

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DECLARATION OF ESTABLISHMENT OF:
CONDITIONS, COVENANTS AND RESTRICTIONS
FOR
SAN IGNACIO GOLF ESTATES

DATED: _____

1 **ARTICLE II**

2 **SCOPE OF DECLARATION**

3 This declaration is intended to regulate and control the use of the Properties for the bene-
4 fit of all Owners thereof, pursuant to the general plan of development set forth herein.

5
6 **ARTICLE III**

7 **COMMON AREAS**

8 **SECTION 1: Ownership.** Ownership of the Common Areas shall, subject to the provi-
9 sions hereof, be transferred to the Association, subject to the easements created herein and ease-
10 ments created by Declarant for purposes deemed necessary for the full use and enjoyment of the
11 Properties. Common Areas are intended for use as public utility easements, drainage-ways,
12 streets, open areas, and any recreational centers or other facilities, if any, and are for the common
13 use and enjoyment of the Members of the Association and their invitees.

14 **SECTION 2: Conveyance of Owner's Rights.** Any sale, lease or sublease of a Lot by
15 its Owner, or transfer of the same by operation of law, shall serve to transfer, convey, lease or
16 sublease to the same extent all of said Owner's right to use the Common Areas.

17 **SECTION 3: Conveyance of Easements and Rights-of-Way.** Notwithstanding any
18 other provision in this Declaration, the Association or Declarant shall at all times have the right
19 to grant and convey to any person or entity easements or rights-of-way, in, on, over, or under any
20 Common Areas for the purpose of constructing, erecting, operating or maintaining thereon,
21 therein and there under: roads, streets, walks, pathways, driveways, temporary overhead or per-
22 manent underground lines, cables, wires, conduits, or other devices for the transmission of elec-
23 tricity for lighting, heating, power, telephone, cable T.V., security and other purposes, sewers,
24 storm drains, and pipes, drainage easements, water systems, water, heating and gas lines or pipes,
25 and any similar public or quasi-public improvements or facilities, and for such other purposes as
26 may be deemed proper by the Association.

27 **SECTION 4: Entrance Features.** Neither the Association nor any Owner, other than
28 Declarant or the developer, Fairfield Green Valley, Inc., shall make or cause to be made any al-
29 teration or modification to improvements, trees, plants, lawns or other landscaping features lo-
30 cated at the entrance to the Properties on Camino Del Sol, without first obtaining the prior writ-
31 ten consent of the Declarant and the developer, Fairfield Green Valley, Inc.

1 **ARTICLE IV**

2 **EASEMENTS, LICENSES AND ENCROACHMENTS**

3 **SECTION 1: Easement for Encroachments.** Each Lot and the property included in the
4 Common Areas shall be subject to an easement for encroachments created or necessary to be
5 created by activities conducted and conditions existing upon the Properties, including construc-
6 tion, settling and overhangs, as determined by Declarant. A valid easement for said encroach-
7 ments and for the maintenance of same, so long as they stand, shall and does exist.

8 **SECTION 2: Easement for Enjoyment.** There is hereby created a blanket, nonexclu-
9 sive easement upon, across, over and under all of the Common Areas for the use and enjoyment
10 of all Members, their guests, invitees and licensees, subject to reasonable regulations of the As-
11 sociation, and for ingress, egress, installation, replacement, operation, repair and maintenance of
12 all utilities, including, but not limited to, water, sewer, gas, telephone, electricity, television an-
13 tennae system, and any equipment or facilities for the installation of a cable communications sys-
14 tem.

15 **SECTION 3: Drainage Easement.** A drainage easement is hereby created upon, across,
16 over and under each Lot for the benefit of all other Lots.

17 **SECTION 4: Utility Easements.** There is hereby reserved in the Declarant and its suc-
18 cessors and assigns, a perpetual exclusive easement and right-of-way across and upon all Com-
19 mon Areas for the construction, maintenance, operation and repair of a cable television system or
20 security system or both, and facilities appurtenant to either or both. Declarant shall have the
21 right to excavate for, place, lay, construct, operate, use, maintain, repair, replace, reconstruct,
22 enlarge, alter, improve, add to, relocate, and remove at any time and from time to time, under-
23 ground structures, equipment and materials, with required appurtenances, necessary for the oper-
24 ation of said cable television system. Declarant shall have the right of ingress and egress from
25 said easement by such route or routes in, upon, over and across the hereinbefore described lands
26 or any portion or portions thereof as Declarant or its assigns may determine, together with the
27 right to clear and keep clear said easement and rights-of-way from any and all obstructions.
28 Without limiting the generality of the foregoing, Declarant and its assigns shall have the right to
29 trim and cut trees, foliage and roots upon and from within the above-described easement and
30 rights-of-way whenever in its judgment, the same shall be necessary for the convenient and safe
31 exercise of the right herein granted. All cable television system equipment or security system
32 equipment installed by Declarant or by its assigns in and upon the herein-described easement
33 shall remain, regardless of the manner in which the same are affixed to land, the personal proper-
34 ty of Declarant or such assigns and shall not become or be deemed to be a part of the realty. De-
35 clarant and its assigns shall have the right to assign, directly or indirectly, said cable television or
36 security system easement to any party or person as it may determine. Nothing herein contained
37 shall obligate the Declarant or any other person to provide a cable television system or security

1 system in the Properties. In the event that such cable television system or security system is built
2 the Declarant, or its assigns, the type and quality of the system shall be within the absolute dis-
3 cretion of the constructing entity. Notwithstanding any other provision of this Declaration, this
4 section may not be amended without the prior written consent of Declarant, or its assigns.

5 **SECTION 5: Golf Course Easement.** A blanket easement is reserved and granted unto
6 the Declarant, all successors and assigns and to the public, upon, across, over and under any
7 roadways and Common Areas for access to any adjacent or nearby golf course, and from one
8 hole to another and from any hole to the golf course clubhouse, driving range or related facilities.
9 This easement is limited to reasonable and necessary access for the play of golf, and is solely for
10 the benefit of users of the golf course. The easement is confined to roads and cart paths built by
11 Declarant or its successors.

12 **SECTION 6: Permissible Encroachments.** Each Owner hereby acknowledges and
13 agrees that Dwelling Units, or privately-owned patio walls, improvements and fixtures which
14 have been initially constructed on the Properties by Declarant in the course of original construc-
15 tion may, from time to time, encroach upon the Common Areas or other Lots in the Properties.
16 Such encroachments caused incidentally by Declarant are permissible, and each Owner, by ac-
17 ceptance of the Deed to his Lot, consents thereto and agrees that title to the land lying within
18 each incidental encroachments and regardless of the platted lot line of the Lot upon which such
19 structure or other work of construction has been constructed, is conveyed to the Owner of the Lot
20 upon which the majority of the encroaching structure is built.

21 **SECTION 7: Private Sewers.** If the Properties are at any time served by private sewers,
22 then an easement shall be deemed reserved unto the Declarant and unto the Association for the
23 placement, operation and maintenance of such private sewers across all Common Areas, and the
24 same shall be maintained by the Association, if the same serve the Properties. Similar easements
25 are reserved to benefit land outside the Properties.

26 **SECTION 8: Additional Easements.** The Owner of each Lot is granted an easement
27 across adjacent Lots for purposes of accomplishing regular maintenance and repair of structures
28 and improvements, including party walls. Each Owner, however, shall be solely responsible for
29 maintenance of that Owner's landscaping and shall keep the landscaping and yard areas in a neat,
30 clean and well-maintained condition.

31 All walls, whether party walls or bearing walls of a Dwelling Unit which are on or im-
32 mediately adjacent to, a property line between two Lots shall be considered party walls. No
33 Owner shall take any action which may destroy the integrity of the wall or pose an unsightly ap-
34 pearance or threaten its strength, durability or lasting life. Without limitation, no Owner shall
35 place any plants or shrubs close to the wall in a fashion that watering of yards or plants will
36 threaten the foundation of the adjacent walls or cause the foundations to be undermined.

1 In addition of all other rights and easements herein provided, perpetual easements for in-
2 gress, egress and utilities are reserved and granted across Common Areas in favor of Declarant
3 and in favor of its successors and assigns for purposes of maintaining over and across the Proper-
4 ties, private sewers and public utilities to serve land owned by Declarant near or adjacent to the
5 Properties, including land intended for future development.

6
7 **ARTICLE V**

8 **THE ASSOCIATION**

9 **SECTION 1: Responsibilities of the Association.** The Association shall be responsible
10 for the protection, improvement, alteration, maintenance, repair, replacement, administration,
11 management and operation of the Common Areas and all landscaped areas established for the
12 common benefit of the Owners, including sidewalks located on individual Lots. The Association
13 shall, to the extent applicable, be responsible for:

14 (a) the maintenance of the common streets, roads, and sidewalks (if applicable) located
15 within the Common Areas and entry way features and landscaping leading into the Properties,
16 including decorative structures, walls, etc.;

17 (b) the maintenance of the landscaped portions of the Common Areas and other areas to
18 be maintained by the Association, including all areas behind the rear patio walls of each dwell-
19 ing, provided that if such areas are not Common Areas, then the Association shall be deemed to
20 have and is hereby granted an easement for such maintenance;

21 (c) the operation, maintenance (including insurance) and, if necessary, the replacement,
22 restoration or reconstruction of street signs, walls, fences and other improvements originally con-
23 structed by Declarant on the Common Areas;

24 (d) the payment of ad valorem real estate taxes, assessments and other charges on those
25 portions of the Common Areas owned by the Association;

26 (e) the insurance of all improvements which the Association is obligated to maintain
27 against damage by casualty with such companies and with such limits as the Association deems
28 appropriate;

29 (f) the hiring, firing, supervision and paying of employees and independent contractors,
30 including, but not limited to, watchmen, security personnel to operate the restricted entry system
31 (if any), workmen, landscapers, attorneys, accountants, architects and contractors to carry out the
32 obligations set forth herein;

33 (g) the maintenance of such liability insurance as the Association deems necessary to
34 protect the Members and the Board of Directors of the Association from liability for conditions

1 existing and events occurring on or about the Common Areas, including, but not limited to, er-
2 rors and omissions insurance for the Board of Directors of the Association;

3 (h) the maintenance of workmen's compensation insurance for the employees, if any, of
4 the Association;

5 (i) the purchase of all goods, supplies, labor and services reasonable necessary for the
6 performance of the obligations set forth herein;

7 (j) the enforcement, in its sole discretion, of the provisions of this Declaration, includ-
8 ing, but not limited to, the Use Restrictions provided for herein;

9 (k) the establishment and maintenance of such cash reserves as the Association in its
10 sole discretion deems reasonably necessary for the maintenance and repair and improvements for
11 which it is responsible and for unforeseen contingencies;

12 (l) the provision of payment for all utility services for Common Area facilities; and

13 (m) the entering into of such agreements and the taking of such actions as are reasonably
14 necessary and convenient for the accomplishment of the obligations set forth above and the oper-
15 ation and maintenance of the Common Areas and facilities located thereon.

16 **SECTION 2: By-Laws and Articles of Incorporation.** The manner in which the Asso-
17 ciation carries out its responsibilities shall be controlled by the provisions of its By-Laws, its Ar-
18 ticles of Incorporation and the provisions hereof. The provisions of this Declaration shall control
19 in the event of a conflict.

20 **SECTION 3: Transition.** At such time as Declarant relinquishes to the Members other
21 than Declarant the operation of the Association, which may or may not be at the same time, De-
22 clarant relinquishes its voting rights as provided herein, Declarant shall deliver to the Associa-
23 tion's /Board of Directors at the Association's offices, all corporate and accounting books and
24 records, and a written notice that Declarant intends to turn over control of the Association. With-
25 in thirty (30) days of receipt of the corporate books, accounting records and written notice of De-
26 clarant intent to turn over the operations of the Association, the Members shall notify Declarant
27 in writing of any claims or disputes with regard to the operations of the Association by the De-
28 clarant, including the construction and maintenance of any streets, roads, sidewalks, street signs,
29 walls, fences, landscape or any other improvements in the Common Areas originally constructed
30 by Declarant or the collection of assessments, or shall by their failure to so notify Declarant, for-
31 ever waive and relinquish any such claims or disputes with the Declarant. Any valid and timely
32 written claims or disputes presented to the Declarant shall be resolved promptly between the
33 Members and the Declarant.

34

1 **ARTICLE VIII**

2 **ASSESSMENTS**

3 **SECTION 1: Power to Levy Assessments.** The Association, through its Board of Di-
4 rectors, shall have the power to levy regular annual assessments and such special assessments as
5 shall be determined thereby, and to determine the amount thereof, the date upon which payment
6 of said regular and special assessments shall be made and to collect delinquent assessments by
7 action of law, or otherwise, from the Owners.

8 **SECTION 2: Effect of Non-payment of Assessments; Remedies of Association.**
9 Payment of said regular and special assessments shall become delinquent ten (10) days after the
10 due date. All delinquent assessments shall be a lien on the Lot of the Owner who fails to pay
11 them and shall bear interest from the date of default until paid at the rate of twelve (12) percent
12 per annum, or two (2) percent per annum above the prime rate of interest customarily charged by
13 Security Pacific Bank-Arizona for short-term loans to its most creditworthy customers as of the
14 date of default or judgment, whichever interest rate is higher, payable from the date of default,
15 until such delinquent assessment is paid. The obligation of every Owner to pay assessments lev-
16 ied by the Association is absolute and shall not be affected by any claim the Owner may have, or
17 believes he has, against any other person, including Declarant or the Association, nor shall such
18 obligation be affected by any irregularity in the manner or timing in which notice of assessment
19 is given. Moreover, the sale of a Lot encumbered by the lien of a delinquent assessment property
20 shall not relieve the Owner thereof from the obligation to pay the pro rata share of annual dues
21 and assessments for any portion of a year which he owned said Lot, and such Owner personally
22 shall remain jointly and severally liable for such delinquent assessments as with any subsequent
23 Owner.

24 The lien against any Lot may be foreclosed in the same manner as a Mortgage, and each
25 Owner consents to the recording by the Association of a Notice and Claim of Lien in the event of
26 any assessment remaining delinquent ten (10) days after the due date. Said Notice and Claim of
27 Lien may be described by a different title, but shall be recorded in the office of the Pima County
28 Recorder and may set forth the amount of the delinquent assessment and any other matter
29 deemed appropriate by the Association.

30 **SECTION 3: Subordination of Lien to Mortgages.** Any lien upon a Lot for delinquent
31 assessments shall be subject and subordinate to a recorded first realty Mortgage upon any of said
32 Lots made in good faith and for value, whether now existing or made and recorded at any time
33 hereafter. Should a Mortgagee of a prior Mortgage of record, or any assignee of a Mortgagee,
34 obtain title to any Lot as a result of a foreclosure of a Mortgage encumbering title thereto, such
35 acquirer of title, his successors or assigns, including any purchaser at t sheriff's sale commenced
36 pursuant to said foreclosure, shall not be liable for assessments by the Association chargeable to
37 such Lot which assessment became due prior to acquisition of title to such Lot by such acquirer;

1 rather, the Owner in default shall remain so liable. After acquisition of title, such acquirer shall
2 pay the share of assessments chargeable to the Lot title to which he has acquired.

3 **SECTION 4: Attorneys' Fees.** In the event it shall become necessary for the Associa-
4 tion to employ attorneys to collect a delinquent assessment, whether by foreclosure of the lien
5 created herein or otherwise, the delinquent Owner shall pay, in addition to the assessment and
6 interest accrued thereon, such reasonable attorneys' fees and all other costs and expenses in-
7 curred by the Association as a result of such delinquency.

8 **SECTION 5: Annual Assessment.** The Directors shall, in accordance with the Associa-
9 tions' estimated expenses and budget each year, and in accordance with Section 8 below, deter-
10 mine assessments whereby each Owner shall pay to the Association within ten (10) days from
11 the receipt of notice of assessment and invoice, a sum equal to that Owner's estimated pro rata
12 share for the Owner of Association costs and expenses to be incurred in the performance of its
13 obligations. These expenses include, but are not limited to, the cost of all water used thereon, the
14 cost of gas, electricity and other utilities serving the Common Areas, all property taxes assessed,
15 landscaping and maintenance costs related thereto, and the Association's legal and accounting
16 costs, expenses of repair and cleaning, management fees due to outside management personnel
17 or incurred by reason of services rendered in management of the Properties, expenses for the
18 charges of a fire company, insurance premiums, reserve accounts, if established by the Board of
19 Directors of the Association, for repairs and maintenance, and for other necessary expenses.
20 Each Owner's pro rata share of such expenses shall be determined by dividing the number of
21 Lots he owns by the total number of Lots, less any Lots owned by the Declarant.

22 The budget, as well as assessments, may take into account services offered or performed
23 by the Declarant, if any, including any discretionary monetary contributions, which Declarant
24 may furnish to the Association to help defray costs and expenses. Declarant shall not be obligat-
25 ed to offer or perform such services, nor to make any monetary contributions, nor to pay assess-
26 ments.

27 **SECTION 6: Owners Not Exempt.** The non-use of, or failure to occupy a Lot, shall not
28 exempt the Owner thereof from payment of all assessments properly levied against that Lot, and
29 the Owner thereof shall be liable for the same as long as said Owner shall own a Lot.

30 **SECTION 7: Joint and Several Liability.** Upon the voluntary conveyance of a Lot, the
31 selling Owner and his buyer shall be, and remain jointly and severally, liable for the payment of
32 all assessments levied against the Lot prior to the closing of said sale and unpaid at the time of
33 the conveyance, subject to the provisions of this Article.

34 **SECTION 8: Amount of Assessment.** The assessment to be charged to each Owner for
35 the Association's fiscal year shall be the amount established by the Board of Directors of the As-
36 sociation, and they shall determine the time and frequency that said assessments are to be paid
37 for each fiscal year.

1 **SECTION 9: Special Assessments.** The Board of Directors of the Association shall de-
2 termine and levy special assessments, in the same manner as set forth above, in the event that
3 unexpected hazards or expenses require repair or replacement of facilities in or on the Common
4 Areas and the funds in the Association obtained through the regular assessments should be insuf-
5 ficient therefore.

6 **SECTION 10. Membership in Green Valley Recreation, Inc.; Payment of Separate**
7 **Additional Assessments.** Green Valley Recreation, Inc. is a non-profit corporation organized
8 under the laws of the State of Arizona and has been formed for the purpose of maintaining facili-
9 ties and services for social and recreational facilities in Green Valley. On November 8, 1978,
10 Green Valley Recreation, Inc. recorded that certain Master Deed Restriction in Docket 5900 at
11 Page 894, Pima County records, establishing a method to incorporate land within its jurisdiction-
12 al area.

13 The Properties are a part of that area, and each purchaser of a Lot within the Properties,
14 by the payment of the purchase price and acceptance of a deed, agrees for himself, his heirs, suc-
15 cessors and assigns, to be bound by the rules and regulations thereof, to pay all membership dues
16 assessed by Green Valley Recreation, Inc., and to comply with all provisions of the Articles of
17 Incorporation and By-laws of Green Valley Recreations, Inc. The Properties and each Lot sub-
18 sequently purchased are made subject to said Master Deed Restriction. There is hereby created a
19 lien with power of sale, encumbering each Lot subsequently purchased to secure payment of the
20 aforesaid membership dues and assessments, provided that no action shall be brought to fore-
21 close such lien or proceed under the power of sale prior to the expiration of thirty (30) days after
22 a Notice and Claim of Lien is recorded in the office of the Recorder of Pima County, Arizona.

23 Each Owner acknowledges the benefit to the Properties afforded by the existence of
24 Green Valley Recreation, Inc. and the facilities it offers for the enhancement of the general plan
25 of development.

26 Any lien claimed or recorded in favor of Green Valley Recreation, Inc., or its successors
27 and assigns, shall at all times be subordinate to the lien of these covenants and the lien of the As-
28 sociation provided for in this Declaration and to the lien of any first mortgages to the same extent
29 as set forth with regard to assessments by the Association as set forth herein, and the provisions
30 hereof dealing with Green Valley Recreation, Inc. and its assessments shall constitute
31 covenants running with the land in the same fashion as all other covenants, conditions and re-
32 strictions of this Declaration. This Section 10 may not be amended without the consent of the
33 Declarant and Green Valley Recreation, Inc., except that after Declarant has sold all of the Lots,
34 it may be amended by the Association with the consent of Green Valley Recreation, Inc.

35 Notwithstanding the above, the lien of Green Valley Recreation, Inc. shall not extend to
36 Properties or Lots while owned by Declarant and Declarant shall be exempt from paying assess-
37 ments.

1 cluding any period of redemption, the First Mortgagee (or receiver appointed in such action)
2 may, but need not, exercise any or all of the rights and privileges of the Owner of the Mortgaged
3 Lot including, but not limited to, the right, if any, to vote as a Member of the Association to the
4 exclusion of the Owner's exercise of such rights and privileges.

5 **SECTION 4: Obligation to Pay Assessments.** At such time as a First Mortgagee shall
6 become record Owner of a Lot, said First Mortgagee shall be subject to all of the terms and con-
7 ditions of this Declaration including, but not limited to, the obligation to pay as and when due,
8 any and all assessments and charges accruing thereafter and assessable against the Lot acquired,
9 in the same manner as any Owner.

10 **SECTION 5: Title Acquired Through Foreclosure or Default.** The First Mortgagee,
11 or any other party acquiring title to a Lot through foreclosure suit or through any equivalent pro-
12 ceeding arising from the default under a First Mortgage, including, but not limited to, the taking
13 of a deed in lieu of foreclosure, shall acquire title to the Lot acquired thereby, free and clear of
14 any lien authorized by or arising out of any of the provisions of this Declaration or the By-laws
15 of the Association and which lien secured the payment of any assessment for charges accrued
16 prior to the final conclusion of any such foreclosure suite or equivalent proceeding, including the
17 expiration date of any period of redemption. Any such unpaid assessment shall nevertheless
18 continue to exist as the personal obligation of the defaulting Owner of the Lot to the Association,
19 and the Board of Directors of the Association may use reasonable efforts to collect the same
20 from the Owner regardless of whether said Owner is or is not a Member of the Association.
21 There shall be a lien upon the interest of the First Mortgagee or other party acquiring title to a
22 Lot by foreclosure or by equivalent procedure for all assessments authorized by this Declaration
23 or by the By-laws of the Association which accrue and are assessed after the date the First Mort-
24 gagee or other acquirer has acquired title to the Lot free and clear of any right of redemption.

25 **SECTION 6: Right to Pay Charges in Default.** First Mortgagees are hereby granted
26 the right, but shall not be obligated to jointly or severally pay, such taxes or other charges as are
27 in default and which may or have become a charge against any Common Areas owned by the
28 Association, and such First Mortgagees may, jointly or severally, pay overdue premiums on haz-
29 ard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such
30 Common Areas, and any First Mortgagees making such payment shall be owed immediate reim-
31 bursement therefore from the Association.

32 **SECTION 7: Precedence of First Mortgage.** Nothing in this Declaration shall in any
33 manner be deemed to give an Owner, or any other party, priority over any rights of a First Mort-
34 gagee under the terms of such First Mortgagee's Mortgage in the case of a distribution to an
35 Owner of insurance proceeds or condemnation awards for losses or to a taking of any Dwelling
36 Unit or any part of the Common Areas owned by the Association. Each First Mortgagee shall be
37 entitled to timely written notice of such loss or taking.

1 recite that the same may not be cancelled or benefits hereunder be alterable without ten (10) days
2 notice in writing to the Association.

3 Until Declarant has relinquished control of the Association, Declarant may insure the As-
4 sociation and Common Areas pursuant to Declarant's own insurance practices and standards,
5 including its master insurance coverage for Declarant's properties.

6 **SECTION 2: Repair and Replacement of Damaged and Destroyed Property.** In the
7 event of damage to, or the destruction by fire or other casualty of Common Areas facilities, or
8 improvements covered by the described insurance policies, the Board of Directors of the Associ-
9 ation shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or
10 destroyed property to as good a condition as formerly existed; provided, however, that in the
11 event that the proceeds of such insurance shall be insufficient to substantially restore or repair
12 the damaged or destroyed facilities, the Board of Directors of the Association shall poll the
13 Members, and upon the election of 67% or more of the total votes of the Members, including the
14 votes of the Declarant, may specially assess the Owners for the difference between the sum re-
15 ceived as insurance proceeds and the reasonable cost of repair or replacement of the damaged or
16 destroyed Common Area facilities. In the event that less than 67% of the Members shall consent
17 to such special assessment of the Owners, no such assessment shall be made and the Board of
18 Directors of the Association may determine to only partially restore or replace the damaged or
19 destroyed facilities or to make some other use of the affected Common Area(s).

20 **SECTION 3: Owner's Responsibilities.** The Association shall in no event be required
21 to replace or restore real or personal property located upon any Lot, and the insurance of Lots
22 and improvements thereon against any and all hazards shall be the sole responsibility of the
23 Owners thereof. In the event of damage to an improvement on a Lot, the Owner thereof shall
24 repair or rebuild the improvement to the same standards and specifications of the original im-
25 provement, unless otherwise permitted by the Architectural Committee.

26 **SECTION 4: Mortgage's Insurance.** Notwithstanding any provision of this Declara-
27 tion to the contrary, in the event any improvement constructed on the Common Areas is the sub-
28 ject of a Mortgage, then each policy of insurance procured pursuant to Section 1 of this Article
29 shall contain, or have attached thereto, a standard mortgagee or beneficiary co-insurance and loss
30 payable clause which provides that all proceeds paid thereunder shall be paid to the Association
31 for the use and benefit of all Mortgagees under Mortgages encumbering any such improvements,
32 as their interest may appear, and such policy or policies shall further provide that the insurance
33 carrier issuing the same shall notify each First Mortgagee identified as such to such carrier at
34 least ten (10) days in advance of the effective date of any reduction in, or cancellation of, the pol-
35 icy. Such policy or policies shall further provide that the interest of each Mortgagee holding a
36 Mortgage encumbering any such improvements in insurance proceeds shall not be invalidated by
37 any action, neglect or inaction of the Board of Directors of the Association, Owners or their ten-
38 ants or agents. Such policy or policies shall further provide for waiver by the insurer of any poli-

1 cy provisions which would render the mortgagee or beneficiary clause invalid by reason of the
2 failure of such mortgagee or beneficiary to notify the insurer of any hazardous use of such im-
3 provements and any policy requirement that the mortgagee or beneficiary pay the premium
4 thereof.

5
6 **ARTICLE XI**

7 **OWNER'S RESPONSIBILITIES**

8 **SECTION 1: Scope of Responsibilities.** Each Owner shall be responsible for all costs
9 and expenses relating to the maintenance, repair, upkeep, taxation and assessment of his Lot(s)
10 and any improvements thereon, including, but not limited to, the payment of utility costs, ad val-
11 orem taxes, roof maintenance and repair, maintenance and repair of building exteriors, fences
12 and walls, upkeep of trees, shrubs, grass, walks and other exterior portions of and structures on
13 his Lot(s), unless otherwise provided herein. All exterior repairs shall be made in conformance
14 with the original architectural design and style of the structure being repaired.

15 **SECTION 2: Conformity to Use Restrictions.** Each Owner shall be responsible for
16 assuring that all construction, alteration, modification or addition to buildings, walls, fences, cop-
17 ings, roads, driveways, or other structures on his Lot conform to the Use Restrictions of Article
18 XIII herein. If an Owner fails or refuses to remove or repair any nonconforming structure, the
19 Association may, in its sole discretion, remove or repair the nonconforming structure, and the
20 cost of removal or repair shall be added to, and become part of, the assessment to which the
21 Owner of the nonconforming Lot is subject and the cost shall be collected in like manner as de-
22 linquent assessments.

23
24 **ARTICLE XII**

25 **ARCHITECTURAL COMMITTEE**

26 **SECTION 1: Composition of the Committee.** There is hereby established an Architec-
27 tural Committee, which shall act in accordance with this Article XII. The Architectural Commit-
28 tee shall be composed of a minimum of three (3) members appointed by the Declarant, until such
29 time as the Declarant relinquishes control of the Association, or all of the Lots have been sold
30 and conveyed to persons other than Declarant, after which time such appointments shall be made
31 by the Board of Directors of the Association. Members of the Architectural Committee shall not
32 be entitled to any compensation for services performed pursuant to this Article XII. Designated
33 representatives of the Architectural Committee shall be entitled to such compensation as may be
34 determined by the Board of Directors, payable as an expense of the Association.

1 **SECTION 2: Review by Committee.** All architectural matters within the Properties
2 shall be subject to the discretionary review of the Architectural Committee, except as otherwise
3 provided herein. The Architectural Committee shall have the exclusive right, exercisable in its
4 sole discretion, to promulgate and amend written rules and regulations concerning the construc-
5 tion, alteration, repair, modification or addition of any exterior building, wall, fence, coping,
6 drive, or similar structure, and all plans, specifications and plot plans related thereto shall be sub-
7 ject to the approval of the Architectural Committee. Such rules and regulations shall be in the
8 sole discretion of the Architectural Committee, provided that the same shall not be in conflict
9 with any provisions in this Declaration. All decisions of such Architectural Committee are final.

10 **SECTION 3: Procedures.** Prior to the construction of any improvement upon a Lot,
11 whether such improvement be initial improvements or later alterations, modifications or other
12 changes, all Owners shall be required to obtain the written approval of the Architectural Com-
13 mittee, which approval may be given in the sole discretion of the Architectural Committee. The
14 Owner shall submit to the Architectural Committee two (2) complete sets of plans for the pro-
15 posed improvements, specifications (including exterior color schemes) and plot plans which shall
16 include the location of all major structures. Approval of the plans and specifications shall be ev-
17 idenced, if at all, by the written endorsement of the Architectural Committee made on the plans
18 and specifications. One (1) set of the endorsed plans and specifications shall be retained by the
19 Architectural Committee. No changes or deviations in or from the plans and specifications, inso-
20 far as the exterior of the proposed improvements are concerned, shall be made without the writ-
21 ten approval of the Architectural Committee. After construction is completed, no further change,
22 including any change of exterior color, shall be made without the written permission of the Ar-
23 chitectural Committee

24 For purposes of this Article, architecture and improvements shall be deemed to include,
25 but not limited to, buildings, fixtures, radio antennae, television antennae, satellite stations or
26 dishes, walls, fences, copings, awnings, sunshades, flagpoles, or any similar structures and any
27 landscaping and any and all other related matters. Structures and improvements erected and con-
28 structed by the developer, Fairfield Green Valley, Inc., or any other agent of Declarant, shall not
29 be subject to the provisions of this Article.

30 **SECTION 4: Alterations and Modifications – Discretion of Architectural Commit-**
31 **tee.** In reviewing plans for alterations, modifications, additions or other changes to a structure
32 upon a Lot, the Architectural Committee shall exercise its discretion in deciding whether or not
33 an alteration or modification is in harmony with the overall scheme of subdivision development.
34 The Architectural Committee shall have the right to deny alterations or modifications for purely
35 aesthetic reasons if the Architectural Committee considers the alteration or modification to be
36 unattractive in relation to the overall scheme of development, or if the Committee considers the
37 alteration or modification to be a nuisance or upset of design, or if the Architectural Committee
38 considers the alteration or modification to be in contrast to, or out of harmony with, the style of
39 existing structures, or if the physical views of the Properties will be disrupted by the alteration or

1 modification. The Architectural Committee may elicit the opinion of other Owners, including
2 the neighbors of the Owner submitting the plan for alteration or modification, as to the conformi-
3 ty and harmony of the proposed plan with the overall scheme of development, and the effect that
4 the proposed plan might have on the physical views of other Owners. After eliciting these opin-
5 ions, the Architectural Committee may, but need not, take them into account in making its final
6 decision of approval or disapproval of an alteration or modification to an existing structure.
7 While the opinion of no single Lot Owner will control a decision of the Architectural Committee,
8 the Committee may, but need not within its own discretion, attach whatever significance it deems
9 sufficient to the statements of residents and/or neighbors of the resident submitting the proposed
10 alteration or modification(s) to an existing structure.

11 **SECTION 5: Minimum Criteria for Plans.** All plans must meet the following mini-
12 mum criteria and such further criteria as the Architectural Committee promulgates:

13 (a) The plans shall be in accordance with the provisions of this Declaration and written
14 rules and regulations of the Architectural committee, and shall not involve material changes to
15 models designed or built by Declarant without specific waiver of this subsection by the Architec-
16 tural Committee, such waiver being at the absolute discretion of the Architectural Committee
17 (provided, however, that Declarant may change its models at any time);

18 (b) The plans shall be in sufficient detail to permit the Architectural Committee to make
19 their determination; and

20 (c) The plans shall be complete and ready for submittal to obtain a building permit from
21 Pima County or other competent jurisdiction.

22 The Architectural Committee shall review and shall either approve or disapprove said
23 plans and specifications within thirty (3) days from receipt thereof. Any plans no so approved or
24 disapproved shall be deemed approved, and the provisions of this section shall be deemed
25 waived.

26 **SECTION 6: Fees.** The Association may charge each applicant for architectural approv-
27 al a fee, which shall be paid to the Architectural Committee or its designated representative. The
28 fee shall not exceed two percent (2%) of the estimated cost of the improvements for which ap-
29 proval is sought.

30 **SECTION 7: No Responsibility for Defects.** Neither Declarant, the Association nor the
31 Architectural Committee shall be responsible in any way for any defects in any plans or specifi-
32 cations submitted in accordance with the foregoing, nor for any structural defects in any build-
33 ings or structures erected according to such plans or specifications.

34 **SECTION 8: Approval for Declarant Not Required.** Notwithstanding any other pro-
35 visions of this Declaration, Declarant shall not be responsible to submit any plans or seek ap-

1 proval for structures, improvements or alterations which the Declarant or its agents shall under-
2 take on the Properties.

3 Declarant is neither bound nor obligated to build any particular style of dwelling on any
4 Lot. Declarant at its discretion may, at any time (and from time to time), alter floor plans, archi-
5 tectural style, and other matters, including composition of building materials.

6 **SECTION 9: Conflict of Interest.** In the event a conflict of interest arises wherein a
7 member of the Architectural Committee wishes to alter, remodel, and/or add to his existing struc-
8 ture, a substitute member shall be appointed by the Board of Directors to the Architectural
9 Committee to, in conjunction with the remaining two (2) members of the Committee, approve or
10 disapprove said plans and specifications. This subsection shall not apply to Declarant, and nei-
11 ther Declarant nor its employees shall be disqualified from performing functions of the Architec-
12 tural Committee or from being members thereof.

13

14

ARTICLE XIII

15

USE RESTRICTIONS

16 **SECTION 1: Land Use and Building Type.** No improvement or structure whatever,
17 other than a first-class private dwelling house, patio walls, swimming pool and customary out-
18 buildings, garage or carport, may be erected, placed or maintained on any Lot. First-class mate-
19 rials and workmanship are required.

20 **SECTION 2: Conformity to Building Codes.** All structural and design work shall be
21 accomplished in accordance with the Uniform Building Code as adopted by the County of Pima
22 or other competent jurisdiction. Electrical and mechanical work shall conform to all applicable
23 local and national codes. All buildings, fences, ledges, improvements or appurtenances or other
24 structures of any nature shall be in compliance with the setback requirements of the County of
25 Pima or other competent jurisdiction, including but not limited to, the front, side and rear set-
26 backs. The same must be approved by the Architectural Committee before the commencement
27 of any construction.

28 **SECTION 3: Fences, Walls and Hedges.** No fence or wall may exceed six (6) feet in
29 height without approval of the Architectural Committee. Any planting used to form a hedge will
30 be subject to the same setback and height requirements as applied to a wall or fence. In deter-
31 mining the height of a wall or other such item, the natural ground level shall be used. Bare con-
32 crete walls and chain link fences are prohibited.

33 **SECTION 4: Screening.** Mechanical and electrical equipment to be installed by an
34 Owner, other than Declarant in the original construction, shall within reason, be concealed from
35 the view of any adjoining street front or Lot. Included within this restriction is air conditioning,

1 evaporative coolers, and pool pump or heating equipment. No such equipment shall be permitted
2 to remain exposed at the side or rear of any Lot unless reasonably concealed by planting or
3 fence.

4 Notwithstanding the above, equipment or other improvements originally installed by De-
5 clarant, or later replaced or repaired, shall be acceptable without the necessity of screening.

6 **SECTION 5: Materials.** Patio walls and other additions and modifications shall be con-
7 structed of the same materials used in the construction of the principal residence and original im-
8 provements placed on the Lot, unless waived in writing by the Architectural Committee.

9 **SECTION 6: Lights.** All exterior lights must be located and maintained so as not to be
10 directed toward or interfere with surrounding Properties or the Common Areas, including streets.

11 **SECTION 7: No Business Use.** No business use shall be made of any Lot, and no build-
12 ing or structure intended for or adapted to business purpose; and no apartment house, duplex,
13 lodging house, rooming house, hospital, sanitarium or doctor's office, multiple family dwelling
14 or other similar structure or use shall be erected, placed, permitted or maintained on Properties
15 on any part thereof. No room or rooms in any residence on said Lots shall be rented or leased,
16 provided that nothing in this Section shall be construed as preventing the renting or leasing of an
17 entire Lot together with its improvements. However, no Lot may be rented for a hotel or transi-
18 ent purpose, which shall be construed to mean for a period of less than thirty (30) days, nor shall
19 any lot be rented to other than a family as defined by the Pima County Zoning Code.

20 **SECTION 8: Mobile Homes, Temporary Structures, etc.** No mobile home, manufac-
21 tured or prefabricated home shall be permitted or placed upon any Lot or anywhere else in the
22 Properties. No temporary house, house trailer, motor home, tent, garage, camper, boat or out-
23 building of any kind shall be placed or erected upon any part of the Properties for use as living
24 quarters. No residence placed or erected on any Lot shall be occupied in any manner at any time
25 prior to its being completed in accordance with approved plans, as hereinafter provided, nor shall
26 any residence, when completed, be in any manner occupied until made to comply with all re-
27 quirements, conditions and restrictions set forth herein. During the actual construction or altera-
28 tion of a building or buildings on any Lot, necessary temporary buildings for storage of materials
29 and equipment may be erected and maintained by the person doing such work. The work of con-
30 structing, altering or remodeling any building on any part of the Properties shall be prosecuted
31 diligently from the commencement thereof until the completion thereof.

32 **SECTION 9: Other Buildings.** No garage or other building or structure shall be erect-
33 ed, placed or maintained on any Lot until the construction and completion of the principal resi-
34 dence thereon, except that the necessary outbuildings, garage or other structures relating to the
35 principal residence may be simultaneously constructed, and nothing herein shall be construed to
36 prevent the incorporation and construction of a garage in and as part of such residence. The Ar-
37 chitectural Committee may require that any garages and other accessory buildings be incorpo-

1 rated as a part of, and attached to the Dwelling Unit, in a manner approved by the Architectural
2 Committee rather than located apart from the Dwelling Unit.

3 **SECTION 10: Architectural Committee Approval** No building of any nature shall be
4 constructed or removed from within or without the Properties to any Lot within the Properties
5 without the consent of the Architectural Committee, and in the event a building shall be so
6 placed from without on any Lot, said building shall comply in all respects with each and every
7 provision of this Declaration relating thereto.

8 **SECTION 11: Rubbish.** No Lot shall be used in whole or part for the storage of rubbish
9 of any character whatsoever, nor for the storage of any property or thing that will cause such Lot
10 to appear in an unclean or untidy condition, or that will be obnoxious otherwise. No obnoxious
11 or offensive activity shall be carried on upon any Lot, nor shall anything be done, placed or
12 stored thereon which may become an annoyance or nuisance to the neighborhood, or occasion
13 any noise or odor which will or might disturb the peace, quiet, comfort or serenity of the occu-
14 pants of surrounding properties. All equipment for the storage or disposal of garbage or other
15 waste shall be kept in a clean and sanitary condition. No container shall be kept at anytime in
16 view of an adjacent street.

17 **SECTION 12: Re-subdivisions.** No Lot or Lots shall be re-subdivided, except for the
18 purpose of combining the re-subdivided portions with another adjoining Lot or Lots, provided
19 that no additional Lot is created thereby. This Section shall not prohibit the combining of Lots,
20 nor shall it apply to re-subdivisions by the Declarant.

21 **SECTION 13: Noise.** No Owner shall engage in any activity or permit any activity to
22 occur on the Properties which shall result in unusual, loud or obtrusive noise or sounds.

23 **SECTION 14: Shrubs, Trees and Grasses.** No shrubs, trees or obstructions of any kind
24 shall be placed on corner Lots in such places as to cause a traffic hazard. Bermuda grass, except
25 that of a variety recognized to be pollen-free and approved in writing by the Declarant, shall not
26 be grown on any Lot. All trees and other vegetation planted on the Lot shall be kept trimmed to
27 a height which will not materially interfere with views from neighboring building sites. The Ar-
28 chitectural Committee may forbid the planting or maintenance of certain plants, trees and shrubs,
29 or restrict the propagation of such plants, trees and shrubs to native or indigenous species.

30 **SECTION 15: Vehicle Parking and Storage.** All Owners, guests and invitees shall
31 park any and all motorized or non-motorized vehicles in off-road parking spaces shown on ap-
32 proved plans. Parking spaces shall include the paved driveways in each Lot and any additional
33 parking spaces, if any, as set forth in the Plat, but shall not include other Common Areas not so
34 designated. Additional parking spaces, if any, may be designated from time to time by the Board
35 of Directors of the Association. Notwithstanding the above provision, Owners, their guests and
36 invitees may park in front of a Lot for purposes of loading and/or unloading personal belongings
37 from a motorized or non-motorized vehicle if the time in which the vehicle is parked in any non-

1 designated space is less than one and one-half (1-1/2) hours in any twenty-four (24) hour period.
2 Parking and/or storing of recreational vehicles (including, but not limited to, motor homes, vans,
3 campers, trailers and boats) is prohibited on all portions of the Properties, except within the con-
4 fines of either a standard-sized carport or a standard-sized garage, as approved by the Architec-
5 tural Committee, or on the parking area of an Owner's Lot, or in any designated common park-
6 ing areas within the subdivision for a period of not more than seventy-two (72) hours in any sev-
7 en (7) day period, and not more than one hundred forty-four (144) hours in any thirty (30) day
8 period, for the purposes of loading, unloading or for providing parking for guests of the Owner
9 who may be driving or pulling one of these recreational vehicles. The use and/or occupancy of a
10 recreational vehicle (including, but not limited to, a motor home, van camper, trailer or boat) as
11 living quarters on either a temporary or permanent basis is strictly prohibited on any portion of
12 the Properties.

13 **SECTION 16: Inoperable Vehicles and Commercial Vehicles.** No inoperable, junk, or
14 wrecked vehicles shall be placed on, or stored on, any Lot or Common Areas, no shall any com-
15 mercial, construction, or like vehicles (except those of the Declarant or its agents) be placed on,
16 or stored on, any Lot or Common Areas, except as may be permitted by the Association, in writ-
17 ing, for limited periods of time.

18 **SECTION 17: Drainage Ways.** No structure, planting or other material, except as in-
19 stalled by Declarant, shall be placed or permitted to remain within any drainage way which may
20 change the direction of flow, or which my obstruct or retard the flow of water.

21 **SECTION 18: Native Growth.** The natural growth on the Properties shall not be de-
22 stroyed or removed except by Declarant, or as approved in writing by the Architectural Commit-
23 tee. In the event growth is removed, except as stated above, the Architectural Committee may
24 require the replanting or replacement of same. The cost thereof will be borne by the Owner re-
25 sponsible for such removal.

26 **SECTION 19: Antennas and Exterior Additions.** No exterior antennas, satellite dish
27 stations or other devices for the transmission or reception of television or radio signals, shall be
28 erected or maintained on any Lot except as initially designed or installed by Declarant or its as-
29 signs, without prior written authorization of the Architectural Committee, and that Committee
30 may require screening and other measures to assure that the antenna or dish is concealed or is
31 below the parapet wall of the roof. This provision shall not prohibit Declarant, or its successors
32 or assigns, from maintaining or placing such equipment on or in the Common Areas. Further, no
33 exterior devices or additions, other than initially installed by Declarant or its agents, shall be
34 constructed on the exterior of a Dwelling Unit (including the roof), without the written authoriza-
35 tion of the Architectural Committee.

36 **SECTION 20: Signs.** No billboards or advertising signs of any character shall be erected
37 or permitted on any Lot or Dwelling Unit. An Owner may erect one (1) portable "Open House"

1 sign, which shall be no greater in size than four (4) square feet, on his Lot during the hours there
2 is a realty representative attending the open house at the Dwelling Unit on the Lot, or while open
3 by the Owners. All such signs must be removed when the Dwelling Unit is not open for public
4 inspection. Notwithstanding any other provision of this Section, Declarant or its agents shall
5 have the right to place any signs or billboards on the Common Areas or on Lots owned by De-
6 clarant for the purpose of advertising and promoting the sales by Declarant or its agents.

7 **SECTION 21: Derricks, Tanks, Heating and Cooling.**

8 (a) No structure designed for use in drilling for water, oil or natural gas shall be erected,
9 placed or permitted upon any part of the Properties, nor shall any water, oil, natural gas, petrole-
10 um, asphalt or hydrocarbon products or substances be produced or extracted therefrom.

11 (b) No elevated tanks of any kind shall be erected, placed or permitted upon any part of
12 the Properties, and any tanks for use in connection with any Dwelling Unit on the Properties, in-
13 cluding tanks for the storage of gas and fuel oil, gasoline or oil, must be buried or walled-in to
14 conceal them from the neighborhood Lots, roads or streets.

15 **SECTION 22: Clotheslines.** Clotheslines shall be of a retractable type concealed from
16 view of neighboring Lots and streets.

17 **SECTION 23: Animals.** No cattle, sheep, goats, pigs, rabbits, poultry or other livestock
18 shall be bred, raised or kept on the Properties, nor shall dogs, cats or other animals be kept in
19 kennels or similar enclosures on the Properties. This restriction shall not be construed, however,
20 as prohibiting the keeping of ordinary domestic pets, as long as such pets are kept confined in the
21 single-family residence and fenced yard. When domestic pets, which are allowed to be kept on
22 the Properties, are taken out of an Owner's Lot, the domestic pet(s) shall be on a leash and the
23 Owner shall be required to immediately pick up any animal feces left on any other Owner's Lot
24 or on the Common Areas.

25 **SECTION 24: Waivers.** Any or all of the restrictions of this section are subject to waiv-
26 er by the Architectural Committee, and any such waiver may apply at the option of the Architec-
27 tural Committee to fewer than all of the Lots without waiver of such restrictions as to any other
28 Lot or Lots.

29 **SECTION 25: Inspection.** During reasonable hours, any member of the Board of Direc-
30 tors of the Association, or any authorized representative of any of them, shall have the right to
31 enter upon and inspect any Lot within the subdivision (not including the interior of any Dwelling
32 Units erected thereon) for the purpose of ascertaining whether or not the provisions of this Dec-
33 laration have been, or are being complied with. Such persons shall not be deemed guilty of tres-
34 pass by reason of such entry.

1 yards and common Dwelling Unit walls. Each Owner, therefore, in the case of such a structure,
2 consents to the placement of the walls of the Dwelling Unit on or immediately adjacent to the
3 dividing lines between Lots or along the boundaries of the Rear Yard Easements and Front
4 Yard/Access Easements as set forth herein.

5 The Adjoining Front Yard Walls on Lots 3 through 9 and 21 through 41 are not party
6 walls, though they adjoin a party wall common to the adjacent Lot.

7 **SECTION 2: Alterations.** No Owner may alter the appearance or structure of a party
8 wall (except that landscaping shall not be precluded) without the consent of the Architectural
9 Committee and such Committee may, but need not, deny approval if all Owners having an inter-
10 est in the party wall have not consented to the alteration. No such approval shall be required of
11 Declarant, and this section shall not apply to improvements constructed, altered or repaired by
12 Declarant.

13 **SECTION 3: Sharing of Repair and Maintenance.** The cost of ordinary repair and
14 maintenance of a party wall shall be shared equally by the Owners of the Lots which are divided
15 by the wall.

16 **SECTION 4: Destruction by Fire or other Casualty.** If a party wall is destroyed or
17 damaged by fire or other casualty, an Owner who has used the wall may restore it and is hereby
18 granted a permanent access easement across adjoining Lot(s) for such restoration. The Owners
19 of the Lots which are divided by the wall shall share equally in the cost of such restoration.

20 **SECTION 5: Weatherproofing.** Notwithstanding any other provision of this Article, an
21 Owner, who by his negligent or willful act, causes a party wall to be exposed to the elements,
22 shall bear the whole cost of repairing all damage resulting from such exposure.

23 **SECTION 6: Right to Contribution Runs with Land.** The right of any Owner to con-
24 tribution from any other Owner sharing a party wall under this Article shall be appurtenant to
25 and shall run with the land.

26 **SECTION 7: Arbitration.** In the event any dispute arises concerning a party wall, or the
27 provisions of this Article, each party shall choose one (1) arbitrator and the two (2) arbitrators
28 shall choose a third (3rd) arbitrator, and the dispute shall be decided by a majority of all the arbi-
29 trators. This section does not apply to the Declarant, and Declarant is not required to arbitrate
30 any disputes.

31 **SECTION 8: Private Agreements.** Private agreements between Owners may not modi-
32 fy the provisions of this Article.

33 **SECTION 9: Eaves, Steps and Open Porches.** For purposes of this Article, eaves,
34 steps and open porches shall not be considered to be part of a Dwelling Unit.

1 **ARTICLE XVI**

2 **GENERAL PROVISIONS**

3 **SECTION 1: Enforcement.** The Association or any Member shall have the right, but
4 not the duty, to enforce, by any proceeding at law or in equity, all restrictions, conditions, cove-
5 nants, reservations, liens or charges now or hereafter imposed by the provisions of this Declara-
6 tion. The prevailing party at any Court action shall be awarded reasonable attorney's fees and
7 costs.

8 **SECTION 2: No Waiver.** No delay or omission on the part of Declarant, its successors
9 or assigns, the Association or any Member in exercising their right of enforcement hereunder
10 shall be construed as a waiver of any breach of any of the restrictions and covenants herein con-
11 tained or acquiescence in any breach hereof and no right of action shall accrue against Declarant,
12 its successors or assigns, the Association or any Member for their neglect or refusal to exercise
13 such right of enforcement, nor shall any right of action accrue against Declarant for including
14 herein provisions, conditions, restrictions or covenants which may be unenforceable.

15 **SECTION 3: Lien of Mortgages.** No breach of the provisions, conditions, restrictions
16 or covenants contained within this Declaration shall defeat or render invalid the lien of any
17 Mortgage made in good faith for value as to any portion of the Properties. Such provisions, con-
18 ditions, restrictions and covenants shall be enforceable against any portion of the Properties ac-
19 quired by any person through foreclosure or by deed in lieu of foreclosure or any breach occur-
20 ring after such acquisition.

21 **SECTION 4: Severability.** Invalidation of any covenant, restriction, provision or term
22 of this Declaration by judgment or court order shall not affect any other covenant, restriction,
23 provision or term hereof which shall remain in full force and effect.

24 **SECTION 5: Amendment.** Except as provided elsewhere in this Declaration, the terms
25 hereof may be amended by the Association; provided, however, that any amendments made by
26 the Association shall be approved by at least fifty-one (51) percent of the total votes held by
27 Owners, and shall be made only by an instrument in writing signed by the President and Secre-
28 tary of the Association and recorded with the County Recorder of Pima County, Arizona. Until
29 January 1, 2025, each and every amendment hereof made by the Association shall be first sub-
30 mitted to Declarant for its approval and Declarant shall have the reasonable right to veto any
31 proposed amendment, and upon such veto, such amendment shall be null and void and of no
32 force and effect.

33 Notwithstanding the above, so long as the Declarant retains its exclusive voting rights
34 and control of the Association hereto, Declarant shall have the right, without any vote or consent
35 whatsoever, to amend this Declaration of its own volition and to make such changes as Declarant

1 shall, in its sole discretion deem proper, including changes to Common Areas which are not a
2 violation of local ordinances.

3 Declarant also reserves the absolute right to amend this Declaration of its own volition
4 and without the necessity of any vote or consent whatsoever, if such amendment shall, in Declar-
5 ant's sole and absolute discretion, be deemed necessary to achieve compliance with the regula-
6 tions of the Federal Housing Administration, Veterans Administration, Federal Home Loan
7 Mortgage Corporation, Federal National Mortgage Association, or any institutional public or
8 private lending or mortgage assistance company.

9 **SECTION 6: Term.** The aforesaid provisions, conditions, restrictions and covenants
10 and each and all thereof, shall run with the land and continue and remain in full force and effect
11 at all times and against all persons until January 1, 2025, at which time they shall be automatical-
12 ly extended for successive periods of twenty-five (25) years, unless repealed by seventy-five per-
13 cent (75%) of the votes of Owners, including Declarant.

14 **SECTION 7: Age Restrictions.**

15 (a) Declarant intends that the Lots described in this Declaration shall have an opportunity
16 to comply with the exemption provisions of the Fair Housing Act Amendments of 1988, Public
17 Law 10-430, 42, U.S.C. ~ 360I, et. Seq., as further interpreted by Rules and Regulations of the
18 Department of Housing and Urban Development promulgated January 23, 1989 at page 3290,
19 which rules and regulations are incorporated herein by reference (the "Exemption"). The Ex-
20 emption is based, generally, upon a standard that at least one occupant per household be fifty-
21 five (55) years of age or older. Certain exceptions are made in cases where in at least eighty per-
22 cent (80%) of the dwellings are so occupied.

23 (b) Accordingly, except as provided below, all Lots within the property shall be intended
24 for occupancy by at least one person per household fifty-five (55) years of age or older.

25 Notwithstanding the above, the Declarant reserves the exclusive right to sell and convey
26 Lots for occupancy wherein at least one person will be at least forty-five (45) years of age or
27 older (but not necessarily fifty-five (55) years of age or older), so long as the property shall con-
28 tinue to qualify for the exemption as set forth in the Fair Housing Act Amendment and as ex-
29 plained in 100.304 et. Seq. of the rules and regulations promulgated January 23, 1989. Prior to
30 the time that twenty-five percent (25%) of the Lots have been sold and first occupied, the ratio of
31 Lots occupied by persons younger than fifty-five (55) years of age or older than fifty-five (55)
32 years, shall not be considered relevant. At such time as at least twenty-five percent (25%) of all
33 Lots within the properties and shown on the plat have been sold and first occupied however, at
34 least eighty percent (80%) of the Lots then occupied shall be occupied by at least one person fif-
35 ty-five (55) years of age or older. As future sales by Declarant occur, then at least eight percent
36 (80%) of all Lots shall continue to be occupied by at least one person per household who is at
37 least fifty-five (55) years of age.

1 Subsequent to initial sales of Lots by Declarant to any member of the consumer public
2 (other than to another builder or developer), all re-sales of such Lots shall be subject to the fifty-
3 five (55) years of age requirement. It shall be a violation of the terms and provisions of this Dec-
4 laration should any Lot subsequently be sold or re-sold and not be occupied by at least one per-
5 son fifty-five (55) years of age or older per household.

6 (c) In the event that Declarant should exercise its right as set forth above, to sell and
7 convey fewer than twenty percent (20%) of the Lots for occupy by at least one person per house-
8 hold forty-five (45) years of age or older, (but not necessarily fifty-five (55) years of age or old-
9 er), then the grantee of the deed to the property affirms, by acceptance of the deed, that the life-
10 style of the occupants of the dwelling are believed to be compatible with the mature lifestyle in-
11 tended throughout the development as a whole.

12 (d) It shall henceforth be the duty and obligation of each record Owner of a Lot prior to
13 re-selling and re-conveying the Lot, to ascertain that, after purchase, at least one occupant will be
14 fifty-five (55) years of age or older, and shall further confirm this fact to the Association; provid-
15 ed, however, that this paragraph (d) shall not apply to the Declarant's reserved rights set forth
16 above with regard to the Lots.

17 (e) This Declaration, as it pertains to age restrictions governing the Lots, may only be
18 amended with the written consent of the Declarant, except that after all of the Lots have been
19 sold by the Declarant, it may be amended by a fifty-one percent (51%) vote of the Members of
20 the Association as defined in the Declaration and in the same fashion as set forth in the Declara-
21 tion.

22 (f) Nothing in this Declaration shall be construed to permit occupancy by minors. No
23 minor (any person less than eighteen (18) years of age) shall reside on any Lot for more than
24 three (3) months during any twelve (12) month period.

25 (g) The provisions f this Declaration pertaining to age restrictions shall not limit the
26 rights of Members of the Association to amend the Declaration as it pertains to those provisions,
27 after Declarant has sold all Lots.

28 (h) The occupancy regulations of this section dealing with both minimum age re-
29 strictions and the prohibition of minors, apply to all occupants whether Owners or tenants, and to
30 all leases as well as sales.

31 (i) It is understood that ultimate responsibility for compliance with the provisions hereof
32 rests with the Owners, and not the Association. The Association and its officers, directors,
33 agents and employees shall have no liability whatsoever for compliance with the foregoing pro-
34 visions. It is the duty of each Owner to comply therewith and make appropriate notification to
35 the Association and each Owner acknowledges that the pattern of re-sales of Lots can be difficult

1 to control or predict, and that compliance with the aforementioned laws, and with the Exemption,
2 depends upon the cooperation of the Owners as a whole.

3 **SECTION 8: Binding Effect.** By acceptance of a deed or acquiring any ownership in-
4 terest in any Lot, each person or entity, for himself or itself, his or its heirs, personal representa-
5 tives, successors, transferees and assigns, binds himself, his heirs, personal representatives, suc-
6 cessors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules
7 and regulations now or hereafter imposed by this Declaration and amendments thereof. In addi-
8 tion, each such person, by so doing, thereby acknowledges that this Declaration sets forth a gen-
9 eral scheme to the development of the Properties and hereby evidences his intent that all re-
10 strictions, conditions, covenants, rules and regulations contained herein shall run with the land
11 and be binding on all subsequent and future Owners, grantees, purchasers, assignees and trans-
12 ferees thereof. All rights and easements created by this Declaration accrue to the benefit of De-
13 clarant and its successors and assigns and to Fairfield Green Valley, Inc.

14 **SECTION 9: Captions.** All captions and titles used in this Declaration are intended
15 solely for convenience or reference purposes only, and in no way define, limit or describe the
16 true intent and meaning of the provisions hereof.

17 **SECTION 10: No interest in Golf Course, Errant Golf Balls.** Every Owner acknowl-
18 edges that neither by acceptance of a deed or membership in the Association, does such Owner
19 have any interest in any public or private golf course owned by the Declarant or the developer,
20 Fairfield Green Valley, Inc. Any and all rights to use of any public or private golf course owned
21 by the Declarant, developer or by any affiliate of them shall be governed exclusively by the
22 rules, regulations, membership terms, if any, rates and other restrictions as may be set forth by
23 such golf course owner.

24 Each Owner of a Lot on or near any adjacent golf course, by acceptance of a deed to any
25 Lot, consents to the landing of errant golf balls and assumes all risk of personal injury or proper-
26 ty damage associated with stray or errant balls, and further grants an easement for the landing of
27 such balls.

28 **SECTION 11: Annexation.** Declarant may, until December 31, 2000, or so long as it
29 owns any Lot in the Properties, whichever is later, annex into the Properties additional property
30 without the consent of the Association, owners, Members or any First Mortgagee. Such annexa-
31 tion may be from any adjacent land owned by Declarant.

32 Each such annexation shall be accomplished by Declarant recording a Declaration of An-
33 nexation I the Office of the County Recorder of Pima County, Arizona, which document shall
34 provide for annexation to this Declaration of the property described in such document and shall
35 be executed by Declarant.

1 All provisions of this Declaration, including but not limited to those provisions regarding
2 assessments by the Association and any right to cast votes as Members of the Association, shall
3 apply to annexed property immediately upon recording the annexation document, unless provid-
4 ed to the contrary in the Declaration of Annexation, or in covenants recorded by Declarant with
5 respect to the Annexation Land.

6 The annexation of additional property shall extend the exclusive voting rights of the De-
7 clarant and all the Declarant's special reserved rights as provided in this Declaration.

8 A Declaration of Annexation may include, but shall not be limited to, a designation and
9 description of the nature of the Lots and structures in the annexed property; including, but not
10 limited to, the type and quality of construction. Declarant may annex all or any part of said An-
11 nexation Land at its sole discretion.

12 Upon recording of any Declaration of Annexation, the Lots described therein shall be
13 deemed Lots hereunder, and the Lots, together with any common areas so designated, shall be
14 deemed a part of the Properties.

15 The Declarant expressly reserves the right in the course of development of the annexed
16 property, to designate common areas as open spaces, peaks, ridges and washes. The Declarant
17 may convey the common areas in such annexed property, as appropriate, to the Association and
18 the Association shall accept such property as Common Area.

19 Any purchaser of a portion of the annexed land is deemed irrevocably to consent to an-
20 nexation under the purview of this Declaration and to permit development in accordance with the
21 general plan established hereby.

22 DATED: _____