

JG 28 2000

*H. Malloy*  
*5/19*

ARTICLES OF INCORPORATION

OF

SAGEWOOD HOMEOWNER'S ASSOCIATION, INC.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned have this day associated ourselves together for the purpose of forming a non-profit corporation under and pursuant to the laws of the State of Arizona and for that purpose do hereby adopt these articles of Incorporation.

ARTICLE I

Name

The name of the corporation is SAGEWOOD HOMEOWNER'S ASSOCIATION, INC., hereinafter called the "Association".

ARTICLE II

Place of Business

The principal place of business of the Association shall be Tucson, Pima County, Arizona, and its known place of business shall be at 231 W. Giacomda Way, Suite #103, Tucson, Pima County, Arizona, 85704.

ARTICLE III

Purpose

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are: To promote the health, safety and welfare of its members and to provide for maintenance, preservation and architectural control of common areas within the subdivision in Pima County, Arizona, known as SAGEWOOD; have and to exercise all powers, rights, and privileges which a non-profit corporation of the State of Arizona may by law now or hereafter have or exercise and to do and perform any and all acts and things to transact any business not inconsistent with law, which may be necessary, incident to or convenient in carrying out any of the purposes of the association. The Association in the fulfillment of its purposes shall have those powers enumerated in A.R.S. Section 10-1005 and the Declaration of Covenants, Conditions and Restrictions of SAGEWOOD, hereinafter referred to as the "Declaration", as recorded in the office of the County Recorder of Pima County, Arizona. The Association shall not carry on any activities not permitted to be carried on by a homeowner's association exempt from federal income tax under Section 501 (a) of the Internal Revenue Code of 1986 or the corresponding provisions of any future United States Revenue law.

**ARTICLE IV**

**Character of Affairs**

The character of business which the corporation initially intends actually to conduct in this State is the operation of a homeowners association.

**ARTICLE V**

**Membership, Voting and Other Rights**

The corporation will have members. The authorized number and qualification of members of the Association; the different classes of membership, if any; voting and other rights and privileges of the members; and their liability for assessments and the method of collection thereof, shall be as provided for in the Declaration and as provided for in the By-Laws of the Association.

**ARTICLE VI**

**Statutory Agent**

The initial statutory agent for the Association is hereby designated as David S. Greenberg, 231 W. Giaconda Way, Suite #103, Tucson, Arizona 85704.

**ARTICLE VII**

**Board of Directors**

The number of directors constituting the initial Board of Directors shall be two (2); the number of directors thereafter shall be fixed by the By-Laws of the Association. The names and addresses of the persons who are to serve as directors until the First Annual Meeting of Members, to be held at a time and place provided by the By-Laws, or until their successors are elected and qualified are:

David S. Greenberg  
231 W. Giaconda Way, #103  
Tucson, Arizona 85704

Kenneth W. Inskip  
231 W. Giaconda Way, #103  
Tucson, Arizona 85704

ARTICLE VIII

Incorporator

The name and address of the incorporator of this Association is:

David S. Greenberg  
231 W. Giacomini Way, #103  
Tucson, Arizona 85704

ARTICLE IX

Exemption

The private property of each and every officer, director, and member of this Association shall at all times be exempt from the debts and liabilities of the Association.

ARTICLE X

Governing Documents

In the event that any part of provision of these Articles of Incorporation are in conflict or inconsistent with the Declaration, or any amendments thereto, the terms and provisions of the above referenced Declaration shall prevail and supersede such conflicting or inconsistent provisions hereof except as may otherwise be required by applicable law. Any provisions contained in these Articles of Incorporation to the contrary notwithstanding, neither the corporation, the Board of Directors of the Corporation nor any agent or employee of the corporation shall be authorized or empowered to take any action inconsistent with the above provisions of the above referenced Declaration.

ARTICLE XI

Amendment to Articles

These Articles of Incorporation may be amended, altered or repealed by the affirmative vote of seventy-five percent (75%) of the members of this corporation entitled to vote at any duly constituted and convened regular or special meeting of members.

EXECUTED this 22nd day of August, 2000, by the Incorporator, David S. Greenberg, who, by virtue of his signature, acknowledges and accepts the appointment as Statutory Agent of the above named corporation, effective the date stated above.

  
\_\_\_\_\_  
David S. Greenberg

Phone 520-544-9191

# NONPROFIT CERTIFICATE OF DISCLOSURE A.R.S. Section 10-3202.D.

SAGEWOOD HOMEOWNER'S ASSOCIATION, INC.  
EXACT CORPORATE NAME

any person serving either by election or appointment as officer, director, trustee, or incorporator in the corporation:  
Been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?

Been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses, or restraint of trade or monopoly in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?

Been or are subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven-year period immediately preceding the execution of this Certificate wherein such injunction, judgment, decree or permanent order:

- (a) Involved the violation of fraud or registration provisions of the securities laws of that jurisdiction?
- (b) Involved the violation of the consumer fraud laws of that jurisdiction?; or
- (c) Involved the violation of the antitrust or restraint of trade laws of that jurisdiction?

5. No X

IF YES, the following information MUST be attached:

- Full name and prior name(s) used.
- Full birth name.
- Present home address.
- Prior addresses (for immediate preceding 7-year period).
- Date and location of birth.

- 6. Social Security number.
- 7. The nature and description of each conviction or judicial action, date and location, the court and public agency involved and file or cause number of case.

is any person serving either by election or appointment as an officer, director, trustee or incorporator of the corporation, served in any such capacity and such interest in any corporation which has been placed in bankruptcy or receivership or had its charter revoked, or administratively dissolved by jurisdiction?

X



IF ANSWER TO THE ABOVE QUESTION IS "YES", YOU MUST ATTACH THE FOLLOWING INFORMATION FOR EACH CORPORATION:

- Name and address of the corporation.
- Full name, including alias and address of each person involved.
- State(s) in which the corporation:
  - (a) Was incorporated.
  - (b) Has transacted business.

- 4. Dates of corporate operation.
- 5. A description of the bankruptcy, receivership or charter revocation including the date, court or agency and the file or cause number of the case.

The fiscal year end adopted by the corporation is DEC 31

penalties of law, the undersigned incorporators/officers declare that we have examined this Certificate, including any attachments, and to the best of our knowledge and belief it is true, correct and complete, and hereby declare as indicated above. THE SIGNATURE(S) MUST BE DATED WITHIN THIRTY DAYS OF THE DELIVERY DATE.

 DATE 8/22/00 BY  DATE 8/22  
 : DAVID S. GREENBERG, PRESIDENT TITLE KENNETH W. INSKEEP, SECY.  
 \_\_\_\_\_ DATE \_\_\_\_\_ BY \_\_\_\_\_ DATE \_\_\_\_\_  
 \_\_\_\_\_ TITLE \_\_\_\_\_

ADDITIONAL CORPORATIONS: ALL INCORPORATORS MUST SIGN THE INITIAL CERTIFICATE OF DISCLOSURE. (If more than one incorporator, please attach remaining signatures on a separate sheet of paper.)

Within sixty days, any person becomes an officer, director, or trustee and the person was not included in this disclosure, the corporation must file a new certificate signed by all incorporators, or if officers have been elected, by a duly authorized officer.

FOR CORPORATIONS: Must be executed by any two executive officers or directors.

BY-LAWS  
OF  
SAGEWOOD HOMEOWNERS ASSOCIATION

ARTICLE I  
DEFINITIONS AND APPLICABILITY

Section 1.01. Definitions. In these By-laws, unless the context otherwise requires, all definitions shall be as set forth in the Declaration of Covenants, Conditions, and Restrictions for SAGEWOOD, hereinafter referred to as the "Declaration."

ARTICLE II  
MEMBERSHIP AND VOTING

Section 2.01.

A. Qualifications. Each Owner (including Declarant) of a Lot, by virtue of being such an Owner and for so long as he/she is such an Owner, shall be deemed a member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation, or a lessee or tenant of an Owner or a purchaser or vendee under an executory contract of sale which has not "closed" and/or been recorded in the office of the County Recorder, Pima County, Arizona. No Owner shall have more than one (1) membership for each Lot owned.

B. Certificates of Membership. Each Owner is automatically a member of the Association. The Association shall issue the same number of certificates of membership in the Association as there are Lots to Owners reflecting their voting status as provided for in the Declaration. In the event any Lot is owned by two (2) or more persons, a single certificate shall be issued in the name of all said persons, and said persons shall designate to the Association, in writing the one of their number authorized to vote said certificate at any and all meetings of the Association. No certificate shall be transferred to any person or persons other than another Owner of record. Any member who has disposed of all his/her interest in any Lot shall forthwith surrender his/her certificate shall, nevertheless, upon the sale by a member of his/her interest in any Lot void his/her certificate and all of his/her rights as a member of the Association.

C. Transfer of Membership. Membership of each Owner (including Declarant) in the Association shall be appurtenant to the Lot owned and shall not be transferred, pledged or alienated in any way except upon the transfer of ownership to said Lot, and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Owner thereof.

Section 2.02. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B: There shall be one Class B Membership which shall be held by the Declarant and the Class B Membership shall be entitled to three (3) votes for each Class A Membership in existence as long as there is a Class B Membership. The Class B Membership shall cease and be converted to Class A Membership when the Declarant no longer owns property at SAGEWOOD.

Section 2.03. Proxies. Votes may be cast by proxy provided that proxies are filed with the Secretary of the Association on or before the appointed time of the meeting.

ARTICLE III  
ADMINISTRATION

Section 3.01. Association Responsibilities. The Association shall have the responsibility of administering the common area(s) or the common property, approving the annual budget, establishing and collecting assessments together with such other responsibilities as set forth in these By-laws and the Declaration. In general, the Association shall be the representative of each Owner for every problem which effects more than one (1) Lot.

Section 3.02. Annual Meetings of Lot Owners. There shall be an annual meeting of the Owners on the third Tuesday in April of each year at such time and place convenient to the Owners as may be designated by the Board of Directors. The Board of Directors may designate another date for such annual meeting not more than thirty (30) days before or after the date fixed for said annual meeting by written notice of the Board given to the Owners not less than ten (10) nor more than sixty (60) days prior to the date fixed for said annual meeting specifying the date, time and place thereof.

Section 3.03. Special Meetings of Owners. A special meeting of the Owners may be called at any reasonable time and place by written notice of the Board of Directors or by the Owners having one-fifth (1/5) of the total votes and delivered notice to all other Owners not less than ten (10) days nor more than thirty (30) days prior to the date fixed for said meeting, specifying the date, time and place thereof, and the nature of the business to be undertaken. No business shall be transacted at a special meeting except as stated in said notice unless by consent of a majority of Owners present, either in person or by proxy.

Section 3.04. Notice of Meeting. It shall be the duty of the Secretary of the Association to mail or deliver a notice of each annual or special meeting within the time period specified above stating the purpose thereof as well as the date, time and place where it is to be held to each Owner of record. The mailing or delivery of such notice to each Owner shall be considered notice served.

Section 3.05. Quorum and Adjourned meeting. The presence of any meeting, in person or by proxy, of the Owners entitled to vote one-tenth (1/10th) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-laws. If any meeting cannot be held because a quorum is not present, the Owners present, either in person or by proxy, shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented. Except as otherwise provided herein, any action may be taken at any meeting of the Owners upon the affirmative vote of the Owners having a majority of the total votes present at such meeting either in person or by proxy.

Section 3.06. Order of Business. The order of business at all regular annual meetings of the Association shall be as follows:

- A. Roll call.
- B. Proof of notice of meeting or
- C. Reading of minutes of preceding meeting.
- D. Report of officers.
- E. Election of Directors.
- F. Unfinished business.
- G. New business.

ARTICLE IV  
BOARD OF DIRECTORS

Section 4.01. Number and Qualifications. The affairs of the Association shall be conducted by a Board of Directors, who must be members. The initial Board shall be composed of two (2) members. On termination of the Class B Membership, the number of Directors shall be three (3).

Section 4.02. Election and Term of Office. Subject to the requirements of Section 4.01 of these By-Laws, the Directors shall be elected in a regular annual meeting of the Association by a vote of a majority of Owners present either in person or by proxy, constituting a quorum, for a term until

the next regular annual meeting unless a longer or shorter term is authorized as hereinafter provided and shall hold office until their successors are elected and qualify. The members of the Board may succeed themselves indefinitely, but in no instance shall there be more than one (1) board member from each Dwelling Unit.

The Board of Directors prior to a regular annual meeting shall appoint a nominating committee to obtain a list of names of Owners who desire to serve on the Board of Directors to be elected at the forthcoming regular annual meeting and the nominating committee shall inform the Owners that it is accepting names of persons to serve on the Board of Directors. After the nominating committee has determined which Owners are willing to serve on the Board of Directors, it shall prepare a list of such names and submit it at the next regular annual meeting for a vote of the Owners. An owner may be elected to the Board of Directors even though his/her name does not appear on the list prepared by the nominating committee. The nominating committee shall count and verify the ballots collected at the regular annual meetings.

Section 4.03. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by vote of the Owners shall be filled by vote of the majority of the remaining Directors, even though they constitute less than a quorum, and each person so elected shall be a Director until a successor is elected at the next regular annual meeting of the Association.

Section 4.04. Removal of Directors. At any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the Owners and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

Section 4.05. Organizational Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the whole Board shall be present.

Section 4.06. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one (1) such meeting shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally, by mail or telephone at least three (3) days prior to the day set for such meeting.

Section 4.07. Special Meetings. Special meetings of the Board of Directors may be called by the President, on three (3) days notice to each Director given personally, by mail or telephone, which notice shall state the date, time, place and purpose of the meetings. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) Directors. Notwithstanding the foregoing, a majority of the Directors may waive the three (3) day notice requirement for calling a special meeting and convene a special meeting at such date, time and place as agreed upon by the majority of Directors.

Section 4.08. Board of Directors Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting, from time to time. At any such adjourned meeting, providing a quorum is then present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 4.09. Powers and Authority of the Board. The Board of Directors shall have all the powers of an Arizona non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Association's Articles of Incorporation, these By-Laws and the Declaration. The Board shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of said Articles, these By-Laws and the Declaration, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the

Association. Without in any way limiting the generality of any of the foregoing provisions, the Board shall have the power and authority at any time to do the following:

A. Care, upkeep, repair and supervision of the common areas, and facilities. The Board shall determine all maintenance and repair expenses on the basis of at least three (3) independent bids, whenever possible; the bids shall be submitted by reputable contractors or persons in the business of performing said maintenance and repairs. The Board shall select the best bid which need not be the lowest bid and the Board's decision in this regard shall be final and conclusive.

B. Collection of assessments from Owners.

C. Designation and dismissal of personnel necessary for the maintenance and operation of the common areas.

D. To maintain insurance coverage as provided for in Article IV of the Declaration and to use the insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance and pay any balance remaining to the Developer, Declarant and Owners and their mortgagees as their interest may appear.

E. To grant and convey to any person easements, rights-of-way, parcels or strips of land in, on, over or under any common areas for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (1) roads, streets, walks, pathways and driveways; (2) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone, cable T.V., and other purposes; (3) sewers, storm drains and pipes, drainage easements, water systems, water, heating and gas lines or pipes; and (4) such improvements as may be permitted under Article II of the Declaration.

F. To retain and pay for legal and accounting services necessary or proper in the operation of the common areas and facilities, enforcement of these By-Laws and the Declaration, or in any of the other duties or rights of the Association.

G. To maintain and repair drainage and other easements, private pedestrian walkways, sidewalks, roadway rights-of-way, parking lots, median strips, entry details, walls or other areas not maintained by governmental entities, or Owners.

H. To obtain or pay for, as the case may be, any other property, or services, which the Board deems necessary including security services for the common areas and facilities.

I. To enter at any reasonable time upon any exterior portion of any Dwelling Unit for the purpose of carrying out its duties and obligations for exterior maintenance and landscaping pursuant to the Declaration.

J. In the event any property owned by the Association is damaged or destroyed by an Owner or any of his/her guests, agents or members of his/her family, such Owner does hereby irrevocably authorize the Association to repair said damage, and the Association shall so repair said damage in good workmanlike manner in conformance with the original plans and specifications. Said Owner shall then repay the Association in the amount actually expended for said repairs. In the event of a dispute between an Owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof; then upon written request of the Owner delivered to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one chosen by the Board of Directors, one chosen by said Owner and these two arbitrators shall choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then the same shall be selected by the presiding Judge of the Superior court of Pima County, Arizona. A determination by any two of the three arbitrators shall be binding upon said Owner and the Association who shall share the cost of arbitration equally. In the event one party fails to choose any arbitrator within (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and authority to choose both arbitrators.

K. To regulate the use and provide for appropriate safety measures for all common areas including, but not limited to, private roadways and parking areas.

L. To maintain all common areas in a neat and attractive manner.

M. To construct new improvements or additions to the common areas or demolish or replace



existing improvements; provided that in the case of any improvements, additions or demolition (other than maintenance or repairs to existing improvements and reconstruction made pursuant to Section 4.16 hereof) involving a special assessment, the vote of Owners having two-thirds (2/3) of the total vote present, voting either in person or by proxy at an annual or special meeting called for the purpose of approving plans and a maximum total cost therefore shall first be obtained. The Board shall levy a special assessment on all Owners for the cost of such work pursuant to these By-Laws and the Declaration.

N. To assign parking spaces.

O. To utilize water metered to the Lots for watering of the plants, trees and shrubs in the common area; provided, however, and on the condition, the Association reimburses Owners on a fair and equitable basis for the cost of water so utilized. The Board's determination of the amount to be reimbursed for such use of water shall be final and conclusive.

P. To select and employ a Trust Company, Bank, or Professional Management Company, in Tucson, Arizona, to collect and disburse funds of the Association under such terms and conditions approved by the Board.

Q. To grant and convey easements and rights-of-way in accordance with the terms of the Declaration.

Section 4.10. Management. The Board shall control, maintain, manage and improve the common property as provided in these By-Laws, the Articles and the Declaration. Such right and power of control and management shall be exclusive. In managing the common property, the Association hereby accepts all responsibility for the control, maintenance, safety and liability of such common property including but not limited to collecting and paying taxes on common areas, which shall be assessed by the County Assessor.

Section 4.11. Taxes. Owners shall pay all real estate and personal property taxes which may be assessed against their respective Lots. The Association shall pay all taxes levied upon any property conveyed, leased or otherwise transferred to the Association, to the extent not assessed to Owners.

Section 4.12. Fidelity Bonds. The Association shall purchase and maintain in force, fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is, in no event, less than 1-1/2 times the insureds estimated annual operating expenses and reserves, and provide for at least ten (10) days notice to the Association and first mortgagees servicing FNMA owned mortgages before cancellation or substantial modification of the bond. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

Section 4.13. Assessments. The Board of Directors shall levy and collect assessments pursuant to the provisions of these By-Laws and Article VI of the Declaration. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the members and their guests, for the improvement and maintenance of the common areas and for all purposes set forth in the Articles, Declaration and these By-Laws. The Board of Directors of the Association may provide that Association dues, charges or assessments may include an adequate reserve fund for maintenance, repairs and replacement of those elements of the common areas and common property owned by the Association that must be replaced on a periodic basis. All such dues, charges and assessments imposed by the Association shall be paid on a periodic basis in regular installments rather than by special assessments.

A. The Board of Directors shall keep or provide for the keeping of books with detailed accounts affecting the administration of the Common Areas specifying the maintenance, repair and replacement expenses thereof and any other expenses incurred. The books and vouchers shall be made available for examination to any of the Owners at convenient hours on working days. At the Annual Meeting, the Board shall make available to the members of the Association a complete financial report pertaining to the Association's financial condition. Upon the vote or written request of twenty-five (25%) percent of the Association's members, the Board shall appoint a committee of

at least three (3) members to audit the books, or in the alternative, shall contract with a private accounting firm to audit same. Any holder, insurer or guarantor of a first mortgage shall be entitled, upon written request to the Association, to receive a copy of the audited financial statement prepared by a private accounting firm. In the event an audited statement has not been prepared by a private accounting firm, the requesting party shall be entitled to receive a copy of the opinion of the financial report of the Board and, if applicable, the member conducted audit report, and the Association shall have an audited financial statement prepared at its expense after any holder, guarantor or insurer of first mortgage has requested a copy of such statement unless said hold, insurer or guarantor waives the right after receiving a copy of the financial report of the Board and/or the member conducted audit report.

B. Within (30) days prior to the end of each calendar year (January 1 through December 31) and subject to the provisions of Section 4.13 thereof, the Board of Directors shall estimate the total charge to be paid during the forthcoming year to determine the annual assessment (including a reasonable reserve for contingencies and less any expected surplus from the prior year).

C. Subject to Section 4.13B hereof, the Board of Directors shall not increase the annual assessment by an amount greater than either (i) 10 percent (10%) of the amount of the preceding annual assessment; or (ii) the percentage increase in the cost of living as reflected by the column entitled "all items" in the Consumer Price Index on a national basis published by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter called the "Cost of Living Index Number"). In the event that the bureau of Labor Statistics shall fail to publish a comparable Cost of Living Index Number during any such years, but a comparable Cost of Living Index Number shall be published by any governmental agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the annual assessment under the provisions of this Section 4.13 with the same force and effect as the Cost of Living Index Number of the Bureau of Labor Statistics.

D. Any increase by the Board of Directors in the Annual Assessment which is greater than the amount permitted under Section 4.13C hereof, must be first approved by two-thirds (2/3) vote of the members who are voting in person or by proxy at a meeting duly called for this purpose before such increase may be placed in effect and bind the members of the Association.

Section 4.14. Authorized Payments by the Association. The board of Directors shall have the exclusive authority to make payments out of the Associations' funds for the benefit of each Owner; this authority shall include but shall not be limited to the following:

- A. Water service for the common areas.
- B. Utility service for the common areas.
- C. All goods, materials, supplies, labor, services, maintenance, repair, alterations, reconstruction and insurance which the Board of Directors is authorized to obtain and pay for pursuant to these By-Laws and the Declaration or which are authorized by the Owners for the convenient operation of the common property.
- D. Workman's Compensation Insurance to the extent necessary to comply with any applicable laws.
- E. Professional management services as provided herein, legal, accounting and other services contracted for by the Board of Directors if it is deemed necessary by them for the operation and maintenance of the common property, protection of any of the common property or in the best interest of the Owners.
- F. As provided in Article II of the Declaration, maintenance, repair, upkeep and repainting of Dwelling Units, including any other improvements on a Lot shall be the sole responsibility of each Owner. In the event any Owner fails to maintain his/her Lot or the exterior of his/her Dwelling Unit or any other improvement on a Lot in a manner in keeping with the general neighborhood, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents or employees, to enter upon the subject property, and repair, maintain and restore the Lot, including the interior sides of the perimeter yard walls or fences, any improvements erected thereon. The cost of such repair and maintenance shall be added to and become part of the assessment to which such Lot is subject. The Board in its sole discretion shall have the right to determine whether or not a lot or the exterior of a Dwelling Unit and any

improvements erected on a Lot are in need of maintenance, repair and upkeep in order to conform to the standards of the general neighborhood, and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the lots as a whole will reflect a high pride of ownership.

G. All costs of enforcing the provisions of these By-Laws and the Declaration including Attorney's fees and court costs provided that all costs incurred for the enforcement of the provision of these By-Laws and the Declaration against any Owner shall be assessed especially against such Owner.

Section 4.15. Rules and Regulations. The Board of Directors shall have the power to adopt and publish rules and regulations (Rules) governing the use of the common property, and such rules and regulations shall be binding upon the members of the Association.

Section 4.16. Damage and Destruction. In the case of damage by fire or other casualty to the common property or exteriors of Dwellings Units:

A. Destruction: Proceeds Exceed 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty (80%) percent of the estimated costs of restoration and repair, a Reconstruction Assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purposes.

B. Destruction; Proceeds Less Than 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty (80%) percent of the estimated cost of restoration and repair, the improvement shall not be replaced or restored unless approved by the vote or written consent of Members entitled to exercise two-thirds (2/3) of the voting power of the membership of the Association.

(1) Rebuilding Not Authorized; First Mortgagee Approval. Notwithstanding the foregoing, unless at least fifty-one (51%) percent of the Eligible Mortgage Holders, based on one (1) vote for each Mortgage held, have given their prior written approval, the Association shall not be entitled to use hazard proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such improvements.

(2) Open Common Area; First Mortgagee Approval. In the event of a determination not to replace or restore the improvements on the Common Area, and provided that in the event of such determination, the Association shall obtain the additional written consent of fifty-one (51%) percent of such Eligible Mortgage Holders, based on one vote for each Mortgage held, the Common Area shall be cleared and landscaped for open Common Area to be used by the Owners pursuant to Article IV of the Declaration, and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy of uniform Reconstruction Assessments in an amount determined by the board.

C. Distribution of Proceeds; Excess proceeds. In the event any excess insurance proceeds remain, the Board shall retain such sums in the general funds of the Association. Notwithstanding anything to the contrary contained in this Section 4.16, the distribution of any insurance proceeds for any damage of destruction to the Common Area shall be subject to the prior rights of Mortgagees.

D. Reconstruction.

(1) Insurance Proceeds. The insurance proceeds arising out of damages to said property shall be paid to such bank other trust company as may be designated by the Board, to be held in separate trusts for the benefit of Owners and their mortgagees, as their respective interests shall appear. The Board is authorized to enter, on behalf of the Owners, into an agreement with such insurance trustee relating to its powers, duties and compensation, on such terms as the Board may approve consistent herewith.

(2) Contractor Bids. The Board Shall obtain firm bids from two (2) or more responsible contractors, to rebuild any portions to said property in accordance with the original plans and specifications with respect thereto and shall, as soon as possible thereafter, select the best bid which need not be the lowest bid.

(3) Reconstruction Assessment. Upon acceptance of a bid, the Board shall levy a

Reconstruction Assessment or assessments on the Owners pursuant to these By-Laws and the Declaration to make up any deficiency between the total insurance proceeds and the contract price of repairing or rebuilding their damaged property and such assessment or assessments and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to said insurance trustee to be used for such rebuilding. If two (2) or more assessments are levied, such assessments may be made due on such dates as the Board may designate over a period of not to exceed twenty (20) years and the Board may borrow money to pay the aforesaid deficiency, and may secure such borrowing by an assignment of the Association's right to collect such-assessments, or by a pledge of any personal property held by it in trust for the Owners, or by both.

## ARTICLE V OFFICERS

Section 5.01. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary and Treasurer, all of whom shall be Directors. Any number of offices, except the office of President and Secretary, may be held by the same person, unless the Articles of these By-Laws otherwise provide.

Section 5.02. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 5.03. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his/her successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 5.04. President. The President shall be the chief executive officer of the Association. He/she shall preside at all meetings of the Association and the Board of Directors. He/she shall have all of the general powers and duties which are usually vested in the office of President of a corporation, including, but not limited to the power to appoint committees from among the Owners from time to time as he/she may in his/her discretion decide are appropriate to assist in the conduct of the affairs of the Association.

Section 5.05. Vice President. The Vice President shall take the place of the President and perform his/her duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 5.06. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; the Secretary shall have charge of such books and papers as the Board of Directors shall direct, and shall in general perform all the duties incident to the office of Secretary.

Section 5.07. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association unless such function is delegated by the Board of Directors to a Trust Company, a Bank, or a Professional Management Company as authorized under Section 4.09. P. of these By-Laws. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects which he/she personally collects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. All funds of the Association over which the Treasurer has direct control shall only be withdrawn upon his/her signature; the Board may require the signature of another member of the Board for disbursement of Association funds.

## ARTICLE VI OBLIGATION OF HOMEOWNERS

Section 6.01. Assessments.

A. Personal Obligation and Non-Exemption. All Owners shall be personally obligated to pay annual and special assessments imposed by the Association to meet all common expenses, which shall include, but not be limited to: insurance premiums; maintenance upkeep and replacement of the common property; reserve contingencies; taxes and utilities for the common areas; and any other charges agreed upon by vote of the Owners. No Owner may exempt himself/herself from contributing toward such expenses by waiver or non-use of the common property or by abandoning his/her Dwelling Unit. The assessments shall be made in the manner provided in Section 4.13 of these By-Laws and Article VI of the Declaration.

B. Charges for Repairs. Each Owner agrees that the charges for repair as determined pursuant to Section 4.09, J. of these By-Laws if not paid within ten (10) days after completion of the work, shall become a lien upon said Owner's Lot and shall continue to be such a lien until fully paid. The amount owed by said Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by these By-Laws and the Declaration. Nothing contained in this paragraph shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this paragraph been inserted.

C. Effect of Nonpayment of Assessments: Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. All assessments delinquent for more than thirty (30) days shall be subject to a reasonable late charge to be established by the Board of Directors and which shall become a part of the assessment. Any delinquent assessments shall also bear interest at the rate of twelve percent (12%) per annum and late payments shall first be credited toward interest due, then toward assessments first due. In the event the Association employs an attorney for collection of any assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of these By-Laws, or for any other purpose in connection with the breach of these By-laws, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

1. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency until paid, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner or member.

2. Enforcement by Lien. There is hereby created a right of claim of lien, on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners together with interest thereon at a rate of twelve percent (12%) per annum from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time within one hundred twenty (120) days after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the default Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for demand of claim of lien or a lien, but any number of defaults may be included within a single demand of claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information,

(a) The name of the delinquent Owner;

- (b) The legal description of the Lot against which claim of lien is made;
- (c) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
- (d) That the claim of lien is made by the Association pursuant to these By-Laws;
- (e) That a lien is claimed against said Lot in an amount equal to the amount stated; and
- (f) That the claim of lien will also extend to all assessments which became due but are not paid from the date of the filing of the claim to the date of payment of all amounts set forth therein (including interest thereon, reasonable attorney's fees, costs and collection), and that the claim of lien will only be deemed satisfied, and released when the Owner is current in the payment of all such amounts.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot. Such a lien shall have priority over all claims of liens created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

#### Section 6.02. Maintenance and Repair.

A. Each Owner must perform promptly all maintenance and repair work within his/her own Lot, which if neglected would affect the property in its entirety or in part belonging to other Owners, being expressly responsible for the damages and liabilities that his/her failure to do may engender.

B. All the repairs of internal installations of the Dwelling Units, such as water, light, gas, power, sewage, telephones, air conditioners, heating equipment, roof, doors, windows, lamps and all other internal accessories belonging to that Dwelling Unit shall be at the Owners expense. In addition, Owners shall bear the expense and responsibility for all glass surfaces, exterior T.V. antennas, exterior lighting fixtures, common walls as provided for in the Declaration, and landscaping.

C. Each Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any portion or all of the common area and facilities damaged through his/her fault, except to the extent covered by insurance.

D. Owners shall not, without the written consent of the board of Directors, make any structural alterations in the common areas or facilities or remove any improvements or fixtures therefrom.

### ARTICLE VII AMENDMENTS

Section 7.01. By-Laws. These By-Laws may be amended in whole or in part by the Association in a duly constituted meeting held for such purpose by a vote of the then Owners of not less than fifty-one percent (51%) of the total number of Dwelling Units covered by the Declaration.

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ARTICLE VIII  
MORTGAGES

Section 8.01. Mortgage Protection. First mortgagees are hereby granted the right to jointly, or singly pay taxes or other charges which are in default and which may or have become a charge against any common areas or other common property owned by the Association, and such first mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common areas or common property and any first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Nothing in these By-Laws shall in any manner be deemed to give a Dwelling Unit Owner, or any other party, priority over any rights of a first mortgagee of a Dwelling Unit pursuant to the terms of such first mortgagee's mortgage in the case of a distribution of a Dwelling Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of common area or other common property owned by the Association.

Each first mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the performance by the Owner of a Lot encumbered by the mortgage in favor of such mortgagee or any obligation under these By-Laws or under the Declaration, Articles of Incorporation, Rules and Regulations of the Association which is not cured within sixty (60) days.

Section 8.02. Notice to Association. An Owner who mortgages his/her Lot shall notify the Association through the management agent, if any, or the President or the Board of Directors in the event there is no management agent, giving the name and address of his/her mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Lots".

Section 8.03. Notice of Unpaid Assessments. The Association shall, at the request of a mortgagee of a Lot, report any unpaid assessments due from an Owner.

ARTICLE IX  
GENERAL PROVISIONS


Section 9.01. Conflict. In the event of any conflict or inconsistency between the provisions of these By-Laws and the Declaration of Covenants, Conditions and Restrictions of SAGEWOOD or any amendments thereto, recorded in the office of the County Recorder, Pima County, Arizona, the Declaration shall prevail and supersede such conflicting or inconsistent provisions of these By-Laws. Neither the Association nor the Board of Directors, nor any agent or employee shall be authorized or empowered to take any action inconsistent with the provisions of the above referenced Declaration.

Section 9.02. Singular includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 9.03. Captions. All captions and titles used in these By-Laws are intended solely for the convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

IN WITNESS WHEREOF, the Association, a non-profit Arizona Corporation, has hereunto caused its corporate name to be signed and attested by the signature of its duly authorized officer this 22 day of August, 2000.

SAGEWOOD HOMEOWNER'S ASSOCIATION, INC.

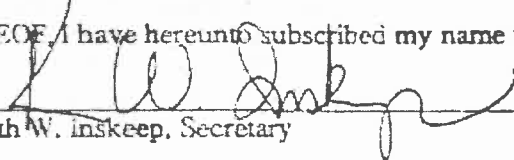
BY   
David S. Greenberg, President

CERTIFICATE OF SECRETARY:

I, the undersigned, do hereby certify:

- (1) That I am the present duly elected and acting Secretary of SAGEWOOD HOMEOWNER'S ASSOCIATION, an Arizona non-profit corporation; and
- (2) That the foregoing By-Laws, comprising twelve (12) pages constitute the original By-Laws of said corporation as duly adopted at the first meeting of the Board of Directors therefore duly held on this 22 day of August, 2000.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22 day of August, 2000.

BY   
Kenneth W. Inskip, Secretary



F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: JEB  
DEPUTY RECORDER  
2012 ROOC



DOCKET: 11490  
PAGE: 1328  
NO. OF PAGES: 25  
SEQUENCE: 20010350394  
02/21/2001  
REST 13:59  
PICKUP  
AMOUNT PAID \$ 29.00

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

SAGEWOOD

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SAGEWOOD (hereinafter terms the "Declaration"), is made this 20th day of SEPTEMBER, 2000, by Fidelity National Title Agency, Inc., an Arizona corporation as Trustee under Trust No. 30,040, and not in its corporate capacity (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Pima County, Arizona, known as SAGEWOOD described in that certain subdivision plat (the "Plat") under the name of SAGEWOOD, Lots 1-58 and Common Area "A" (private drainage facilities), recorded in Book 54 of Maps and Plats at Page 47, in the Pima County Recorder's Office, State of Arizona (hereinafter referred to as the "Property"); and

WHEREAS, The Genesee Company is a Colorado corporation authorized to do and doing business in the State of Arizona as a foreign corporation and is the beneficiary of Declarant and is herein referred to at various times as the Developer; and

WHEREAS, said Plat designates the area and dimensions for each Lot numbered 1-58, boundary lines, Common Elements and easements; and Declarant and Developer desire to develop the Property and subject the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements as described in this Declaration (hereinafter collectively called the "CCR's"); and

WHEREAS, Declarant desires to form a non-profit corporation for the purpose of benefiting SAGEWOOD, the Owners and the Lots as said terms are defined in this Declaration, which non-profit corporation (hereinafter termed the "Association") will operate, manage and maintain any Common Elements, certain private easements, certain rights of way and Association Land; and establish, levy, collect and disburse the assessments and other charges imposed hereunder; and as the agent and representative of the Members of the Association and Owners of SAGEWOOD, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of SAGEWOOD; and

WHEREAS, Declarant is preparing the necessary documents for the incorporation and organization of the Association; and

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WHEREAS, in order to cause the CCR's to run with SAGEWOOD and to be binding upon SAGEWOOD and the Owners and Lots thereof from and after the date of recordation of this Declaration, Declarant hereby makes all conveyances of SAGEWOOD Property, whether or not provided so therein, subject to the CCR's set forth herein and by accepting deeds, leases, easements or other grants or conveyances to any portion of SAGEWOOD, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns agree that they shall be personally bound by all of the covenants (including, but not limited to, the obligation to pay Assessments) hereinafter set forth; and

WHEREAS, Declarant proposes to sell individual lots and to sell and convey the same subject to the CCR's, limitations, obligations, easements, equitable servitudes, charges and liens hereinafter set forth which is for the benefit of the Property and any subsequent Owners;

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth herein shall run with the Property; shall be binding upon all persons having or acquiring any interests in the Property or any part thereof; shall inure to the benefit of and be binding upon Declarant, its successors in interest, each owner and his respective successors in interest, and may be enforced by Declarant, or its successors in interest, any Owner or its successors in interest, or by any entity having an interest in their enforcement.

No provision contained herein shall be construed to prevent or limit Declarant's or Developer's right to complete development of the Property and construction of improvements thereon, nor Developer's right to construction of sales offices or similar facilities on the Property, nor Developer's right to post signs incidental to sales, nor Developer's right to do anything that it may, in its sole discretion, deem necessary and proper for the full development and sale of the Property.

1. **DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned:

1.1 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot and/or Owner pursuant to Paragraph 6 below.

1.2 "Architectural Review Committee" shall mean the Committee of the Association to be created pursuant to Paragraph 9 below.

1.3 "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

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1.4 "Assessable Property" shall mean any Lot except such part or parts thereof as may from time to time constitute Exempt Property as herein defined.

1.5 "Assessment" shall mean an Annual Assessment, Special Assessment, Maintenance Charge and/or other Association levy.

1.6 "Assessment Lien" shall mean the lien created and imposed by Paragraph 6 below.

1.7 "Assessment Period" shall mean the term set forth in Paragraph 6 below.

1.8 "Association" shall mean the Arizona non-profit corporation to be organized by Declarant to administer and enforce the CCR's and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association "SAGEWOOD Homeowner's Association, Inc."

1.9 "Association Land" shall mean such part or parts of SAGEWOOD, together with the buildings, structures and improvements thereon and other real property which the Association may at any time own in fee or in which the Association at any time may have a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

1.10 "Board" shall mean the Board of Directors of the Association.

1.11 "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

1.12 "Common Elements" shall mean:

- (a) All Association Land;
- (b) All land within SAGEWOOD which the Declarant, by this Declaration or other recorded instrument makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date;
- (c) All land within SAGEWOOD which the Declarant indicates on the Plat is to be used for landscaping, drainage and/or flood control for the benefit of SAGEWOOD;
- (d) All other lands within the drainage easement areas set forth by the Plat or other recorded instruments;
- (e) Areas on a Lot within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of improvements, utilities, ingress and egress;

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(f) All private shared driveway areas which are deeded to the Association or the use of which is given to the Association by easement and by agreement for which the Association accepts responsibility for maintenance;

(g) All land described as natural buffer on the Plat;

1.13 "CCR's" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

1.14 "Declarant" shall mean not only Fidelity National Title Agency, Inc., an Arizona corporation as Trustee under Trust No. 30,040, and not in its corporate capacity, but also The Genesee Company as beneficiary under Fidelity National Title Agency, Inc., Trust Number 30,040, and their respective successors or assigns while title holder of any Lot, either as the original Owner or by reacquisition.

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

1.16 "Developer" shall mean The Genesee Company, a Colorado corporation authorized to do and doing business as a foreign corporation in the State of Arizona and its successors or assigns.

1.17 "Dwelling Unit" shall mean a Lot, together with the improvements placed within the confines of said boundary.

1.18 "Exempt Property" shall mean the following parts of SAGEWOOD:

(i) All land and improvements owned by or dedicated to and accepted by the United States, State of Arizona, Pima County, City of Tucson or any political subdivision thereof for as long as any such entity or political subdivision is the owner thereof or for as long as said dedication remains effective;

(ii) All Association Land, for as long as the Association is the Owner thereof.

1.19 "Maintenance Charges" shall mean any and all costs assessed pursuant to this Declaration.

1.20 "Member" shall mean any person holding a membership in the Association pursuant to this Declaration.

1.21 "Majority of Owners" shall mean Owners owning a majority of the Lots. = 27 + 1

1.22 "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (legal title if same has merged) of any Lot or Dwelling Unit. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation.

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1.23 "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.24 "Plat" shall mean the plat prepared by OPW & Associates, Inc. Under the name of "SAGEWOOD, Lots 1-58 & Common Area A (private drainage facilities)", recorded in Book \_\_\_\_ of Maps and Plats at Page \_\_\_\_, in the Pima County Recorder's Office, State of Arizona.

1.25 "The Property" or "the Subdivision" shall mean all that real property pursuant to Paragraph 6 below.

1.26 "Special Assessment" shall mean any assessment levied and assessed pursuant to Paragraph 6 below.

1.27 "SAGEWOOD" shall mean the Property described in this Declaration and the development to be completed thereon.

1.28 "SAGEWOOD Rules" shall mean the rules for SAGEWOOD adopted by the Board pursuant to Paragraph 4 below.

1.29 "SAGEWOOD Architectural Rules" shall mean the rules established by the SAGEWOOD Architectural Review Committee, which rules shall become a part of this Declaration enforceable in the same manner as this Declaration.

## 2. GENERAL RESTRICTIONS

All property within SAGEWOOD shall be subject to the CCR's, and this Declaration, and this Declaration, the Plat (and any final plat as approved and recorded) and the CCR's are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of lots in SAGEWOOD and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of SAGEWOOD and every part thereof. All of this Declaration, the Plat and CCR's shall run with all Lots and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, this Declaration and the CCR's shall be binding upon and shall benefit the Association. All property within SAGEWOOD shall be held, used and enjoyed subject to the following limitations and restrictions:

2.1 **Private Residence.** Each and every Lot shall be used for private residential purposes only, and no structure whatever other than one first-class, private, single family resident, together with attached private garage and appurtenant structures shall be erected, placed or maintained on any Lot.

2.2 **Antennas and Exterior Additions.** No exposed antenna, satellite dishes (except as required by law) and no exposed mechanical or solar equipment shall be erected or maintained on the roof of any Dwelling on any Lot. Further, no other exterior devices or additions shall be constructed on the exterior of the Dwelling Unit (including roof) without the written authorization of the Board or the Architectural Review Committee.

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Solar energy equipment installation may be used with the proper approval of the Board or its designated Architectural Review Committee.

2.3 **Signs.** No signs of any kind shall be displayed which are visible from neighboring property without the approval of the Board, except:

1. Such signs as may be required by legal proceedings; and
2. Such signs as may be used by Developer in connection with the sale of Lots; and
3. Such signs as may be approved by the Board indicating a Dwelling Unit or Lot is for sale or lease.

Where the Board's approval is required, it shall approve the nature, composition, number, size and location of all signs, unless excepted hereunder.

2.4 **Animals.** No animals of any kind shall be raised, bred, or kept, except that a reasonable number of generally recognized house or yard pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. All dogs must be kept under leash or controlled at all times so that they will not interfere with any Member's use and enjoyment of the Lots or Dwelling Units, and it shall be the responsibility of each pet owner to clean up after their pets. No animal shall be allowed to become a nuisance and must be kept inside a Dwelling Unit or in an enclosed area at all times. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per household; provided, however, the Board may determine that a reasonable number in any instance may be more or less. Upon the written request of any Member, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Paragraph, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable. All pets required by government authority to be licensed must be licensed.

2.5 **Nuisances.** After completion of construction of a Dwelling Unit upon a Lot and landscaping of Lots, no rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot within the Property, and no odors shall be permitted to arise therefrom so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Lot or to its occupants. Storage or disposal of garbage, rubbish or debris shall be done in a clean and sanitary manner and maintained in such a fashion so as not to be offensive to Owners of adjacent Lots. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot without the prior written approval of the Board. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance. Wood piles or other materials shall be stored in a manner so as not to be attractive to native rodents, snakes and other animals and to minimize the potential danger from fires.

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Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods. Trash and debris shall not be permitted to accumulate and supplies of building materials will be piled only in such areas as may be approved by the Architectural Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Architectural Review Committee, which may also require screening of the storage area.

**2.6 Native Growth and Planting.** All landscaping shall first be approved before installation by the Architectural Review Committee. The theme for landscaping shall emphasize plantings and other features which will complement and enhance the native existing character. Approved landscaping after installation will be maintained as required to provide a neat and attractive appearance. Removal of dead bushes and trees and removal of trash and debris will be accomplished as required to this effect. The Architectural Review Committee will be the sole and final judge as to whether or not landscaping after installation has met the approved criteria and whether or not it is at any given time maintained properly. The native growth on any Lot or the Property shall not be removed or destroyed except as may be necessary for the construction or maintenance of roads, driveways, sidewalks, Dwelling Units and walled-in patio yards. Native vegetation may not be removed from any lot or Common Area for any reason.

**2.7 No Business Use.** No business or professional service of any nature, whether for profit or non-profit, shall be conducted on any Lot, except the business of the Association and the Developer while developing, constructing and selling lots. No building or structure intended for, or adapted to, business or professional or any non-residential purposes, shall be erected, placed, permitted or maintained on any Lot.

**2.8 Rental.** No room or rooms in any residence, or parts thereof, may be rented or leased to others by any Homeowner. Nothing in this paragraph, however, shall be construed as preventing the renting or leasing of an entire Dwelling Unit.

**2.9 Outbuildings.** No tent or outbuilding of any kind shall be placed or erected on any part of the Property for more than forty-eight (48) hours. Notwithstanding anything to the contrary above, no structure of any kind shall be permitted or placed upon Common Area "A" (drainage facilities).

**2.10 Materials.** All buildings of any nature constructed hereon shall be constructed of new materials. No building shall be removed from without said Property to any Lot within said Property. All structures to utilize earth-tone colors except that bolder colors may be used for accents.

**2.11 Wells.** No derrick or other structure designed for use in boring for water, oil, natural gas, or any other substance, or for any other purpose, shall be erected, placed or permitted upon any part of said property, nor shall any water, oil, natural gas, petroleum,

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asphalt, minerals or hydrocarbon products or substances be produced or extracted therefrom.

**2.12 Tanks, Exposed Coolers and Other Materials.** No elevated tanks of any kind shall be erected, placed or permitted upon any part of said property. Any tanks for use in connection with any Dwelling Unit constructed on any Lot, including, but not limited to, tanks for the storage of gas and fuel, oil, gasoline or oil, must be buried or walled in or kept screened by adequate planting to conceal them from the neighboring Lots, roads or streets. The term "adequate planting" as used herein shall mean transplantings which provide immediate and effective concealment of the object being screened. No evaporative coolers, air conditioning units, heating units, air conditioning towers, or compressor units shall be placed on the roof or attached to exterior walls or windows of any structure and any such units without approval of the Board. Equipment, gas meters, electric meters, wood piles or storage piles shall be kept within an area which is walled in such a manner as to conceal same from the view of the neighboring Lots, roads or streets, or shall be kept within a service room. Clotheslines shall not be permitted at any time on any Lot or the Property.

**2.13 Grass.** No bermuda grass shall be sown, planted, cultivated or maintained on any Lot, except those varieties known and recognized as being pollen-free.

**2.14 Further Subdivision.** No Lots shall be subdivided, except for the purpose of combining the resubdivided portions with another adjoining Lot (provided that no additional Lot is created thereby), without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the Subdivision, easement or other interest. Any ownership or single holding by any person comprising parts of two (2) adjoining Lot or Lots or of the whole of one Lot and part or parts of one or more adjoining Lots, for all purposes of this Declaration and CCR's, shall be deemed as constituting ownership of a single Lot. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot and no applications for variances or use permits shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Board and the proposed use of the Lot complies with this Declaration and CCR's.

**2.15 Topography.** No Dwelling Unit shall include a two-story structure on any Lot of the Property.

**2.16 Masonry and Frame Stucco.** At least seventy-five percent (75%) of the area of exterior walls of the Dwelling Unit (exclusive of glass areas) must be constructed of slump block or frame stucco as approved by the Architectural Review Committee. Not more than two (2) of the foregoing materials shall be used for visible exterior surfaces of the structure, including patio walls, on any one Lot, and one (1) of the materials shall be predominant. If frame stucco or slump block is used for the exterior walls of the Dwelling Unit, stucco coverage must be at least one-half (1/2) of an inch.

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2.17 **Driveways.** All private driveways and parking areas must be paved with concrete, asphaltic concrete (or comparable alternate on an adequate base to prevent erosion) and shall connect with the paved portion of the road in front of the Lot.

2.18 **Roof Material.** In order to prevent excessive sun glare to neighboring property or Lots, no roofing finish material shall be of a lighter color value than the exposed roof material.

2.19 **Set Backs, Definition.** For the purpose of this Declaration, "set back" shall be defined as the minimum horizontal distance between a point on a building or structure (other than a wall, fence, unroofed terrace, steps, and/or roof projections at the eaves) to the nearest property line or lines.

2.20 **Set Back.** Any building or structure shall be set back to the appropriate distances from Lot lines as identified on the Plat or in conformance with City of Tucson laws, rules and regulations, whichever is more restrictive.

2.21 **Pools.** A pond, swimming pool, body of water, play courts, outside barbecue facilities or shower, dressing rooms, outside toilet facilities may be erected or placed on any Lot within a walled patio, subject to Board approval.

2.22 **Patio Walls.** No patio or other exterior wall shall be constructed of any material other than masonry or frame stucco as approved by the Board and any such wall shall not be more than six (6) feet in height. Any required or proposed masonry screen walls shall be constructed of, or painted with, graffiti-resistant materials. Those masonry screen walls visible from the public right-of-way shall incorporate one of the following decorative materials:

- (a) Tile,
- (b) Stone,
- (c) Brick,
- (d) Textured brick/block,
- (e) A coarse-textured material such as stucco, or plaster, or
- (f) A combination of the above materials.

In addition, any continuous walls greater than 75 feet in length and three feet in height shall vary the wall alignment (log, curve, notch, or set back, etc.) and include trees or shrubs in the voids created by the variations.

2.23 **Variance.** If any Lot covered by these restrictions includes major surface irregularities directly affecting the buildable area of said Lot in such manner as to make normal development extremely difficult or impossible, or if natural growth now existing on any Lot is of such character as to constitute a desirable or unique asset for the Lot on which it is located, the Board shall have the authority to grant a variance for the location of pools and barbecue facilities herein set forth, so that said Lot may be developed to its maximum usage.

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2.24 **Fences.** No fence shall be permitted or installed on any Lot unless constructed as described in Paragraph 2.22 above and approved by the Board and Architectural Review Committee; provided that gates may be wood or metal.

2.25 **Utility Lines.** All telephone, power and utility lines located in the road in front of the Lots or utility easement on the Lots shall be underground, and service from any of these to any structure shall be buried service lines. This provision shall not, however, prohibit the erection of temporary overhead power or telephone lines incident to construction. All costs for such work done which is performed between the easement line on the Lot and any point or points on the Lot shall be borne by the Owner of the Lot. There is hereby created a blanket easement upon, across, over and under each Lot for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. As such utilities are installed in connection with the initial development of the Lot and the construction of a Dwelling Unit or building thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roof and exterior walls of buildings on the Lots. Notwithstanding anything to the contrary contained herein, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on any Lot except as initially programmed and approved by the Declarant or the Architectural Review Committee, or, if installed after recordation of this Declaration, approved by the Owner and Architectural Review Committee in writing. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in and upon any Lot, unless the same shall be contained in conduits or cables installed and maintained underground and concealed in, under or on buildings or other structures approved in writing by the Architectural Review Committee. No provision hereof shall be deemed to prevent the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Review Committee in writing.

2.26 **Exemption of Developer.** Nothing in these CCR's shall limit the right of Developer to complete excavation, grading, and construction of improvements to any Lot within the subdivision owned by Declarant, or to alter the foregoing or to construct such additional improvements as Developer deems advisable in the course of the sale of the subdivision, so long as any Lot therein remains unsold, or to use any structure in the subdivision as real estate sales or leasing office. Developer need not seek or obtain the Board's approval for the installation of any improvements, including landscaping. The rights of Developer hereunder or elsewhere in these Restrictions may be assigned.

2.27 **Drainage.** There shall be no interference with the established drainage pattern over any Lot within the Property unless adequate provision is made by submitting a drainage plan for approval by the Board for proper drainage conforming to government rules, regulations, ordinances and drainage criteria, and is approved by the Board. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Property is completed, or which is shown on any plans

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conforming to government rules, regulations, ordinances and drainage criteria approved by the Board.

**2.28 Unsightly Articles.** No unsightly articles shall be permitted to remain so as to be visible from adjoining Lots, Dwelling Units or from the road in front of the Lots. At no time shall there be any outside storage of commercial vehicles, boats, trailers, campers, motor coaches, mobile homes or house trailers of any type on any Lot. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories. Any and all items stored in a garage area shall be stored so as to conceal the same from view from adjoining property or from the streets or public way. Grass, shrub or tree clippings, garbage or trash containers shall be kept within an enclosed structure or appropriately screened from view of adjoining Dwelling Units, except when necessary to make available for collection and then, only the shortest time reasonably necessary to effect such collection. The Board shall have sole discretion in determining if any activity by an Owner is in violation of this Paragraph 2.28.

**2.29 Trash Containers.** No garbage or trash shall be placed or kept on any Lot or Dwelling Unit within the subdivision, except in covered containers or a type, size and style which have been approved by the Board. All rubbish, trash or garbage shall be removed from Lots and Dwelling Units and shall not be allowed to accumulate thereon. No incinerators shall be allowed. All rubbish, trash, garbage or wood storage will be maintained in a clean and orderly manner so as not to be offensive to Owners of adjacent Lots or the Property. Said rubbish, garbage and trash shall be maintained in such a manner so as not to create any obnoxious odor which might disturb the peace, quiet, comfort or serenity of any Owners of any Lots or the Property and storage and disposal of said garbage, rubbish and trash will be done in a clean and sanitary manner. All rubbish, trash and garbage shall be left out for pick-up only on scheduled garbage pick-up days. The Board shall reserve the right to designate the garbage collection company or agency and to include garbage collection fees in the Annual Assessment chargeable to a Dwelling Unit and Owner.

**2.30 Mail Boxes.** The Board shall determine the location, color, size, design, lettering and all other particulars of all mail and paper delivery boxes, and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

**2.31 Easement of Enjoyment.** Every Owner and other Member of the Association shall have a right and easement of enjoyment in and to the Common Elements and any Association Land which shall be appurtenant to and shall pass with the title to every Lot subject to the right of the Association to suspend the voting rights and right to use Association Land by any Member for any period during which any Assessment against his Lot remains delinquent. The Association shall maintain the right to regulate the use of the Common Elements and Association Land through the SAGEWOOD Rules and to provide access to those areas such as landscape right-of-ways not intended for use by Members. The SAGEWOOD Rules shall be intended in the absolute discretion of the Board to enhance the preservation of Association Land and SAGEWOOD for the safety

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and convenience of the users and shall otherwise be used to promote the best interests of the Owners of the Lots.

**2.32 Architectural Control.** No improvements, alterations, repairs, excavations, grading, landscaping or other work which in any way alters the exterior appearance of any Property within SAGEWOOD or the improvements located thereon shall be made or done without prior approval of the Architectural Review Committee in writing except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Architectural Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots shall be subject to the prior written approval of the Architectural Review Committee and no changes or deviations in or from the plans and specifications once approved by the Architectural Review Committee shall be made without prior written approval of the Architectural Review Committee.

**2.33 Repair of Building.** No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approval of the Architectural Review Committee, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

**2.34 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or other improvements or that which Declarant or the Association may require for the operation and maintenance of SAGEWOOD.

**2.35 Motor Vehicles.** No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street in SAGEWOOD and no inoperable vehicle may be stored or parked on any such Lot or street so as to be visible from any other Lot or from Common Elements or Association Land; provided, however, that the provisions of this Paragraph shall not apply to emergency vehicle repairs.

**2.36 Parking.** It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners and of their guests and invitees are to be kept in garages, residential driveways of the Owner and/or other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot; provided, however, that this Paragraph shall not be construed to permit parking in the above-described areas and any vehicle whose parking at SAGEWOOD is otherwise prohibited or the parking of any inoperable vehicle.

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2.37 **Right of Entry.** During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Review Committee, any member of the Board or any authorized representative of either of them shall have the right to enter upon and inspect any Lot and improvements thereon except for the interior portions of any completed residence for the purpose of ascertaining whether or not the provisions of this Declaration and CCR's have been or are being complied with and such person shall not be deemed guilty of trespass by reason of such entry.

2.38 **Health, Safety and Welfare.** In the event additional uses, activities and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, the Board may make further rules restricting or regulating their presence at SAGEWOOD as part of the SAGEWOOD Rules or may direct the Architectural Review Committee to make rules governing their presence on Lots.

2.39 **Outside Lighting.** All outside lighting on any Lot or the Property shall be directed down or shall be shielded from adjacent properties in accordance with applicable laws, rules and regulations and subject to the written approval of the Board.

3. **PERMITTED USES, RESTRICTIONS AND RIGHTS - DWELLING UNITS**

3.1 **Business Uses Prohibited.** No gainful occupation, professional trade or other non-residential use shall be conducted on any Lot except that Developer may maintain sales on a lot.

3.1 **Renting.** Homeowners shall have the right to lease or rent their Dwelling Units; provided, however, that any lease agreement shall be in writing, shall be for a term of at least six (6) months, and shall provide that any such tenant shall abide by the SAGEWOOD Rules, Bylaws, Articles and this Declaration and the CCR's.

4. **ORGANIZATION OF ASSOCIATION**

4.1 **Formation of Association.** The Association shall be a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration and CCR's. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration and the CCR's.

4.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) members. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

4.3 **The SAGEWOOD Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and

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repeal rules and regulations to be known as the SAGEWOOD Rules. The SAGEWOOD Rules may restrict and govern the use of any area by any Member or resident; provided, however, that the SAGEWOOD Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the SAGEWOOD Rules shall have the same force and effect as if they were set forth and were a part of this Declaration.

4.4 **Personal Liability.** No member of the Board or any committee of the Association, no officer of the Association and no manager or other employee of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee member or officer of the Association; provided, however, the limitations set forth above shall not apply to any person who has failed to act in good faith or is engaged in willful or intentional misconduct.

4.5 **Insurance.** The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas. The Board in its discretion, may determine additional insurance needs for the Association.

4.6 **Taxes.** The Association shall be responsible for the payment of all taxes on the Common Area.

5. **MEMBERSHIP AND VOTING**

5.1 **Owners of Lots.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Each such Owner shall have one Membership for each Lot owned by the Member. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

5.2 **Declarant.** The Declarant shall be a Member of the Association for so long as it holds a Class B membership described below or owns any Lot in SAGEWOOD.

5.3 **Voting.** The Association shall have two (2) classes of voting memberships:

(a) **Class A Membership:** Class A Membership shall be all memberships except the Class B Membership held by the Declarant and each Owner shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration;

(b) **Class B Membership:** There shall be one Class B Membership which shall be held by the Declarant and the Class B Membership shall be entitled to three (3) votes for each Class A Membership in existence as long as there is a Class B Membership. The Class B Membership shall cease and be converted to Class A Membership when the Declarant no longer owns property at SAGEWOOD.

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5.4 **Right to Vote.** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board has given actual written notice of such change and has provided satisfactory proof thereof. Fractional votes shall not be allowed.

5.5 **Non-Cumulative Voting for Board Members.** In any election of the members of the Board, every Owner of a Membership entitled to vote at such election shall cast said vote or votes in a non-cumulative fashion as provided by Arizona law.

5.6 **Membership Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws as the same may be amended from time to time.

5.7 **Transfer Membership.** The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to a Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record or such other legal process as now in effect or as may hereafter be established under Arizona law. Any attempt to make a prohibited transfer shall be void.

## 6. ASSESSMENTS AND CREATION OF LIEN

6.1 **Creation of Lien and Personal Obligation of Assessments and Maintenance Charges.** The Declarant, for each Lot established in SAGEWOOD, hereby covenants and agrees and each Owner by acceptance of a Deed therefor, whether or not expressed in the Deed, is deemed to covenant and agree to pay to the Association the following assessments and charges:

- (a) Annual Assessments;
- (b) Special Assessments;
- (c) Maintenance Charges as described in this Declaration.

The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, costs and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing servitude and lien upon the Lot against which such Assessment is made. The Annual and Special Assessments against each Lot shall be based upon the number of Memberships appurtenant to the Lot. Each such Annual and Special Assessment and Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of the Lot at the time the Assessment was due. The personal obligation for delinquent assessments shall not pass to the successors and title to the Owner unless expressly assumed by them.

6.2 **Annual Assessments.** In order to provide for the uses and purposes of the Association, including the establishment and replacement of maintenance reserves, the Board each year, commencing with the year in which the Plat is recorded, shall assess

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against each Lot an Annual Assessment. The amount of the Annual Assessment shall be in the sole discretion of the Board and shall be determined with the objective of fulfilling the Association's obligations under this Declaration.

**6.3 Uniform Rate of Assessment.** The amount of any Annual or Special Assessment or Maintenance Charge against each Lot shall be fixed as a uniform rate for Membership.

Notwithstanding anything to the contrary herein, Declarant and/or Developer shall not be responsible for payment of any Annual and Special Assessments or Maintenance Charges established pursuant to this Declaration or the Articles or Bylaws of the Association except that Declarant and/or Developer shall pay Annual and Special Assessments and/or Maintenance Charges on Completed Lots owned by Declarant and/or Developer. For purposes of this Declaration, "Completed Lots" shall mean any Lot with a Dwelling Unit thereon ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living on the Property (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed) but shall not include any Lots with improvements thereon used by Declarant and/or Developer as models or sales offices.

Although Declarant and/or Developer may contribute to the expenses of the Association and the maintenance of the Common Easement Area, it is understood that Declarant and/or Developer are not and shall not be held liable for the payment of any Annual and Special Assessments and/or Maintenance Charges provided for in this Declaration and/or Articles and Bylaws of the Association by virtue of the ownership or development of Lots within the Property unless such ownership is of Completed Lots as herein defined, and that the failure to pay any Annual and Special Assessments and/or Maintenance Charges shall not give rise to any right of imposing any lien or encumbrance upon said Lots and by Declarant and/or Developer as security for the payment of said Annual and Special Assessments and/or Maintenance Charges unless Declarant and/or Developer have failed to pay same on Completed Lots as herein defined.

**6.4 Maximum Annual Assessment.** The Annual Assessment to be established by the Board may not exceed a certain amount hereinafter referred to as the "Maximum Annual Assessment" which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

- (a) Until January 1 of the year following the recordation of the Plat, the Maximum Annual Assessment against each Owner shall be Twelve Hundred Dollars (\$1,200.00) for each Membership;
- (b) From and after January 1 of the year immediately following recordation of the Plat, and during such year, the Maximum Annual Assessment cannot be increased more than ten percent (10%) each year;
- (c) From and after January 1 of the year immediately following the recordation of the Plat, the Maximum Annual Assessment may be increased above the

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Maximum Annual Assessment otherwise determined under subsection (b) above by a vote of two-thirds (2/3) of each Class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

- (d) At the time of conveyance of a Lot by Declarant to an Owner, the Owner (not Declarant) thereof shall pay the equivalent of two (2) months of the Annual Assessment then applicable to that Lot into the working capital fund of the Association. At the same time, Developer and/or Declarant shall match the equivalent payment made by Owner. Said working capital funds shall be used by the Association to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the working capital fund are not to be considered as advance payment of Annual and Special Assessments or Maintenance Charges.

**6.5 Special Assessments for Capital Improvements and Extraordinary Expenses.** In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying the whole or any part of the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land or Common Elements, including fixtures or personal property related thereto or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of each Class of members who are voting in person or by proxy at a meeting duly called for such purpose.

**6.6 Notice and Quorum.** Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 4.5 of this Declaration shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of the Members or proxies entitled to cast fifty percent (50%) of all of the votes (exclusive of suspended voting rights) of each Class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**6.7 Establishment of Annual Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year except that the first Assessment Period shall commence upon the filing of the Plat and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the Pima County Recorder's Office an instrument specifying the new Assessment Period.

**6.8 Billing and Collection Procedures.** The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual and Special Assessments and Maintenance Charges provided said procedures are not inconsistent with these

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provisions. The failure of the Association to send a bill to a Member shall not relieve any Member of its liability for any Assessment or charge under this Declaration but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement at the address of the Member on the records of the Association that the Assessment or any installation thereof is or will be due and owing. Such notice may be given at any time prior to or after delinquency of such payment. Any Assessment or installment thereof not paid when due shall be deemed delinquent and bear interest thirty (30) days after its due date until paid at a rate of twelve percent (12%) per annum. A Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The Board may also record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording the notice, processing the delinquency and recording the notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the assessment lien. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or any other person a written certificate stating that all Annual and Special Assessments and Maintenance Charges (including interest, costs and attorney's fees, if any, as provided above) have been paid with respect to any Lot or if not paid, the amount then due and owing. The Association may make a reasonable charge for the issuance of such certificates which shall be paid at the time of request.

**6.9 Enforcement of Annual and Special Assessments and Maintenance Charges and of Assessment Lien.**

1. Association as Enforcing Body. The Association as the agent and representative of the Members shall have the right to enforce the provisions of this Declaration and CCR's. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, but not at the expense of the Association, by any appropriate action.

2. Remedies of Enforcement. If any Member fails to pay the Annual or Special Assessments or Maintenance Charges, the Association may enforce the payment of the Annual or Special Assessments and/or Maintenance Charges, including the Assessment Lien, by any manner provided by law. All costs of enforcement shall be borne by the Member who is delinquent.

**7. USE OF FUNDS**

7.1 Association's Funds Purposes. The Association shall apply all funds and property collected and received by it, including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source for the common good and benefit of SAGEWOOD and the Members by devoting said funds and property to the acquisition, construction, alteration, maintenance,

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repair and operation by any manner or method whatsoever of any and all land, properties, improvements and services within or without SAGEWOOD which may be necessary or desirable or beneficial to the general common interests of SAGEWOOD and its Members. The Association may borrow money in such amounts and at such rates upon such terms as is necessary or appropriate. The Association shall not be obligated to spend in any year any or all of the funds received by it in such year and may carry forward as surplus any balance remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property or the Common Elements and shall maintain insurance for the Board for errors and omissions. The Association shall accept full and complete responsibility for control, management, maintenance and liability of all Common Elements including, but not limited to, Association Land.

8. MAINTENANCE

8.1 **Common Elements and Rights of Way.** The Association shall maintain and otherwise manage all of the Common Elements, including, but not limited to, the landscape in walkways, paths and parking areas. The Association through its Board shall be the sole judge as to the appropriate maintenance of all Common Elements and other areas of the Property maintained by the Association. In the event that the need for maintenance or repair of Common Elements as maintained by the Association is caused by the willful or negligent act of any Member, Member's family, guests, invitees or designees, the costs associated therewith shall be added to and become a part of the Assessment to which such Member and Member's Lot is subject and secured by the Assessment Lien.

8.2 **Detention Basin Maintenance.** The Association shall be solely responsible for operation, maintenance, and liability for drainage structures and detention basins, and shall have an Arizona Registered Professional Civil Engineer prepare a certified inspection report for the drainage and detention/retention facilities at least once each year, and these regular inspection reports will be on file with the Association for review by City Staff, upon written request. City Staff may periodically inspect the drainage and detention/retention facilities to verify that scheduled and unscheduled maintenance activities are being performed adequately. The Association agrees to reimburse the City for any and all costs associated with maintaining the drainage and detention/retention facilities, should the City find the Association deficient in their obligation to adequately operate and maintain their facilities. The certified annual inspection report shall contain the following summaries: (a) either a statement that no maintenance work is needed at that time, or a list of repairs and work to be done to correct deficiencies or potential problems and/or to restore the aesthetics, followed by a letter of certification from an Arizona Registered Professional Civil Engineer stating that the recommended work has been satisfactorily completed; and (b) a statement either indicating that watershed conditions have not change since the previous inspection report, or stating that specific

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changes have occurred which alter or eliminate some of the design features and affect the level of service of the drainage and detention/retention systems. The City Engineer is to be notified if watershed conditions have changed to the extent that drainage and detention/retention systems no longer satisfy the requirements of the Floodplain Regulations found in the Tucson Zoning Code.

**8.3 Front Yard Landscaping and Maintenance.** The Front Yard of any Lot shall at all times be owned in fee simple by the Owner. Each Owner shall be liable for all costs of landscape, irrigation, design, planting, installation of landscape, irrigation and vegetation; except for initial landscaping and irrigation provided by Declarant and/or Developer; provided, however, that no landscaping or irrigation shall be commenced, installed or maintained upon a Lot until plans and specifications for same shall have been submitted to and approved in writing by the Board or by the Architectural Control Committee of the Association.

**8.4 Rear Yard Landscaping and Maintenance.** The Rear Yard of any Lot shall at all times be owned in fee simple and maintained solely and exclusively by the Owner of the Lot and no maintenance or other obligations regarding the Rear Yard of a Lot shall be assumed or borne by the Association. Notwithstanding anything to the contrary above, any Rear Yard landscaping or irrigation shall not be commenced, installed or maintained until plans and specifications for same shall have been submitted to and approved in writing by the Board and the Architectural Control Committee of the Association.

9. **ARCHITECTURAL REVIEW COMMITTEE**

**9.1 Establishment.** The Declarant shall establish an Architectural Review Committee to perform the functions of the Architectural Review Committee as described in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the Architectural Review Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration, the Plat or CCR's. The Architectural Review Committee shall consist of such number of regular members as the Declarant may designate and such members shall be appointed by the Declarant. The appointees need not be architects or owners and do not need to possess any special qualifications of any type except as the Declarant in its discretion may require. The Architectural Review Committee shall hold regular meetings and a quorum for such meetings shall consist of a majority of the regular members and a concurrence of a majority of the regular members shall be necessary for any decision of the Architectural Review Committee. The Architectural Review Committee shall follow the guidelines as set forth in this Declaration and CCR's in rendering its decisions and developing its rules and the decision of the Architectural Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

**9.2 Fee.** The Board may establish reasonable processing fees to defer the cost of the Architectural Review Committee in considering any requests for approval submitted to it which fee shall be paid at the time the request for approval is submitted.

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9.3 **Appointment of Architectural Review Committee Members.** Architectural Review Committee members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's right to appoint Architectural Review Committee members shall cease and the Board shall be vested in that right and all of the rights of the Declarant pertaining to the Architectural Review Committee at such time as the Declarant no longer owns any property at SAGEWOOD or when such right is expressly relinquished by Declarant to Board in writing, whichever first occurs.

10. **RIGHTS AND POWERS OF ASSOCIATION**

10.1 **Association's Rights and Powers as Set Forth in Articles and Bylaws.** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant may encompass any and all things which a natural person could do or which nor or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration, that are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. The Association, as the agent and representative of the owners, shall have the right to enforce the CCR's set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which shall have been executed pursuant to or subject to the provisions of this Declaration or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

10.2 **Contracts With Others for Performance of Association's Duties.** Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliate companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee as employed by or otherwise connected with Declarant through its affiliates, provided such fact is disclosed and the contract is fair and reasonable.

10.3 **Change of Use of Association Land and Procedure Therefor.** Upon the adoption of a resolution by the Board stating that in the Board's opinion the then-present use of a designated part of the Association Land or the Association's interest in the Common Elements is no longer in the best interests of the Owners and upon the approval of such resolution by a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use and in connection therewith construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use, provided such use shall be for the benefit of the Owners and consistent with the CCR's or zoning regulations restricting the use of the Association Land and Common Elements.

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10.4 **Ad Valorem Taxes.** The Association shall be responsible for the payment of taxes on the Common Elements and Association Land. Each Lot shall be responsible for their pro-rate share of any taxes so assessed and said taxes may be added to the Assessment as that term is used herein.

11. **GENERAL PROVISIONS**

11.1 **Term.** The covenants, conditions and restrictions of this Declaration shall remain in full force and effect for a period of ninety-nine (99) years from the date this Declaration is recorded. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each unless terminated by a written and recorded instrument approved by the Owners pursuant to the procedure set forth below for amendments to this Declaration.

11.2 **Amendments.** This Declaration may be amended by an instrument in writing signed and acknowledged by the Owners of two-thirds (2/3) of the Lots, and such amendment shall be effective upon its recordation with the Pima County Recorder. Notwithstanding anything in this Declaration to the contrary, Declarant shall have the superior right, so long as Declarant is the Owner of at least one (1) Lot to amend this Declaration by a written amendment signed only by the Declarant and then recorded.

11.3 **Enforcement and Non-Waiver.**

1. **Enforcement.** Except as otherwise provided herein, any Owner or Declarant (so long as Declarant owns at least one [1] Lot), shall have the right to enforce, by an proceeding at law or in equity, all restrictions, conditions, covenants, reservations or liens, now or hereafter imposed by provision of this Declaration.

2. **Violations and Nuisances.** Every act or omission whereby any provision of this Declaration is violated in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by Declarant, or any Owner or group of Owners within the subdivision.

3. **Violation of Law.** Each and every provision of this Declaration and any amendment hereto, shall be subject to all governmental zoning and building ordinances and subdivision regulations and any future amendments thereto.

4. **Remedies Cumulative.** Each remedy provided by these CCR's is cumulative and not exclusive.

5. **Waiver.** Failure by Declarant or by any Owner to enforce any of the provisions of these CCR's at any time, shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of these CCR's.

11.4 **Mortgagee Protection.** Notwithstanding any other provisions of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid

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the rights of the beneficiary under any deed of trust or mortgage upon a Lot or Dwelling Unit made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust or mortgage, such Lot or Dwelling Unit shall remain subject to this Declaration, as amended.

**11.5 Construction.**

**A. Governing Law.** The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the subdivision. This Declaration shall be construed and governed by the laws of the State of Arizona.

**B. Restriction Severable.** Notwithstanding the provisions of the foregoing paragraph, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**C. Rule Against Perpetuities.** In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event, said periods of time shall be reduced to a period of time which shall not violate the rules against perpetuities as set forth in the laws of the State of Arizona.

**D. Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

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

**11.6 Savings Clause.** Notwithstanding anything herein to the contrary, Developer shall have full and complete authority to perform such acts which it deems necessary for the development and sale of Lots within the subdivision.

**11.7 Binding Effect.** By acceptance of a deed for acquiring any ownership interest in any of the Property included within this Declaration, each Person or entity, for himself, or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Property, and hereby evidences his interest that all restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration

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shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

FIDELITY NATIONAL TITLE AGENCY, INC.  
AS TRUSTEE UNDER TRUST NUMBER 30,040.  
AND NOT IN ITS CORPORATE CAPACITY

By *Martha L. Hill*  
Its: TRUST OFFICER

DEVELOPER:

THE GENESEE COMPANY

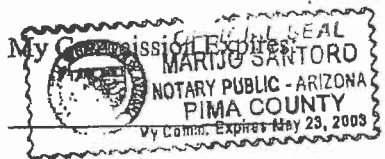
By *[Signature]*  
Its: Vice President

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF PIMA     )

On this 20th day of SEPTEMBER, 2000 before me, the undersigned Notary Public, personally appeared MARtha L. Hill, in his/her capacity as TRUST OFFICER of Fidelity National Title Agency, Inc., as Trustee Under Trust Number 30,040 and not in its corporate capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*[Signature]*  
Notary Public



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STATE OF ARIZONA )  
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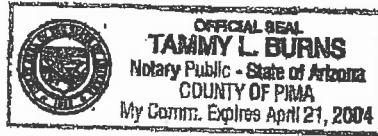
On this 18 day of September, 2000, before me, the undersigned Notary Public, personally appeared David Greenberg, in his/her capacity as Vice President of The Genesee Company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Tammy L. Burns  
Notary Public

My Commission Expires:

April 21, 2004



11403131

F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: CML  
DEPUTY RECORDER  
1951 OS1  
W  
OLCOTT LAW FIRM  
180 W MAGEE STE 164  
TUCSON AZ 85704



DOCKET: 12403  
PAGE: 902  
NO. OF PAGES: 1  
SEQUENCE: 20041950238  
10/07/2004  
NOTICE 12:15  
MAIL  
AMOUNT PAID \$ 10.00

WHEN RECORDED, RETURN TO:  
THE OLCOTT LAW FIRM, PLLC  
180 W. MAGEE, SUITE 164  
TUCSON, ARIZONA 85704

### NOTICE

#### OF COMMUNITY ASSOCIATION

Pursuant to A.R.S. §33-1256(J) or 33-1807(J), notice is hereby given of the following contact information:

- Official Name of Association:  
**SAGEWOOD HOMEOWNER'S ASSOCIATION, INC.**
- Other Name of Association: **SAGEWOOD HOA**
- Address of Association or Management Company:  
**P.O. BOX 30848, TUCSON, AZ 85751**
- Telephone number of Association or Management Company:  
**MPM COMMUNITY MANAGEMENT, LLC (520) 571-7400 FAX (520) 571-7401**
- Statutory Agent: **JONATHAN OLCOTT** 7062 E 21<sup>ST</sup>
- Community Document(s) Recording Information:

<u>Date</u>	<u>Recording Number</u>
2/21/01	11490 / 1328

STATE OF ARIZONA )  
County of Pima )

ACKNOWLEDGED before me this 23<sup>rd</sup> day of September  
by Richard Ratten (R) AGENT of the Association.



Melisa K. Rainey  
Notary Public

TUCSON 000001

**SAGEWOOD HOME OWNERS ASSOCIATION**  
**Rules & Regulations**

These Rules & Regulations are based on the CC&R's and give reference to Chapter and paragraph.

**(2.4) ANIMALS (See Pima County Code, Chapter 6.04)**

1. No more than 2 dogs or cats per household. Request for exemption for good cause must be made in writing to the Management Company/Board of Directors. The request must contain all information about the proposed pet. The decision will be provided in writing within 30 business days of receipt of request. No breeding of animals for purpose of resale is permitted on any lot.
2. Leash Law and Confinement. All dogs must be on a leash when off the owners property.
  - A. If confined to a back yard, owner must provide the following;
    1. A shelter per county code; 3 sides and a roof, large enough for the animal to stand up, turn around and lay down naturally; adequate insulation to protect the animal from temperature extremes; adequate ventilation; maintained in a clean and sanitary manner to prevent parasites and maintain the health of the animal. Bedding must be maintained in the same manner.
    2. Provide a daily supply of clean and sufficient water, not placed in the sun.
    3. Provide a daily supply of sufficient, nutritious food to maintain the animal's health
    4. Provide regular immunizations including rabies to maintain the animal's health and have documentation of same.
    5. License any dog over 4 months of age.
    6. Prevent dog from excessive barking and howling
    7. Prevent dog from damaging walls of property of adjacent neighbors.
    8. Clean up dog's solid waste a minimum of every 3 days and dispose of properly in your trash can. Take whatever steps necessary to eliminate odors from urine.
    9. Owner is responsible for actions of dog and is liable for any damage, real or personal which the dog does to any person or property. The Association assumes no responsibility or liability for any animal maintained by any owner.
    10. Any fencing, product used to control animal and prevent from jumping over the wall, must be pre-approved by the Committee and must not be visible above the wall.
  - B. Any violation of any of the preceding rules will be addressed per the Pima County Code and the Pima Animal Control by either the offended neighbor, or in the event 2 or more neighbors complain about the same dog, by the Association.
  - C. (2.5;2.28;2.29) NUISANCES; TRASH; UNSIGHTLY ARTICLES
    1. All trash, rubbish, garbage and animal solid waste is to be placed in the trash receptacle provided by the collection service with whom the home owner has contracted.
    2. Trash Containers are to be kept out of view of the street; put out the night before pickup after 7pm, and returned to the home by 7pm the night of pickup. In the event your collection company does not pick up the trash

on the scheduled day, contact them to determine when it will be picked up and keep the trash can out of view until that day and time.

3. No amplifiers of any kind may be placed either temporarily or permanently outside the dwelling. Music, noise, of guests is to be kept to a minimum and is to stop after midnight.
4. Dogs are not to be permitted to bark or howl constantly.

**D. LANDSCAPING; MAINTAINANCE (2.6; 2.13; 2.9; 2.10; 2.11; 2.12; 2.21)**

1. ALL LANDSCAPING CHANGES, ADDITIONS MUST BE APPROVED IN WRITING PRIOR TO INSTALLATION BY THE ARCHITECTURAL REVIEW COMMITTEE. See section E for penalties for violations.
2. Weeds must be removed on a regular basis either manually (preferred) or with the MINIMAL use of an herbicide.
3. Native growth in the common areas may not be destroyed or removed.
4. Bermuda grass or any pollen producing grass may not be used on any lot in Sagewood. Only grasses certified to be pollen free may be used.
5. Only gravel up to ¾" may be used on lots. River rock may only be used in an area where there is a drainage problem. This must be verified by inspection by the Architectural Review Committee.
6. Any addition to the dwelling must use the same materials, new, as used in the dwelling. Paint colors must be earth tones, same as the dwelling and pre-approved by the Committee. All necessary licenses/permits must be obtained by the owner.
7. Any structure placed in the back yard can not be visible above the wall. The only exception would be a play set which must be constructed of new materials consisting of PVC, metal pipe painted to compliment the dwelling, or a termite resistant wood, also painted to compliment the dwelling or stained.
8. No addition to any wall is permitted. All damage is to be repaired within a 30 day period with the same block.
9. A temporary tent type structure utilized for a gathering may be visible from the street for a period of no more than 48 hours (2 days)

**E. ARCHITECTURAL CONTROL; REVIEW COMMITTEE**

1. The Architectural Review Committee (ARC) has the right to inspect any lot with appropriate written notice including date and time, to determine compliance with the CC&R's and Rules and Regulations. This requires admittance of the ARC by the owner to the lot and the ARC can not be considered as trespassing in this instance.
2. **EXISTING VIOLATIONS;** Due to the failure of the prior Home Owners Association and Management company to ensure compliance by owners with regard to landscaping, maintainance, additions to walls and various structures placed on lots, the Sagewood Home Owners Association, Lewis Management and the ARC reserve the right to inspect the changes made and provide in writing to the homeowner the remedy/remedies needed to bring the property into compliance. The homeowner will have the right of a hearing to discuss the remedy/remedies and to come to an agreement as to when and how the remedy/remedies will be done.

3. Any violation which is not corrected within the time frame established by the ARC, the HOA, and/or Lewis Management will be addressed per the Resolution passed by the Board of Directors on January 3, 2003.

#### F. MOTOR VEHICLES; PARKING; REPAIRS – INOPERATIVE VEHICLES

1. No inoperable vehicle may be parked, stored, repaired, constructed, or reconstructed, on any lot or street in Sagewood.
  - a. Exception – emergency repairs. Routine maintenance may be done in the garage only.
  - b. No fluids from any vehicle may be stored or disposed of on any lot in Sagewood. All oil and other fluids must be taken to an appropriate place which accepts such fluids.
2. No vehicle of any kind may be parked on the sidewalks, the space between the sidewalk and the curb, or on the curbs in Sagewood. (The sidewalks are not built for this type of weight.)
3. Extra vehicles (each lot has 4 spaces available – 2 in the garage and 2 on the driveway) may be parked as follows;
  - On the South side of W. Bitter Orange
  - On the North side of W. Scots Pine from Romero to end
  - On the West side of Mint
  - On the East side of Confrey
4. Street parking is at your own risk.
5. If you have extra vehicles, or guests, the above rules apply and it may be necessary to park the extra vehicles off site.
6. No RV's, trailers, fifth wheels, motorhomes, may be stored on any lot in Sagewood or parked on the street for longer than 8 hours for the purpose of loading or unloading.
7. No commercial vehicles of any kind may be parked or stored in Sagewood.

#### G. RENTALS (2.8)

No room or rooms may be leased in Sagewood. The entire dwelling may be leased and it is the responsibility of the owner/landlord to provide copies of the Bylaws, CC&R's and the Rules and Regulations for Sagewood to the tenant. The tenant must comply with same.

#### H. RETENTION BASINS

1. No trash of any kind may be thrown into the retention basins or canal.
2. No one is allowed into the retention basins or canal. Any one seen entering these areas should be reported to the police and the management company.

#### I. POOLS

1. Any pool or spa must first have approval of the Architectural Review Committee and comply with the laws of the State of Arizona and Pima County before being installed.

#### J. SIGNS

1. No signs of any kind may be placed anywhere on any lot in Sagewood without prior approval of the Architectural Review Committee. This includes Sale and For Rent signs.

RESOLUTION OF THE BOARD OF DIRECTORS  
SAGEWOOD HOMEOWNERS ASSOCIATION  
ADOPTED JANUARY 20, 2003

ATTACHMENT A - FINES SCHEDULE

1. No fine shall be assessed until the Member who has committed a violation has been given due written notice.
2. An initial fine of \$50 for all first-time parking/motor vehicle violations and \$100 for any subsequent parking/motor vehicle violations.
3. \$10 per day per weed/landscape maintenance violation.
4. \$15 per occurrence for all trashcan violations shall be assessed against each specific violation.
5. Monetary fines for any other violations(s) of the governing documents and/or rules and regulations of the Association are as follows:

- |                          |   |       |
|--------------------------|---|-------|
| <input type="checkbox"/> | First Violation                                     | \$50  |
| <input type="checkbox"/> | Second Violation (of the same nature)               | \$100 |
| <input type="checkbox"/> | Third Violation (of the same nature)                | \$200 |
| <input type="checkbox"/> | Each Violation after the third (of the same nature) | \$500 |

6. It is the obligation of the Member to advise the Association in writing that the violation has ceased.

Effective Date. The effective date of this resolution is February 1, 2003.

DATED this 20 day of January, 2003

SAGEWOOD HOMEOWNERS ASSOCIATION

By: Phyllis Denson, President

Attest: Wacy Alvarez, Secretary