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To

When recorded, return to:

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**SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SUN-AIR ESTATES UNITS III, IV, V AND VI**

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**SUN-AIR ESTATES UNITS III, IV, V AND VI
SECOND AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun-Air Estates Units III, IV, V and VI ("Declaration") is made as of the effective date hereinafter set forth.

RECITALS

WHEREAS, The Association amended, restated, wholly superseded and replaced the Restated Declaration, with the Sun Air Estates Units III, IV, V and VI Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded in Maricopa County, Arizona, Recorder Number 99-1033848 on November 10, 1999 (the "Amended CC&Rs"), which governs the property described on the attached Exhibit "A" and herein incorporated by reference ("Property");

WHEREAS, the Association, by and through the Owners, wishes to amend and restate the Declaration in its entirety as set forth herein;

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NOW THEREFORE the Association declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each Owner thereof and the Association.

**ARTICLE I
DEFINITIONS**

The following terms used herein are defined as follows:

1.01 **Articles of Incorporation or Articles.** Shall mean and refer to the Articles of Incorporation of the Sun Air Estates Homeowners Association.

1.02 **Association.** Shall mean Sun Air Estates Homeowners Association, an Arizona nonprofit corporation, its successors and assigns. The Owners hereby ratify the incorporation of the Sun Air Estates Homeowners Association as the Association under this Declaration and consent to the exercise by the Sun Air Estates Homeowners Association of all of the powers and

functions of the Association under this Declaration.

1.03 **Board or Board of Directors.** Shall mean the Board of Directors of the Association.

1.04 **By-Laws.** Shall mean and refer to the By- Laws of the Sun Air Estates Homeowners Association.

1.05 **Common Areas.** Shall mean and include the areas and facilities described in Article V, below.

1.06 **Declaration.** Shall mean, collectively, this Sun-Air Estates III, IV, V and VI Second Amended and Restated Declaration of Covenants, Conditions and Restrictions and any amendments to these Amended CC&Rs.

1.07 **Lot.** Shall mean a separately designated Lot on the Plat (including, but not limited to, any "sublot" designated on the Plat by a number and a letter A or B) and the residential dwelling units, garages, structures and other improvements constructed thereon.

1.08 **Original Declarant.** Shall mean Glenn Properties, Inc., an Arizona corporation, its successors or assigns.

1.09 **Original Developer.** Shall mean Glenn Properties, Inc., an Arizona corporation, its successors or assigns.

1.10 **Owner.** Shall mean the record owner, whether one or more persons, of fee simple title of any Lot (whether or not subject to any mortgage), including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation. In the event that fee simple title to any Lot is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 *et seq.*, (Deed of Trust Statute) legal title shall be deemed to be in the trustor.

1.11 **Pima.** Shall mean Pima Savings and Loan, F.A., its successors and assigns.

1.12 **Plat.** Shall mean that certain plat of Sun-Air Estates Unit III Amended recorded in Book 205 of Maps, Page 25, in the official records of Maricopa County, Arizona; that certain plat of Sun-Air Estates Unit IV recorded in Book 227 of Maps, Page 11, in the official records of Maricopa County, Arizona; that certain plat of Sun-Air Estates Unit V recorded in Book 344 of Maps, Page 3, in the official records of Maricopa County, Arizona; and that certain plat of Sun-Air Estates Unit 6 (VI) recorded in Book 501 of Maps, Page 24, in the official records of Maricopa County, Arizona, all as thereafter from time to time replatted, amended or supplemented.

1.13 **Unit.** Shall mean and refer to a detached single family residential dwelling unit or a duplex residential dwelling unit.

1.14 **Property, Premises or Subdivision.** Shall mean the Unit III Property, the Unit IV Property, the Unit V Property, the Unit VI Property and the Common Area Property as shown in Exhibit "A" and as shown on the Plats.

ARTICLE II PLAN

2.01 **Plan of Development.** Sun-Air Estates Unit III, Sun-Air Estates Unit IV and Sun-Air Estates Unit V and Sun-Air Estates Unit VI are a portion of a larger development created by the various developers. The entire concept may be referred to herein as the "Development". Certain recreational areas and facilities, as more particularly mentioned in Article IV below, have been developed by the Original Developer or others as part of the Development. These areas and facilities are for the use and benefit of the Owners of the Lots, as well as for the use and benefit of owners of other portions of the Development, as set forth below.

ARTICLE III USE RESTRICTIONS

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3.01 **Animals; Pets.** Only a reasonable number of commonly accepted household pets may be kept on a Lot, provided that such commonly accepted household pets are not kept, bred or maintained for any commercial purposes. Except as stated above, no other animals of any kind shall be raised, bred or kept on the Property or any part thereof. All such pets must be kept on the Owner's Lot or on a leash no longer than six feet (6') in length, within the Owner's control, at all times. Each Owner must immediately clean up after such pet's droppings that are on Common Area or another Owner's Lot. No such pets shall be allowed to make an unreasonable amount of noise or to become a nuisance or an annoyance to other Owners.

3.02 **Business or Offensive Activities.** No noxious or offensive activity may be carried on or permitted on any part of the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood; nor shall any part of the Premises be used for any business use. For purposes of the preceding sentence, "business use" shall be construed to have its ordinary, generally accepted meaning and shall include any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. The leasing of an Owner's own Lot shall not be considered a trade or business. "Business use" shall not include (a) the existence or operation of business activity not apparent or, detectable by sight, sound or smell from outside the Lot on which it occurs; (b)

business activity not involving persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (c) business activity consistent with a residential character and not a nuisance, or a hazardous or offensive use, or a threat to the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. Furthermore, no advertising or directional signs may be placed upon the Lot or any portion of the Common Areas regarding the business activity.

3.03 Construction. All Units and other structures on any Lot shall be of new construction (and then only pursuant to the terms hereof), and no buildings or structures shall be moved from any other location onto any of the Lots or portions thereof. No detached single family residence or living unit within a duplex shall be erected, permitted or maintained on any Lot having a ground floor-area of less than one thousand (1,000) square feet, exclusive of open roofed areas, pergolas and attached garage or carport.

3.04 Easements. Easements for installation and maintenance of utilities and drainage facilities have been created as shown on the Plat. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. All easement areas upon each Lot and all improvements in easement areas shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

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3.05 Fencing; Walls. No fence or other such wall shall be constructed or maintained nearer to the front street line of a Lot than the edge of the outer back wall of the Unit constructed on the Lot. No side or rear wall, other than the wall of the building constructed on the Lot, shall be more than six feet in height. Notwithstanding the foregoing, however, the prevailing city regulations shall take precedence over these restrictions if said regulations and provisions are more restrictive. All fencing shall be masonry fencing only and shall be subject to the prior approval of the Architectural Control Committee.

3.06 Landscaping. Each Lot shall be landscaped and maintained by the Owner thereof in accordance with the Design Guidelines.

3.07 Outside Lighting. No spotlights, floodlights or similar type high-intensity type lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot, the adjacent Lot or any improvements thereon.

3.08 Renting. Any agreement for the lease of a Lot must be in writing and must be expressly subject to this Declaration, the Articles, By-Laws, Association rules and Design Guidelines. An Owner who leases or otherwise grants occupancy rights to his Lot to any person shall be responsible for assuring compliance by the occupant with all of the provisions of this Declaration, the Articles, By-Laws, Association rules and Design Guidelines and shall be jointly and severally responsible for any violations by the occupant thereof. No portion of the Property,

other than the entire Lot and all improvements thereon, may be rented or leased, and each lease or rental period must be for a minimum of thirty (30) days. Prior to leasing or otherwise granting a right to occupy any Lot or Unit, the Owner of the Lot or Unit shall notify the Board of the proposed lease or grant of occupancy rights and shall thereafter furnish the Board with such documents or information concerning the proposed lessee or occupant as may be reasonably requested by the Board to ensure compliance with this Article.

3.09 Residential Use. All of the Lots in the Subdivision shall be known and described as, and limited in use to, residential purposes. Except as may otherwise be permitted by this Declaration, no improvements or construction whatever other than private dwellings, patio walls, and related landscaping and improvements, and customary outbuildings, garages, carports, and swimming pools may be erected or maintained on any Lot.

3.10 Screening Areas; Fences. All screened areas, fences, hedges or walls shall be maintained upon the Property in accordance with their original construction or installation, except as otherwise approved by the Architectural Control Committee.

3.11 Signs. No sign of any kind shall be displayed to the public view or from any Lot or any Common Area without the approval of the Board or the Architectural Control Committee, except: (a) a single nameplate and a single address plate attached to the exterior of a Unit identifying the occupant and the address of the Unit, provided that such nameplate and address plate shall be subject to the Design Guidelines; (b) such signs as may be required by legal proceedings, or the prohibition of which is ^{Unofficial Document} by law (including, but not limited to political signs); (c) such signs as may be required for traffic control and regulation of Common Areas; and (d) a single "For Sale" or "For Lease" sign placed upon the exterior of any Unit (or on the Lot containing the Unit) if the dimensions of such sign do not exceed 18 inches by 36 inches.

3.12 Subdividing. None of the Lots shall be resubdivided into smaller parcels nor conveyed or encumbered in less than the full original dimensions as shown on the Plat; provided that Lots or parts thereof may be combined in common ownership so as to create parcels of land with street frontages and areas no less than the minimum street frontage and area of the smallest Lot as shown on the Plat.

3.13 Temporary Structures. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling unit or other permanent structure on any Lot shall be removed immediately after the completion of construction.

3.14 Trash; Unsightly Items. Each Lot shall be maintained free of rubbish, trash or garbage and the same shall be removed from the Premises and not allowed to accumulate thereon, and no garbage, trash or other waste materials shall be burned on any of the Lots. Garbage cans, clotheslines, woodpiles, service areas, and areas for the storage of equipment shall be kept screened by adequate fencing or other aesthetically pleasing materials so as to conceal

same from the view of adjacent Lots and streets. No incinerators shall be permitted on the Property or any part thereof.

3.15 Trucks; Boats; Cycles; Campers. No trucks, vans, boats, trailers, busses, motor homes, campers or similar vehicles or equipment shall be parked or stored in or on the Common Areas or any Lot other than in individual carports, garages, fenced back yards or other areas expressly designated by the Board, except (a) as specifically permitted by law or by the Association rules, (b) pickup trucks (with or without "toppers" or camper shell coverings) and vans with a manufacturer's rating of 3/4 ton or less, (c) trucks and vans belonging to persons doing construction or other work in the Subdivision during daylight hours (or at other times during emergencies), or (d) motor homes or campers parked in a driveway or street for a period of 48 hours prior to a trip and 48 hours following a trip for purposes of loading and unloading.

3.16 Window Coverings. No aluminum foil or similar reflective coverings shall be allowed to be placed on the outside or inside of any windows or in or about any Unit which can be seen from the streets or other parts of the Subdivision.

ARTICLE IV PARTY WALLS

The rights and duties of the Owners of Units within the Subdivision with respect to party walls shall be governed by the following: Unofficial Document

4.01 What Constitutes a Party Wall. Each wall, including patio walls, which is constructed as part of the original construction of any structure, any part of which is placed on the dividing line between Lots shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

4.02 Damaged or Destroyed Party Wall Through Act of One Adjoining Owner. In the event any such party wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests, tenants, licensees, agents or members of his family, (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild or repair the same to as good condition as formerly without cost to the adjoining Owner.

4.03 Damaged or Destroyed Party Wall By Cause Unknown To Either Adjoining Owner. In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

4.04 **Responsibility for Exposing Interior Party Wall.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the interior of any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

4.05 **Party Wall Rights Pass To Successors.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

4.06 **Modification of Party Wall Requires Adjoining Owner's Written Consent.** In addition to meeting the other requirements of these restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Unit in any manner which requires the extension or other alteration of a party wall shall first obtain the written consent of the adjoining Owner.

4.07 **Duplex Dividing Wall Is a Party Wall.** The party wall dividing one Unit of a duplex unit from the other Unit of a duplex unit, and any exterior wall of a Unit which serves as a boundary separating two or more Lots, shall be deemed to be a party wall and the terms hereof shall apply thereto. In addition, no such wall shall be penetrated by any nail, tack, screw or other such item in excess of two inches, and no equipment or other thing which produces noise shall be attached thereto.

4.08 **In Resolving Dispute Between ^{Unofficial Document} Wall Owners, Board's Decision Is Final.** In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then (subject to any judicial decision by a court of competent jurisdiction) the determination thereof by the Board shall be final and binding on each and all of such Owners.

4.09 **Party Wall Includes Fence and Wall.** These covenants shall also apply to any fence or wall which is built on or immediately adjacent to a property line.

ARTICLE V COMMON AREAS

5.01 **Common Areas.** The Common Areas shall be all real property interests and the facilities, improvements and amenities located thereon, which may from time to time be owned or leased by the Association or otherwise held by the Association for the common use and enjoyment of the Owners of Lots in the Subdivision. The Common Areas may include, without limitation, landscaped areas, a swimming pool, clubhouse, and other such recreational facilities. The Common Areas, if any, may be platted as tracts in conjunction with the platting of portions of the Development, or the Common Areas, if any, may be developed without platting.

5.02 **Identification of Common Areas.** The Association may identify any Common

Area by causing to be recorded an affidavit, in the Office of the County Recorder of Maricopa County, Arizona, legally describing the real property constituting the Common Area, together with reference to the Lots then having the right to use the Common Area.

5.03 Association to Manage and Maintain the Common Areas. At such time as the Common Areas are transferred and conveyed to the Association, as hereinafter described, the Association, through its members and its Board of Directors, shall take the appropriate action to manage and maintain, repair, replace and improve the Common Areas, together with improvements located thereon.

5.04 Owners Have Nonexclusive Right to Use Common Areas. The Owners of Lots within the Subdivision shall have the nonexclusive right of use of the Common Areas, subject to the terms hereof.

ARTICLE VI ASSOCIATION FOR SUN-AIR ESTATES, INC. AND MEMBERSHIP IN THE ASSOCIATION

6.01 Purpose. The Association shall be a non-profit corporation organized under and pursuant to the laws of the State of Arizona, for the general welfare and benefit of the Owners of Lots in the Property.

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6.02 Membership. Membership in the Association shall be limited to the Owners of Lots. Membership in the Association shall be subject to all the provisions of this Declaration and to the Articles of Incorporation and By-Laws, as the same may be amended from time to time. Upon becoming an Owner of a Lot, such Owner shall be and become a member of the Association, automatically. An Owner shall remain a member of the Association until such time as his ownership of a Lot ceases for any reason. Ownership of a Lot shall be the sole qualification and criterion for membership in the Association, and the foregoing does not include persons or entities who hold an interest merely as security for the performance of any obligation. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot, and no membership in the Association may be transferred, pledged, or alienated in any way, except in connection with the sale or transfer of the Lot to which that membership is appurtenant, and then only to such purchaser of such Lot, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other such legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot, then the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the purchaser, or other successor, and thereupon the old membership outstanding in the name of the seller or transferor shall be null and void as though the same had been surrendered. The record Owner of a Lot shall be entitled to one membership in the Association for himself and his family residing in a dwelling unit and; provided; however, in the event any such Lot is owned by two or

more persons, the membership as to each such Lot shall be joint, and a single membership for same shall be issued in the names of all Owners. At the discretion of the Board, no certificates of membership need be issued, and if certificates are not issued, membership shall be evidenced by an official list of members kept by the Secretary or other designated officer of the Association.

6.03 Board of Directors. The Board of Directors shall consist of not less than three (3) nor more than nine (9) members, as set forth in the Articles and By-Laws (but the number of members of the Board may be such number as specified in the By-Laws), and the members of the Board shall be elected at the annual meeting of the members of the Association as more particularly set forth in the Articles and By-Laws.

6.04 Suspension of Voting Rights. The Association may, by rule or resolution of the Board, provide for or cause the suspension of the right of an Owner or any person (including, without limitation, a member of the family of an Owner) to use the Common Areas or any designated portion thereof (a) during any time in which any assessment or other charge owing to the Association respecting such Owner or his Lot remains unpaid and delinquent, or (b) for any other infraction of the Association rules or breach of this Declaration respecting such Owner or his Lot. Any suspension during a period of delinquency may be imposed with or without a prior hearing, as the Board may specify from time to time by rule or resolution. Any other suspension shall be made only by the President, the Board or a duly appointed committee thereof, after notice and hearing given and held in accordance with the By-Laws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Owner's right to use any portion of the Property necessary for such Owner to gain access to his Lot. The voting rights of an Owner shall be automatically suspended during the time that and for so long as the Owner's right to use the Common Areas or any portion thereof is suspended pursuant to this Section.

ARTICLE VII PROPERTY RIGHTS

7.01 Owners' Easements of Enjoyment. There shall be deemed to have arisen a right and easement of enjoyment in and to the Common Areas, vested in every Owner of a Lot within the Subdivision, and such right and easement to enjoyment shall be appurtenant to and shall pass with the title to every Lot. This Section shall be for the mutual benefit of all of the Owners of Lots within the Subdivision and is necessary for the protection of all such Owners. The rights of all such Owners to the use and enjoyment of the Common Areas, whether arising on account of this easement and right or on account of their membership in the Association, shall be subject to the rights of the Association acting by and through its Board of Directors:

- A. To limit the number of guests of members;
- B. To charge equal and reasonable admission and other fees for the use of any recreational facility;
- C. To suspend the voting rights of any member and his right to use the recreational facilities for any period during which any assessment for which he is responsible remains unpaid,

or for any violation of this Declaration, the Articles of Incorporation, the By-Laws and the published rules and regulations of the Association;

D. To promulgate and enforce reasonable rules and regulations in connection with the Common Areas.

7.02 Transfer of Common Areas. The Association, acting by and through its Board of Directors, shall have the right to dedicate, transfer and convey the Common Areas to any governmental or public authority upon a vote by a majority of the members present and voting at a duly called special meeting of the Association for that purpose. Any such conveyance must allow continued use of the property conveyed by the members of the Association. Public utility or other such easements may be granted by the Board, without a vote or consent of the members.

7.03 Delegation of Use. Any Owner may delegate, subject to and in accordance with this Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations of the Association, his right of enjoyment of the Common Areas to the members of his family, his tenants, contract purchasers and guests. Any such delegation shall not relieve the Owner of any of his liabilities and obligations under this Declaration, the By-Laws, the Articles, the Design Guidelines or the rules and regulations of the Association.

ARTICLE VIII COVENANT FOR ASSESSMENTS

8.01 Creation of the Lien and Personal Obligation of Assessments. The Owner of each Lot, by acceptance of a deed or other instrument therefor, whether or not it should be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association (or the Original Developer prior to the date described herein): (a) annual assessments, (b) special assessments, and (c) individual assessments as provided for later in this Article. The annual, special and individual assessments, together with such interest thereon and costs of collection thereof (including reasonable attorneys' fees) as hereinafter provided, shall be a charge on the land and shall be a continuing lien (hereinafter sometimes called an "assessment lien") upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall be appurtenant to the Lot at the time when the assessment became due, but such personal obligation or liability of the Owner shall not be deemed to limit or discharge the charge on the land and the continuing lien upon the Lot against which such assessment is made. No Owner may exempt himself from liability for the assessment which becomes due while he is the Owner by failure or waiver of the use or enjoyment of any of the Common Areas, by the abandonment of his Lot, or otherwise. To the extent permitted by law, each Owner 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 Declaration, whether such liens are now in existence or are created at any time in the future.

8.02 Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the general benefit, recreation, health, safety and welfare of the

Owners of the Property. Such purposes shall include, but shall not be limited to, and the Association's rights and powers and shall include (in addition to the rights and powers set forth in this Declaration and in the Articles of Incorporation and By-Laws), provision for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Areas and the improvements and facilities thereon; and further, shall include the payment of any taxes and assessments, if any, which may be assessed against and levied upon the Common Areas, and all premiums for hazard and public liability insurance, together with all other costs and expenses related to the management and maintenance of the Common Areas. Nothing contained herein shall limit the Association's rights and powers granted in this Article or granted elsewhere in this Declaration and the Articles or By-Laws.

8.03 Annual Assessments.

A. The Board, on behalf of the Association, shall determine and establish a budget and make assessments on the basis of costs and expenses incurred or estimated to be incurred by the Association. The Owner of each Lot, for said Owner and for said Owner's heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees that each Lot shall be subject to an assessment in an amount to be determined, which amount shall include the following:

(1) The actual cost to the Association of all taxes and improvement lien assessments (if any), water, utilities, insurance, repairs, construction, replacement and maintenance of the Common Areas and the improvements and facilities located thereon, and services benefitting all of the Owners within the Property, and other charges necessary or appropriate to carry out the purposes of the Association as set forth in this Declaration, the Design Guidelines, the Articles, the By-Laws and the rules and regulations of the Association; and

(2) Such sums as the Board shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, management and administrative costs and other charges as specified herein.

B. The annual assessment must be fixed at a uniform rate for all Lots.

C. The amounts to be prorated pursuant to this Section shall be established at least annually by the Board, and shall be collected at regular intervals as stated in Section 8.06 below.

D. If the Board determines during any fiscal year that the total annual assessments for the current fiscal year are, or will become, inadequate to meet all common expenses for whatever reason, including actual common expenses in excess of the estimated common expenses used in preparation of the Association's budget for that year, the Board shall then immediately determine the approximate amount of the inadequacy for the remainder of that fiscal year only and issue a supplemental estimate of the common expenses and determine the revised amount of annual assessments to be paid by each Owner for the balance of the year, and the date or dates when due.

E. If the total annual assessments for any current fiscal year prove to be excessive in light of the actual common expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the annual assessments for the succeeding year, or abate collection of annual assessments for such period as it deems appropriate.

F. Notwithstanding the foregoing, the annual assessment charged in any one fiscal year may be no more than twenty percent (20%) greater than the annual assessment charged in the previous fiscal year, unless a majority of the Members consent to such amount.

8.04 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair, or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, or for any other Association purpose, provided that any such assessment shall have the consent of a majority of the votes cast of those who are voting at any special meeting of the Members of the Association duly called for such purpose. Such assessments shall be fixed at a uniform rate for all Lots.

8.05 Quorum for Any Action Authorized under Section 8.04. Written notice of any meeting called for the purpose of taking any action authorized under Section 8.04 above shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first meeting called, the presence of ~~at least~~ ^{Unofficial Document} one person or by absentee ballot, of members entitled to cast fifty percent (50%) of all the votes shall constitute a quorum. If the required quorum is not forthcoming at the first meeting, another meeting may be called, subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

8.06 Uniform Mode of Assessments. Subject to the provisions contained in this Declaration, both annual and special assessments shall be fixed at a uniform rate for the Lots obligated to pay the particular assessment, and may be collected on a monthly or other periodic basis as determined by the Board.

8.07 Due Date of Annual Assessment. The Board shall fix the amount of the annual assessment against each Lot and said amount shall not be changed without at least thirty (30) days notice in advance of each change. Written notice of the assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand of any member at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

8.08 Individual Assessment for Restoration of Owner's Lot.

A. In the event the Owner of a Lot fails to maintain his Lot (including the exterior of the improvements thereon and the yard and landscaping) in a first-class, neat and clean condition, or otherwise fails in any way to comply with the provisions of this Declaration, the Articles, the By-Laws, the Association Rules or the Design Guidelines, the Association, acting through the Board, shall have the right, and each Owner expressly grants and assigns to the Association the right (subject to prior notice as hereinbelow set forth), (i) to enter upon such Owner's Lot and repair, maintain, rehabilitate and restore same to the condition deemed sufficient by the Board, and (ii) to bring the Owner or his Lot into compliance with this Declaration, the Articles, the By-Laws, the Association Rules and the Design Guidelines. The cost thereof shall be charged against and collected from the Owner of the Lot; the amount thereof to be paid by the Owner within thirty (30) days from the date of the invoice sent to the Owner; and said amount further shall be secured by and subject to all provisions regarding the assessment lien as provided in this Article.

B. Prior to exercising the aforesaid rights, the Owner shall be given written notice specifying the necessary repairs, maintenance, rehabilitation, restoration or other action to be undertaken, and granting the Owner thirty (30) days to accomplish the same (or such shorter period as may be specified by the Board in the event of an emergency or dangerous condition which poses a threat to the health or safety of other persons or a substantial threat to the property of another). If, at the end of said period, the work required to be performed has not been completed (or has been completed in an unsatisfactory manner), or if sufficient action has not been taken to effect same, then the Association, through the Board, shall have the right, as above set forth, to make such repairs, maintenance, rehabilitation or restoration and to bring the Owner and his Lot into compliance.

C. Nothing herein contained shall be construed as granting to the Association or the Board any right to enter into or inside of any Unit without the consent of the owner thereof

8.09 Property Subject to Assessments. All of the Lots in the Subdivision shall be subject to the assessments created herein, except the following: (a) all property dedicated to and accepted by a local public authority; (b) all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Arizona; and (c) all Lots owned by (or held by a trustee for the benefit of) the Original Declarant, the original Developer, Pima, or any Developer Builder, until such time as the Unit thereon is actually occupied as a residence.

8.10 Effect of Nonpayment of Assessments and Remedies of the Association. Each Owner, for himself, his heirs, successors and assigns, covenants and agrees that with respect to assessments determined during the period that he is an Owner, he will remit those assessments directly to the management corporation or to such other party or parties as directed by the Board; and further agrees that any assessments which are not paid when due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum or such other interest rate as may be specified from time to time by the Board by rule or regulation, may be subject to a late fee, and the Owner shall be obligated for the assessment, interest, and late fees thereon, together with all costs incurred by the Association in collecting the same, including reasonable attorneys' fees, regardless of whether suit is filed. The assessment shall

immediately become a lien upon said Owner's Lot from the date the assessment is made and/or levied, and shall continue to be such lien until fully paid, which lien shall secure the amount of the assessment, together with interest, costs and attorneys' fees as hereinabove stated. The Association is hereby authorized to record the lien in the office of the County Recorder for Maricopa County, Arizona. In the event the Owner of any Lot fails to pay an assessment due, the Association, by and through its Board, may enforce the payment of the assessment by foreclosure of the lien or by taking any or all of the following actions concurrently or separately (and by exercising any of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise any other remedies):

A. Bring an action at law against the Owner personally obligated to pay the assessment.

B. Foreclose the assessment lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the same may be redeemed after foreclosure sale as provided by law. The Association, acting on behalf of the Owners, shall have the power to bid in an interest foreclosed at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

C. Foreclose such lien or liens in the manner provided by the statutes of the State of Arizona for the foreclosure of materialmen's liens. Anything hereinabove to the contrary notwithstanding, the remedies above set forth for the Association are not exclusive, and the Association, acting by and through the Board, may take any and all other remedies available to it at law or in equity.

8.11 Subordination of the Lien to Mortgages and Deed of Trust. The assessment lien created hereunder shall be junior and subordinate to the lien of any first mortgage or first deed of trust against any Lot, and foreclosure of the assessment lien shall not affect or impair the lien of any such first realty mortgage or first deed of trust. The foreclosure of a first realty mortgage or first deed of trust against a Lot or acceptance of a deed in lieu of foreclosure or a trustee's sale pursuant to a deed of trust shall not affect or impair the personal obligation of the former Owner to pay the assessment lien. Any first mortgage foreclosure purchaser, or grantee taking by deed in lieu of foreclosure, or buyer at a trustee's sale, shall take the Lot free of the assessment lien for all charges that have accrued up to the date of issuance of a sheriff's deed, or deed given in lieu of foreclosure or prior to the trustee's sale, but shall take subject to the assessment lien for all assessments and charges accruing subsequent to the issuance of such sheriff's deed, deed given in lieu of foreclosure, or trustee's sale.

ARTICLE IX INSURANCE/REBUILDING

9.01 Common Areas. The Association, acting by and through its Board, shall have the authority to obtain liability, casualty and other insurance for the Common Areas as the Board deems necessary or appropriate. Notwithstanding the foregoing, the Board shall obtain public

liability insurance on behalf of the Association in an amount not less than \$2,000,000.

9.02 No Liability for Failure to Procure Insurance. Notwithstanding anything contained herein to the contrary or otherwise, neither the Board, nor the Association shall be liable to any party whomsoever for a failure to procure any insurance, nor shall the above mentioned parties be liable in any manner whatsoever for the risks covered by such insurance or for the failure of such insurance to cover any risk. Each Owner shall be responsible for determining the amount and type of insurance protection in force and to obtaining additional insurance protection at his own cost as he may see fit.

9.03 Duplex Units. Without limiting any of the provisions of this Declaration, each Owner of a Unit constituting part of a duplex, for himself, his heirs, personal representatives, successors and assigns, covenants and agrees as follows:

A. In the event his Unit is wholly or partially destroyed, said Owner will be obligated to rebuild same in accordance and in compliance with these Restrictions within one (1) year from the date of destruction thereof, irrespective of whether or not said destruction is covered by any insurance.

B. Without limiting the obligation of each Owner under Section 9.03 A above, within sixty (60) days after whole or partial destruction of an Owner's Unit, said Owner will remove all debris and waste from the Lot upon which said Unit was located, and shall correct and improve the unsightly appearance of any part of the Lot. In the event that said Lot is not so corrected and improved, and the debris and waste removed therefrom, the Board shall have the right (but not the obligation) to correct and improve same and remove the debris and waste therefrom after the sixty-day period has expired; and in such event, all costs and expenses thereof shall be a lien against the Lot in accordance with the provisions of this Declaration.

C. These provisions are expressly intended to benefit and protect the Association and all Owners (including, but not limited to, any Unit Owner in a duplex unit).

D. Notwithstanding anything to the contrary in this Section 9.03, each Owner under Section 9.03 A above shall immediately remove or repair any dangerous condition on his Lot which constitutes a threat to the health or safety of other persons or a substantial threat to the property of another.

9.04 Damage and Destruction of Common Areas. In the event of partial or total destruction of the Common Areas, or any improvements thereon, it shall be the duty of the Association to restore and repair the same as promptly as practical, subject and pursuant to this Section 9.04:

A. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair; together with any uncommitted or unreserved capital of the Association, shall be at least seventy-five percent (75%) of the estimated cost of restoration and repair, a reconstruction assessment against each Owner at a uniform rate for each Lot he owns,

may be levied by the Board to provide the necessary funds for such reconstruction in excess of the amount of the funds available for such purpose. The Association shall thereupon cause the damaged or destroyed Common Areas to be restored to substantially the condition the Common Areas were in prior to the destruction or damage.

B. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be less than seventy-five percent (75%) of the estimated cost of restoration and repair, the Common Areas shall be replaced or restored unless two-thirds (2/3) of the Owners, at a special meeting held for such purpose, disapprove of such replacement or restoration. If the Owners do not disapprove the proposed replacement or restoration, the Board shall levy a reconstruction assessment against each Owner at a uniform rate for each Lot he owns, and cause the damaged or destroyed Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. If the Owners disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Areas as provided above, the Common Areas so damaged or destroyed shall be cleared and landscaped for Common Area use or other use determined by the Board and the costs thereof shall be paid with the insurance proceeds.

C. In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section, the Board may retain such sums in the general funds of the Association subject to any applicable tax laws or other similar requirements. All amounts collected as reconstruction assessments shall ^{Unofficial Document} be used for the purposes set forth in this Section 9.04 and shall be deposited by the Association in a separate bank account for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed , a contribution to the capital account of the Association by the Owners. Any reconstruction assessment shall be secured by the assessment lien of Article VIII.

ARTICLE X ARCHITECTURAL CONTROL

10.01 Architectural Control Committee. The Association shall have an Architectural Control Committee consisting of no fewer than three nor more than five individuals, specified from time to time by resolution of the Board. Subject to any applicable provisions of the By-Laws, the Architectural Control Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"), which the Architectural Control Committee may, from time to time in its sole discretion, amend, repeal or augment. The Design Guidelines are hereby incorporated herein and shall be deemed to be part of this Declaration and shall be binding on all Owners and other persons as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The design Guidelines may include, among other things, (i) time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Guidelines, and (ii) such other limitations and restrictions as the Architectural Control Committee in its reasonable discretion shall adopt,

including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, but not limited to, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement. The address of the Architectural Control Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines or by written notice to Owners. The address shall be the place for the submittal of drawings and specifications and the place where the current Design Guidelines shall be kept. The Architectural Control Committee shall approve or disapprove any plans or specifications submitted to it in accordance with the Design Guidelines within such period as may be specified in the Design Guidelines, but in no event more than forty-five (45) days after submission.

10.02 Approval and Conformity of Drawings and Specifications. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot, landscaping, grading or drainage thereof, including, but not limited to, the painting (other than painting with the same color and type of painting as previously existed) of exterior walls, patio covers and fences, except in compliance with drawings 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.

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10.03 Non-Liability for Approval of Drawings and Specifications. Drawings and specifications shall be approved by the Architectural Control Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such drawings and specifications neither the Architectural Control Committee, nor any member thereof, nor the Association, nor any member thereof, nor the Board, nor any officer of the Association assumes any liability or responsibility therefor, or for any defect in any structure constructed from such drawings and specifications. Neither the Architectural Control Committee, nor any member thereof, nor the Association, nor any member thereof, nor the Board, nor any officer of the Association shall be liable to any Owner or other person for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved drawings and specifications, (c) the development, or manner of development of any property within the Property, or (d) the changing of the natural grade of any Lots. Approval of drawings and specifications by the Architectural Control Committee or a change in the natural grade of any Lot is not, and shall not be deemed to be, a representation or warranty that said drawings, specifications or changes comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

10.04 Inspection. Any member or authorized consultant of the Architectural Control Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, after reasonable

notice as provided herein to the owner, in order to inspect improvements constructed or being constructed on such Lot, or any changes in the grade thereof, to ascertain that such improvements or changes have been or are being built or changed in compliance with the Design Guidelines and this Declaration.

10.05 **Fee; Deposit.** The Architectural Control Committee may assess reasonable fees in connection with its review of drawings and specifications and may require reasonable construction deposits as a requirement for approval of drawings and specifications.

ARTICLE XI EMINENT DOMAIN

11.01 **Definition of Taking.** The term "Taking" shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

11.02 **Representation in Condemnation Proceedings.** The Owners hereby appoint the Association, through such persons as the Board may delegate, to represent all of the Owners in connection with any threatened Taking. The Board shall act in 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.

11.03 **Award for Common Areas.** ^{Unofficial Document} Awards received by the Association on account of the Taking shall be paid to the Association. The Board may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Owners at a uniform rate for each Lot, or as their interests may otherwise appear, subject to any applicable tax laws or other similar requirements.

ARTICLE XII GENERAL PROVISIONS

12.01 **Easements Resulting from Encroachments.** Each Unit and Lot shall be subject to an easement for encroachments, including, but not limited to encroachments of walls, fences, ledges and roofs created by construction, settling and overhangs as designed or constructed by the Original Developer or any Developer Builder. If any portion of a Unit or of a fence or wall shall actually encroach upon any Lot, a valid easement for any of said encroachments and for the maintenance thereof so long as they stand, shall and does exist. In the event that any Unit or structure is repaired, altered or reconstructed, the Owners of Lots agree that similar encroachments shall be permitted and that a valid easement for said encroachments and for the maintenance thereof shall exist. Owners and any other parties acquiring any interest in the Property shall acquiesce and agree to the existence of such easements by accepting a deed from any seller or by acquiring any interest what ever in the Property.

12.02 **Reference.** All instruments of conveyance or transfer of any interest in all or any

part of the Property may contain the Restrictions herein set forth by reference to this Declaration; provided, however, the Restrictions contained herein shall be binding in accordance with their provisions upon all persons affected by the terms and conditions of this Declaration regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance.

12.03 Enforcement. These Restrictions may be enforced by the Association, acting by and through its Board, and any Owner of any Lot within the Property. Violation of any one or more of the Restrictions contained herein may be restrained by a court of competent jurisdiction and/or damages may be awarded against any such violator. Nothing herein contained shall be construed as meaning that damages are an adequate remedy where equitable relief is sought, and any person bringing an action to enforce the terms hereof shall be entitled to any and all remedies at law or equity. In the event the Association employs an attorney or attorneys to enforce compliance with, or specific performance of the terms and conditions of this Declaration, the Owner or Owners against whom enforcement is sought shall pay all attorneys' fees and costs incurred in connection with any such enforcement, regardless of whether suit is brought. Nothing contained in this Section shall limit the remedies otherwise provided in this Declaration.

12.04 Waiver; Severability. The waiver of or failure to enforce any breach or violation of any restriction herein contained shall not be deemed to be a waiver of the right to enforce or be deemed an abandonment of the particular restriction or of any of the restrictions, nor shall it be deemed to be a waiver of the right to enforce any subsequent breach or violation of such restriction or any of the restrictions. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce the Restrictions) had knowledge of the breach or violation. No restriction contained herein shall be deemed to have been abandoned or the right to enforce waived unless this Declaration is amended to delete such restriction. The invalidity of any portion or part hereof shall not affect the remaining portions of this Declaration or parts thereof, and all are inserted conditionally upon their being held valid at law. In the event that one or more parts hereof shall be deemed invalid or shall operate to render this Declaration invalid, this Declaration shall be construed as if the invalid parts had not been inserted.

12.05 Notices. Notices provided for in this Declaration, or the Bylaws or Association rules, shall be in writing and shall be addressed to the Association at the following address:

Sun Air Estates Homeowners Association
Post Office Box 21
Peoria, Arizona 85380-0021

The Association may designate a different address or addresses for notice by giving written notice of such change of address to all owners at such time. All notices to Owners shall be to their respective Lots or to the last address shown on the records of the Association. Any Owner may designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States mail, or when delivered in person with written acknowledgment of the receipt thereof.

12.06 Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate, binding upon all Owners and other persons subject to this Declaration, to govern the use and/or occupancy of the Common Areas and any other part of the Property. The Association rules shall govern such matters in furtherance of the purposes of the Association, including, but not limited to, the use of the Common Areas; provided, however, that the Association rules may not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles, By-Laws or Design Guidelines. The Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on Owners and all other persons having any interest in, or making any use of, the Property. The Association rules shall be available at the principal office of the Association to each Owner or other person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association rules and any provisions of this Declaration, or the Articles, By-Laws or Design Guidelines, the provisions of the Association rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, By-Laws or Design Guidelines to the extent of any such conflict.

12.07 Mortgagee/Beneficiary. Whenever the words "mortgage" or "mortgagee" are used or referred to in this Declaration, the words will also be deemed to include deed of trust and trustee or beneficiary under a deed of trust, which terms may be used interchangeably.

12.08 Association Easement. There is hereby created an affirmative, nonexclusive easement in favor of the Association for ingress over all the Property (except the interior of any occupied Unit) for the purpose of enabling the Association and its contractors, employees, representatives and agents to implement the provisions of this Declaration.

12.09 Amendment. These Restrictions may be amended by an instrument in writing, by the then Owners of seventy-five percent (75%) of the Lots in the Subdivision, which instrument shall also be recorded in the office of the County Recorder of Maricopa County, Arizona. Notwithstanding the foregoing, these Restrictions may be amended by the Board without a vote of the Owners solely for the purpose of complying with the law.

12.10 Board's Determination Binding. In the event of any dispute or disagreement between or among any Owners or any other persons subject to this Declaration, relating to the Property, or any question of interpretation or application of the provisions of the Declaration, the Articles, By-Laws, Association rules or Design Guidelines, then (subject to any judicial decision by a court of competent jurisdiction) the determination thereof by the Board shall be final and binding on each and all of such Owners or persons. The Board, at its election, may delegate the resolution of such dispute or disagreement to the President or a committee appointed by the Board.

12.11 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, the Articles or By-Laws, any provision of this Declaration, the Articles or By-Laws which requires the vote or written assent of the Owners shall be deemed satisfied by the following:

A. The vote in person or by absentee ballot of the specified percentage of Owners at a meeting duly called and noticed pursuant to the provisions of the Articles or By-Laws dealing with annual or special meetings of the Owners; or

B. Written consents signed by the specified percentage of Owners, if permitted in the By-Laws or Declaration; or

C. If no percentage of owners is otherwise specified, then the vote or written assent of more than fifty percent (50%) of the Owners shall be required.

12.12 Indemnification. To the fullest extent permitted by law, every director and officer of the Association and every member of the Design Review Committee shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director member of the Design Review Committee or other person, did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of his duties. This indemnification shall be mandatory in all circumstances in which indemnification is permitted by law; provided, however, that the Association shall have the right to refuse indemnification if the person to whom indemnification would otherwise have been applicable shall have unreasonably refused to permit the Association, at its own expense and through counsel of its own choosing, to defend him or her in the action. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

12.13 Non-Liability of Officials. To the fullest extent permitted by Nonprofit Corporation Act (set forth at A.R.S. § 10-3101 et seq., as may be amended from time to time), the officers and directors of the Association, the Design Review Committee and other committees of the Association and all members thereof shall be exempt from liability to any Owner, occupant, the Association and every other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of drawings or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith, unless such damage or injury was caused by willful and wanton or grossly negligent conduct, and which such officers and directors of the Association, the Board, or such committees or persons reasonably believed to be within the scope of their respective duties.

12.14 Attorney's Fees. In the event the Association incurs legal expenses and costs, including but not limited to attorney's fees, in bringing claims against Owners or defending claims brought by Owners in an administrative action or proceeding, including but not limited to,

proceedings before an Administrative Law Judge, the Association shall be entitled to recover its attorney fees and costs from the Owner involved in the administrative proceeding.

**ARTICLE XIII
COMMUNITY
AGE RESTRICTED**

13.01 **Age of Residents.** Subject to all local ordinances, as they may be amended from time to time, at least one person age fifty-five (55) or over must be a permanent occupant of each Unit, whenever any person occupies said Unit. Persons under the age of fifty-five (55) and greater than or equal to the age of eighteen (18) may occupy and reside in a Unit as long as at least one of the permanent occupants is age fifty-five (55) or over. No person under the age of eighteen (18) may be a permanent occupant of any Unit, except that persons under the age of eighteen (18) may be permitted to visit and temporarily reside for periods not to exceed thirty (30) days in total in any calendar year. If, however, ownership of a Unit is transferred upon the death of a permanent occupant age fifty-five (55) or over, the requirement of one permanent occupant of said Unit being age fifty-five (55) or over is waived as to occupancy by the heirs or surviving spouse so long as no permanent occupant is under the age of eighteen (18) and further so long as at least eighty percent (80%) of all of the occupied Units in Sun-Air Estates Units III, Unit IV, Unit V and Unit VI, are permanently occupied by one person age fifty-five (55) or over.


13.02 **Rules and Regulations; Enforcement.** The Board shall have the power, in its reasonable discretion, to determine the meaning of "permanent occupant" for purposes of this Article and to adopt, amend and repeal such rules and regulations in connection therewith as it deems reasonable and appropriate; provided, however, that the term "permanent occupant" shall not be construed or defined to require the continuous occupancy of any Unit. It shall be the responsibility of the Board to enforce the restrictions of this Article, which may include taking periodic surveys to determine whether eighty percent (80%) of the Units in Sun-Air Estates Units III, Unit IV, Unit V and Unit VI, are permanently occupied by at least one person who is age fifty-five (55) or over. The Board shall have the power to adopt, amend and repeal such rules and regulations as it deems reasonable and appropriate to establish policies or procedures for the enforcement of this Article in accordance with the requirements of the Act.

13.03 **Facilities.** Subject to the terms of this Declaration and the Articles and By-Laws of the Association, the Board shall have the authority to make any additional capital improvements upon the Common Areas necessary to provide facilities or services specifically designed to meet the requirements of the Act.

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Second Amended and Restated Declaration have been approved by the required percentage of the Owners.

DATED this 13th day of July, 2007.

SUN AIR HOMEOWNERS ASSOCIATION, INC.

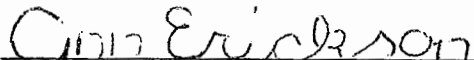
By 
Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 13th day of July, 2007, before me personally appeared George Thurston, whose identify was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed the above/attached document.



Notary Seal:


Notary Public

Unofficial Document

EXHIBIT "A"
LAND SUBJECT TO DECLARATION

Lots 256 A and B through 284 A and B, inclusive, and Lots 285 through 318, inclusive, SUN-AIR ESTATES UNIT III AMENDED, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 205 of Maps, page 25.

Lots 319 A and B through 348 A and B, inclusive, Lot 361 A and B, Lot 362 A and B, Lot 364 A and B, Lot 369 A and B, SUN-AIR ESTATES UNIT IV, according to the plat thereof of record in the office of the County Recorder of Maricopa County, Arizona, in Book 227 of Maps, page 11, and Certificate of Correction recorded in Document No. 91-0350314, County Recorder of Maricopa County, Arizona.

Lots 1 through 52 inclusive, SUN-AIR ESTATES UNIT V, Book 344 of Maps, Page 3, County Recorder, Maricopa County, Arizona.

Lots 1 through 66 inclusive and Tracts A through G inclusive, of UNIT 6, SUN AIR ESTATES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 501 of Maps, Page 24.

That part of the Southwest quarter of Section Twenty-eight (28), Township Three (3) North, Range One (1) East of the Gila and Salt River ^{Unofficial Document} Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of said Southwest quarter of Section 28, Township 3 North, range 1 East; run thence South 00 degrees 03 minutes 33 seconds West 541.54 feet along the East line of said Southwest quarter of Section 28, Township 3 North, Range 1 East; thence South 88 degrees 14 minutes 00 seconds West 1451.07 feet to the True Point of Beginning; thence South 00 degrees 03 minutes 33 seconds West 243.00 feet; thence North 88 degrees 56 minutes 27 seconds West 430.00 feet; thence North 00 degrees 03 minutes 33 seconds East 243.00 feet; thence South 88 degrees 56 minutes 27 seconds East 430.00 feet to the True Point of Beginning.

Recorded at the Request of:

Sun Air Estates Homeowners Association,
a.k.a. Sun Air Estates Units III – VI
c/o Mulcahy Law Firm, P.C.
3001 E. Camelback Rd., Ste. 130
Phoenix, AZ 85016

FamendSunAirIII-3-1-1--
morenoa

**First Amendment to the Amended and Restated Declaration of Covenants, Conditions and
Restrictions for Sun Air Estates Homeowners Association,
a.k.a. Sun Air Estates Units III – VI**

THIS FIRST AMENDMENT TO the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun Air Estates Homeowners Association, a.k.a. Sun Air Estates Units III – VI ("Amendment") is made this 3 day of June, 2022 by Sun Air Estates Homeowners Association, a.k.a. Sun Air Estates Units III – VI ("Association").

RECITALS

- A. The Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sun Air Estates Homeowners Association, a.k.a. Sun Air Estates Units III – VI was recorded on 11/10/1999 at Document No. 99-1033848, official records of Maricopa County, Arizona ("Declaration"), and subjected the real property described in the Declaration (and any Supplemental Declaration) to the Declaration and required that the property be held, sold, used, and conveyed subject to the easements, restrictions, covenants and conditions, which run with the title to the real property subject to this Declaration.
- B. The Declaration is binding on all parties having any right, title or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the properties.
- C. Pursuant to the Declaration, the Declaration may be amended by an instrument in writing, by the then Owners of seventy-five percent (75%) of the Lots in the Subdivision, which instrument shall also be recorded in the office of the County Recorder of Maricopa County, Arizona.

NOW, THEREFORE, the Declaration is amended as follows:

1. The following is hereby added as Article VIII, Section 11 of the Declaration:

8.12 IMPACT FEE

(A) EXCEPT AS PROVIDED IN SUBSECTION (B), IMMEDIATELY UPON BECOMING THE OWNER OF A UNIT, EACH PERSON OR ENTITY WHO PURCHASES OR OTHERWISE BECOMES THE OWNER OF A UNIT ON OR AFTER THE DATE OF THIS AMENDMENT SHALL PAY TO THE ASSOCIATION AN IMPACT FEE IN THE AMOUNT OF SEVEN HUNDRED AND FIFTY DOLLARS. THE AMOUNT OF THE IMPACT MAY BE INCREASED BY THE BOARD FROM TIME TO TIME AFTER THIS AMENDMENT IS RECORDED, PROVIDED ANY SUCH INCREASE IS APPROVED BY A VOTE OF AT LEAST 50% OF THE OWNERS VOTING IN PERSON OR BY ABSENTEE BALLOT AT A MEETING OF THE OWNERS.

(B) NO IMPACT FEE SHALL BE PAYABLE WITH RESPECT TO: (I) THE TRANSFER OR CONVEYANCE OF A UNIT BY DEVISE OR INTESTATE SUCCESSION; (II) A TRANSFER OR CONVEYANCE OF A UNIT FOR ESTATE PLANNING PURPOSES; OR (III) A TRANSFER OR CONVEYANCE TO A CORPORATION, PARTNERSHIP OR OTHER ENTITY WHICH THE GRANTOR OWNS A MAJORITY INTEREST UNLESS THE BOARD DETERMINES, IN ITS SOLE DISCRETION, THAT A MATERIAL PURPOSE OF THE TRANSFER OR CONVEYANCE WAS TO AVOID PAYMENT FOR THE IMPACT FEE IN WHICH EVENT AN IMPACT FEE SHALL BE PAYABLE WITH RESPECT TO SUCH TRANSFER OR CONVEYANCE.

(C) IMPACT FEES SHALL BE NON-REFUNDABLE AND SHALL NOT BE CONSIDERED AS AN ADVANCED PAYMENT OF ASSESSMENTS.

(D) PURSUANT TO A.R.S. 33-442, IMPACT FEES SHALL EITHER BE USED AS CONTRIBUTION TO THE OPERATING EXPENSES OR THE RESERVE FUND, AS MAY BE DETERMINED FROM TIME TO TIME BY THE BOARD OF DIRECTORS, IN ITS SOLE DISCRETION. SUCH PURPOSES SHALL INCLUDE, FOR IMPROVEMENT, CONSTRUCTION, REPAIR, MAINTENANCE, CARE, UPKEEP AND MANAGEMENT OF THE COMMON AREAS AND THE IMPROVEMENTS AND FACILITIES THEREON IN THE BOARD'S DISCRETION. THE COLLECTION AND EXPENDITURE OF THE IMPACT FEE TOUCHES AND CONCERNS THE PROPERTY AND IS APPURTENANT TO THE TITLE OF EACH AND EVERY UNIT.

(E) THE IMPACT FEE IS NOT INTENDED TO COMPENSATE THE ASSOCIATION FOR THE COST INCURRED IN THE PREPARATION OF THE STATEMENT WHICH THE ASSOCIATION IS REQUIRED TO MAIL OR DELIVER TO A PURCHASER UNDER A.R.S. 33-1260 AND THEREFORE, THE IMPACT FEE SHALL BE IN ADDITION TO THE FEE WHICH THE ASSOCIATION IS ENTITLED TO CHARGE PURSUANT TO A.R.S. 33-1260.

2. The terms used in the Amendment without definition shall have the same meanings given to such terms in the Declaration.
3. By attesting to this Amendment, the President certifies that the amendments were properly adopted by the Association in accordance with the requirements of the Declaration.
4. Except as expressly amended by this Amendment, the Declaration, shall remain in full force and effect. In the event of any inconsistency or conflict between the provisions of this Amendment and the Declaration, this Amendment shall prevail.

Sun Air Estates Homeowners Association, a.k.a. Sun Air Estates Units III – VI,
an Arizona Non-Profit Corporation

BY:  (Signature)
George Thurston, Board President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 3rd day of June, 2022, by George Thurston, the President of Sun Air Estates Homeowners Association, a.k.a. Sun Air Estates Units III – VI, an Arizona non-profit corporation, on behalf of the non-profit corporation.

Notary Public: 

My commission Expires: February 19, 2023

