

When recorded return to:

Michael Lanata
1725 W. Greentree Dr., Suite 114
Tempe, Arizona 85284

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
ADRIAN FONTES
2018-0279628 04/13/18 12:13
PAPER RECORDING

0358651-68-1-1
hernandeze

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
ALTA VISTA**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS	2
ARTICLE 2 - PLAN OF DEVELOPMENT	7
2.1 General Declaration.....	7
2.2 Association Bound	8
2.3 Disclaimer of Representations.....	8
ARTICLE 3 - EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS.....	8
3.1 Easements for Use of Common Areas.....	8
3.2 Easements to Facilitate Development	9
3.3 Utility Easements	10
3.4 Easement for Maintenance of Association Maintained Areas.....	10
3.5 Easements for Encroachments.....	11
3.6 Delegation of Use.....	11
3.7 Dedications and Easements Required by Governmental Authority	11
3.8 Further Assurances	11
3.9 Assignment of Development Rights/Easements	11
3.10 Easement for Maintenance and Enforcement.....	11
3.11 Easement for Drainage	12
ARTICLE 4 - PERMITTED USES AND RESTRICTIONS	12
4.1 Residential Purposes.....	12
4.2 Animals	12
4.3 Temporary Occupancy and Temporary Building.....	13
4.4 Diseases and Insects	13
4.5 Antennas.....	13
4.6 Mineral Exploration	14
4.7 Trash Containers and Collection	14
4.8 Party Walls	14
4.9 Overhead Encroachments.....	15
4.10 Window Coverings.....	15
4.11 Garages and Driveways.....	15
4.12 Heating, Ventilating, and Air Conditioning Units.....	16
4.13 Solar Collection Panels or Devices	16
4.14 Basketball Goals.....	17
4.15 Vehicles.....	17
4.16 Landscaping and Maintenance	18
4.17 Prohibited Uses.....	19
4.18 Dust Control	19
4.19 Nuisances; Construction Activities	19
4.20 Drainage	20
4.21 Health, Safety, and Welfare	20
4.22 Leasing; Obligations of Tenants and Other Occupants	20
4.23 Environmental Protections	21
4.24 Property Restrictions	21
4.25 Model Homes	21
4.26 Repair of Building / Reconstruction.....	22
4.27 Signs	22

TABLE OF CONTENTS
(continued)

	<u>Page</u>
4.28 Utility Service.....	23
4.29 Right of Entry.....	23
4.30 Declarant’s Exemption.....	23
4.31 Crime and Drug Free Community.....	23
4.32 Sidewalks, Paths, and Walkways.....	23
4.33 Flags and Flagpoles.....	24
4.34 Clothes Drying Facilities.....	24
4.35 Variances.....	24
ARTICLE 5 - ARCHITECTURAL CONTROL.....	24
5.1 Approval Required.....	24
5.2 Architectural Committee.....	25
5.3 Owners In Good Standing.....	26
5.4 Review of Plans.....	26
5.5 Exclusions.....	27
5.6 Non-Liability for Approval of Plans.....	27
5.7 Inspection and Recording of Approval.....	27
5.8 Declarant Review.....	28
5.9 Governmental Approvals.....	28
ARTICLE 6 - ORGANIZATION OF ASSOCIATION.....	28
6.1 Formation of Association.....	28
6.2 Board of Directors and Officers; Management.....	29
6.3 Board’s Determination Binding.....	29
6.4 Indemnification.....	29
6.5 Role of Association.....	30
6.6 The Association Rules.....	30
6.7 Non-Liability of Officials/Personal Liability.....	30
6.8 Easements.....	31
6.9 Managing Agent.....	31
6.10 Designated Service Providers.....	31
ARTICLE 7 - MEMBERSHIPS AND VOTING.....	32
7.1 Owners of Lots; Identity of Members.....	32
7.2 Right to Vote; Assignment of Class B Voting Rights to Declarant.....	32
7.2.1 Class A.....	32
7.2.2 Class B.....	32
7.3 Membership Rights.....	33
7.4 Transfer of Membership.....	33
ARTICLE 8 - COVENANT FOR ASSESSMENTS AND CREATION OF LIEN.....	33
8.1 Creation of Assessment Right and Personal Obligation of Assessments.....	33
8.2 Purpose of Annual Assessments; Common Expenses.....	34
8.3 Lien for Assessments; Foreclosure.....	34
8.3.1 Assessment Lien.....	34
8.3.2 Effect of Nonpayment of Assessments; Remedies of the Association.....	35
8.3.3 Judgments.....	36
8.4 Declarant’s Exemption.....	36

TABLE OF CONTENTS
(continued)

	<u>Page</u>
8.5 Reduced Assessments.....	37
8.6 Deficiency Assessments/Designated Builders’ Subsidy	37
8.7 Computation of Annual Assessments; Annual Budget	37
8.8 Due Dates; Confirmation of Payment	38
8.9 Inadequate Funds.....	38
8.10 Maximum Annual Assessment.....	38
8.11 Special Assessments.....	38
8.12 Administrative Fee	39
8.13 Working Capital Fund.....	39
8.14 Capital Reserve Fund; Reserves	40
8.15 Capital Reserve Fee; Reserve Contribution	40
ARTICLE 9 - USE OF FUNDS; BORROWING POWER	41
9.1 Purposes for which Association’s Funds May Be Used.....	41
9.2 Borrowing Power	41
9.3 Surplus Funds; Association’s Rights in Spending Funds from Year to Year.....	41
ARTICLE 10 - INSURANCE.....	42
10.1 Scope of Coverage.....	42
10.2 Certificates of Insurance.....	43
10.3 Payment of Insurance Proceeds.....	43
10.4 Repair and Replacement of Damaged or Destroyed Property.....	43
10.5 Individual Responsibility; Disclaimer of Liability.....	43
ARTICLE 11 - MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT OR A DECLARANT AFFILIATE.....	44
11.1 Dispute Resolution	44
11.1.1 Consensus for Association Action	44
11.1.2 Alternative Method of Resolving Disputes	44
11.1.3 Claims	44
11.1.4 Mandatory Procedures.....	45
11.1.5 No Amendment of Section 11.1	47
11.2 Right to Cure Alleged Defect.....	47
11.3 Conflicts	49
11.4 Arizona Statute Compliance.....	49
11.5 Exclusions	49
11.6 Funds of the Association	49
11.7 Notices under Article 11.....	49
11.8 Scope.....	49
ARTICLE 12 - MAINTENANCE.....	50
12.1 Common Areas and Public Rights-of-Way	50
12.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas.....	51
12.3 Improper Maintenance and Use of Lots and Tracts; Association’s Right to Remedy	51
12.4 Conveyance of Common Areas.....	52
ARTICLE 13 - RIGHTS AND POWERS OF ASSOCIATION.....	52

TABLE OF CONTENTS
(continued)

	<u>Page</u>
13.1 Association’s Rights and Powers as Set Forth in Articles and Bylaws.....	52
13.2 Rights of Enforcement of Provisions of This and Other Instruments	52
13.3 Contracts with Others for Performance of Association’s Duties	54
13.4 Fines	54
13.5 Board of Directors Power to Enforce	54
13.5.1 Power to Enforce.....	54
13.5.2 Board Discretion to Regulate the Appeal Process.....	55
13.5.3 Binding Decision of the Board.....	55
13.5.4 Owner Acceptance of Board’s Arbitration.....	55
ARTICLE 14 - ANNEXATION AND DEANNEXATION; REPLAT	55
14.1 Annexation of Annexable Property	55
14.2 Annexation of Other Real Property	56
14.3 Deannexation Without Approval.....	56
14.4 Declarations of Annexation and Certificates of Deannexation	56
14.5 Reservation of Right to Resubdivide and Replat.....	56
ARTICLE 15 - TERM; AMENDMENTS; TERMINATION.....	56
15.1 Term; Method of Termination.....	56
15.2 Amendments.....	57
15.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions	57
ARTICLE 16 - MISCELLANEOUS.....	58
16.1 Disclosures	58
16.1.1 School Operations	58
16.1.2 Commercial Sites	58
16.1.3 City Parks	58
16.1.4 Undomesticated Creatures.....	58
16.2 Acknowledgment.....	58
16.3 Gates.....	58
ARTICLE 17 - MISCELLANEOUS.....	59
17.1 Interpretation of the Covenants	59
17.2 Severability.....	59
17.3 Change of Circumstances	60
17.4 Perpetuities and Restraints on Alienation.....	60
17.5 Laws, Ordinances, and Regulations	60
17.6 Rules and Regulations	60
17.7 References to the Covenants in Deeds	60
17.8 Time is of the Essence.....	60
17.9 Governing Law.....	60
17.10 Gender and Number	60
17.11 Captions and Titles.....	60
17.11 Notices.....	61
17.13 FHA/VA Approval.....	61
17.14 Waiver	61

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
ALTA VISTA**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ALTA VISTA (this “**Declaration**”) is made as of the 22nd day of February, 2018, by LENNAR ARIZONA, INC., an Arizona corporation (the “**Declarant**”).

WITNESSETH:

A. Declarant is the owner of certain real property located in the County of Maricopa, State of Arizona, legally described in *Exhibit “A”* attached hereto (the “**Initial Property**”) and incorporated herein by this reference, which is to be commonly known as “ALTA VISTA”.

B. Declarant desires to develop the Initial Property, together with such portions of the Annexable Property as are subsequently annexed to the Initial Property (collectively, the “**Property**”), into a planned residential community.

C. As part of the various stages of development of the Property, Declarant intends, without obligation: (i) that portions of the Property may be dedicated to the public for streets, roadways, drainage, flood control, and general public use; (ii) that Lots within the Property may be sold or otherwise conveyed to Builders for the Construction and sale of single-family homes; and (iii) that Supplemental Declarations may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements applicable to the Lots that are subject thereto.

D. Declarant has formed, or will form, a nonprofit corporation for the purpose of benefiting the Property, the Owners, and the Residents, which nonprofit corporation (hereinafter termed the “**Association**”) will: (i) hold title to, operate, manage, and maintain any Common Areas and other designated areas in the Property, including Association Maintained Areas; (ii) establish, levy, collect, and disburse the Assessments and other charges imposed hereunder; and (iii) as the agent and representative of the Members of the Association, and of the Owners and the Residents of the Property, administer and enforce this Declaration and enforce the use and other restrictions imposed on various parts of the Property.

E. Declarant may, without obligation, seek approval of the Property by the Federal Housing Administration (“**FHA**”), the Veterans Administration (“**VA**”), the Federal National Mortgage Association (“**FNMA**”), the Federal Home Loan Mortgage Corporation (“**FHLMC**”) or by any other governmental agencies or financial institutions whose approval Declarant deems necessary and desirable.

F. In order to cause the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements (the “**Covenants**”) to run with the Property and to be binding upon the Property and all Owners and Residents thereof, and their successors and assigns, from and after the date of the Recording of this Declaration, Declarant hereby declares that all conveyances of the Property shall be subject to the Covenants herein set forth.

NOW, THEREFORE, Declarant hereby declares, covenants, and agrees as follows:

ARTICLE 1
DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

“Affiliate” of a Person shall mean a Person that controls, is controlled by, or is under common control with such other Person.

“Alleged Defect” has the meaning given to it in *Section 11.2* hereof.

“Annexable Property” shall mean any real property within two miles from any portion of the exterior boundary of the Initial Property. No part of the Annexable Property shall be subject to this Declaration until such portion of the Annexable Property is annexed to the Property pursuant to the provisions of this Declaration.

“Annual Assessment” shall mean the Assessments imposed for annual expenses pursuant to *Section 8.7*.

“Architectural Committee” shall mean the committee to be created pursuant to *ARTICLE 5* of this Declaration.

“Architectural Committee Rules” shall mean the rules adopted by the Architectural Committee, as amended and supplemented from time to time, governing the operations of the Architectural Committee including, without limitation, regarding the process of review of architectural submittals.

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

“Assessable Lot” means, during Declarant Control Period, a Lot owned by a Person other than Declarant or an Affiliate of Declarant. After the termination of Declarant Control Period, all Lots shall be Assessable Lots.

“Assessment” shall mean the charges levied and assessed against each Membership pursuant to *ARTICLE 8* hereof.

“Assessment Lien” shall mean the lien created and imposed by *Section 8.3* hereof.

“Association” shall mean the Arizona nonprofit corporation organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers, and duties set forth in this Declaration. Declarant hereby reserves the exclusive right to cause such Association to be incorporated. It is the intent of Declarant that the Association shall be named “ALTA VISTA HOMEOWNERS ASSOCIATION”.

“Association Maintained Areas” shall mean all of the Common Areas, any public rights-of-way or portions thereof that are required by the County or the City, pursuant to applicable law or agreement, to be maintained by the Association, any areas for which the Association has

maintenance, repair, and/or operational responsibility by the terms of this Declaration, any Supplemental Declaration, any Declaration of Annexation, or any other applicable real property covenants, by requirements of governmental authorities, or by contract, or any other designated areas. Association Maintained Areas can also include portions of Lots if designated by a Supplemental Declaration or any other Recorded document executed by Declarant or the Association.

“Association Rules” shall mean the rules adopted by the Board, as amended and supplemented.

“Board” shall mean the Board of Directors of the Association.

“Bound Party” shall have the meaning set forth in *Section 11.1.2* hereof.

“Builder” shall mean an Owner that is in the business of constructing and selling completed Dwelling Units to third parties and that intends to construct and sell Dwelling Units on the Lots it owns or, in the case of any Lots within the Property that are either (i) subject to a Recorded option agreement pursuant to which a Person who would be a Builder if it was the Owner of such Lots, has the option to purchase such Lots, (ii) owned by a Person who holds title to the Lots in the capacity of a land banker and who has entered into a purchase agreement with a Person who would be a Builder if such Person owned the Lots, or (iii) owned by a Person in the business of holding lots without Dwelling Units for investment and selling to Builders, then in any such event, such Lots shall be deemed to be owned by a Builder under this Declaration. The term Builder includes any Affiliate of a Builder.

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

“Capital Improvements” shall mean those items owned, repaired, or maintained by the Association that individually have an expected useful life of three (3) years or greater and exceed \$1,000.00 in value. Similar items that are individually valued less than \$1,000.00, shall be deemed Capital Improvements when all such items together, multiplied by the single value of one like item, exceed a total of \$1,000.00.

“Capital Reserve Fund” shall mean the Association’s fund for the periodic maintenance, repair and replacement of the major components of the Association Maintained Areas, as provided for in *Section 8.14*.

“Certificate of Deannexation” shall mean a certificate Recorded pursuant to the provisions of *ARTICLE 14* below for the purpose of deannexing any portion of the Property from the Property.

“City” shall mean the City of Phoenix.

“Claimant” shall mean any Person that has a claim against Declarant or a Builder under this Declaration.

“Claims” shall have the meaning set forth in *Section 11.1.2* hereof.

“Class A Member” shall have the meaning set forth in *Section 7.2.1* hereof.

“Class B Member” shall have the meaning set forth in *Section 7.2.2* hereof.

“Common Area” and **“Common Areas”** shall mean all real property and the Improvements or amenities thereon that may from time to time be owned or leased by the Association or otherwise held by the Association for the common use and enjoyment of the Owners. Any real property, and Improvement or amenities thereon, that are described as “common areas” in a Supplemental Declaration, a Declaration of Annexation, or a Plat shall be deemed to be “Common Areas” for the common use and enjoyment of the Owners, in the manner provided in such document, and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration. Common Areas may be abandoned or modified as provided in this Declaration.

“Common Expenses” shall mean the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

“Community Documents” shall mean, collectively, this Declaration, all Supplemental Declarations, all Declarations of Annexation, the Bylaws, the Articles, the Association Rules, the Design Guidelines, and the Architectural Committee Rules, as amended and supplemented from time to time.

“Construction” shall mean any de-vegetation, excavation, or grading work within the Property and the work of construction, erection, or installation of an Improvement within the Property, including on a Lot, that would be Visible From Neighboring Property.

“County” shall mean Maricopa County.

“Declarant” shall mean and refer to the above recited Declarant and/or any Person or Persons to whom all or a portion of rights reserved to Declarant under this Declaration are assigned pursuant to a written, Recorded document expressly assigning such rights. Notwithstanding anything contained herein to the contrary, an assignment of all or any portion of Declarant’s rights or a sharing of those rights with any Builder shall not deprive the assignor of any protections, indemnities, or freedoms from liability that would otherwise exist under this Declaration, if the assignor had maintained all of Declarant’s rights hereunder. The term Declarant includes any Affiliate of Declarant.

“Declarant Control Period” shall mean the period commencing upon the Recording of this Declaration and ending on the later to occur of (a) the date that Declarant or a Designated Builder conveys the last Lot to a Purchaser or (b) the date that neither Declarant nor any Designated Builder owns any Lot or other portion of the Property. If the Declarant Control Period expires, the Declarant Control Period shall be reinstated automatically upon the annexation of any portion of the Annexable Property in accordance with *Section 14.1* of this Declaration for purposes of determining whether a Lot is an Assessable Lot.

“Declaration” shall mean this Declaration of Covenants, Conditions, and Restrictions, as amended or supplemented from time to time.

“Declaration of Annexation” shall mean a declaration Recorded pursuant to the provisions of *ARTICLE 14* below for the purpose of annexing any portion of the Annexable Property to the Property.

“Deed” shall mean a deed or other instrument conveying the fee simple title to any portion of the Property from one Owner to another Owner.

“Deficiency Assessments” shall mean Assessments that are imposed against Lots owned by Declarant and Designated Builders pursuant to the provisions of *Section 8.6* hereof.

“Design Guidelines” shall mean the standards and guidelines adopted by the Board, as amended or supplemented from time to time.

“Designated Builder” shall mean any Builder that is designated by Declarant as a “Designated Builder” in a Recorded instrument, a Supplemental Declaration or in a written notice given by Declarant to the Association, and by such designation received an assignment of such rights as may have expressly been permitted in this Declaration and set forth in the instrument making such designation.

“Dwelling Unit” shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

“First Mortgage” shall mean a deed of trust or mortgage Recorded against a Lot that has priority over all other deeds of trust or mortgages Recorded against the same Lot.

“First Mortgagee” shall mean the grantee or beneficiary of a First Mortgage.

“Gates” shall mean the gated entrances described in *Section 16.3.1*.

“Improvement” shall mean (a) any Dwelling Unit, building, fence, or wall; (b) any swimming pool, tennis court, basketball goal, backboard or sports apparatus, or playground equipment; (c) any road, driveway, or parking area; (d) any trees, plants shrubs, grass, or other landscaping improvements of any type or kind; (e) any statuary, fountain, artistic work, craft work, figurine, or ornamentation of any type or kind; (f) any other structure of any type, kind, or nature; (g) any grading, earth work, drainage work, and utility improvements or work; and (h) any changes in the physical appearance of the Property, including exterior paint, which in any way alters the exterior appearance of any part of a Lot and is Visible From Neighboring Property.

“Initial Property” shall mean the real property legally described in *Exhibit “A”* attached hereto, which shall initially be all of the real property subject to this Declaration.

“In Good Standing” shall mean that the Owner or Member is not delinquent in the payment of any Assessment or any other amounts owed to the Association, and the Owner, as well as any resident or guest, is not in violation of the Community Documents.

“Lot” shall mean a portion of the Property intended for independent ownership and use and designated as a lot on a Plat and, where the context indicates or requires, shall include any Dwelling Unit. Notwithstanding the foregoing to the contrary, if a Lot is owned by the Association and used for open space or other purposes generally benefiting the Owners, it shall be considered part of the Common Area.

“Maintenance” shall mean care, inspection, maintenance, operation, repair, repainting, restoration, renovation, replacement, and reconstruction.

“Maintenance Charges” shall mean any and all costs assessed on an Owner pursuant to *ARTICLE 12* hereof.

“Maintenance Standard” shall mean the standard of Maintenance of Improvements situated on Lots established from time to time by the Board or, in the absence of any standard established by the Board, the standard of Maintenance of Improvements situated on Lots generally prevailing throughout the Property or on Common Area.

“Maximum Annual Assessment” shall mean the maximum amount for annual Assessments allowed by *Section 8.10* hereof.

“Member” shall mean any Person holding a Membership in the Association pursuant to this Declaration.

“Membership” shall mean a membership in the Association and the rights granted to the Owners and Declarant pursuant to *ARTICLE 7* hereof to participate in the Association.

“Modification” shall mean an addition, alteration, repair, change, or other work that in any way alters the exterior appearance of any Improvement located on a Lot that is Visible From Neighboring Property.

“Owner” shall mean (when so capitalized) the Record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple title interest of any portion of the Property. An Owner shall include a purchaser under a contract for the conveyance of real property, subject to the provisions of A.R.S. Section 33-741 et seq. An Owner shall not include: (i) Persons having an interest in a Lot merely as security for the performance of an obligation or as a lessee or (ii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract that are intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. Section 33-801 et seq., the trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

“Person” shall mean a natural person, corporation, partnership, limited liability company, trustee, or any other legal entity.

“Plat” shall mean any subdivision plat Recorded with respect to any portion of the Property.

“Property” shall mean the Initial Property described in *Exhibit “A”* attached hereto, together with all Improvements constructed thereon from time to time, and all portions of any real property annexed to the Initial Property and subjected to this Declaration pursuant to the provisions of *ARTICLE 14* hereof. The Property shall not be deemed to include any portion of the Annexable Property until such portion is annexed to the Property pursuant to the applicable provisions hereof.

“Purchaser” shall mean any Person, other than Declarant, an Affiliate of Declarant, or a Designated Builder, who becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to Declarant or a Designated Builder for use as a model in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of Declarants rights under this Declaration.

“Record,” “Recording,” or “Recordation” shall mean placing an instrument of public record in the office of the County Recorder, in the State of Arizona, and **“Recorded”** shall mean having been so placed of public record.

“Reduced Assessments” shall mean the Assessments payable by Designated Builders at the rate of twenty-five percent (25%) of Annual Assessments, as provided in *Section 8.5* hereof.

“Reserve Account” shall mean the separate bank account established for the Association into which the Capital Reserve Fund shall be deposited as provided in *Section 8.15* hereof.

“Reserve Contribution” shall mean the amount payable by Purchasers to the Association upon acquisition of a Lot to enhance the Association’s Capital Reserve Fund, as provided in *Section 8.15* hereof.

“Resident” shall mean each natural person legally occupying or residing in a Dwelling Unit.

“Special Assessment” shall mean any Assessment levied and assessed pursuant to *Section 8.11* hereof.

“Subsidiary Association” shall mean an Arizona nonprofit corporation, its successors and assigns, established for the purpose of administering and enforcing the provisions of any Supplemental Declaration.

“Supplemental Declaration” shall mean a declaration of covenants, conditions, and restrictions (or similar instrument) approved by Declarant (or the Board after Declarant no longer owns any portion of the Property or owns or holds an option to purchase any interest in any portion of the Annexable Property or after the earlier relinquishment by Declarant of such approval rights) and Recorded against a portion of the Property as a supplement to this Declaration setting forth additional or modified provisions for such portion of the Property.

“Tract” means an area of the Property that is subject to this Declaration but has not been subdivided into Lots and related amenities and rights-of-way by a subdivision Plat or other Recorded instrument creating Lots and other related amenities and rights-of-way.

“Visible From Neighboring Property” shall mean, with respect to any given object, that such object is, or would be, taller than the surrounding fence line or visible from any public rights-of-way, private streets, roadways, or through rear yard view fencing.

“Working Capital Contribution” shall mean the contribution by Purchasers to the working capital of the Association required by *Section 8.13* hereof when a Lot and Dwelling Unit are acquired.

ARTICLE 2
PLAN OF DEVELOPMENT

2.1 General Declaration. Declarant intends that the Property be developed, used, and enjoyed in accordance with and pursuant to each Plat by subdividing the Property into Lots and Tracts and by selling and conveying Lots to Purchasers. All Lots and Tracts within the Property shall be held, conveyed, hypothecated, encumbered, occupied, built upon, or otherwise used, improved, or transferred in whole or in part, subject to this Declaration; provided however, that such portions of the Property as are dedicated to the public or a governmental entity for public

purposes shall not be subject to the Declaration while owned by the public or the governmental entity, although any restrictions imposed in this Declaration upon the Owners or the Residents concerning the use and maintenance of such portion or portions of the Property shall at all times apply to the Owners and the Residents. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of the Property, and is established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and every part thereof. This Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and Residents, and each of their successors in interest. By acceptance of a Deed or by acquiring any interest in any portion of the Property, each Person, for himself, his heirs, personal representatives, successors, transferees, and assigns, binds himself, his heirs, personal representatives, successors, transferees, and assigns, to all of the terms and conditions now or hereafter imposed by this Declaration. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development, sale, and use of the Property and hereby evidences his interest that all terms and conditions contained in this Declaration shall run with the land and be binding upon all subsequent and future owners, grantees, purchasers, assignees, tenants, and transferees thereof. Each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial and prohibitive to the Association and all Owners. Declarant, its successors, assigns, and grantees, covenant and agree that the Lots, Tracts, Memberships in the Association, and the other rights appurtenant to such Lots and Tracts shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Tract even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Tract.

2.2 Association Bound. Upon the Recording of this Declaration in the Official Records of the County, the covenants, promises, and other requirements contained herein shall be binding upon and shall benefit the Association.

2.3 Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranty or representation whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that the Property is or will be committed to or developed for a particular (or any) use or that, if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Tract in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by accepting a Deed to a Lot or Tract, agrees that neither Declarant nor any Builder shall have any liability with respect thereto.

ARTICLE 3

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

3.1 Easements for Use of Common Areas. Declarant and every Owner and Resident of the Property shall have a right and easement of enjoyment in and to the Common Areas that shall be appurtenant to, and shall pass with the title to, every Lot and Tract subject to the following provisions:

- (a) The right of the Association to suspend the voting rights of any Member, the right to use the facilities and other Common Areas by any Member, and any

other rights incidental to membership (i) for any period during which any Assessment against the Member's Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, the Association Rules, or any other Community Document; and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period; provided, however, that a Member's rights may only be suspended under procedures sufficient to comply with applicable law and that the Association may not restrict an Owner's access to his Lot. Nothing herein shall authorize the Board to limit ingress or egress to or from an Owner's Lot.

- (b) The right of the Association to regulate the use of the Common Areas through the Association Rules and to prohibit or limit access to certain Common Areas, such as specified landscaped areas, provided however, nothing herein shall authorize the Board to limit ingress or egress to or from an Owner's Lot. The Association Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof and otherwise shall serve to promote the best interests of the Owners and Residents.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any entity for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by the Members holding at least two-thirds (2/3rds) of each Class of Membership in the Association have executed an instrument agreeing to such dedication or transfer.
- (d) The right of the Association to change the use of the Common Areas in accordance with this Declaration, provided however, nothing herein shall authorize the Board to limit ingress or egress to or from an Owner's Lot.
- (e) The right of the Association to change the size, shape, or location of Common Areas, to exchange Common Areas for other lands or interests therein that become Common Areas and to abandon or otherwise transfer Common Areas so long as, in each case, either (i) the Board determines that the Members are not materially or adversely affected, or (ii) Members holding at least two-thirds (2/3rds) of each Class of Membership in the Association have executed an instrument agreeing to such change in size, shape or location, or exchange, abandonment, or transfer.

3.2 Easements to Facilitate Development. Declarant hereby reserves to itself and to each Designated Builder expressly granted such rights, their successors and assigns, and to its contractors, subcontractors, suppliers, engineers, architects, and agents, a non-exclusive blanket easement over and through the Property (excluding the interior of any occupied Dwelling Unit) for the purposes of facilitating the development, marketing, sale, and/or lease of the Property, which shall include without limitation: (a) the Construction of all Improvements on the Common Area that Declarant deems necessary; (b) the Construction of Dwelling Units and other Improvements on Lots owned by the Declarant or such Designated Builder; and (c) the storage of supplies of building materials and equipment necessary to construct Improvements on the Common Area and such Lots owned by the Declarant or Designated Builder.

Declarant hereby reserves to itself, its affiliates, successors, and assigns, and to each Designated Builder expressly granted such right, the right to: (a) use any Lots owned or leased by it, any other Lot with written consent of the Owner thereof, or any portion of the Common Areas as models, management offices, sales offices, a visitors' center, construction offices, customer services offices or sales office parking areas; and (b) install and maintain on the Common Areas, any Lot owned or leased by Declarant, or any other Lot with the consent of the Owner thereof, such marketing, promotional, or other signs as Declarant deems necessary for the development, marketing, sale, and/or lease of the Property or any other property owned by Declarant. So long as Declarant or a Designated Builder is selling and/or marketing the Property (or any other property owned by Declarant), Declarant shall have the right to restrict the use of parking spaces situated on the Common Area and to reserve such parking spaces for use by prospective Purchasers of Lots, Declarant's contractors, subcontractors, suppliers, agents, or employees, or other Persons engaged in sales, marketing, or Construction activities for or on behalf of Declarant.

Neither Declarant nor any Designated Builder shall exercise any of the rights or easements reserved by or granted pursuant to this *Section 3.2* in such a manner as to unreasonably interfere with the Construction, development, or occupancy of any part of the Property.

3.3 Utility Easements. A nonexclusive, perpetual blanket easement is hereby created over and through the Common Areas in locations as specifically approved by Declarant or the Association, and a limited, specific easement over and through those portions of the Property shown as public utility easement areas on any Plat is hereby created, for the purpose of:

- (a) Installing, constructing, operating, maintaining, repairing, or replacing equipment used to provide to any portion of the Property any utilities including, without limitation, water, sewer, gas, electricity, telephone, internet, and television service, whether public or private;
- (b) Ingress and egress to install, construct, operate, maintain, repair, and replace such equipment; and
- (c) Exercising the rights under the easement.

Such easement is hereby granted to any Person providing such utilities or installing, constructing, maintaining, repairing, or replacing equipment related thereto. All utility installations including, without limitation, electrical installations, must be placed underground unless the prior written consent is given by the Declarant while there is a Class B Membership, or by the Board after the Class B Membership ceases to exist. Any pipes, conduits, lines, wires, transformers, and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by Declarant, where contemplated on any Plat, or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of Construction if approved by Declarant. The Person installing a utility pursuant to this easement shall install and construct, and the Person providing the service shall maintain, repair, or replace, the equipment used to provide or meter utilities as promptly and expeditiously as possible in a good and workmanlike manner free of any mechanics' or materialmens' liens, and shall restore the surface of the land and the improvements situated thereon to their original condition as soon as possible.

3.4 Easement for Maintenance of Association Maintained Areas. The Association shall have an easement upon and over all Association Maintained Areas and in any landscape easement

shown on any Plat for the purpose of maintaining the landscaping and drainage facilities within such areas pursuant to the provisions of this Declaration. The easement provided in the preceding sentence shall terminate with respect to any Association Maintained Area on the date the Association's responsibilities with respect to maintaining the landscaping or drainage facilities within any such Association Maintained Area terminates.

3.5 Easements for Encroachments. If any Improvement constructed by or for a Builder or Declarant on any Lot or Tract now or hereafter encroaches on any other portion of the Property by an amount of deviation permitted by customary construction tolerances (but in no event more than forty-two (42) inches as measured from any point on the common boundary along a line perpendicular to such boundary), and which encroachment is minor or inconsequential in nature and does not materially interfere with the intended use of the burdened property, a perpetual easement is hereby granted to the extent of any such encroachment, and the owner of the encroaching Improvement shall also have an easement for the limited purpose of the Maintenance of the encroaching Improvement.

3.6 Delegation of Use. Any Member may, in accordance with this Declaration and the Association Rules and the limitations therein contained, delegate his right of enjoyment in the Common Areas and facilities to the members of his family or his Residents.

3.7 Dedications and Easements Required by Governmental Authority. Declarant hereby reserves to itself and its successors and assigns (including the Association after the expiration of the Declarant Control Period), the right to make any dedication and to grant any easements, rights-of-way, and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

3.8 Further Assurances. The easements granted and reservations made to Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by Declarant. Upon written request of Declarant, the Association and each Owner shall from time to time sign, acknowledge, and deliver to Declarant such documents or instruments deemed necessary by Declarant to evidence or confirm the reservation or grant of rights and easements to Declarant under this Declaration.

3.9 Assignment of Development Rights/Easements. Declarant may make limited temporary assignment of its easement rights under this Declaration to any Person performing Construction or Maintenance on any portion of the Property. Any such assignment shall be in writing.

3.10 Easement for Maintenance and Enforcement. Declarant, the Association, and their respective directors, officers, agents, contractors, and employees, the Architectural Committee, and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Dwelling Unit) for:

- (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents;
- (b) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements that are or were approved in writing by the Architectural

Committee, and that all Improvements are being properly maintained as required by the Community Documents;

- (c) correcting any condition originating on a Lot or in the Common Area threatening another Lot or the Common Area;
- (d) performing installation or Maintenance of utilities, landscaping, or other Improvements located on the Lots for which the Association is responsible for Maintenance; or
- (e) correcting any condition that violates the Community Documents.

3.11 Easement for Drainage. Declarant hereby reserves to itself and its successors and assigns, the right to grant any drainage easements over, under, across or through the Common Areas in such locations as Declarant determines.

ARTICLE 4 **PERMITTED USES AND RESTRICTIONS**

4.1 Residential Purposes. All Lots and Dwelling Units within the Property shall be used for single-family residential purposes. No gainful occupation, profession, business, trade, or other nonresidential use shall be conducted on any Lot or in any Dwelling Unit, provided that an Owner or any Resident may conduct limited business activities in a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectible by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity conforms to all applicable zoning requirements and all other applicable laws; (c) the business activity does not involve door-to-door solicitation of other Owners or Residents (other than door-to-door solicitation in connection with political activity conducted between sunrise and sunset and such Owner complies with the identification requirements contained in A.R.S. Section 33-1808(G)(2)); (d) the business activity does not generate drive-up traffic or customer or client parking; and (e) the business activity is consistent with the residential character of the Property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other Owners or Residents, as may be determined in the sole discretion of the Board. No Lot will ever be used, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, commercial storage, vending, or other similar uses or purposes; provided however, that Declarant and its agents, successors, or assigns, may use the Property, including any vacant Lots, for any of the foregoing uses as may be required, convenient, or incidental to the development, marketing, sale, and/or lease of the Property including, without limitation, for the purposes of a business office, management office, storage area, construction yard, signage, model sites and display, and sales office during the Construction and sales period. After the expiration of the Declarant Control Period, the Board shall have broad authority to enact and adopt rules and regulations to implement this *ARTICLE 4*, and to exempt or make specific exceptions for a particular Dwelling Unit on a case-by-case basis.

4.2 Animals. No animal, bird, poultry, or livestock may be kept on any Lot other than a reasonable number of generally recognized house or yard pets, and only to the extent that they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have authority to determine what is a reasonable number of generally recognized house or yard pets for any particular Lot, and the Board's determination shall be final. All house or yard pets permitted under this *Section 4.2* shall be confined to an Owner's Lot; except that a dog may

be permitted to leave an Owner's Lot if such dog is at all times kept on a leash and is not permitted to enter upon any other Lot. Any Person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict portions of the Common Area on which dogs are permitted.

No animal, bird, poultry, or livestock (if permitted by the Association) shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing, or confinement of any animal, bird, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property; provided, however, it is not the intent of this restriction to prohibit structures in the rear yard of a Lot that are Visible From Neighboring Property solely because of the existence of rear yard view fencing on or near the boundary of the Lot upon which the structure is situated. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, for the purposes of this paragraph, whether a particular animal, bird, poultry, or livestock is a nuisance or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein and in this Declaration. So long as there is a Class B Membership, Declarant may adopt such rules and regulations relating to animals permitted and maintained on the Property. Thereafter, the Board may adopt such rules and regulations relating to animals permitted and maintained on the Property.

4.3 Temporary Occupancy and Temporary Building. No mobile home, basement of any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind shall be used at any time for a Dwelling Unit, either temporary or permanent. Temporary buildings, mobile homes, or structures may be used during the Construction of a Dwelling Unit on any Lot, in such locations as they are approved in writing by the Architectural Committee in advance provided that they shall be removed immediately after the completion of Construction. This *Section 4.3* shall not prevent Declarant's use or a Designated Builder's use of a mobile home for the purpose of serving as a Construction office or selling Lots on the Common Area or any Lot owned by Declarant or the Designated Builder, to the extent permitted by Declarant.

4.4 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Tract that shall induce, breed, or harbor infectious plant diseases or noxious insects.

4.5 Antennas. Subject to applicable law, no antenna, aerial, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radio) signals of any kind (collectively referred to herein as "**antennas**") will be allowed outside any Dwelling Unit so as to be Visible From Neighboring Property, unless approved by the Architectural Committee; provided, however, with respect to antennas and other devices for the reception of video programming signals covered by 47 CFR part 1, Subpart S, Section 1.4000 (or any successor provision promulgated under the Telecommunications Act of 1996, as amended from time to time) (collectively the "**Permitted Antenna**"), an Owner may install a Permitted Antenna on his Lot if written notice identifying the type of Permitted Antenna is given to the Association and, to the extent the following can be done without precluding the reception of an acceptable quality signal, the Permitted Antenna is installed so as to be inconspicuous from adjacent Lots and Common Area in a manner that is architecturally compatible with the overall theme of the Property. This provision shall be interpreted in a manner to be consistent with the Telecommunications Act of 1996, as amended from time to time, and the regulations promulgated thereunder. The Architectural Committee may permit the placement and operation of one or more aerial satellite dishes or satellite communication systems, and/or other apparatus and equipment for an antenna or cable system for the benefit of all or portions of the Property.

Subject to any limitations imposed by state or federal law, any transmission cable for a receiver to a Dwelling Unit must be underground. The Board is hereby vested with the broadest discretion to enact rules and regulations to implement this Article to conform to state and federal law. The Board may enact rules and regulations that are more restrictive than this *Section 4.5*, if permissible by federal and state law. No Owner may place antennas on Common Areas or Association Maintained Areas.

4.6 Mineral Exploration. With the exception of wells that may be operated on Common Area, as approved by the Declarant or the Board, no Lot or Tract shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

4.7 Trash Containers and Collection. No garbage, trash, or recycling items shall be placed or kept on any Lot or Tract, except in covered containers of a type, size, and style that are approved by the Board and/or supplied by the City. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available on days of collection only. All rubbish, trash, or garbage shall be promptly removed from all Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Tract.

4.8 Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots, or between Lots and Common Areas, shall be as follows:

Each wall that is located on or near the boundary between two Lots shall constitute a party wall and, to the extent not inconsistent with this *Section 4.8*, the general rules of law regarding party walls shall apply.

The Owners of contiguous Lots who share a party wall shall both have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. Except as otherwise provided in this *Section 4.8* or in an applicable Supplemental Declaration or Declaration of Annexation for the portion of the Property subject to such Supplemental Declaration or Declaration of Annexation, the Owners of contiguous Lots who share a party wall shall each pay one-half (1/2) of the cost of any maintenance, repair, or replacement of the party wall. Either of such Owners may perform any necessary repair, maintenance, or replacement of the party wall and, in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (1/2) of such cost. In the event that any party wall is damaged or destroyed through the negligence or willful act or omission of any Owner, his agents, tenants, licensees, guests, invitees, or family, it shall be the obligation of such Owner to rebuild and repair the party wall without cost to the other Owner or Owners who share the party wall.

The right of any Owner to request or gain contribution from any other Owner under this *Section 4.8* shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to, or rebuild a party wall shall first obtain the written consent of the adjoining Owner.

In the event any party wall encroaches upon a Lot or Common Area, a valid easement for such encroachment and for the maintenance of the party wall shall and does exist in favor of the Owners of the Lots that share the party wall.

Declarant hereby reserves to itself and to its successors and assigns and, after the expiration of the Declarant Control Period, to the Association, a perpetual non-exclusive easement over, under, upon, and across the Lots for the purpose of repairing or relocating a party wall without the consent of the Owners who share the use of the party wall.

Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior consent of all Owners of any interest therein whether by way of easement or in fee.

In the event of a dispute between Owners with respect to the Construction, repair, or rebuilding of a party wall, or with respect to the sharing of the cost thereof, either adjoining Owner may submit the dispute to the Board, the decision of which shall be binding.

Notwithstanding anything contained herein, to the contrary, and unless otherwise agreed in writing by the Association and any affected Owner, in the case of walls or fences on the exterior perimeter boundaries of the Property or on the exterior perimeter boundaries of Lots facing Common Area ("**Perimeter Walls**"), the Association, subject to Section 12.3 hereof, will repair and repaint the exterior surface of the Perimeter Walls which face the Common Area or outside of the Property, and the Owner will be responsible for repairing and repainting that portion which faces into the Lot. In addition, subject to Section 12.3 hereof, the Association shall maintain, repair, and replace any wrought iron view fencing, whether it be a party wall or a Perimeter Wall. No Owner shall allow landscaping to impede or otherwise interfere with the maintenance and repair of a Perimeter Wall or view fencing.

Notwithstanding anything contained herein to the contrary, walls or fences constructed by Declarant, any Builder, or the Association on Common Areas where the wall or fence does not border on a Lot shall be maintained by the Association, subject to the provisions of *Section 12.3* hereof, except that each Owner of a Lot shall be responsible for painting the portion of the party wall facing his Lot or the portion thereof that is not a portion of the Common Area.

4.9 Overhead Encroachments. No tree, root, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, party wall, Common Area, or other Lot from ground level to a height of eight feet (8') without the prior written approval of the Architectural Committee. No tree, root, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach visibly upon any other Lot.

4.10 Window Coverings. Within ninety (90) days of the initial conveyance of a Lot with a Dwelling Unit constructed thereon to an Owner from Declarant or a Builder (or by a trustee for the benefit of Declarant or a Builder), the Owner or Resident of the Lot shall install permanent window coverings on all street facing windows. In no event shall the interior or exterior of any windows be covered with reflective material such as foil, or with paper, bed sheets, or other temporary coverings. The Board shall have the broadest authority to enact rules and regulations relating to window coverings.

4.11 Garages and Driveways. No garage shall be converted to a living space, altered, or used for storage of material or other purposes that would prevent the use of the garage for the parking of at least two motor vehicles or, in the case of homes with garage extensions, trailers, all-terrain vehicles, boats, or other similar recreational vehicles, except that Declarant or a Builder may use the garage in one or more model homes for a sales office and/or a construction office. The interior of all garages situated upon any Lot shall be maintained by the respective Owners thereof in a neat and clean condition. Garage doors shall be kept closed at all times, except to the limited

extent reasonably necessary to (i) permit the entry or exit of vehicles or Persons, (ii) accommodate Maintenance of the Lot or Dwelling Unit, or (iii) reasonably utilize the Dwelling Unit, garage, or driveway in accordance with this Declaration.

4.12 Heating, Ventilating, and Air Conditioning Units. No heating, air conditioning, or evaporative cooling units or equipment shall be placed, constructed, or maintained upon the Property including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall that conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and prior written approval of the Architectural Committee, provided however, that where such unit or equipment is Visible From Neighboring Property solely through a "view fence," no screening or concealment shall be required.

4.13 Solar Collection Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, Declarant, and other Persons if they have obtained the prior written approval of the plans by the Architectural Committee, such approval to be subject to the restrictions of applicable law, may cause solar collecting panels and devices to be placed, constructed, or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar panels and devices are placed, constructed, and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed, and maintained in such location(s) and with such means of screening or concealment as the Architectural Committee may reasonably deem appropriate to limit, to the extent reasonably possible, the visual impact of such solar collecting panels and devices when viewed by a Person six feet (6') tall standing at ground level on adjacent properties. The restrictions in this *Section 4.13* shall be subject to any limitations imposed by A.R.S. Sections 33-439 and 33-1816 and other applicable law. Each Owner and Resident acknowledges that solar panels and devices installed by or on behalf of Declarant may in some instances be Visible From Neighboring Property. Further, each Owner and Resident acknowledges and agrees that: (y) solar panels and devices installed in compliance with this *Section 4.13* may cause glare which may impact surrounding Owners and Residents and (z) that the Architectural Committee is not responsible for potential glare from such solar panels and devices. Each Owner and Resident further: (a) agrees that the Declarant, a Builder, the Architectural Committee, and the Association shall not be responsible for, or have an obligation to remedy, any glare caused by the installation and operation of any solar panel or device by an Owner or Resident in accordance with this *Section* and (b) acknowledges and accepts the location of, and any glare resulting from, solar panels or devices installed by Declarant or a Designated Builder upon a Lot. An Owner or Resident installing or operating a solar panel or device shall take reasonable measures to reduce glare; provided, however, that the installing Owner or Resident shall not be required to take any measure which would contravene A.R.S. Section 33-1816(B). All solar panels and devices installed by or on behalf of the Declarant shall be deemed approved by the Architectural Committee and in compliance with this *Section 4.13*.

4.14 Basketball Goals. Permanent mounted goals placed in the front or side yard of a Lot adjacent to the driveway are permitted only upon prior written approval by the Architectural Committee. Portable or temporary goals are permitted in rear yards only. The Board may adopt such rules and regulations as it deems appropriate relating to the Construction, placement, and use of basketball goals or similar structures or devices.

4.15 Vehicles. As used in this *Section 4.15*: (a) “**Motor Vehicle**” means a car, van, sport utility vehicle, truck, motorcycle, golf cart, all-terrain vehicle, pickup truck, or other motorized vehicle; and (b) “**Street**” means each public or private street or alley shown on a Plat.

No bus, mobile home, motor home, travel trailer, tent trailer, trailer, camper, camper shell, boat, boat trailer, personal watercraft, recreational vehicle, or other similar equipment or vehicle may be parked, kept, or stored on the Common Areas.

Buses, mobile homes, motor homes, travel trailers, tent trailers, trailers, campers, camper shells, boats, boat trailers, personal watercrafts, and recreational vehicles and any similar equipment or vehicle may not be parked on a Lot if Visible From Neighboring Property, except (i) in a garage or (ii) behind an RV gate or double wide gate in a parking area on the Lot either approved by the Architectural Committee or Board or as originally installed by or on behalf of Declarant. All other restrictions herein shall apply.

Except as otherwise provided by applicable law, no Motor Vehicle that exceeds eight feet (8') in height or exceeds twenty-four feet (24') in length or that is designed or used for carrying merchandise, supplies, or equipment for commercial purposes shall be parked on a Street or on a driveway or any other part of a Lot so as to be Visible From Neighboring Property, except for:

- (a) the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers, or vendors of the Association or of an Owner, or Resident in the driveway of a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board; and
- (b) the parking for not more than seventy-two (72) hours within any seven (7) day period of recreational vehicles, motor homes, and similar vehicles owned or leased by an Owner, or Resident in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

No Motor Vehicle of a contractor, subcontractor, supplier, or vendor of an Owner, or Resident shall be parked overnight on a Lot, a Street, or the Common Area. No Motor Vehicle shall be parked on any part of the Common Area other than a Street or designated parking spaces, if any, as originally installed by Declarant or as subsequently installed by the Association.

All-terrain vehicles must be kept in garages, behind an RV gate or double wide gate, or in another part of the Lot that is not Visible From Neighboring Property. Except as otherwise provided by applicable law, no Motor Vehicle owned or leased by an Owner, or Resident of a Lot or their guests may be parked on a Street if space for the parking of the Motor Vehicle is available in any of the following areas: (a) the garage or carport situated on the Lot of the Owner, or Resident; (b) the driveway on the Lot constructed as part of the initial Construction of Improvements on the Lot by Declarant or a Builder; or (c) a driveway expansion constructed on the Lot with the written approval of the Architectural Committee.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Areas. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp, or other material and the Motor Vehicle is not in regular use. Motor Vehicles owned by guests of an Owner, or other Resident may be parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Areas, if any, as originally installed by Declarant or as subsequently installed by the Association.

Notwithstanding any other provision of this *Section 4.15* to the contrary, no Motor Vehicle may be parked on a driveway if the length of the Motor Vehicle exceeds the length of the driveway or if the Motor Vehicle encroaches upon or obstructs access across the sidewalk or curb adjacent to the driveway.

The provisions of this *Section 4.15* shall not apply to vehicles of Declarant, any Builder, or their respective employees, agents, Affiliates, contractors, or subcontractors during the course of Construction activities upon or about the Property. The Association shall have the right to tow any Motor Vehicle or trailer including, without limitation, any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or similar equipment or vehicle, or any automobile, motorcycle, motorbike, all-terrain vehicle or other Motor Vehicle parked, kept, maintained, constructed, reconstructed, or repaired in violation of this Declaration or the Association Rules at the cost and expense of the Owner if such vehicle or equipment is parked on any Common Area or otherwise in violation of this *Section*. The cost incurred by the Association in towing any vehicle parked on Common Area, trailer or related equipment from any Lot shall be payable by the Owner of such Lot on demand by the Association and shall be secured by the Assessment Lien.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the Association Rules, the provisions of this Section shall control.

The provisions of this *Section 4.15* will not be construed to prohibit the parking of any vehicle within the Property to the extent required by A.R.S. Section 33-1809 or other applicable law.

4.16 Landscaping and Maintenance. Within ninety (90) days of acquiring a Lot with a Dwelling Unit thereon, each Owner shall landscape (if not already landscaped) the front yard of such Lot and any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and any adjacent street (unless a Common Area Tract lies between the boundary of the Lot and the adjacent street) and, if such Lot has a “view fence,” then the back yard between the side boundaries of such Lot and such view fence. Each Owner who is required by the immediately preceding sentence to landscape its Lot shall submit a landscaping plan to the Architectural Committee for review and approval pursuant to *ARTICLE 5* hereof. Each Owner shall maintain the landscaping on such Owner’s Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street (unless a Common Area Tract lies between the boundary of the Lot and the adjacent street) in accordance with the Maintenance Standard and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping that have been damaged. Landscaping shall be installed under this *Section 4.16* so as to be consistent, in terms of general appearance and level of care and attention, with other normal completed residential landscaping within the Property and within other residential properties in the vicinity of the Property and in accordance with Association Rules.

Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean, and attractive condition, free from weeds, consistent in appearance with other properly maintained, improved Lots within the Property. In the event any such landscaping is damaged or disturbed as a result of the installation or maintenance of any utility lines, cables, or conduits for the use or benefit of the Owner of the Lot, such Owner shall promptly repair and restore any damage or disturbance to such landscaping in accordance with the landscape plans previously approved by the Architectural Committee. The provisions of this *Section 4.16* shall not apply to the Declarant or any Designated Builder.

4.17 Prohibited Uses. No use that is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation, pollution, or that constitutes a nuisance or unreasonable source of annoyance, or that is hazardous by reason of risk of fire or explosion shall be permitted on any Lot. No use that is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use, ordinance, or regulation) of the United States, the State of Arizona, the County, the City, or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot.

4.18 Dust Control. The areas on each Lot that are not improved with buildings ("Clear Areas") shall be landscaped as provided in *Section 4.16*. After a sale of any Lot by Declarant or any Designated Builder to a Purchaser, until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris, and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain his Lot in a manner that minimizes the possibility of dust being transmitted into the air and over adjacent properties.

4.19 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property or on any Lot for any time, and no odors shall be permitted to arise or emit therefrom, so as to render the Property or any portion thereof, or activity thereon, unsanitary, unsightly, unreasonably offensive, or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Residents.

No Person shall permit any thing or condition to exist upon any Lot that shall induce, breed, or harbor infectious plant diseases or noxious insects. No loud, noxious or unreasonably offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon that may be, or may become, an unreasonable annoyance or nuisance to Persons or property in the vicinity of such Lot, or that shall unreasonably interfere with the quiet enjoyment of each of the Owners and Residents.

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 the Construction period, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any Construction equipment and building materials stored or kept on any Lot during the Construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. This *Section 4.19* shall not apply to Construction activities of Declarant or a Designated Builder or their respective employees, Affiliates, contractors, or subcontractors during the course of Construction activities or sales activities upon or about the Property.

The Board shall have the right to determine, in its sole discretion, whether the provisions of this *Section 4.19* have been violated. Any decision rendered by the Board shall be enforceable and be binding in the same manner as other restrictions in this Declaration.

4.20 Drainage. No Owner or Resident or other Person shall interfere with the drainage established for any portion of the Property by Declarant. No Owner or Resident or other Person shall obstruct, divert, alter, or interfere in any way with the drainage of ground and surface water upon, across or over any portion of the Lots, Tracts, rights-of-way, Common Areas, or other portions of the Property including, but not limited to, Construction or installation of any type of structure or vegetation. Each Owner shall, at its own expense, maintain the drainage ways and channels within any drainage easements on its Lot or Tract in proper condition free from obstruction. The Association shall have the right, after ten (10) days' notice to an Owner, except in the case of emergency (in which case the Association shall have an immediate right of access), to repair or otherwise maintain the drainage way or channel within any drainage easements on said Owner's Lot or Tract, which the Association, acting through the Board, determines has not been maintained by the Owner in compliance with this provision. All costs and expenses including, but not limited to, reasonable attorneys' fees and costs incurred by the Association shall be borne by the Owner, and shall be paid to the Association upon demand, plus interest at an annual rate of twelve percent (12%) from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an Assessment, subject to the Assessment Lien, and collected in like manner as Assessments levied pursuant to this Declaration. For the purpose of this clause, "drainage" means the drainage that exists at the time the overall grading of the Lots, Tracts, rights-of-way, and Common Areas were completed by Declarant or any Designated Builder in accordance with plans approved by the City and Declarant, or any drainage easement areas as marked on a Plat. Notwithstanding anything contained herein to the contrary, in the event the applicable Owner or Association fails to maintain any such drainage areas, the City, or any other governmental authority with jurisdiction shall have the right to enter upon and maintain any such drainage areas in any drainage easements, whether or not the same are located on any Lot, Tract, or within the Common Areas, and the costs thereof incurred by the City or such other applicable governmental authority shall be charged to the Association and become part of the Assessments payable by the Owner pursuant to the terms hereof.

4.21 Health, Safety, and Welfare. In the event that any uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of any Owner or Resident, the Board may adopt rules restricting or regulating their presence on the Lot or Tract as part of the Association Rules.

4.22 Leasing; Obligations of Tenants and Other Occupants. All tenants and other Residents shall be subject to the terms and conditions of this Declaration and other Community Documents. Each Owner shall cause his, her, or its Residents or other occupants to comply with this Declaration, all Supplemental Declarations and other Community Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such Residents or other occupants, notwithstanding the fact that such Residents or other occupants are also fully liable for any violation of each and all of those documents. No Owner may lease less than such Owner's entire Lot. No Lot may be leased for a period of less than six (6) months. Written leases are required. All leases must restrict occupancy to no more than five (5) unrelated individuals or to a single family of related individuals of any size. The Owner is responsible for the tenant's violation of this Declaration and other Community Documents. Within fifteen (15) days after the effective date of any new lease term or renewal term, the Owner of a leased Lot shall obtain from the Board a form tenant information sheet and

must complete and furnish to the Board within the fifteen day period the completed tenant information sheet containing: (i) the name and contact information for any adults occupying the Lot; (ii) the period of the lease term including the beginning and ending dates of the tenancy; (iii) a description and license plate numbers of the tenants' vehicles; and (iv) any other information that the Association may request by law. The Association, or its managing agent, by written resolution of the Board, may charge the Owner who leases a Lot an administrative fee of \$25.00, or such greater amount as may be permitted by law, for each new tenancy of the Lot, provided that fee shall not be charged for any lease renewal. Such fee shall be paid by the Owner fifteen days from the post marked request, and shall be subject to the Assessment Lien. The provisions of this *Section 4.22* shall not apply to the use of Lots or Dwelling Units owned by or leased to Declarant or any Builder as a model home or for marketing purposes.

4.23 Environmental Protections. No Lot or Tract, nor any facilities on any Lot or Tract, shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this *Section 4.23*, "**Hazardous Substances**" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; and in the rules and regulations adopted and guidelines promulgated pursuant to said laws.

4.24 Property Restrictions. No Supplemental Declarations shall be Recorded by any Owner, Resident, or other Person against any Lot without the provisions thereof having been first approved in writing by the Board, and any Supplemental Declaration that is Recorded without such approval being evidenced thereon shall be null and void; provided, however, that, without prior approval of the Board, Declarant shall have the right to Record a Supplemental Declaration against any portion of the Property owned by Declarant either prior to or simultaneously with the conveyance of any such portion of the Property to a Builder or other Owner. Notwithstanding the foregoing or anything else in this Declaration to the contrary, no Supplemental Declaration Recorded by an Owner shall operate to modify or amend this Declaration but, in the event that such covenants, conditions, and restrictions impose restrictions on the use or occupancy of the real property subject to the Supplemental Declaration that are more restrictive than the restrictions set forth in this Declaration, the more restrictive provisions shall prevail. No application for rezoning, variances, or use permits pertaining to any Lot or Tract shall be filed with any governmental authority by any Person unless the application has first been approved by the Board or Declarant, so long as Declarant owns any portion of the Property or the Annexable Property, and the proposed use otherwise complies with this Declaration. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents, subcontractors, or parties designated by it in connection with the Construction, completion, sale, or leasing of Lots, Common Areas, or any other portion of the Property.

4.25 Model Homes. The provisions of this Declaration that prohibit nonresidential use of Lots and regulate parking of vehicles shall not prohibit the Construction and Maintenance of model homes by Declarant and Designated Builders engaged in the Construction and/or sale of Dwelling Units within the Property and parking incidental to the visiting of such model homes. Any

Dwelling Units constructed as model homes shall cease to be used as model homes at any time the Builder thereof is not actively engaged in the Construction and/or sale of single-family Dwelling Units within the Property, and no Dwelling Units shall be used as a permanent main model home for the sale of Dwelling Units not located within the Property unless such use is by Declarant or authorized in writing by Declarant.

4.26 Repair of Building / Reconstruction. 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 approvals required by *ARTICLE 5* hereof, such building or structure shall be promptly repaired or rebuilt or shall be demolished, in which event the area shall be restored to a reasonably safe and presentable condition. In the event any Dwelling Unit or other structure is totally or partially damaged or destroyed by fire, act of God, or any other cause, the Owner shall promptly remove all exterior debris, shall secure the damaged area as needed, including as may be reasonably necessary for the health and safety of others, and shall fully repair the damage and complete reconstruction of the Dwelling Unit or other structure as soon as reasonably possible, and in all events within eighteen (18) months after occurrence of the damage or destruction.

4.27 Signs. No signs whatsoever that are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- (a) Signs required by legal proceedings;
- (b) A maximum of one political sign (as defined in A.R.S. Section 33-1808) (or such greater number of political signs permitted by City ordinances if the City regulates the number of political signs on residential property) may be placed on a Lot by the Owner of that Lot; provided, however, that no political signs may be displayed pursuant to this *Section 4.27* earlier than 71 days before an election day or more than 3 days after an election day;
- (c) No more than two (2) identification signs for individual Dwelling Units, each with a face area of seventy-two square inches (72") or less;
- (d) "For Sale" and "For Lease" signs temporarily erected in connection with the marketing of any Lot, provided, however, that the Board may adopt additional rules regulating such signs provided such rules comply with the provisions of A.R.S. Section 33-1808(F) (as amended) and any other applicable laws;
- (e) Signs and notices erected or posted in connection with the provision of building security;
- (f) Promotional and advertising signs of any Designated Builder on any Lot approved from time to time in advance and in writing by the Architectural Committee as to number, size, color, design, message content, location, and type.
- (g) Cautionary signs regarding children provided that: (i) all such signs are displayed in residential areas only; (ii) all such signs are removed within one hour of children ceasing their activities; (iii) all such signs are displayed only when children are actually present within fifty feet (50') of the sign; (iv) all such signs

are no taller than three feet in height; and (v) all such signs are professionally manufactured or produced; and

- (h) Other signs (including, but not limited to, Construction job identification signs, Builder identification signs and subdivision identification signs) that are in conformance with the applicable requirements of the City or other applicable governmental agencies and have been approved in advance and in writing by the Architectural Committee as to size, color, design, message content, and location.

Subject to the limitations above, the Association may adopt reasonable rules and regulations regarding the number, size, placement and manner of display of signs and flags to the extent A.R.S. Section 33-1808 or other applicable law does not prohibit such regulation.

4.28 Utility Service. No lines, wires, or other devices for communications or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed, or maintained anywhere in or upon any Lot or Tract unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Declarant or any Builder or as may be otherwise approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the Construction of buildings or structures.

4.29 Right of Entry. During reasonable hours and upon reasonable prior notice to the Owner or Resident of a Lot or Tract, any member of the Architectural Committee or the Board, or any authorized representative thereof, shall have the right to enter upon and inspect any Lot or Tract, and the Improvements thereon, except for the interior portions of any completed Dwelling Units, for the purpose of ascertaining whether or not the provisions of this Declaration or any other Community Documents have been, or are being, complied with, and such Persons shall not be deemed guilty of trespass by reason of such entry.

4.30 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents, of structures, Improvements, or signs necessary or convenient to the development, marketing, sale, and/or lease of Lots and Tracts within the Property and, in connection therewith, Declarant shall have the right and authority to permit and authorize any Builder to construct and install temporary signage that is necessary or convenient to the development and sale of any Lots and Tracts within the Property.

4.31 Crime and Drug Free Community. The Association shall have the right and power to enact rules prohibiting criminal and drug activity on the Property, including the right to assess fines and evict tenants who engage in such activity. The Association shall have the right and power to require Residents and Owners to sign reasonable contracts and forms that assure there is no criminal and drug related activity on the Property. However, neither Declarant nor the Association shall have any obligation or responsibility for enforcing the law, or liability for the occurrence of such activity on the Property. Further, neither Declarant nor the Association makes any guaranty that such activity will not occur on the Property.

4.32 Sidewalks, Paths, and Walkways. Sidewalks, paths, and walkways within the Property are designed for pedestrian traffic. Motorized vehicles including, but not limited to, ATVs, golf

carts, and motorcycles, may not be operated on the sidewalks, paths, or walkways within the Property. Horses may not be ridden on sidewalks, paths, walkways, streets, or any other portion of the Property.

4.33 Flags and Flagpoles. Excluding flags used for marketing by Declarant or approved by Declarant for marketing by Designated Builders, and except as set forth in the next sentence, no flags of whatever nature shall be placed on any Lot or Common Area which are Visible From Neighboring Property. The following flags shall be permitted on an Owner's Lot and the Association shall adopt reasonable rules and regulations regarding the placement and manner of display of: (a) The American flag or an official or replica of a flag of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard by a Member on that Member's Lot if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code Sections 4 through 10); (b) the POW/MIA flag; (c) the Arizona state flag; (d) an Arizona Indian nations flag; or (e) the Gadsden flag. Subject to the limitations above, the Association may adopt reasonable rules and regulations regarding the location and size of flagpoles, may limit an Owner or Resident to displaying no more than two flags at once, and may limit the height of the flagpole to no more than the height of the rooftop of the Owner's home, except that the Association shall not prohibit the installation of a flagpole in the front yard or backyard of a Lot. This provision shall be read and interpreted to be in compliance with A.R.S. Sections 33-1808(A) and (B), as amended.

4.34 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot unless they are not Visible From Neighboring Property.

4.35 Variances. The Board, in its good-faith discretion, may grant such variances of the restrictions contained in this *ARTICLE 4* as it shall deem appropriate, so long as the use or condition permitted by such variance does not result, as determined by the Board in its sole discretion, in an unsafe, insanitary, or aesthetically displeasing condition, or in a substantial departure from the common plan of development contemplated by this Declaration.

ARTICLE 5 **ARCHITECTURAL CONTROL**

5.1 Approval Required. No Improvement that would be Visible From Neighboring Property, or that would cause any thing to be Visible From Neighboring Property, shall be constructed or installed on any Lot or Tract without the prior written approval of the Architectural Committee, which shall have the authority to regulate the external design and appearance of the Lots and Tracts and all Improvements constructed thereon. No addition, alteration, repair, change, or other work that in any way alters the exterior appearance of any part of a Lot or Tract, or any Improvements located thereon, that are or would be Visible From Neighboring Property shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval from the Architectural Committee for the Construction, installation, addition, alteration, repair, change, or replacement of any Improvement that is or would be Visible From Neighboring Property shall submit to the Architectural Committee written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change, or other work that the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans, and specifications that the Architectural Committee may reasonably request. The Architectural Committee may also require an Owner or Member to pay a security deposit to secure completion of the new construction of a Dwelling Unit on a Lot, or for rebuilds of a Dwelling Unit on a Lot, which deposit must be submitted upon request. If the Architectural Committee fails to approve or

disapprove an application for approval within sixty (60) days after an application meeting all of the requirements of this Declaration and of the Architectural Committee, together with any fee required to be paid and any additional information, plans, and specifications requested by the Architectural Committee has been submitted to the Architectural Committee, the application will be deemed to have been disapproved. The approval by the Architectural Committee of any Construction, installation, addition, alteration, repair, change, or other work shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, or other work subsequently submitted for approval. Notwithstanding anything to the contrary contained in this Declaration, for the new construction of a Dwelling Unit on a Lot, or for rebuilds of a Dwelling Unit on a Lot, and if the Association requires an Owner or Member to pay a security deposit to secure completion of the Owner's or Member's construction project or compliance with approved plans, the rules set forth in A.R.S. Section 33-1817(B)(2), as amended, shall apply.

5.2 Architectural Committee. An Architectural Committee shall be established to perform the duties and exercise the power and authority imposed on or granted to the Architectural Committee by the Community Documents. Until the last Lot in the Property has been sold to a Purchaser, Declarant shall have the sole right to determine the number of members on the Architectural Committee and to appoint and remove the members of the Architectural Committee. Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee and, in that event, Declarant may require, until the last Lot is sold to a Purchaser, that specified actions of the Architectural Committee be approved by Declarant in writing before they become effective. After the last Lot is sold to a Purchaser, the Board shall determine the number of members on the Architectural Committee, and the members of the Architectural Committee shall be appointed and may be removed by the Board at a Board meeting or by written action in lieu of a meeting. Members of the Architectural Committee need not be Owners or Residents of the Property. In the event the Board does not appoint an Architectural Committee for any reason, the Board shall exercise the authority granted to the Architectural Committee under this Declaration. In accordance with A.R.S. Section 33-1817, the Architectural Committee shall, at all times, include at least one member of the Board who shall serve as chairperson of the Architectural Committee.

The Architectural Committee may adopt, amend, and repeal architectural guidelines, standards, and procedures (the "**Architectural Committee Rules**") to be used in rendering its decisions. Such guidelines, standards, rules, and procedures may include, without limitation, provisions regarding:

- (a) the size and height of Dwelling Units and other Improvements;
- (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography;
- (c) placement of Dwelling Units and other buildings;
- (d) landscape design, content, and conformance with the character of the Property and permitted and prohibited plants;
- (e) requirements concerning exterior color schemes, exterior finishes, and materials;
- (f) signage;

- (g) perimeter and screen wall design and appearance;
- (h) time periods for commencement and completion of any approved Construction or Modification; and
- (i) rules and regulations governing Construction activities.

Any adoption, amendment, or repeal of the Design Guidelines after Declarant no longer has the right to appoint the Architectural Committee must be approved by the Board.

The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove any Construction or Modification within a specified portion of the Project.

The decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration, but shall be subject to appeal to the Board as the final arbiter pursuant to the provisions of *Section 13.5* hereof, and the decision of the Board in all cases shall be final and binding.

5.3 Owners In Good Standing. In addition to all other requirements of this *ARTICLE 5*, the Owner of a Lot must be In Good Standing to be eligible to submit plans for Improvements, additions, alterations, repairs, changes, or other work to the Architectural Committee for approval.

5.4 Review of Plans. If the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after an application meeting all of the requirements of this Declaration and of the Design Guidelines, together with any fee required to be paid and any additional information, plans, and specifications requested by the Architectural Committee has been submitted to the Architectural Committee, the submittal will be deemed disapproved. In reviewing plans and specifications for any Construction, installation, addition, alteration, repair, change, or other work that must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish-grade elevation. The Architectural Committee may disapprove plans and specifications for any Construction, installation, addition, alteration, repair, change, or other work that must be approved by the Architectural Committee pursuant to this *ARTICLE 5*, if the Architectural Committee determines, in its sole and absolute discretion, that:

- (a) The proposed Construction, installation, addition, alteration, repair, change, or other work would violate any provision of this Declaration or other Community Documents;
- (b) The proposed Construction, installation, addition, alteration, repair, change, or other work does not comply with any Architectural Committee Rule or Association Rule;
- (c) The proposed Construction, installation, addition, alteration, repair, change, or other work is not in harmony with existing Improvements within the Property or with Improvements previously approved by the Architectural Committee but not yet constructed;

- (d) The proposed Construction, installation, addition, alteration, repair, change, or other work is not aesthetically acceptable in the sole and absolute discretion of the Architectural Committee;
- (e) The proposed Construction, installation, addition, alteration, repair, change, or other work would be detrimental to or adversely affect the appearance of the Property; or
- (f) The proposed Construction, installation, addition, alteration, repair, change, or other work is otherwise not in accord with the general plan of development for the Property.

5.5 Exclusions. The provisions of this *ARTICLE 5* shall not apply to, and approval of the Architectural Committee shall not be required for, the Construction, erection, installation, addition, alteration, repair, change, or replacement of any Improvements made by or on behalf of Declarant (or its designated agents or contractors), nor shall the Architectural Committee's approval be required for the Construction of any Dwelling Units by any Designated Builder that are constructed in accordance with plans and specifications that have previously been approved by Declarant or the Architectural Committee in writing.

5.6 Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance, and location, and are not approved for engineering design or for compliance with zoning and building ordinances (or other governmental requirements), and by approving the plans and specifications neither the Architectural Committee, the members thereof, Declarant, the Association, any Owner, nor the Board (nor any committee, officer, director, employee, or agent of any of the foregoing) assumes any liability or responsibility therefor, or for any defect in any structure constructed from the plans and specifications. None of the Architectural Committee, any member thereof, Declarant, the Association, or the Board (nor any committee, officer, director, employee, or agent of any of the foregoing) (subject to any mandatory limitations imposed by A.R.S. Sections 10-3202, 10-3851, or 10-3856, or other applicable law, and except for an intentional infliction of harm on the Association or its Members, an intentional violation of criminal law, the receipt of a financial benefit to which such Person was not entitled, or an unlawful distribution under A.R.S. Section 10-3833 or other applicable law), shall be liable to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective, (b) the Construction or performance of any work, whether or not pursuant to approval of plans, drawings, and specifications, (c) the development or manner of development of any property within the Property, or (d) the execution and filing of any estoppel certificate pursuant to any Design Guidelines established by the Board, whether or not the facts therein are correct; provided, however, that the action, with the actual knowledge possessed by the Person executing and filing the estoppel certificate was taken in good faith. Approval of plans and specifications by the Architectural Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including but not limited to zoning ordinances and building codes.

5.7 Inspection and Recording of Approval. Any member or authorized consultant of the Architectural Committee, or any authorized officer, director, employee, or agent of the Association, may at any reasonable time, enter without being deemed guilty of trespass, upon any Lot after a reasonable notice as provided herein to the Owner in order to inspect Improvements constructed or being constructed on the Lot to ascertain that the Improvements have been or are

being built in compliance with the Design Guidelines and this Declaration. The Architectural Committee has the right but not the obligation to cause an inspection to be undertaken within 30 days of a request therefor from any Owner as to the Owner's Lot and, if the inspection reveals that the Improvements located on the Lot have been completed in compliance with this *Section 5.7*, the Design Guidelines, any applicable provisions of any other applicable Community Documents, the Architectural Committee has the right but not the obligation to provide the Owner a notice of approval in recordable form which, when Recorded, shall be conclusive evidence of a compliance with the provisions of this *Section 5.7*, the Design Guidelines, and any other applicable Community Documents as to the Improvements described in the Recorded notice, but as to the described Improvements only.

5.8 Declarant Review. Each Owner acknowledges that Declarant, as the developer of the Property and as an owner of significant portions of the Property, has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Notwithstanding anything contained in this Declaration to the contrary, until the end of Declarant Control Period, Declarant shall have all of the rights granted in this Declaration, any Declaration of Annexation, or any Supplemental Declaration to the Architectural Committee through individuals appointed by Declarant for such purpose, including but not limited to, establishment of the Design Guidelines and Architectural Committee Rules. Until the end of the Declarant Control Period or such earlier time as Declarant delegates all or a portion of its design review powers to the Architectural Committee, the Association shall have no jurisdiction over architectural or design review matters. If Declarant delegates all or a portion of its design review powers to the Architectural Committee prior to the end of the Declarant Control Period, Declarant shall give the Association at least 30 days' prior written notice of the delegation. Upon the expiration or relinquishment of Declarant's rights under this *Section 5.8*, the Association, acting through the Architectural Committee, shall assume jurisdiction over architectural and design review matters. In exercising its power under this *Section 5.8*, Declarant shall be acting in its own interest as developer of the Property.

5.9 Governmental Approvals. The approval required by the Architectural Committee pursuant to this *ARTICLE 5* shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule, or regulation. The approval by the Architectural Committee of any Construction, installation, addition, alteration, repair, change, or other work pursuant to this *ARTICLE 5* shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such Construction, installation, addition, alteration, repair, change, or other work or that such Construction, installation, addition, alteration, repair, change, or other work conforms to any applicable building codes or other federal, state, or local law, statute, ordinance, rule, or regulation.

ARTICLE 6

ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be an Arizona nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, this Declaration, and any other Community Documents. The Association shall have all of the common law and statutory power conferred upon nonprofit corporations under Arizona law and all powers necessary and desirable to perform the Association's duties and obligations. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise

changed or interpreted so as to be inconsistent with this Declaration. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and maintenance of the Association Maintained Areas.

6.2 Board of Directors and Officers; Management. The affairs of the Association shall be conducted by the Board appointed or elected in accordance with this Declaration and the Articles and Bylaws, and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. The initial Board shall be composed of at least three (3) members. The initial directors and officers of the Association shall be designated in the Articles, and such individuals shall serve until their death, resignation, or removal from office. Until the termination of the Declarant Control Period, Declarant shall have the exclusive right to appoint and remove the members of the Board. After the termination of the Declarant Control Period, Declarant has the right but not the obligation to appoint the first Board comprised of Owners. The Board may also appoint various committees and may appoint a manager or managing agent who shall, subject to the direction of the Board, be responsible for the day-to-day operations of the Association for such compensation as may be agreed upon by the Board and the managing agent. Notwithstanding anything contained in the foregoing or elsewhere in this Declaration to the contrary, Declarant shall have the right to designate and to determine the compensation to be paid to the initial managing agent if such managing agent is retained during the Declarant Control Period. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

6.3 Board's Determination Binding. Subject to the terms and conditions of this Declaration, in the event of any dispute or disagreement between or among any Owners, Members, or any other Persons subject to this Declaration, relating to the Property or any questions of interpretation or application of the provisions of this Declaration or any other Community Documents, then (subject to any judicial decision by a court of competent jurisdiction) the determination thereof by the Board shall be final and binding on each Owner, Member, or other Person subject to this Declaration. The Board, at its election, may delegate the resolution of any such dispute or disagreement to the President or a committee appointed by the Board.

6.4 Indemnification. To the fullest extent permitted by law but subject to any mandatory limitations imposed by A.R.S. Sections 10-3202, 10-3851, or 10-3856, or other applicable law, the Association shall indemnify the following Persons against all expenses and liabilities including, but not limited to, attorneys' fees, witness fees (including expert witness fees), costs, and litigation-related expenses reasonably incurred by or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of their being or having appointed, removed, or controlled or failed to control members of the Board or the Architectural Committee), or any settlement of any such proceeding: (i) every director and officer of the Association; (ii) every member of the Architectural Committee and other committees of the Association; and (iii) Declarant (and its employees, agents, and licensees). Any agent or employee of the Association may, in the discretion of the Board and subject to the finding described below, also be indemnified by the Association. Any Person described in the first sentence of this *Section 6.4* shall be entitled to indemnification whether or not that Person is a director, officer, member of the Architectural Committee, or serving in any other specified capacity at the time the expenses are incurred. Notwithstanding anything to the contrary in this Declaration, before any Person is entitled to indemnity pursuant to this *Section 6.4*, the Board shall determine, in good faith, that the Person to be indemnified did not act, fail to act, or refuse

to act with gross negligence, willful or intentional misconduct, or fraudulent or criminal intent in the performance of that Person's duties. These rights of indemnification shall be in addition to and not exclusive of all other rights to which the Persons to be indemnified may be entitled at law or otherwise.

6.5 Role of Association. The Association's primary responsibilities will include, without limitation, the following:

- (a) The maintenance of all Association Maintained Areas;
- (b) Appointment of individuals to serve on the Architectural Committee pursuant to the provisions of *ARTICLE 5* hereof;
- (c) The enforcement of this Declaration and the other Community Documents; and
- (d) The approval, coordination, and oversight of any Subsidiary Association.

6.6 The Association 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 repeal rules and regulations to be known as the Association Rules, which shall apply to, restrict, and govern the use of any Common Areas, Lots, and Tracts by any Owner, Member, or Resident; provided however, that the Association Rules shall not be inconsistent with this Declaration, or the Articles or Bylaws of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Association Rules may include, without limitation, the following:

- (a) the management, operation, and use of the Association Maintained Areas including, but not limited to, any recreational facilities situated upon the Association Maintained Areas;
- (b) minimum standards for the Maintenance of Lots; and
- (c) restrictions on the use and Maintenance of Lots.

6.7 Non-Liability of Officials/Personal Liability. To the fullest extent permitted by law, none of the following Persons shall be liable to the Association, or any Member, Owner, or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and that the following Persons reasonably believed to be within the scope of their respective duties: (i) every director and officer of the Association; (ii) every member of the Architectural Committee and other committees of the Association; and (iii) Declarant (and its employees, agents, and licensees). Each Owner and other Person having any interest in the Property or entering upon or using any portion of the Property is deemed to acknowledge and accept the following:

- (a) None of the Persons described above in this *Section 6.7* shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner or other Person entering upon or making use of any portion of Property. Each Owner and other Person assumes all risks associated with the

use and enjoyment of the Property including but not limited to any recreational facilities upon or within the Property.

- (b) None of the Persons described above in this *Section 6.7* shall be liable for or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property. Each Owner and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property.

No provision of this Declaration or any other Community Documents shall be construed or interpreted as creating a duty by any of the Persons described above in this *Section 6.7* to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

6.8 Easements. In addition to the other easements granted hereunder, the Association is authorized and empowered to grant permits, licenses, easements, and rights-of-way upon, across, or under real property owned or controlled by the Association for sewer lines, water lines, underground conduits, storm drains, television cable, and other similar public or private utility purposes, roadways, or other purposes as may be reasonably necessary and appropriate for the development, maintenance, or preservation of the Common Areas or for the preservation of the health, safety, convenience, and welfare of the Owners, provided that any damage to a Lot resulting from a grant of any of the foregoing rights shall be repaired by the grantee at its expense.

6.9 Managing Agent. All powers, duties, and rights of the Association, the President of the Board, or the Board as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no delegation shall relieve the Association of its obligation to perform any delegated duty. Any agreement for professional management, or any other contract providing for management or maintenance services (excluding utility services) to the Association, shall not exceed a term of five (5) years, subject to renewal by agreement of the parties for successive one (1) year periods, and shall further provide for termination by the Association with or without cause and without payment of a termination fee upon thirty (30) days written notice.

6.10 Designated Service Providers. Subject to compliance with all applicable law, the Board shall have the authority to designate exclusive or preferred providers of services within the Property when the Board deems it necessary or desirable to do so for reasons of obtaining better rates or terms of service or for other reasons deemed reasonable by the Board. If the Board makes such a designation, the Association may enter into an agreement with the designated service provider, and the cost of services purchased by the Board shall be considered a Common Expense of the Association and shall be included in the Assessments payable by each Owner, provided however, that the Board may allocate such costs between improved and unimproved properties, as a Special Assessment, in such a manner as the Board deems equitable. Notwithstanding any designation and negotiation with a service provider, each Owner may contract separately with the designated service provider to receive services in excess of those provided to the Property pursuant to the service provider's agreement with the Association, and the cost of the additional services shall be paid separately by the Owner and shall not be an Assessment under this Declaration. Any service provider designated by the Board pursuant to this *Section 6.10* shall

have an easement over the Common Areas to the extent necessary or convenient for the efficient delivery of the designated service.

ARTICLE 7
MEMBERSHIPS AND VOTING

7.1 Owners of Lots; Identity of Members. Each Owner of a Lot shall automatically be a Member of the Association, and shall remain a Member of the Association until such time as ownership ceases for any reason, at which time the Owner's Membership in the Association shall automatically cease. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable, and joint ownership or ownership of undivided interests in any real property that establishes a Membership shall not cause there to be more Memberships than the number established for purposes of this *Section 7.1*. There shall be one (1) Membership for each Lot within the Property as shown on any Plat. Notwithstanding the fact that Owners of Tracts shall be subject to the portions of this Declaration that are specifically applicable to the Tracts, Owners of Tracts shall not be Members of the Association.

7.2 Right to Vote; Assignment of Class B Voting Rights to Declarant. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void. The Association shall have two (2) classes of voting Members, as follows:

7.2.1 Class A. Class A Members shall be all Owners except Declarant and any Designated Builders. Each Class A Member shall have one (1) vote for each Lot owned by such Member.

7.2.2 Class B. Class B Members shall be Declarant and all Designated Builders. The Class B Members shall have four (4) votes for each Lot owned. Notwithstanding anything contained herein to the contrary, at any time that Declarant owns one or more Lots and a Designated Builder is paying Reduced Assessments, such Designated Builder's voting rights in the Association shall be deemed to be assigned to Declarant, who shall have the right to exercise any and all voting rights otherwise entitled to be cast by such Designated Builder as a Class B Member. A Designated Builder shall have the right at any time to elect to reacquire its voting rights in the Association by agreeing to pay full Assessments in a written notice provided to the Board. The Class B Membership shall automatically cease and be converted to a Class A Membership upon the earliest of the following dates:

- (a) The date that is ninety (90) days after the date upon which one hundred percent (100%) of the total number of Lots have closed escrow and been sold from a Designated Builder or Declarant to a Purchaser;
- (b) The date that is twenty (20) years after the date this Declaration is Recorded; or

- (c) The date on which Declarant and all Designated Builders relinquish their Class B Membership and their rights to vote all Class B Memberships.

7.3 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 other Community Documents, as the same may be amended from time to time.

7.4 Transfer of Membership. The rights and obligations of an Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except:

- (a) upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot, and
- (b) as provided above for the retention by Declarant of the voting rights of Designated Builders who are not paying full Assessments.

A transferor of a Lot must notify the Board of the transfer in writing, and remains liable for all obligations hereunder until the transferor so notifies the Board. A transfer of ownership to a Lot may be effectuated by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage, or deed of trust of Record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of the Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof.

ARTICLE 8

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Right and Personal Obligation of Assessments. In order to provide funds to enable the Association to meet its obligations, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Annual Assessments shall be imposed for the purpose of paying Common Expenses and to establish reserves as hereinafter provided, and shall be allocated equally among all Lots. The Assessments, together with interest, late charges, and all costs (including but not limited to reasonable attorneys' fees and collection costs) incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. During the Declarant Control Period, no Annual Assessment or Special Assessment shall be levied against any Lot owned by Declarant. Each Owner, by acceptance of a Deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due, or other such time period that the Board may specify from time to time, shall also pay a late charge as set by the Board from time to time. The fifteen-day delinquency period and late charges shall be subject to any limitations imposed by A.R.S. Section 33-1803 or other applicable law as amended from time to time. The initial late charge shall be the greater of fifteen dollars (\$15.00) per month or ten percent (10%) of the unpaid Assessment. Late charges shall be subject to any limitations imposed by applicable Arizona law, including A.R.S. Section 33-1803 or other applicable law, as amended from time to time. The Owner shall also pay all expenses and attorneys' fees reasonably incurred by the Association in seeking to collect such Assessments and other amounts. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using such Owner's Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with

respect to such Owner's Lot. Upon transfer by an Owner of fee title to such Owner's Lot, however, and with written notice to the Board, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board or Declarant or Architectural Committee to take some action or perform some function required to be taken or performed by the Association or Board or Declarant or Architectural Committee under this Declaration or the other Community Documents.

8.2 Purpose of Annual Assessments; Common Expenses. The Association shall have the right to impose Annual Assessments for the purpose of paying all Common Expenses of the Association, which shall include without limitation, all costs incurred in connection with the acquisition, Construction, alteration, maintenance, provision, and operation of all land, properties, improvements, facilities, services, projects, programs, studies, and systems desirable or beneficial to the general common interests of the Property, its Members, and Residents, such as the maintenance of landscaping on Common Areas, public and private rights-of-way, and drainage areas, obtaining liability and casualty loss insurance, supplying utilities and other public services, providing for communication and transportation within and dissemination of information concerning the Property, obtaining legal and accounting services for the Association, indemnifying officers and directors of the Association, and providing streetlights and other services for the protection of the health and safety of the Members and Residents of the Association.

8.3 Lien for Assessments; Foreclosure.

8.3.1 Assessment Lien. There is hereby created and established a lien in favor of the Association against each Lot that shall secure payment of all present and future Assessments and Maintenance Charges assessed or levied against such Lot or the Owner thereof (together with any other amounts levied against such Lot or the Owner thereof pursuant to the Community Documents). The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien.

Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale or transfer of any Lot shall not affect the Assessment Lien; provided however, that the sale or transfer of any Lot pursuant to a First Mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments on the Lot as to payments that became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof nor shall such sale or transfer relieve the Owner at the time of the Assessment from his personal responsibility for the Assessment. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage, and convey the same. During the period any Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Area.

Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

8.3.2 Effect of Nonpayment of Assessments; Remedies of the Association.

- (a) Any Assessment, or any installment of any Assessment, not paid within thirty (30) days or such other time period as the Board may specify from time to time after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time by the Board. Except to the extent limited by applicable law, the Association shall have a lien on each Lot for:
 - (i) all Assessments levied against the Lot;
 - (ii) all interest, lien fees, late charges, and other fees and charges assessed against the Lot or payable by the Owner of the Lot;
 - (iii) all attorneys' fees, court costs, and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; and
 - (iv) any other amounts payable to the Association pursuant to the Community Documents.

- (b) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees, and any other sums due to the Association in any manner allowed by law including but not limited to the following:
 - (i) Suspension of Rights. The Board may suspend for the entire period during which a delinquent amount remains unpaid the obligated Owner's voting rights (except that any voting rights that are deemed assigned to Declarant as provided in *Section 7.2* hereof shall not be subject to suspension by the Board regardless of whether any delinquent amount remains unpaid with respect to the Lot or Lots subject to such voting rights) and rights to use and enjoy the Common Areas, in accordance with procedures that conform to Arizona law except that in no event shall the Board prevent access to such Owner's Lot.
 - (ii) Collection of Delinquent Amount. Subject to any limitations imposed by applicable law, as may be amended from time to time, the Board may institute an action at law for a money judgment or any other proceeding to recover the delinquent amount.
 - (iii) Recording of Notice. The Board may Record a notice of lien (the "**Notice of Lien**") setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description of the Lot against which the Notice of Lien is Recorded, and the delinquent amount plus interest, accrued collection costs, lien recording fees, and reasonable attorneys' fees as provided in this Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost

of Recording the notice, processing the delinquency, and Recording a notice of satisfaction of the lien. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges, and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number or defaults may be included within the demand and the Association may proceed with Recording a Notice of Lien against the Lot. The Association shall not be obligated to release the Notice of Lien until all delinquent Assessments, interest, lien fees, reasonable attorney's fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

- (iv) Foreclosure of Lien. The Board may foreclose the lien against the Lot in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and any other applicable law. The provisions of this *Section 8.3* shall be subject to any limitations imposed by A.R.S. Sections 33-1803 and 33-1807 or other applicable law as amended from time to time.
- (c) The Assessment Lien shall have priority over all liens or claims except for:
- (i) liens and encumbrances Recorded before the Recording of this Declaration;
 - (ii) liens for real estate taxes and other governmental assessments and charges against the Lot; and
 - (iii) any Recorded First Mortgage on the Lot or a seller's interest in a first contract for sale pursuant to Title 33, Chapter 6, Article 3 of the Arizona Revised Statutes Recorded prior to the Association's lien.

Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of a First Mortgage, purchase at foreclosure sale or trustee sale, or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot that became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot that accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

8.3.3 Judgments. The Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments without a foreclosure of the lien for such Assessments, and the same shall not constitute a waiver of the lien for such Assessments.

8.4 Declarant's Exemption. During the Declarant Control Period and so long as there is a Class B Membership, Lots owned by Declarant shall not be subject to Assessment, but Declarant shall be required to pay to the Association Deficiency Assessments as provided in *Section 8.6* hereof as determined in connection with said *Section 8.6*. When the Class B Membership ceases

in accordance with *Section 7.2* hereof, Declarant shall no longer be required to pay any Deficiency Assessments.

8.5 Reduced Assessments. During the Declarant Control Period and so long as there is a Class B Membership, each Designated Builder shall pay Annual Assessments with respect to Lots owned by such Designated Builder in an amount equal to twenty-five percent (25%) of the Annual Assessment payable by other Owners other than Declarant (“**Reduced Assessments**”). Each Designated Builder shall be required to pay to the Association Deficiency Assessments as provided in *Section 8.6* hereof. When the Class B Membership ceases in accordance with *Section 7.2* hereof, Designated Builders shall no longer be required to pay any Deficiency Assessments.

8.6 Deficiency Assessments/Designated Builders’ Subsidy. During the Declarant Control Period when Declarant is exempt from the payment of Annual Assessments and when any Designated Builder is paying Reduced Assessments, Declarant and each Designated Builder, as applicable, shall pay to the Association such amounts (“**Deficiency Assessments**”) as may be necessary to make up any budget shortfalls of the Association resulting from the Reduced Assessments paid by the Designated Builder and the fact that Declarant is exempt from the payment of Assessments with respect to any Lots owned by Declarant. Such deficiencies shall be allocated between Declarant and the Designated Builders on a pro rata basis according to the number of Lots owned by Declarant and each Designated Builder as of the date the payment is requested by the Board or the management agent. In no event shall Declarant or any Designated Builder be required to pay the Association in excess of the amount of Assessments that would have been payable by Declarant or the Designated Builder if the Lots owned by Declarant or the Designated Builder had been assessed as Assessable Lots. (As an example of the effect of the foregoing, if the Annual Assessment per Lot was \$240.00, the Reduced Assessment paid by a Designated Builder was consequently \$60.00, and there was a shortfall in of such year, the maximum Deficiency Assessment payable by a Designated Builder for the year will be \$180.00, calculated by taking the full Annual Assessment (\$240.00) and subtracting the reduced Annual Assessment (\$60.00)). Declarant and Designated Builders shall pay Annual Assessments in the same manner and at the same per Lot amount as other Owners under this Declaration after the expiration of the Declarant Control Period. In the event of any conflict between this *Section 8.6* and any other paragraph of the Declaration, this *Section 8.6* shall control.

8.7 Computation of Annual Assessments; Annual Budget. The Annual Assessments shall commence as to all Assessable Lots on the first day of the calendar month following conveyance of the first Lot to a Purchaser. The initial Annual Assessment shall be prorated according to the number of months remaining in the calendar year within which the Annual Assessments actually commence. At least thirty (30) days prior to the commencement of each Assessment Period (as such period shall be determined by the Board), the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments or other amount to be generated through Assessments against the Lots. The Annual Assessments may include contributions to the Capital Reserve Fund described in *Section 8.14*, in addition to the contributions required by *Section 8.15*. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot an Annual Assessment. The Annual Assessment shall be the same for each Assessable Lot. The amount of increase, if any, in the Annual Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by

Arizona law, including the provisions of A.R.S. Section 33-1803, as amended. When adopted by the Board, the Board shall make the annual budget available to the Members of the Association. The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board and not relieve any Owner from its obligation to pay the Annual Assessment. If the Board fails to adopt a budget for any Assessment Period at least thirty (30) days in advance, then the current Annual Assessment amount shall apply until the Board establishes the Annual Assessment for each subsequent fiscal year. Except as provided in *Section 8.10*, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners.

8.8 Due Dates; Confirmation of Payment. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed “paid” when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed “paid” and shall remain due and payable with interest accruing from the date such Assessments were originally due). The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Association’s manager setting forth whether the Assessments payable with respect to a specific Lot have been paid. A properly executed certificate of the Association as to the status of the payment of Assessments with respect to any such Lot shall be binding upon the Association as to the matters described therein. Any Assessments that are not paid when due shall be subject to the payment of interest and late fees in accordance with the provisions of *Section 8.3.2(a)(ii)* hereof.

8.9 Inadequate Funds. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are or will become inadequate to meet all Common Expenses for any reason including, without limitation, nonpayment of Assessments by Members, the Board may amend the budget and increase the Annual Assessment for that Assessment Period (subject to such limitations as may be imposed by Arizona Law) and the revised Annual Assessment shall commence on the date designated by the Board.

8.10 Maximum Annual Assessment. The Assessments provided for under *Section 8.7* shall not at any time exceed the “**Maximum Annual Assessment**,” as determined in accordance with this *Section 8.10*. For the fiscal year ending December 31 of the year in which the Common Areas are first conveyed to the Association, the Maximum Annual Assessment applicable to the Lots shall be the amount established by Declarant for Annual Assessments no later than the date on which the first retail sale of a Lot to a Purchaser occurs. Unless a greater Maximum Annual Assessment is approved by majority of all Members of the Association, the Maximum Annual Assessment for any fiscal year shall be equal to the Annual Assessment levied in the immediately preceding fiscal year increased by twenty percent (20%). Increases in Annual Assessments shall be subject to any limitations imposed by A.R.S. Section 33-1803 or other applicable law.

8.11 Special Assessments. The Association may, in addition to the Annual Assessments under *Section 8.7*, levy a Special Assessment but only for the purpose of defraying, in whole or in part, the cost of any Construction, reconstruction, repair, or replacement of a Capital Improvement owned by the Association or for defraying other extraordinary expenses; provided, however, that such Special Assessment must be approved by at least two-thirds (2/3rds) of the votes entitled to be cast by the Members voting in person or by absentee ballot at a meeting of the Association

duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners.

8.12 Administrative Fee. Each Person who acquires a Lot together with a completed Dwelling Unit constructed thereon shall pay to the Association (or, at the direction of the Association, to any management company employed by the Association to manage the affairs of the Association) immediately upon becoming the Owner of the Lot an administrative fee as is established from time to time by the Board, not to exceed the amount permitted under applicable law, to cover actual costs to the Association of Membership transfer.

8.13 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser who acquires a Lot together with a completed Dwelling Unit constructed thereon shall pay to the Association immediately upon becoming the Owner of such Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for such Lot (the "**Working Capital Contribution**"). Funds paid to the Association pursuant to this *Section 8.13* may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this *Section 8.13* shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this *Section 8.13* shall not be used in calculating the Maximum Annual Assessment pursuant to *Section 8.10* hereof. Working Capital Contributions payable pursuant to this *Section 8.13* are secured by the Assessment Lien and are in addition to any other fees payable pursuant to the Community Documents and any other fees payable at the close of escrow. The Board may, from time to time, thereafter increase or decrease the amount of the Working Capital Contribution, but the amount of the Working Capital Contribution may not be increased by the Board by more than twenty percent (20%) during any year without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

No Working Capital Contribution shall be payable with respect to:

- (a) the transfer or conveyance of a Lot by devise or intestate succession;
- (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, a family limited liability company, or other Person for bona fide estate planning purposes;
- (c) a transfer or conveyance of a Lot to a corporation, partnership, limited liability company, or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Contribution, in which event a Working Capital Contribution shall be payable with respect to such transfer or conveyance;
- (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or
- (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. Section 33-741 et seq.

8.14 Capital Reserve Fund; Reserves. The Board shall establish reserves for the future periodic maintenance, repair, or replacement of the major components of the Association Maintained Areas. The reserves may be funded from Annual Assessments, Special Assessments, the Working Capital Contributions paid pursuant to this Declaration, the Reserve Contributions paid pursuant to this Declaration, or any other revenue of the Association (the “**Capital Reserve Fund**”). All amounts designated as reserves shall be deposited by the Board in a separate bank account (the “**Reserve Account**”) to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Unless the Association is exempt from federal or state taxes, all reserves shall be accounted for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Reserve Account may only be used to pay costs and expenses related to the periodic maintenance, repair, and replacement of the Association Maintained Areas, unless the expenditure of any or all of the funds in the Reserve Account for other purposes is approved by the vote of Owners holding at least two-thirds (2/3rds) of the votes in the Association. Notwithstanding any other provision of this *Section 8.14* to the contrary, any funds held in the Reserve Account that are in excess of the funds reasonably necessary for the future repair and replacement of the major components of the Association Maintained Areas, as determined by the Board in its sole discretion, may be used for the Construction of new improvements on the Common Area.

8.15 Capital Reserve Fee; Reserve Contribution. Except as otherwise provided in this *Section 8.15*, each Purchaser shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for such Lot (the “**Reserve Contribution**”) to the reserves of the Association for the periodic maintenance, repair, and replacement of the major components of the Association Maintained Areas. The Board may, from time to time, thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board by more than twenty percent (20%) during any year without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

No Reserve Contribution shall be payable with respect to:

- (a) the transfer or conveyance of a Lot by devise or intestate succession;
- (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, a family limited liability company, or other Person for bona fide estate planning purposes;
- (c) a transfer or conveyance of a Lot to a corporation, partnership, limited liability company, or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution, in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance;
- (d) the conveyance of a Lot by a trustee’s deed following a trustee’s sale under a deed of trust; or

- (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. Section 33-741 et seq.

All Reserve Contributions shall be deposited in the Reserve Account established pursuant to this Declaration. Reserve Contributions shall be non-refundable and shall not be offset or credited against or considered as an advance payment of Assessments. Payments made pursuant to this *Section 8.15* shall not be used in calculating the Maximum Annual Assessment pursuant to *Section 8.10* hereof. Reserve Contributions payable pursuant to this *Section 8.15* are secured by the Assessment Lien and are in addition to any other fees provided for in the Community Documents and any other fees to be paid at the close of escrow.

ARTICLE 9

USE OF FUNDS; BORROWING POWER

9.1 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual Assessments, Reduced Assessments, Special Assessments, Deficiency Assessments, Working Capital Contribution, Reserve Contribution, other fees, loan proceeds, surplus funds, and all funds and property received by it from any other source) for the common good and benefit of the Property and the Members and Residents by devoting said funds and property, among other things, to the payment of all Common Expenses. The Association may also expend its funds for any purposes that any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter, subject to the limitations imposed by *Section 11.6* with respect to funds for proceedings arising from any Defect.

9.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that no portion of the Common Areas shall be mortgaged or otherwise encumbered without the approval of at least two-thirds (2/3rds) of the Members of each Class of Members; provided, however, that, for so long as Declarant is a Class B Member, no portion of the Common Areas shall be mortgaged or otherwise encumbered without the Declarant's consent. Notwithstanding anything contained in the foregoing to the contrary, if ingress and egress to any Owner's Lot is over or through any Common Areas that will be mortgaged or otherwise encumbered as provided in the foregoing, any such mortgage or encumbrance shall be subject to such Lot Owner's right and easement for ingress and egress.

9.3 Surplus Funds; Association's Rights in Spending Funds from Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Assessments, Deficiency Assessments, Special Assessments, Working Capital Contributions, Reserve Contribution, other fees, or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year 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 and the accomplishment of its purposes.

ARTICLE 10
INSURANCE

10.1 Scope of Coverage. Commencing no later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain insurance as to the Association Maintained Areas, including the Common Areas, directors and officers liability insurance, and/or such other insurance as the Board determines appropriate with the amount and type of coverage to be determined by the Board. The premiums payable by the Association for such insurance shall be part of the Common Expenses. Such insurance may include, without limitation, any of the following:

- (a) Comprehensive general liability insurance, including medical payments insurance in amounts determined by the Board, but not less than \$1,000,000.00, that shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the Association Maintained Areas, including the Common Areas and all other portions of the Property that the Association is obligated to maintain under this Declaration and performance of the Association's duties and the exercise of the Association's rights and responsibilities, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group.
- (b) Property/Casualty loss insurance on all Common Areas, insuring against all risk of direct physical loss, in an amount equal to the maximum insurance replacement cost of the Association Maintained Areas including the Common Areas exclusive of land, excavations, foundations, deductibles, and other items normally excluded from a property policy.
- (c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of the State of Arizona.
- (d) "Agreed amount" and "inflation guard" endorsements.
- (e) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association and its Members.

The insurance policies obtained by the Association shall, to the extent reasonable, contain the following provisions:

- (i) There shall be no subrogation with respect to the Association, its agents, servants, or employees with respect to Owners and members of their household;
- (ii) No act or omission of any Member will void the policy or be a condition of recovery on the policy;
- (iii) The coverage afforded by any such policy shall not be brought into contribution or proration with any insurance that may be purchased by any Member of their mortgagees or beneficiaries under deeds of trust;

- (iv) A “severability-of-interest” endorsement that shall preclude the insurer from denying the claim of any Member because of the negligent acts of the Association or other Members;
- (v) A statement of the name of the insured as the Association; and
- (vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carried shall notify any First Mortgagee named in the policy at last ten (10) days in advance of the effective date of any substantial modification, reductions, or cancellation of the policy.

10.2 Certificates of Insurance. Any insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and upon request to any Owner, mortgagee, or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled less than thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner, and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

10.3 Payment of Insurance Proceeds. With respect to any loss to any Association Maintained Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Association Maintained Areas. The Association is irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board shall have full and complete power to act for the Association in this regard and may, in its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the Trustee shall have authority to negotiate losses under any policy purchased by the Association.

10.4 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Areas that is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or unless Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association in accordance with *Section 9.1*.

If all of the Association Maintained Areas are not repaired or replaced, insurance proceeds attributable to the damaged Association Maintained Areas shall be used to restore the damaged area to a condition that is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be retained by the Association as an addition to the Capital Reserve Fund.

10.5 Individual Responsibility; Disclaimer of Liability. It shall be the responsibility of each Owner and Resident to provide insurance for himself and his real and personal property interests on or within the Property, including but not limited to, additions and Improvements thereto, furnishings, and personal property thereon, and for his personal liability. No Person shall maintain any insurance that would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvement or

fixtures on the Association Maintained Areas. The Association, Board members, Designated Builders, and Declarant shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or the amount of such insurance is not adequate.

ARTICLE 11
MANDATORY BINDING ARBITRATION
FOR MATTERS INVOLVING DECLARANT OR A DECLARANT AFFILIATE

11.1 Dispute Resolution.

11.1.1 Consensus for Association Action. Except as provided in this *ARTICLE 11*, the Association may not commence a legal proceeding or an action without the approval or affirmative vote of Owners representing not less than seventy-five percent (75%) of the total authorized votes in each class of membership. A Member holding a proxy (if proxies are then allowed by applicable law, such as A.R.S. Section 33-1812, as amended) or otherwise representing Lots owned by Owners other than the voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of seventy-five percent (75%) of the total number of Lots represented by the voting Member. *Section 11.1* shall not apply, however, to (i) actions brought by the Association to enforce Community Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or (v) any claims, grievances or disputes that do not involve a Bound Party and where the amount in controversy is equal to or less than \$50,000.00.

11.1.2 Alternative Method of Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors, committee members and other Association officials; all Owners and other persons subject to this Declaration; any Builder, its officers, directors, employees and agents; and any Person not otherwise subject to this Declaration who agrees to submit to this *ARTICLE 11* (each such entity being referred to as a “**Bound Party**”) agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes related to the Property or this Declaration as more particularly described in *Section 11.1.3* (collectively, “**Claims**”) to the procedures set forth in this *ARTICLE 11*.

11.1.3 Claims. Unless specifically exempted below, all Claims between any of the Bound Parties relating to the Property regardless of how the same might have arisen or on what it might be based including, but not limited to, Claims (a) arising out of or relating to the interpretation, application or enforcement of the Community Documents or the rights, obligations and duties of any Bound Party under the Community Documents; (b) relating to the design or construction of Improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of *Section 11.1.4* and, if applicable, the dispute resolution provisions of the purchase agreement for the purchase of a Dwelling Unit. To the extent of any conflict between the dispute resolution provisions of this Declaration, and the dispute resolution provisions of a purchase agreement, the dispute resolution provisions of the purchase agreement shall control between the buyer and Builder, and the buyer and seller, as to the portion of the Property subject to the purchase agreement, but the provisions hereunder shall apply as to the Common Areas and actions brought by or on behalf of the Association. Notwithstanding the foregoing, in addition to the provisions of

Section 11.1.4, claims involving a Defect or Alleged Defect shall first be subject to the provisions of *Section 11.2*, prior to the Bound Parties proceeding to mediation under *Section 11.1.4(b)(ii)*.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of *Section 11.1.4*.

- (a) any suit by the Association against any Bound Party to enforce the provisions of *ARTICLE 8* (Covenant for Assessments and Creation of Lien);
- (b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's and/or Declarant's ability to act under the provisions of *ARTICLE 4* (Permitted Uses and Restrictions) or *ARTICLE 5* (Architectural Control);
- (c) any suit between or among Owners which does not include Declarant, a Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Community Documents;
- (d) any suit in which any indispensable party is not a Bound Party;
- (e) any suit as to which any applicable statute of limitations has expired; and
- (f) those matters set forth in the last sentence of *Section 11.1.1*.

11.1.4 Mandatory Procedures.

- (a) **Notice.** Any Bound Party having a Claim (for purposes of this *Section 11.1.4*, "**Claimant**") against any other Bound Party ("**Respondent**") (the Claimant and the Respondent referred to herein being individually, as a "**Party**," or, collectively, as the "**Parties**") shall notify each Respondent in writing (the "**Notice**"), stating plainly and concisely:
 - (i) the nature of the Claim, including the persons involved and Respondent's role in the Claim;
 - (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises including, as applicable, proof that the Members have approved the course of action in accordance with *Section 11.1.1* above);
 - (iii) the proposed remedy; and
 - (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

To the extent applicable, the Association shall promptly provide to any Bound Party all Association documents reasonably requested by such Bound Party to confirm that seventy-five percent (75%) of the total authorized votes in each class of membership has approved the commencement of a legal proceeding or an action, including the filing of a Claim.

(b) **Negotiation and Mediation.**

- (i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (ii) If the Parties do not resolve the Claim within 30 days after the later of the date of the Notice and, for Claims involving an Alleged Defect, the expiration of the Cure Period provided in *Section 11.2* (as such Cure Period may be reasonably extended by the Builder if the Builder is diligently pursuing the cure) (“**Termination of Negotiations**”), Claimant shall have 30 days to submit the Claim to mediation under the auspices of the American Arbitration Association (“**AAA**”) in accordance with the AAA’s Supplementary Mediation Procedures for Residential Construction Disputes in effect on the date of the Notice or, if such supplementary procedures are not then in effect, then in accordance with the AAA’s Construction Industry Mediation Rules in effect on the date of the notice of the Claim.
- (iii) If Claimant does not submit the Claim to mediation within such 30-day period, or does not appear for the mediation, then the Respondent shall deliver notice to Claimant, in accordance with *Section 11.7*, stating that Respondent is ready to proceed with mediation of the Claim. If Claimant, within 60 days after the receipt of Respondent’s notice, does not submit the Claim to mediation, or does not appear for the meditation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
- (iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 90 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings (“**Termination of Mediation**”). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys’ fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with *Section 11.1.4* and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in *ARTICLE 11*. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying, from all such Parties pro rata) all costs incurred in enforcing such agreement including, without limitation, attorneys’ fees and court costs.

(c) **Binding Arbitration.**

- (i) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Supplementary Arbitration Procedures for Residential Construction Disputes then in effect or, if such supplementary procedures are not in effect, in accordance with the AAA's Construction Industry Arbitration Rules then in effect; provided, however, that the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) shall apply, as necessary, to supplement the applicable AAA rules. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. The arbitrator(s) shall not have any relationship to the parties or interest in the Property.
- (ii) If Claimant does not submit the Claim to arbitration within 90 days after receipt of the Termination of Mediation, or does not appear for the arbitration, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
- (iii) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).
- (iv) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.
- (v) Unless otherwise mutually agreed by the parties to the proceedings, the arbitration proceedings shall be heard in the County.

11.1.5 No Amendment of Section 11.1. Without the prior written consent of Declarant and any and all Builders, *Section 11.1* may not be amended for a period of twenty years from the effective date of this Declaration.

11.2 Right to Cure Alleged Defect. If the Association, the Board or any Owner or other Person (for purposes of this *Section 11.2*, "**Claimant**") claims, contends, or alleges that a Defect (an "**Alleged Defect**") exists in any Improvements within the Property as installed or constructed by or on behalf of Declarant or a Builder, including, but not limited to, the Dwelling Unit

constructed on the Lots, the Person that constructed the Improvement (for purposes of this *Section 11.2*, the “**Respondent**”) shall have the right to inspect, repair, redesign, and/or replace the Alleged Defect as set forth in this *Section 11.2*.

- (a) **Defect Defined.** As used in this Declaration, “**Defect**” shall mean failure to construct or install Improvements in accordance with: approved plans and specifications, applicable governmental requirements, contractual obligations, applicable covenants or aesthetic requirements or standards of good practice in the applicable industry; using acceptable materials or procedures; in breach of applicable governmental, legal or contractual obligations; or otherwise contrary to the expectations of the Claimant.
- (b) **Notice of Alleged Defect.** Within 30 days after discovering any condition that will be alleged to be a Defect, a Claimant shall give written notice of the Alleged Defect (“**Notice of Alleged Defect**”) to the Respondent(s) believed by the Claimant to be responsible for the Alleged Defect. The Notice of Alleged Defect shall include a reasonably detailed description of the Alleged Defect, shall contain the information required by *Section 11.1.4(a)*, and may contain any additional information the Claimant believes to be necessary to cure the Alleged Defect.
- (c) **Right to Enter, Inspect, Repair and/or Replace.** Within ninety (90) days after the receipt of a Notice of Alleged Defect (the “**Cure Period**”), each and every Respondent shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter the affected portion of the Property for the purposes of inspecting and/or conducting testing and, if the Respondent(s) so chooses in its sole discretion, repairing, and/or replacing the Alleged Defect (or paying the Claimant the reasonable cost of repairing and/or replacing the Alleged Defect) or to otherwise respond to the Claimant in the event that the Respondent(s) determines that no default has occurred and/or no Defect exists. A Claimant shall have no right to bring any action against Respondent(s) until the earlier of: (i) the expiration of the Cure Period (as such Cure Period may be reasonably extended by the Respondent if Respondent is diligently pursuing a cure) or (ii) the Respondent(s)’ election to not take any curative action with respect to the Alleged Defect (the “**Termination of the Cure Period**”). Upon the Termination of the Cure Period, the Claimant may elect to proceed to mediation as provided in *Section 11.1.4(b)(ii)*, and thereafter, the remainder of *Section 11.1.4* shall govern the resolution of the dispute between Claimant and Respondent. The Cure Period shall be extended by any period of time that Claimant refuses to allow such Respondent(s) to perform inspections and/or perform tests as provided in this *Section 11.2*. Any agreement made in writing for repair, replacement or other curative action shall be enforceable against both parties to the agreement without requiring either party to again go through the notice and other procedures provided for in this *ARTICLE 11*.
- (d) **No Additional Obligations; Irrevocability and Waiver of Right.** Nothing in *Section 11.2* shall be construed to impose any obligation on any Person to inspect, test, repair, or replace any item or Alleged Defect for which the Person is not otherwise obligated under applicable law or other binding legal obligation. The right to enter, inspect, test, repair, and/or replace an Alleged Defect shall be

irrevocable and may not be waived or otherwise terminated with regard to any Person except by a written document executed by that Person.

- (e) **No Amendment of Section 11.2.** Without the express prior consent of Declarant and any and all Builders, *Section 11.2* may not be amended for a period of twenty years from the effective date of this Declaration.

11.3 Conflicts. Notwithstanding anything to the contrary in this Declaration, with the exception of *Section 13.5*, if there is a conflict between the provisions of this Article and any other provision of the Community Documents, this Article shall control.

11.4 Arizona Statute Compliance. In the event a court of competent jurisdiction invalidates all or part of this *ARTICLE 11* regarding the resolution of Disputes and litigation becomes necessary, Declarant, each Builder, the Association, the Board, and all Owners shall be bound by the applicable Arizona construction defect statutes—currently codified at A.R.S. Section 33-2001 et seq., and A.R.S. Section 12-1361 et seq.—then in existence.

11.5 Exclusions. Neither Declarant nor any Builder, as applicable, shall be liable for damages or any Defects caused by:

- (a) normal wear and tear;
- (b) an Owner's, Member's, or third party's use of the Property and/or Improvements;
- (c) alterations by Owners other than Builders; or
- (d) reliance by Declarant or any Builder on engineering or other reports.

11.6 Funds of the Association. Notwithstanding any other provision of this Article (or of any other Article of this Declaration), no funds of the Association shall be used or devoted to proceedings with respect to any Defect unless they are raised specifically for such purposes by a Special Assessment imposed in accordance with the requirements of this Declaration following appropriate notice to the Members of the purposes for which such funds are being collected.

11.7 Notices under Article 11. All notices required pursuant to this *ARTICLE 11* to be given to a Person that is an entity shall be deemed sufficient if personally delivered, delivered by commercial messenger service, or mailed by registered or certified mail, postage prepaid, return receipt requested to the address of: (i) the statutory agent for a Person (if any) and (ii) the "domestic address" as set forth in the records of the Arizona Corporation Commission or other jurisdiction of organization. With respect to notice that is required to be sent to a Person which is not an entity, such notice may be sent to the last known address of such Member, Owner, or Resident as it appears on the records of the Association as of the date of mailing.

11.8 Scope. Declarant or a Builder may, at its sole election, include its contractors, sub-contractors, and suppliers, as well as any warranty company and insurer as parties in any mediation or arbitration. The waiver or invalidity of any portion of this *ARTICLE 11* shall not affect the validity or enforceability of the remaining portions of this *ARTICLE 11*.

ARTICLE 12
MAINTENANCE

12.1 Common Areas and Public Rights-of-Way. The Association shall be responsible for the management and Maintenance of the Association Maintained Areas and all Improvements located thereon (including any Gates and any private irrigation lines within the Common Area), except for any part of the Association Maintained Areas that any governmental entity is maintaining or is obligated to maintain. The Association shall use a commercially reasonable standard of care in providing for the repair, management, and Maintenance of the Common Areas so that the Project will reflect a high degree of pride of ownership. The Board, however, shall be the sole judge as to the appropriate level of Maintenance of all Common Areas by the Association. Any cooperative action necessary or appropriate to the proper Maintenance and upkeep of the Common Areas shall be taken by the Board or by its duly delegated representative. Notwithstanding any duty the Association may have to maintain and repair the Common Areas, the Association and Declarant shall not be liable for injury or damage caused by a latent condition or by any Member, Owner, Resident, or other Person. Neither the Association nor Declarant shall be liable to any Person for any claim, injury, or damage arising from the use of the Common Areas, which shall be used at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage, or repair the Common Areas. Without limiting the foregoing, neither Declarant nor any other installer of landscaping in Common Areas shall be responsible for replacement of landscaping that dies more than ninety (90) days following installation or that requires replacement due to vandalism, lack of proper watering or maintenance by the association, or damage due to negligence of any Owner, Resident, or other Person. The foregoing limitations of liability with respect to Declarant or the Association shall not apply to any claim arising from the gross negligence or intentional misconduct of the Association or Declarant, as applicable.

12.1.1 The Association may also maintain any landscaping and other Improvements not on Lots that are within the exterior boundaries of the Property within areas shown on a Plat for any Tract within the Property and that are intended for the general benefit of the Owners and Residents of the Property, except the Association shall not maintain areas that:

- (a) the City or other governmental entity is maintaining, or
- (b) are required to be maintained by the Owners of a Lot, either through a Subsidiary Association or otherwise.

12.1.2 The Association shall, in the discretion of the Board:

- (a) Reconstruct, repair, replace, or refinish any Improvement or portion thereof upon Common Areas;
- (b) Remove and/or replace injured and diseased trees and other vegetation in any Common Area and plant trees, shrubs, and ground cover to the extent that the Board deems necessary for the conservation of water and soil or for aesthetic purposes (provided, however, without limiting the discretion of the Board, the Board need not replace dead or damaged landscaping if in the Board's discretion (i) the remaining landscaping is acceptable to the Board, and (ii) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with the City with respect to the Property, even if the location of specific plants is different than the locations shown on such approved landscaping plans);

- (c) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use, and regulation thereof; and
- (d) Do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and the beauty thereof in accordance with the general purposes specified in this Declaration.

12.1.3 No Owner, Resident, or other Person shall construct or install any Improvements on the Association Maintained Areas or alter, modify, or remove any Improvements situated on the Association Maintained Areas without the written approval of the Board. No Owner, Resident, or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Association Maintained Areas and the Improvements located thereon.

In the event any Plat, deed restriction, or this Declaration permits the Board to determine whether Owners of certain Lots will be responsible for Maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of the Property for the Association or an individual Owner to be responsible for such Maintenance considering cost, uniformity of appearance, location, and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the Maintenance and other obligations of the Association under this *ARTICLE 12* and in order to promote uniformity and harmony of appearance. The Board may also cause the Association to contract to provide Maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

12.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for Maintenance or repair of Common Areas and other areas maintained by the Association is caused through the act of any Member, the Member's family, guests, tenants, or invitees, the cost of such Maintenance or repairs shall be due within thirty (30) days of notice and shall be an Assessment to which such Member and the Member's Lot is subject, and shall be secured by the Assessment Lien, provided that, prior to submitting a bill for such costs, the Board shall cause a notice to be sent to the Member specifying the Maintenance or repairs and the Member shall have the right to object to his responsibility. Following the Board's consideration of such objection, the Board may absolve the Member or demand that the Member pay the bill within the thirty (30) day period provided above. The decision of the Board shall be final and binding, subject to the final decision of a court of competent jurisdiction. Any charges or fees to be paid by the Owner of a Lot in connection with a contract entered into by the Association with an Owner for the performance of an Owner's Maintenance responsibilities shall also be an Assessment and shall be secured by the Assessment Lien.

12.3 Improper Maintenance and Use of Lots and Tracts; Association's Right to Remedy. In the event any portion of any Lot or Tract is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots, Tracts, or other areas of the Property that are substantially affected thereby or related thereto, or in the event any portion of a Lot or Tract is being used in a manner that violates this Declaration or the other Community Documents, or in the event the Owner of any Lot or Tract is failing to perform any of its obligations under this Declaration or other Community Documents, the Board may, by resolution, make a finding to such effect specifying the particular condition or conditions that exist and, pursuant thereto, give notice thereof to the offending Owner that unless corrective

action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If, at the expiration of said fourteen (14) day period of time, the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken (either by undertaking such corrective actions or bringing suit to compel the offending Owner to undertake such corrective action) and the cost thereof, together with any attorney's fees expended by the Association in connection therewith, shall be an Assessment to which the offending Owner and the Owner's Lot or Tract is subject, if any, and shall be secured by the Assessment Lien.

12.4 Conveyance of Common Areas. The Association shall be responsible for the ongoing Maintenance, repair, and restoration of Tracts and areas designated or intended to become Common Areas commencing upon the substantial completion of the installation of landscaping and other Improvements in such Tracts and areas in substantial accordance with the approved landscaping plans filed with the City. After conveyance of any Common Area to the Association, the Association shall not further convey the Common Area without the consent of at least two-thirds (2/3rds) of the Members of each Class of Members of the Association or at least two-thirds (2/3rds) of the Class A Members if there is no longer a Class B Membership.

ARTICLE 13 **RIGHTS AND POWERS OF ASSOCIATION**

13.1 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 that a municipality could do or that now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and 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.

13.2 Rights of Enforcement of Provisions of This and Other Instruments. Declarant, during the Declarant Control Period, and the Association, as the agent and representative of the Members, shall each have the right to enforce the provisions of this Declaration and the other Community Documents. Notwithstanding the foregoing, if Declarant or the Association shall fail or refuse to enforce this Declaration or any provision hereof and the other Community Documents for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association by any appropriate action whether in law or in equity, but not at the expense of the Association. No Member may bring an action against the Board or Declarant for failure to enforce the Community Documents without joining as claimants at least twenty percent (20%) of the Members, and without complying with the provisions contained in this Declaration and the other Community Documents. Subject to the preceding sentence, any Member may enforce the provisions of this Declaration and the other Community Documents at any time by any appropriate action, whether or not Declarant and/or the Association takes any action to enforce the provisions of this Declaration and the other Community Documents.

13.2.1 The Association may enforce the Community Documents in compliance with applicable law in any manner provided for in the Community Documents or by law, or in equity, including, but not limited to:

- (a) Imposing reasonable monetary fines or penalties, in compliance with A.R.S. Sections 33-1803 and 33-1807, as amended, and other applicable law, after notice and an opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Resident on the Owner's Lot or any guest or invitee of the Owner or any Resident;
- (b) Suspending an Owner's right to vote;
- (c) Suspending any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from an Owner's Lot;
- (d) Suspending any services provided by the Association to any Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;
- (e) Exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;
- (f) Requiring an Owner, at the Owner's expense, to remove any structure or other Improvement on such Owner's Lot in violation of the Community Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (g) Without liability to any Person, prohibiting any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Community Documents from continuing or performing any further activities in the Property;
- (h) Towing vehicles from Common Areas owned by the Association that are parked in violation of the Community Documents;
- (i) Filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or monetary damages, or to obtain such other relief as to which the Association may be entitled; and
- (j) Recording a written notice of violation by any Owner or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: the name of the Owner or Resident violating or responsible for the violation of the Community Documents; the legal description of the Lot against which the notice is being Recorded; a brief description of the nature of the violation; a statement that the notice is being Recorded by the Association pursuant to this Declaration; and a statement of the specific steps that must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent Purchaser of the Lot, that there is such a violation. Failure by the

Association to Record a notice of violation shall not constitute any evidence that no violation exists with regard to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that, because of the strength of the Owner's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

13.3 Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, or in the Articles, the Bylaws, or the laws of the State of Arizona (including, without limitation, A.R.S. Section 33-1811), the Association may enter into contracts and transactions with others, including Declarant and its Affiliates, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one (1) or more directors or officers of the Association, or members of any committee is employed by or otherwise connected with Declarant or its Affiliates provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer, or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member that shall authorize any contract or transaction described above or grant or deny any approval sought by Declarant or any Affiliate or any competitor thereof and may vote to authorize any such contract, transaction, or approval with like force and effect as if he were not so interested.

13.4 Fines. The Association, acting through the Board, shall have the right to adopt a schedule of fines for the violation of any provision of the Community Documents, including the Association Rules, by any Owner or Resident. No fine shall be imposed, however, without first providing a written warning to the Owner or Resident in question describing the violation and stating that the failure to stop such violation within no less than ten (10) business days, or less in the event of a recurrence of the same violation within three (3) months of the original violation, or other time periods as may be required by applicable law, shall make the Owner or Resident, as applicable, subject to the imposition of a fine. All Owners shall be given an opportunity to be heard regarding the imposition of a fine prior to the levying of a fine in accordance with applicable law. All fines imposed by the Association shall be paid within thirty (30) days following imposition, and shall accrue interest at a per-annum rate equal to twelve percent (12%) thereafter. Notwithstanding anything to the contrary contained in this Declaration, the levying and collection of all fines or other monetary penalties under this Declaration must comply with applicable law, including A.R.S. Sections 33-1803 and 33-1807, as amended.

13.5 Board of Directors Power to Enforce.

13.5.1 Power to Enforce. The Board shall have the authority to enforce all uses and restrictions contained in the Community Documents and all decisions of the Architectural Committee, subject to applicable law including, without limitation, the notice, hearing and other requirements of A.R.S. Section 33-1803. The Board shall act as the final arbiter of any dispute related to the uses and restrictions contained in *ARTICLE 4* and all rules enacted under *ARTICLE 5*, subject to applicable law. The Board shall act as the final interpreter of any of the provisions in this Declaration and all rules or decisions of the Architectural Committee under *ARTICLE 5*, subject to the decision of a court of competent jurisdiction and applicable law. This Declaration shall be governed by and construed in accordance with the laws of the State of Arizona. Nothing

contained in this *Section 13.5* shall limit the Association's right to file legal actions for the collection of Assessments, or to enjoin violations.

- (a) Any Owner may submit a written request to the Board for an enforcement hearing related to any dispute related to the Board's enforcement rights under this *Section 13.5* (except for collection of Assessments).
- (b) Within thirty (30) days of the Board's receipt of an Owner's written request for an enforcement hearing, the Board shall set the matter for hearing. The Board shall notify the Owner of the hearing date and time in writing.
- (c) The Board shall issue its decision within thirty (30) days after the date of the hearing.

13.5.2 Board Discretion to Regulate the Appeal Process. The Board shall regulate hearing procedures in its discretion on a case-by-case basis. In no event shall the Board prohibit the Owner from testifying at the hearing. The Board shall admit such witness testimony and physical evidence as the Board deems relevant and non-cumulative. The Owner shall have the right to cross-examine witnesses and to be represented by counsel.

13.5.3 Binding Decision of the Board. Subject to the provisions in this document and applicable law, any decision pursuant to this *Section 13.5* is final and binding upon the Owner and may not be subject to judicial challenge. Board discussions may only be appealed if the Owner complies with this *Section 13.5* and any subsequently adopted enforcement policies. In the event no relevant policies are adopted by the Board, such appeals shall be handled pursuant to the terms of *ARTICLE 11* of this Declaration.

13.5.4 Owner Acceptance of Board's Arbitration. By accepting a Deed subject to this Declaration, all Owners agree to the arbitration agreements contained in this Declaration.

ARTICLE 14

ANNEXATION AND DEANNEXATION; REPLAT

14.1 Annexation of Annexable Property. The Annexable Property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent, or vote of the Association or its Members provided that a Declaration of Annexation, as hereinafter described, covering the portion of the Annexable Property sought to be annexed shall be executed by Declarant, or its successors and assigns, and by the fee title holders of the portions of the Annexable Property sought to be annexed, in the event Declarant or its successors and assigns does not hold fee title to all of said property, and Recorded. Such execution and Recording of a Declaration of Annexation shall constitute and effectuate the annexation of the portion of the Annexable Property described therein, making said real property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter, the Annexable Property so annexed shall be part of the Property and all of the Owners of Lots in the Annexable Property so annexed shall automatically be Members of the Association. Although Declarant, its successors, and assigns, shall have the ability to so annex all or any portion of the Annexable Property, neither Declarant nor its successors and assigns shall be obligated to annex all or any portion of the Annexable Property, and such Annexable Property shall not become subject to this Declaration unless and until a Declaration of Annexation annexing such Annexable Property shall have been so executed and Recorded. The Declaration of Annexation may contain provisions for the establishment of a

Subsidiary Association, if approved and acknowledged by the Association or if established by Declarant in the Declaration of Annexation.

14.2 Annexation of Other Real Property. Prior to the termination of the Declarant Control Period, the Declarant may cause real property other than the Annexable Property to be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association; provided, however, that the Declarant must obtain the consent of the owner of such property. Real property other than the Annexable Property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association after the Declarant Control Period only with the prior written consent of Members holding at least seventy-five percent (75%) of the votes of the Association and the consent of the owner of such property. In the event that any additional real property is annexed to the Property, such annexation shall be effected by the Recordation of a Declaration of Annexation covering the real property sought to be annexed and executed by the Board and by the fee title holders of the real property sought to be annexed.

14.3 Deannexation Without Approval. A portion or portions of the Property may be deannexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Association provided that a Certificate of Deannexation covering the portion of the Property sought to be deannexed shall be executed and Recorded by Declarant and by the Owner(s) of all of the real property to be deannexed. No Certificate of Deannexation shall be so executed and Recorded pursuant to this *Section 14.3* after the first to occur of (a) the first sale of a Lot to a Purchaser in the portion of the Property to be deannexed, or (b) the date that is twenty (20) years subsequent to the Recording of this Declaration.

14.4 Declarations of Annexation and Certificates of Deannexation. The annexations and deannexations authorized under the foregoing Sections shall be made by Recording in the office of the County Recorder of the County, a Declaration of Annexation or similar instrument that shall extend the plan of this Declaration to such property or a Certificate of Deannexation that shall remove the portion of the Property covered thereby from the plan of this Declaration. The Declarations of Annexation contemplated above may contain such complementary additions and modifications of the Covenants, Conditions, and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Declaration of Annexation revoke, modify, or add to the Covenants established by this Declaration within the existing Property.

14.5 Reservation of Right to Resubdivide and Replat. Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to resubdivide and replat any Tract, Lot, or Lots which the Declarant then owns and has not conveyed or sold.

ARTICLE 15

TERM; AMENDMENTS; TERMINATION

15.1 Term; Method of Termination. This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each unless there is an affirmative vote to terminate this Declaration by Members holding ninety percent (90%) of the votes eligible to be cast at a meeting held for such purpose within six (6)

months prior to the expiration of the effective period hereof, and by Declarant to the extent Declarant and/or any Designated Builder holds a Class B Membership. This Declaration may be terminated at any time if one hundred percent (100%) of the votes cast by the Members shall be cast in favor of termination at a meeting held for such purpose and Declarant, to the extent it continues to own a Lot in the Property, have voted in favor of termination. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained within a period beginning six (6) months prior to such vote to six (6) months after such vote from the holders of First Mortgages to which the Assessment Lien is subordinate pursuant to this Declaration, on seventy-five percent (75%) of the Lots upon which there are such First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of the County, a Certificate of Termination duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect and the Association shall be dissolved pursuant to the terms set forth in its Articles.

15.2 Amendments. This Declaration may be amended at any time by the affirmative vote of Members holding at least seventy-five percent (75%) of the votes of the Association. So long as the Declarant or any Designated Builder owns one or more Lots or any portion of the Annexable Property, any amendment to this Declaration must be approved in writing by Declarant. In addition, the provisions of this Declaration shall not be amended to the detriment of Declarant without the prior written consent of Declarant even if Declarant no longer owns any Lot at the time the amendment is adopted by the Owners. However, after Declarant and any Designated Builder no longer own any Lots in the Association, Declarant cannot unreasonably withhold written consent of amendments. Declarant, so long as Declarant or any Builder owns any Lot or any part of the Annexable Property, and thereafter the Board, may amend this Declaration or the Plat without obtaining the approval or consent of any Owner or First Mortgagee in order to correct technical or clerical errors.

Any amendment approved by the Owners shall be signed by the President or Vice President of the Association and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

Any challenge to any amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this *Section 15.2* must be made within one (1) year after the Recording of the amendment.

15.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions. Declarant, so long as Declarant or any Builder owns any Lot or any part of the Annexable Property, and thereafter the Board, may amend this Declaration or the Plat without obtaining the approval or consent of any Owner or First Mortgagee in order to conform this Declaration or the Plat to the requirements or guidelines of the FNMA, the FHLMC, the FHA, the Department of Veterans Affairs, or any federal, state, or local governmental agency whose approval of the Property, the Plat, or the Community Documents is required by law, by Declarant, or by the Board.

Declarant, so long as Declarant or any Builder owns any Lot or any part of the Annexable Property, and thereafter the Board, may amend this Declaration without the consent of any other Owner for the purposes of correcting technical or clerical errors. During the Declarant Control

Period, and if the Property has been approved by the FHA or VA in connection with any loan programs made available by FHA or VA, any amendment to this Declaration must be approved by the Department of Veterans Affairs and/or the Federal Housing Administration, as applicable, if required by such agency at the time of the amendment.

Any amendment approved by Members or by the Board shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this *ARTICLE 15*. Any amendment made by Declarant shall be signed by Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon Recording of the amendment.

ARTICLE 16 **MISCELLANEOUS**

16.1 Disclosures.

16.1.1 School Operations. The Property is located in the vicinity of currently operated schools. As a result, residents of the Property may be exposed to nuisances associated with regular school activity in the immediate and surrounding area, including, but not limited to, noise, dust, foot and vehicle traffic, sports field lighting and public address announcements, and all other regular activities associated with school activities. Declarant makes no representations or warranties whatsoever with regard to such operations.

16.1.2 Commercial Sites. The Property is located near designated commercial sites, and subject to substantial levels of sound, noise, and other nuisances, from such commercial site, and any commercial buildings or facilities developed thereon.

16.1.3 City Parks. The Property is located near certain parks currently owned and maintained by the City. No assurance is made by Declarant or any Builder that there is any right to access any parks in the vicinity of the Property, that the parks in the vicinity of the Property will remain maintained as parks by the City, or that the view of the parks from the Property will remain unobstructed in the future.

16.1.4 Undomesticated Creatures. The Property is located nearby certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, coyotes, javelinas, reptiles and insects), which may from time to time stray onto the Property, and which may otherwise pose a nuisance or hazard.

16.2 Acknowledgment. Each Owner, by accepting a deed to a Lot, shall be deemed to have fully investigated the issues related to the disclosures set forth in *Section 16.1* and shall be deemed to have agreed that neither Declarant nor any Builder nor any of their respective employees, agents, invitees, licensees, contractors, officers, directors, shareholders, affiliates, successors and assigns shall have any liability or obligation whatsoever with respect to any of the foregoing matters nor for any adverse consequences, circumstances, or conditions which may at any time arise as a result thereof.

16.3 Gates.

16.3.1 The Declarant or the Association may, but shall not be obligated to, construct gated entrances for Vehicles and/or pedestrians (each a “Gate” and collectively, the “Gates”) leading

into the Property, or portions of the Property, in order to limit access to the Property or such portions and to provide some privacy for some or all of the Owners and Residents. If constructed, the Board may make reasonable rules, which shall be consistent with this Declaration, relating to the right of entry through such Gates of each Gate User (as defined in *Section 16.3.2*).

16.3.2 Each Owner and Resident, and such Owner's and Resident's family members, agents, guests, invitees, tenants, lessees, or other permittees who uses a Gate (each a “**Gate User**” and collectively, the “**Gate Users**”) hereby acknowledge, understand, and agree that Declarant may, at its option, keep one or more of the Gates open for extended periods of time during construction and marketing activities at the Property.

16.3.3 Each Gate User hereby acknowledges and agrees as follows: (i) neither the Declarant nor the Association make any representations or warranties that any of the Gates will provide security, safety, or privacy to any Gate User; (ii) that each Gate User hereby assumes the risk that any Gate may not provide security, safety, or privacy and may restrict or delay entry into the Property and access to a Dwelling Unit by each Gate User and police, fire department, ambulances, and other emergency vehicles or personnel; (iii) neither the Declarant nor the Association shall be considered in any way the guarantor or insurer of security within the Property and no such Person shall be liable or responsible in any way for a failure to provide adequate security or for the ineffectiveness of security, safety, or privacy measures undertaken in good faith; (iv) the Gates, any patrolling of the Property, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security system (a) may be compromised or circumvented, (b) may not prevent loss by burglary, theft, hold-up, or otherwise, and (c) may not in all cases provide the detection or protection for which the system, group, or plan is designed or intended.

16.3.4 The Declarant, the Association, any Designated Builder, any management company retained to manage the Property, and any member, partner, director, officer, agent or employee of any of the foregoing, shall not be liable to any Gate User for any claims or damages resulting, directly or indirectly, from the construction, operation, existence, or maintenance of the Gates and each Gate User hereby releases such Persons from any and all claims, actions, suits, demands, causes of action, losses, damages, or liabilities (including strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from the construction, operation, existence or maintenance of the Gates.

ARTICLE 17 **MISCELLANEOUS**

17.1 Interpretation of the Covenants. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant’s construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and property benefited or bound by the Covenants and other provisions hereof. In the event of any conflict between this Declaration, and the Articles, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Design Guidelines, the Bylaws shall control.

17.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

17.3 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

17.4 Perpetuities and Restraints on Alienation. If any of the options, privileges, Covenants, or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the last living survivor of the living descendants of the President of the United States on the date hereof.

17.5 Laws, Ordinances, and Regulations. The covenants, conditions, and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of Declarant, the Board, or the Architectural Committee with respect to a certain action are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances, and regulations. The compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, ordinances, and regulations.

Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

17.6 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities, and duties provided said rules and regulations are not inconsistent with the provisions of this Declaration.

17.7 References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or Tract or any part of the Property may contain the covenants, conditions, and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the covenants, conditions and restrictions shall be binding upon the grantee/Owner or other Person claiming through any instrument and such Person's heirs, executors, administrators, successors, and assigns.

17.8 Time is of the Essence. Time is of the essence of this Declaration.

17.9 Governing Law. The provisions of this Declaration shall be governed by and interpreted in accordance with the laws of the State of Arizona.

17.10 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

17.11 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

17.12 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City. This *Section 17.12* shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

17.13 FHA/VA Approval.

17.13.1 Prior to the end of the Declarant Control Period, the following actions will require the prior approval of the FHA and/or the VA, as applicable (if and to the extent that this Declaration shall have been previously submitted to and approved by the FHA and/or the VA and, at the time of the action in question, the applicable agency has insured or guaranteed an outstanding loan against any portion of the Property): (a) annexation of additional properties into the Property (unless the annexation is in accordance with a plan of annexation or expansion previously approved by such agencies); (b) dedication of any part of the Common Areas; and (c) amendment of this Declaration. Consent of the FHA or VA will be deemed to have been given if the matter has been submitted to the agency for approval and the agency has failed to respond within 30 days of submittal.

17.13.2 Nothing in this Declaration shall be understood (a) to require any mortgagees to collect Assessments that accrued prior to the date upon which the mortgagee came into possession of, or acquired title to, a Lot or Tract, whichever occurs first; or (b) to cause the failure to pay Assessments to constitute a default under a mortgage.

17.14 Waiver. The waiver of or failure to enforce any breach or violation of this Declaration will not be deemed a waiver or abandonment of any provision of the Declaration or a waiver of the right to enforce any subsequent breach or violation of the Declaration. The foregoing shall apply regardless of whether any Person affected by the Declaration (or having the right to enforce the Declaration) has or had knowledge of the breach or violation.

[Signature page follows.]

EXHIBIT "A"

Legal Description of Initial Property

Lots 1 through 45, inclusive, and Tracts "A" through "G", inclusive, of the subdivision known as ALTA VISTA according to the Final Plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1365 of Maps, page 21 of the official records.