUMUSA and SUZANNE A. FUMUSA (collectively, "Declarant").

RECITALS

A. Declarant owns fee title in approximately 20 acres of land located in the general vicinity of Christopher Creek in Gila County, Arizona. This land currently is intended to be known and developed by Declarant under the name "The Brook at Christopher Creek or the "Development."

B. Declarant desires to carry out a general plan for development and to develop The Brook at Christopher Creek as a residential community development (minor land division) with residential areas and other common facilities.

C. Declarant desires and intends that the Covered Property be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions which are created, granted, (or reserved in this Declaration, all of which:

- (i) are for the purpose of protecting the value, desirability, and attractiveness of the Covered Property;
- (ii) shall run with fee simple title to all of the real property comprising the Covered Property;
- (iii) shall be binding on all parties having any right, title, or interest in all or any portion of the Covered Property; and
- (iv) shall inure to the benefit of all parties having any right, title, or interest in all or any portion of the Covered Property and their successors and assigns (including all subsequent purchasers).

D. Declarant intends to form an Arizona nonprofit corporation to be known as the "The Brook at Christopher Creek Community Association." The Association shall be formed for the purposes of, among other things:

- (i) maintaining the Common Areas;
  - (ii) preserving the values and amenities of the Covered Property (in regard to which the Association will be delegated certain powers of administering and enforcing this Declaration);
  - (iii) establishing, collecting, disbursing, and enforcing the Assessments; and
  - (iv) maintaining (or contracting for the maintenance of) any areas which the Association agrees to maintain.
- E. Until such time as the Association is incorporated, Declarant reserves the right to exercise the powers, rights, and duties granted to or imposed upon the Association under this Declaration.

as follows: NOW, THEREFORE, DECLARANT declares, grants, reserves, covenants, and agrees

**ARTICLE I**

**DEFINITIONS**

As used in this Declaration (but without limiting any other defined terms used in the Declaration), the following terms shall have the following meanings:

**Section 1.1. Adjustment Date.** "Adjustment Date" shall mean January 1 of each year during the period this Declaration remains in effect.

**Section 1.2. Annual Assessments.** "Annual Assessments" shall mean the regular annual assessments levied by the Board pursuant to Article VII of this Declaration.

**Section 1.3. Articles.** "Articles" shall mean the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

**Section 1.4. Assessments.** "Assessments" shall mean collectively all Annual Assessments, Special Assessments, and Maintenance Assessments.

**Section 1.5. Assessment Lien.** "Assessment Lien" shall mean the charge and containing lien against a Lot or a Parcel for payment of Assessments, as created by the recordation of this Declaration.

**Section 1.6. Assessment Period.** "Assessment Period" shall mean each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration.

**Section 1.7. Association.** "Association" shall mean The Brook at Christopher Creek Community Association, an Arizona nonprofit corporation, and its successors and assigns.

**Section 1.8. Association Rules.** "Association Rules" shall mean the rules and regulations, if any, adopted by the Association pursuant to Section 5.3 of this Declaration, as such rules and regulations may be amended from time to time.

Section 1.9. Board. "Board" shall mean the Board of Directors of the Association.

Section 1.10. Bylaws. "Bylaws" shall mean the Bylaws of the Association, as amended or restated from time to time.

Section 1.11. Common Area and Common Areas. "Common Area" and "Common Areas" shall mean all real property (and the improvements or amenities located on the real property) which from time to time may be owned, leased, maintained, or operated by the Association including, but not limited to, the following:

- (i) all roads within the Covered Property which are not owned by or dedicated to the public but which the Association is required to maintain;
- (ii) all land specifically designated now or in the future for landscaping, drainage, flood control or utility easements for the benefit of the Owners generally; and
- (iii) Tract "A" as set forth on the Record of Survey.

Section 1.12. Constituent Documents. "Constituent Documents" shall mean, collectively, this Declaration, the Articles, the Bylaws, and the Association Rules, all as may be amended from time to time.

Section 1.13. Covered Property. "Covered Property" shall mean the real property more particularly described on Exhibit "A".

Section 1.14. Declarant. "Declarant" shall mean Ivan H. Bigelow and Mark J. Fumusa and their respective spouses.

Section 1.15. Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, and Easements, as amended or supplemented from time to time.

Section 1.16. Dwelling Unit. "Dwelling Unit" means any building or portion of a building situated upon a Lot or Parcel and intended for use and occupancy as a residence by a Single Family.

Section 1.17. Lot. "Lot" or "Parcel" shall mean an area of real property which is designated as a "Lot" or "Parcel" on the Record of Survey or otherwise by this Declaration.

Section 1.18. Member. "Member" shall mean any Owner. Tenants shall not be Members of the Association.

Section 1.19. Membership. "Membership" shall mean the amalgam of rights and duties of a Member with respect to the Association.

Section 1.20. Owner. "Owner" shall mean the record holder of legal title to the fee simple interest in any Lot or Parcel or any portion of a Lot or Parcel. In the case of a purchaser under a recorded contract for sale (as described in A.R.S. § 33-741), the contract purchaser shall be deemed the "Owner" (but only if the contract has been recorded). The term "Owner" shall include all successors and assigns of the original or any subsequent Owner.

Section 1.21. Person. "Person" shall mean a corporation (profit or non-profit), partnership, joint venture, individual, trust, limited liability company or any other legal entity.

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Section 1.22. Record. "Record" or any adjective or verb comprised in part of the word "record", whether or not capitalized, shall mean or describe the act of placing (or the completed placing) of a document of public record in the Official Records of Gila County, Arizona.

Section 1.23. Record of Survey. "Record of Survey" shall mean the Record of Survey - Minor Land Division Recorded with the Gila County Recorder at Document 95-670828, as may be amended from time to time.

Section 1.24. Resident. "Resident" shall mean:

- (i) each Tenant who resides on the Covered Property and the members of the immediate family of each Tenant who reside on the Covered Property;
- (ii) each Owner and the members of the immediate family of each Owner who reside on the Covered Property; and
- (iii) such persons as the Board, in its absolute discretion, may authorize, including without limitation on-site employees, invitees, and guests of an Owner or Tenant.

Section 1.25. Single Family. "Single Family" shall mean an individual living alone or a group of natural persons related to each other by blood, marriage, or legal adoption or a group of not more than 3 unrelated natural persons who maintain a common household in a Dwelling Unit.

Section 1.26. Special Assessments. "Special Assessments" shall mean the assessments, if any, levied by the Board pursuant to Section 7.5 of this Declaration.

Section 1.27. Tenant. "Tenant" shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in A.R.S. §33-1310(11) or otherwise.

Section 1.28. Visible From Neighboring Property. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a Person six (6) feet tall standing on adjacent real property at an elevation no greater than the elevation of the base of the object being viewed.

Section 1.29. Well Property. "Well Property" shall mean Tract "A" as set forth on the Record of Survey.

## ARTICLE II

### PROPERTY AND PERSONS BOUND BY THE DECLARATION

Section 2.1. General Declaration. Declarant, as of the date of this Declaration, intends to develop The Brook at Christopher Creek for residential purposes and to sell and convey each Parcel or Lot or any portion of any Parcel or Lot subject to this Declaration as a minor land division. Declarant declares that all of the Covered Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon, used, improved, or transferred, in whole or in part, subject to the Constituent Documents. This Declaration, during its term, shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and all successors and assigns of the foregoing.

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Section 2.2. Owners and Residents Bound. Upon the recordation of this Declaration, this Declaration shall be binding upon all Owners of the Covered Property, all Residents, and all Tenants (and each of their successors and assigns), whether or not stated in any document or deed transferring any interest in any Parcel or Lot.

Section 2.3. Association Bound. Upon the incorporation of the Association, this Declaration shall be binding upon and shall benefit the Association and its successors and assigns.

### ARTICLE III

#### COMMON AREAS

Section 3.1. Common Areas. The Brook at Christopher Creek is intended to be developed as a residential community with minimal Common Areas. As of the date of recordation of this Declaration, the only Common Areas located within the Covered Property are the access roads, public utility easements and Tract A. Declarant does not intend, as of the date of recordation of this Declaration, to convey fee simple legal title to any portions of the Covered Property to the Association; however, the Association may possess some maintenance responsibility with respect to the Common Area, all as more specifically set forth in this Declaration or the other Constituent Documents or other written instrument.

Section 3.2. Right of Enjoyment. Subject to the terms of this Declaration, every Owner, Resident, and Tenant shall have the right and easement to use and enjoy the Common Area.

Section 3.3. Insurance. The Association shall insure the use and operation of the Common Areas from damage or liability from personal injury, death, and property damage. All insurance shall be maintained in amounts, with companies, with deductibles, and subject to such terms as the Board may determine in its sole discretion.

### ARTICLE IV

#### LAND USE CLASSIFICATIONS, PERMITTED USES, AND RESTRICTIONS

Section 4.1. Land Use Classifications. All Covered Property shall be held, used and conveyed only for Single Family residential and no other purposes.

Section 4.2. Permitted Uses and Restrictions. In addition to all other restrictions imposed by this Declaration, the Covered Property (and each Lot or Parcel within the Covered Property) shall be held, used and conveyed subject to the following restrictions:

(a) Trash. No garbage, trash construction or tree removal debris may be stored or placed on any portion of the Covered Property except in a trash receptacle of a size, type, and style approved by the Association. All garbage and trash must be regularly removed from each Lot or Parcel.

(b) Occupancy. Except for activities related to the occupancy of Dwelling Units, no gainful occupation, trade, or other nonresidential use may be conducted on the Covered Property.

(c) Residential Use. The Covered Property may be used only for the construction and occupancy of Dwelling Units intended for the use and enjoyment of Owners and Residents of and incidental residential activities, such as the construction and use of swimming pools, spas, open spaces, roadways, tennis courts, stables and other recreational amenities permitted by this Declaration. Each Lot or Parcel shall be restricted to one (1) Dwelling Unit and one (1) guest house. Each Dwelling Unit shall have a minimum of 1200 square feet and each guest house shall have a minimum of 720 square feet.

95-675675

(d) Temporary Occupancy. No trailer, tent, shack, garage, barn, pre-built or pre-manufactured home or temporary structure or mobile home of any kind shall be used as a residence, whether temporary or permanent. Temporary structures used during construction shall be removed immediately after completion of construction. All construction activity shall be completed within nine (9) months of commencement.

(e) Hazardous Wastes. No Owner or Resident may permit any hazardous waste or substance to be produced, stored, dumped, or generated on the Covered property.

(f) Repair of Building. No building or improvement on the Covered Property shall be permitted to fall into disrepair. Each building and improvement must at all times be kept in good condition and repair and adequately painted or otherwise finished.

(g) Mineral Exploration. No portion of the Covered Property may be used in any manner to explore for or to remove any water, oil, hydrocarbons, minerals, gravel, gas, earth, or any earth substance of any kind.

(h) Signage. No signage of any type or nature will be allowed anywhere on the Covered Property except as approved, in writing, by the Association.

(i) Recreational Vehicles, Etc. No trailers, motor homes, campers, RV's, mini-vans or boats or any type of nature shall be stored on the Covered Property unless stored in a garage or carport or otherwise screened so as not to be Visible From a Neighboring Property.

(j) Exterior Lighting. All exterior lighting shall be indirect lighting and no direct lighting of any type or nature will be permitted except as approved, in writing, by the Association.

(k) Set Backs. Except for property lines that border National Forest, all Dwelling Units or structures of any type or nature built on any portion of any Lot or Parcel shall be set back a minimum of thirty (30) feet from the nearest property line. All fences that contain animals shall be subject to the same set back requirement.

(l) Animals. Horses or llamas are permitted on the Covered Property, but no Owner shall place or maintain two (2) horses or llamas on any Parcel or Lot. Other normal and customary pets may also be kept on the Covered Property including, without limitation, up to two (2) dogs or two (2) cats per Parcel or Lot. No boarding of animals shall be permitted on the Covered Property.  
\*no more than

*AB*  
*MAX*  
*SAT*

(m) Buildings. All buildings shall be designed and constructed to be consistent with the rustic forest environment. All Dwelling Units or other structures shall be built of new materials only and constructed in earth tones consistent with the surrounding environment, including roofs. In order to insure that any proposed construction activity complies with this provision, an Owner may submit plans and material samples to the Board for approval. The Board's failure to respond to any inquiry within thirty (30) shall be deemed approval. All submissions to the Board in connection with this paragraph shall be made in writing and shall be in sufficient detail and accompanied by appropriate materials to enable the Board to render a decision. Any Owner that commences construction activity on any Lot or Parcel without first obtaining the Board's approval pursuant to this paragraph shall be subject to the Board later determining that the construction does not comply with this provision and requiring that the Owner, at the Owner's sole cost and expense, make any modifications necessary to bring the construction into compliance with this provision. Any construction activity that varies from the plans and specifications submitted to the Board for approval shall not be considered "approved" by the Board.



95-875675

Section 4.3. Parcels 2, 3 and 4 as set forth on the Record of Survey may not be further subdivided. Parcels 1 and 5 may be subdivided into as many as three (3) Lots each. Each Lot shall have a minimum area of one (1) acre.

#### ARTICLE V

##### ORGANIZATION OF ASSOCIATION

Section 5.1. Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties vested with the powers prescribed by law and set forth in the Articles, the Bylaws, and this Declaration. The Articles and Bylaws shall be created by the Declarant, who will serve as the incorporator of the Association. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

Section 5.2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws.

Section 5.3. Association Rules. By a majority vote of the Board, the Association, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal the Association Rules. The Association Rules shall not be inconsistent with this Declaration, the Articles, or the Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth entirely in this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association.

Section 5.4. Personal Liability and Indemnification. Neither the Association nor any Board member, officer, committee member, employee, or representative of the Association shall be personally liable to any Owner or to any other Person, including the Association, for any damage, loss, costs, fees (including attorney fees), liability, or prejudice suffered or claimed on account of any of their acts, omissions, errors, or negligence. The limitation set forth in this Section 5.4 shall not apply to any Person that has failed to act in good faith or has engaged in willful or intentional misconduct. In addition, the Association shall be authorized to indemnify any Board member, officer, committee member, employee, or representative of the Association to the fullest extent permitted by A.R.S. § 10-1003(C), as amended from time to time (or any successor or replacement provision).

#### ARTICLE VI

##### MEMBERSHIP AND VOTING

Section 6.1. Membership and Voting Generally. Every Owner shall be a Member of the Association with full voting privileges and shall remain a Member for so long as that Person continues to be an Owner. The Owner's of Parcels 2, 3 and 4 as set forth on the Record of Survey shall each have one (1) vote on any Association matter. The Owner(s) of Parcels 1 and 5 as set forth on the Record of Survey shall each have three (3) votes on any matter requiring a vote of the Members of the Association. In the event Parcels 1 and/or 5 are subdivided in the future in accordance with this Declaration, the votes assigned to those Parcels shall be divided among the Lots created as a result of such subdivision at the rate of one (1) vote for each Lot.

Section 6.2. Right to Vote. Subject to the authority of the Board to suspend voting rights, each Member shall be entitled to cast the votes established in this Declaration and the other Constituent Documents. No change in the Membership of a Member shall be effective for voting purposes until the Board receives written notice of the change together with satisfactory evidence of the change. Votes may

95-875675

be cast only in whole numbers, and fractional votes are not permitted. If any Member casts a vote or votes, the Member thereafter will be conclusively presumed to be acting with its authority as a Member unless a written objection is made to the Board at or prior to the time the vote or votes are cast.

Section 6.3. Members' Rights. Each Member shall have the rights, duties, and obligations set forth in this Declaration and the other Constituent Documents.

Section 6.4. Transfer of Membership. The rights, duties, and obligations of a Member cannot and shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of such Member's Lot or Parcel and then only to the transferee. A transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona Law. Any attempt to make a prohibited form or transfer shall be void. Any permitted transfer of ownership in a Lot or Parcel shall operate to transfer the Membership relating to that Lot or Parcel to the new Owner.

## ARTICLE VII

### ASSESSMENTS AND CREATION OF LIEN

Section 7.1. Creation of Assessment Lien: Personal Obligation of Owner. Declarant, for each Lot and Parcel constituting part of the Covered Property, covenants, contracts, and agrees, and each Owner (whether an original Owners or a successor Owner) by acceptance of a deed for the Lot or Parcel (whether or not it is expressed in any such deed or other instrument) is deemed personally to covenant, contract, and agree to pay to the Association the Assessments established in this Declaration. The Assessments, together with accrued interest and all costs and attorney fees, if any, incurred by the Association in connection with the enforcement and collection of the Assessments or in otherwise enforcing this Declaration, shall be a charge and a continuing lien upon the Lots or Parcel against which the Assessment is made and, in addition, shall be the personal obligation of the Owner of the Lot or Parcel at the time when the Assessment becomes due and payable.

Section 7.2. Annual Assessments. The Annual Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners and Residents, to preserve the value of the Covered Property, to pay the costs of administration of the Association and maintenance of the Common Areas, and to otherwise further the interests of the Association, all as the Board deems appropriate.

Section 7.3. Rate of Assessment. All Annual Assessments and Special Assessments shall be allocated among each Lot or Parcel based on the percentage calculated by dividing the total number of votes allocated to that Parcel by the total number of votes allocated to all of the Covered Property.

Section 7.4. Parcel Assessment. All Assessments shall be made on a Parcel-by-Parcel or Lot-by-Lot basis.

Section 7.5. Special Assessments. The Association may levy a Special Assessment for the following purposes: (i) paying any amounts incurred by or assessed against the Association under any indemnity provisions of any maintenance contracts, (ii) defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvements or real or personal property owned or operated by the Association including, without limitation, the Well Property and associated water distribution system; or (iii) defraying any other extraordinary expenses. Special Assessments shall be levied by the Board. Special Assessments shall be assessed uniformly among the Owners in the manner described in Section 7.3, except as otherwise authorized under this Declaration.

Section 7.6. Determination of Assessments. The amount of any Annual Assessments or Special Assessments shall be determined in accordance with this Section 7.6. Within thirty (30) days

95-675675

after the commencement of the initial Assessment Period and within thirty (30) days prior to the end of each subsequent Assessment Period, the Board shall prepare and circulate to all Members a budget setting forth the total Association budget for the relevant Assessment Period and the allocable portion of the Annual Assessments and Special Assessments due on a Parcel-by-Parcel basis. If no Member has sent a written objection to the Association within twenty (20) days after the commencement of a new Assessment period, the budget shall be deemed approved. If any Member timely objects to the budget in writing, the Board shall call a special meeting of Members to vote on the Budget. If a quorum of the Members is not present in person or by proxy at the beginning of the special meeting, the budget shall be deemed approved, and the objecting Member shall pay (as a Special Assessment) for the cost of noticing and calling the meeting in an amount not less than Two Hundred and No/100 Dollars (\$200.00). If a quorum is present and the budget is approved, no costs shall be assessed against the objecting Members. Notwithstanding the foregoing, no Member shall have a right to object to any Annual Assessment or Special Assessment which does not, in the aggregate, exceed that charged in the prior Assessment Period by not more than ten percent (10%). The presence or absence of a quorum shall be determined in accordance with the Articles and Bylaws.

Section 7.7. Annual Assessment Period. Except as otherwise provided below, the Assessment Period shall be the calendar year. The first Assessment Period, however, shall commence upon the filing of the first Tract Declaration and terminate on December 31 of that year. The Board, in its sole discretion and from time to time, may change the Assessment Period.

Section 7.8. Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing, and collecting the Assessments. Assessments may be collected on a monthly basis or any less frequent basis. The failure of the Association to send a bill shall not relieve any Owner of the Owner's liability for an Assessment. It shall be the responsibility of each Owner of Subsidiary Association, as the case may be, to inform the Association in writing of any change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any unrefunded prepayments made by a prior Owner.

Section 7.9. Collection Costs and Interest. Any Assessment shall have added to it a late charge equal to fifteen percent (15%) of the delinquent amount if the Assessment is not paid within fifteen (15) days after its due date. In addition, all unpaid Assessments shall bear interest from fifteen (15) days after its due until paid at a rate equal to the lesser of: (i) eighteen percent (18%) per annum; or (ii) the then prevailing highest interest rate chargeable on loans in Arizona. The Owner shall be liable for all costs, including but not limited to attorney fees and collection agency fees, which may be incurred by the Association in collecting any Assessment. The Board also may levee an Assessment Lien against the applicable Lot or Parcel and may establish a fixed fee to be reimbursed to the Association for the Association's cost in recording the Assessment Lien, processing the delinquency, and recording a release of lien. The foregoing fee shall be treated as a collection costs of the Association secured by the recorded Assessment Lien. All references in this Declaration to the term "Delinquent Amount" shall include any delinquent Assessment and all late charges, interests and costs collectable under this Section 7.10.

Section 7.10. Statement of Payment. Upon receipt of a written request from any Owner or Resident, the Board, within a reasonable time, shall issue to the requesting party a written statement stating that as of the date of that statement:

- (a) All Assessments have been paid with respect to the specified Lot or Parcel; or
- (b) If such have not been paid, the amount then due and payable.

The Association may make a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth in the statement.

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ARTICLE VIII

ENFORCEMENT AND THE ASSESSMENT LIEN

Section 8.1. Association Remedies to Enforce Assessments. If any Assessment is not paid when due, the Association may enforce its payment and the Assessment Lien by taking any of the following actions, concurrently or separately:

- (a) Bring an action at law against the Owner who is personally liable for the Assessments;
- (b) Foreclosure the recorded Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency) and, at the Association's option, the Association may bid for and purchase the Lot or Parcel at any foreclosure sale; or
- (c) Exercise any other action available at law or in equity.

By exercising any of the remedies outlined above, the Association shall not be deemed to have waived its right to exercise any other remedy.

By exercising any of the remedies outlined above, the Association shall not be deemed to have waived its right to exercise any other remedy.

Section 8.2. Subordination of Assessment Lien. Regardless of whether or not a notice of an Assessment Lien is actually recorded, the Assessment Lien on any Lot or Parcel shall be superior to all charges, liens, or encumbrances which, after the date of recordation of this Declaration, are or may be imposed on any Lot or Parcel, except:

- (a) The lien of any first mortgage or deed of trust encumbering the Lots and Parcels;
- (b) The lien for taxes or other governmental assessments that is deemed prior and superior by applicable law; or
- (c) The lien for taxes of any first mortgage or first deed of trust affecting any Lot or Parcel held by an institutional lender who holds such mortgage or deed of trust as a purchase money security interest.

The sale or transfer of any Lot or Parcel shall not affect the Assessment Lien or the personal obligation of the Owner to pay the Assessment; however, the sale or transfer by an institutional first lender of any Lot or Parcel pursuant to any foreclosure sale, trustee's sale, or deed in lieu proceeding shall extinguish the Assessment Lien on the particular Lot or Parcel but only as to payments that became due prior to such sale or transfer. No sale or transfer by an institutional first lender of any Lot or Parcel pursuant to any foreclosure sale, trustee's sale, or deed in lieu proceeding, however, shall relieve a Lot or Parcel or its Owner from liability for any Assessments which may become due in the future (after the sale or transfer) or from the Assessment Lien arising out of Assessments made after the sale or transfer. Nothing in this Declaration, however, shall be construed to release any Owner or previous Owner from the Owner's personal obligation to pay any Assessment, and the Association may enforce collection of the Assessments from the Person even though the Person is no longer an Owner.

ARTICLE IX

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#### USE OF ASSOCIATION FUNDS

Section 9.1. Use of Association Funds. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all funds for the common good and benefit of the Covered Property, the Owners, and the Residents. The funds may be used, among other things, to insure, acquire, construct, alter, maintain, provide, and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies, and systems, within or without the Covered Property and the Common Areas, which may be necessary, desirable, or beneficial to the general common interests of the Owners and the Residents.

Section 9.2. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all funds received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year.

#### ARTICLE X

#### MAINTENANCE

##### Section 10.1. Common Areas.

(a) Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain all Common Areas.

(b) Standard of Care. The Association shall use a standard of reasonable care in providing for the repair, management, and maintenance of the Common Areas. Absent bad faith, the Board shall be the sole judge as to the appropriate level of maintenance of all Common Areas.

(c) Well Property. In addition to the Association's duty to preserve, maintain and manage the Common Areas, the Association shall also have the responsibility for maintaining the well, pumping and water distribution equipment and facilities located on the Well Property or elsewhere within the Common Areas. Each Owner of a Lot or Parcel shall be entitled to a pro-rata share of water from the Well Property allocated among each Lot or Parcel based on the percentage calculated by dividing the total number of votes allocated to that Lot or Parcel by the total number of votes allocated to all of the Covered Property. For example, the owner of Parcel 3 will be entitled to receive one-ninth (1/9) of the water from the Well Property and the owner of Parcel 5 (prior to subdivision) shall be entitled to receive one-third (3/9) of the water. Although the Association shall bear responsibility for maintaining the Well Property and associated pumping, storage and distribution equipment, the Association shall not bear any responsibility for the quality or potability of the water delivered to each Lot or Parcel. All costs and expenses associated with maintaining the Well Property and associated water distribution system will be part of the Association's budget subject to Assessment.

(d) Creek Crossing Maintenance. Costs and expenses incurred by the Association in connection with the repair and maintenance of the Crossing spanning Christopher Creek that provides access to Parcels 2, 3 and 4 shall be the obligation of the Owners of Parcels 1, 2, 3, 4 and 5 on a pro-rata (1/5, 1/5, 1/5, 1/5, 1/5) basis. The Association shall determine the amount of any Annual Assessments or Special Assessments in accordance with this provision.

Section 10.2. Assessment of Certain Maintenance Costs. In the event the need for maintenance of repair of the Common Areas is caused through the willful or negligent act or omission of any Owner or Resident (or the Owner's or Resident's family, guests, Designees, or agents), the cost of such maintenance or repair shall be assessed as a Maintenance Assessment directly against the Owner and the Owner's Lot or Parcel by a recorded Assessment Lien.