

WHEN RECORDED RETURN TO:

Towne Development, Inc.
c/o Kevin G. Kiesel
706 East Bell Road, Suite 212
Phoenix, Arizona 85022

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**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS,
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,
RESERVATIONS AND EASEMENTS
FOR
RYDER RANCH**

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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS FOR RYDER RANCH (hereinafter, this "Declaration") is made this 5 day of APRIL, 2021, by **HBT of Ryder Ranch LLC**, an Arizona limited liability company (hereinafter, "Declarant").

BACKGROUND

A. Declarant is the current legal title holder of certain real property located in the City of Surprise, Maricopa County, Arizona, legally described on ***Exhibit "A"*** attached hereto and incorporated herein by this reference (the "Property"); and

B. Declarant desires to develop, in stages, the Property and those portions of the Additional Property (hereinafter described) which may from time to time be owned or acquired by Declarant and annexed pursuant to this Declaration and become part of the Property, into a planned residential development; and

C. As part of the various stages of development of the aforesaid lands, Declarant intends, without obligation, to Record various subdivision plats; and to dedicate portions of the Property to the public for streets, roadways, drainage, flood control, and general public use; and

D. Declarant desires to form a nonprofit corporation for the social and recreational purposes of benefiting the Property, the Owners and Residents (as said terms are defined herein below), which nonprofit corporation (hereinafter termed the "Association") will (i) acquire, construct, operate, manage and maintain a variety of Common Areas within the Property; (ii) establish, levy, collect and disburse the Assessments, fees and other charges imposed hereunder; and (iii) as the agent and representative of the Members of the Association and Residents of the Property, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of the Property; and

E. Declarant is preparing the necessary documents for the incorporation and organization of the Association; and

F. Declarant therefor wishes to subject all of the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth; and

G. To cause the Declaration to run with the Property and to be binding upon the Property and the Owners thereof from and after the date of the Recording of this Declaration, Declarant hereby makes all conveyances of the Property, whether or not so provided therein, subject to the Declaration herein set forth; and by accepting Deeds, leases, easements or other grants or conveyances to any portion of the Property, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns,

agree that they shall be personally bound by all of the Declaration (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted therefrom.

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:

1.1 "**Additional Property**" shall mean real property situated in the City of Surprise, County of Maricopa, State of Arizona, and the Improvements located thereon, which is contiguous to or in the vicinity of any real property previously subjected to this Declaration as shall be determined by Declarant during the Declarant Control Period. For purposes of this Section, property shall be contiguous if only separated by a public street or road. All or part of the Additional Property may be added to the Property in one or more additional phases by the Recording of a Supplemental Declaration pursuant to the provisions of **Article 14** hereof.

1.2 "**Alleged Defect**" has the meaning given to it in **Section 11.2(a)** hereof.

1.3 "**Annual Assessment**" shall mean the charge levied and assessed each year against each Lot pursuant to **Section 7.2** hereof.

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

1.5 "**Assessment**" shall mean an Annual Assessment, Special Assessment, Special Service Area Assessment, Reserve Contribution and/or Maintenance Charge.

1.6 "**Assessment Lien**" shall mean the lien created and imposed by **Section 7.1** hereof.

1.7 "**Assessable Lot**" shall mean, during the Declarant Control Period, a Lot owned by a Person other than Declarant. After the termination of the Declarant Control Period, all Lots shall be Assessable Lots.

1.8 "**Assessment Period**" shall mean the time period set forth in **Section 7.11** hereof.

1.9 "**Association**" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Declaration and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association the "Ryder Ranch Community Association," and hereby reserves the right to use any similar name if, for any legal or other reason, "Ryder Ranch Community Association" cannot or should not be used.

1.10 "**Association Land**" shall mean such part or parts of the Property, together with the Improvements thereon, and other real property which the Association may at any time own in fee or

in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

1.11 "**Board**" shall mean the Board of Directors of the Association.

1.12 "**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 own 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.

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

1.14 "**City**" shall mean the City of Surprise, an Arizona municipal corporation.

1.15 "**Claimant**" shall mean any person that has a Claim against Declarant or a Builder under this Declaration.

1.16 "**Claims**" shall have the meaning set forth in *Section 11.1.2* hereof.

1.17 "**Common Area and Common Areas**" shall mean (i) all Association Land and the Improvements thereon; (ii) all land within the Property which the Declarant, by this Declaration or other Recorded instrument, makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date; (iii) all land within the Property which the Declarant indicates in a Recorded Plat or other Recorded document or instrument is to be used for landscaping, water retainage, drainage, and/or flood control for the benefit of the Property and/or the general public and is to be dedicated to the public or the City upon the expiration of a fixed period of time, but only until such land is so dedicated; and/or (iv) all land within the Property which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance as reflected in a Recorded Plat or other Recorded instrument, and for which the Association benefits by limited use, full use, or aesthetic consistency, for the benefit of the Members; and/or (v) any easement areas situated in the vicinity of the Property which are for the benefit of the Association and its Members and for which the Association has accepted responsibility for maintenance as reflected in a Recorded document, plat or other instrument.

1.18 "**Community Documents**" shall mean, collectively, this Declaration, all Supplemental Declarations, Declarations of Annexation, Articles, Bylaws and Community Rules, as amended or supplemented from time to time.

1.19 "**Community Rules**" shall mean the rules for the Property adopted by the Board pursuant to *Section 5.3* hereof.

1.20 "**Covenants**" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

1.21 "**Declarant**" shall mean HBT of Ryder Ranch LLC, and the successors and assigns of Declarant's rights and powers hereunder, and any person or persons to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned by a written, Recorded instrument expressly assigning those rights.

1.22 "**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 the Declarant or a Designated Builder conveys the last Lot to a third-party purchaser or (b) the date that neither Declarant nor any Designated Builder owns any Lot or other portion of the Property. The Declarant Control Period shall also terminate upon the date set forth in a written notice signed by Declarant to the Association stating that the Declarant Control Period has terminated.

1.23 "**Declaration**" shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements, as amended or supplemented from time to time.

1.24 "**Deed**" shall mean a deed or other instrument conveying the fee simple title in a Lot.

1.25 "**Design Guidelines**" shall mean the architectural guidelines and standards promulgated by the Design Review Committee as provided in *Section 14.1* hereof.

1.26 "**Design Review Committee**" shall mean the committee of the Association to be created and appointed pursuant to *Article 14* hereof.

1.27 "**Designated Builder**" shall mean any Builder that is designated by the Declarant as a "Designated Builder" in a Recorded instrument, 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.

1.28 "**Development Master Plan**" shall mean the General Development Plan for the Property approved by the City as the same may be amended from time to time.

1.29 "**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.

1.30 "**Exempt Property**" shall mean the following parts of the Property: (i) all land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, the City, Maricopa County, or any political subdivision, specifically including without limitation, the Flood Control Basin (hereinafter described) for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective; and (ii) all Association Land, for as long as the Association is the owner thereof. Exempt Property shall also include any Lot with respect to which Declarant in its sole discretion elects to either exempt from the payment of Assessments or delay the levy of Assessments for the period of any such exemption or delay as set

forth in a Recorded written instrument effecting such exemption or delay that is executed and Recorded by Declarant pursuant to **Section 7.4** below.

1.31 INTENTIONALLY DELETED.

1.32 "**Improvement**" or "**Improvements**" shall mean buildings, roads, driveways, levees, dams, channels, basins, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, playgrounds, hardscapes, and all other structures or landscaping improvements of every type and kind.

1.33 "**Lot**" or "**Lots**" shall mean any area of real property within the Property designated as a Lot on any subdivision plat Recorded and approved by the Declarant or Board.

1.34 "**Maintenance Charges**" shall mean any and all costs assessed pursuant to **Section 10.2** hereof.

1.35 "**Member**" shall mean any person or entity holding a Membership in the Association pursuant to this Declaration.

1.36 "**Membership**" shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Owners and Declarant pursuant to **Article 6** hereof.

1.37 "**Owner**" shall mean 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 interest of a Lot. Owner shall not include (i) persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Tenant. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of Arizona Revised Statutes § 33-741 *et seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instruction or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots subject to the lien of a deed of trust pursuant to Arizona Revised Statutes § 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.

1.38 "**Party Wall**" shall mean a wall or fence constructed on, or immediately adjacent to, the common boundary of Lots or with respect to Theme Walls, the common boundary of Common Areas and a Lot or the boundary line between a Lot and the adjacent public right-of-way.

1.39 "**Person**" shall mean a natural person, corporation, partnership, limited liability company, trustee, or any other legal entity.

1.40 "**Plat**" shall mean any subdivision plat Recorded with respect to any portion of the Property.

1.41 "**Property**" shall mean the real property situated in the City of Surprise, Maricopa County, Arizona, described on *Exhibit "A"* attached hereto, and the Improvements to be completed thereon, and any part of the Additional Property added pursuant to *Article 14* hereof.

1.42 "**Purchaser**" shall mean any Person who becomes the owner of a Lot except for: (i) Declarant or a Designated Builder, (ii) a Person who purchases a Lot and then leases it to a Designated Builder for use as a model in connection with the sale or lease of other Lots, or (iii) a Person who, in addition to purchasing a Lot, is assigned any or all of Declarant's rights under this Declaration.

1.43 "**Recording**" shall mean placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and "**Recorded**" shall mean having been so placed of public record.

1.44 "**Reserve Contribution**" shall mean the amount payable by Purchasers to the Association as provided in *Section 7.18* hereof.

1.45 "**Resident**" shall mean each natural person residing in a Dwelling Unit.

1.46 "**Single Family**" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

1.47 "**Special Assessment**" shall mean any assessment levied and assessed pursuant to *Section 7.7* hereof.

1.48 "**Special Service Area**" shall mean any part of the Property designated in a Recorded Plat approved and signed by Declarant or the Association, or any other Recorded instrument approved and signed by Declarant or the Association, as an area within which certain services are to be provided for the primary benefit of the Owners of less than all of the Lots in the Property.

1.49 "**Special Service Area Assessment**" shall mean an Assessment levied against less than all of the Lots in the Property pursuant to *Section 7.8* of this Declaration. Each Lot shall be subject to a separate Special Service Area Assessment for each Special Service Area within which such Lot is located.

1.50 "**Special Fees**" shall mean special fees authorized by this Declaration which an Owner, Resident or any other person is obligated to pay to the Association over, above and in addition to any Assessments imposed or payable hereunder.

1.51 "**Sub-Association**" shall mean an owners association created within the Property other than the Association and subject to this Declaration. Each Owner who is a member of a Sub-Association shall also hold membership in the Association.

1.52 "**Supplemental Declaration**" shall mean a written instrument Recorded pursuant to *Article 14*.

1.53 "**Tenant**" shall mean any person who occupies property located on the Property under any type of rental or letting arrangement such as, for example, a lessee of a Dwelling Unit.

1.54 "**Theme Wall**" shall mean a wall or fence constructed by Declarant or any Builder on the boundary between any Lot and any Common Areas or the adjacent public right-of-way and which serves as a community theme wall for the Property.

1.55 "**Visible From Neighboring Property**" shall mean, with respect to any given object, that such object is or would be visible to a person six feet (6') tall, standing at ground level on any part of any Lot or Common Area which adjoins the Lot on which such object is located.

1.56 "**Working Capital Assessment**" shall mean the amount payable by persons or entities acquiring Lots from persons other than Declarant pursuant to *Section 7.16* of this Declaration.

ARTICLE 2.

PROPERTY SUBJECT TO THE DECLARATION

2.1 **General Declaration Creating Ryder Ranch.** Declarant intends to develop the Property and to sell and convey Lots to third parties, including without limitation, Builders. Declarant hereby declares that all of the real property within the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that property which is not part of a Lot and which is dedicated or conveyed to the public or a governmental entity for public purposes shall not be subject to this Declaration and the Covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners, Tenants and Residents concerning the use and maintenance of such public areas shall at all times apply to the Owners, Tenants and 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 perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with the Property and with all Lots and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Tenants and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Development Master Plan as to any portion of the Property owned by the Declarant or from dedicating or conveying portions of the Property owned by the Declarant, including streets or roadways, for uses other than as a Lot or Association Land.

2.2 **Association Bound.** Upon the date of filing the Articles with the Arizona Corporation Commission, the Covenants shall be binding upon and shall benefit the Association.

2.3 **Sub-Associations Bound.** Any and all Sub-Associations shall be bound by and, to the extent specifically set forth in this Declaration, benefitted by the Covenants.

ARTICLE 3.
EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

3.1 **Easements of Enjoyment.** Declarant and every Owner, Tenant, Resident and other Member of the Association shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of the recreational facilities and other Common Areas by any Member (i) for any period during which any Assessment against such Member's Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Community Rules, and (iii) for successive 60-day suspension periods if any such infraction is not corrected during any prior 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 such Owner's Lot.

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or other agreements with the City effective prior to the date hereof or specified on a Recorded subdivision plat, no such dedication or transfer shall be effective unless approved by the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by the Membership, except that the Board shall have authority to transfer to such public agencies, authorities or utility companies easements and rights-of-way which are intended to benefit the Property and which do not have any substantial adverse effect on the enjoyment of the Common Areas by the Members.

(c) The right of the Association to regulate the use of the Common Areas through the Community Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way, not intended for use by the Members. The Community 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, or otherwise shall serve to promote the best interests of the Owners and Residents.

(d) The right of the Association to change the use of the Common Areas in accordance with this Declaration.

(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 which become Common Areas and to abandon or otherwise transfer Common Areas so long as, in each case, (i) the Board determines that the Members are not materially or adversely affected, and (ii) during the Declarant Control Period, the Declarant has executed an instrument agreeing to such change in size, shape or location, exchange, abandonment or transfer. Any remodeling or renovation of a Common Area facility does not constitute a "change" and shall not require a vote of the membership as described above.

3.2 Easements to Facilitate Development. Declarant hereby reserves to itself and to each Designated Builder who is expressly granted such rights in writing, together with 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 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 any Designated Builder.

Declarant hereby reserves to itself, its affiliates, successors and assigns, and to each Designated Builder who is expressly granted such right in writing, 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 any 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.

(d) 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 during the Declarant

Control Period, or by the Board after the expiration of the Declarant Control Period. 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 workman like 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.

During the Declarant Control Period, Declarant may grant, and Declarant may cause the Association to grant, easements and licenses over, under, and across the Common Areas and the Lots (provided that such easements and licenses do not unreasonably interfere with the house on such Lot or otherwise unreasonably interfere with the use of such Lot) as reasonably needed for development of the Property.

3.4 **Easement for Maintenance of Common Areas and Flood Control Basin.** The Association shall have an easement upon and over all Common 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. In addition, the Association shall have an easement upon and over the Flood Control Basin for the purpose of maintaining such Flood Control Basin until such time as the Declarant has conveyed fee simple title to the Flood Control Basin to the Flood Control District and the Flood Control District commences construction of drainage improvements within the Flood Control Basin. The easement provided in the preceding sentence shall terminate with respect to any Common Area and with respect to the Flood Control Basin on the date the Association's responsibilities with respect to maintaining the landscaping or drainage facilities within any such Common Area within the Flood Control Basin, as applicable, terminates.

3.5 **Easements for Encroachments.** If any Improvement constructed by or for a Builder or Declarant on any Lot now or hereafter encroaches on any other portion of the Property by an amount of deviation permitted by customary construction tolerances, 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 **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.

3.7 **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 of 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.

3.8 **Assignment of Development Rights/Easements.** Declarant may make limited temporary assignments 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.

3.9 **Easement for Maintenance and Enforcement.** Declarant, the Association, and their respective directors, officers, agents, contractors and employees, the Design Review 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 Design Review 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.

3.10 **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.

3.11 **Delegation of Use.** Any Member may, in accordance with the Community Rules and the limitations thereon contained in this Declaration (i) delegate such Member's right of enjoyment in the Common Areas and facilities to the members of such Member's family, tenants, or guests or invitees; or (ii) designate another person to exercise all of such Member's rights (but not liabilities or voting rights), which other Person shall, during the period of such designation, have the sole right to delegate rights of enjoyment pursuant to subsection (i) of this Section.

ARTICLE 4.
PERMITTED USES AND RESTRICTIONS

4.1 **Residential Use.** All Lots within the Property shall be used solely for the development of single-family detached housing, each intended for residential use by a Single Family pursuant and subject to the following:

4.1.1 **Residential Use of Dwelling Units.** All Dwelling Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Dwelling Unit, except that an Owner or other Resident of a Dwelling Unit may conduct a business activity within a Dwelling Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (ii) the business activity does not include parking or entering or exiting the residential Lot from customers or employees; (iii) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (iv) the business activity does not involve the door-to-door solicitation of Owners or other Residents in the Property; (v) the business activity does not violate any provision of this Declaration, the Design Guidelines, or the Community Rules; and (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Property, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of an entire Dwelling Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.1.2 **Tenants.** No portion of a Dwelling Unit but for the entire Dwelling Unit on a Lot may be rented, and then only to a Single-Family Tenant from time to time by the Owner, subject to the provisions of this Declaration, the Community Rules, and the Design Guidelines. All such leases of Dwelling Units shall be expressly subject to the terms and conditions of the Arizona Residential Landlord and Tenant Act, Arizona Revised Statutes §33-1301, *et seq.* Notice of any lease, together with (a) the name and contact information for all adults occupying the Dwelling Unit, (b) the term of the lease (which may not be less than thirty (30) days), including the commencement date and expiration date of such lease, and (c) a description and the license plate numbers of all vehicles owned and/or operated by the Single-Family Tenant. Such information shall be provided to the Association or its designee within (10) days of the execution of the lease.

4.2 **Reserved.**

4.3 **Covenants, Conditions, Restrictions and Easements Applicable to All Lots.** The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots, and the Owners, Tenants and Residents thereof.

4.3.1 **Architectural Control.** No excavation or grading work shall be performed on any Lot, no Improvements which would be Visible From Neighboring Property shall be constructed or installed on any Lot, nor shall any addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of the Lot, or any Improvements located thereon which are Visible From Neighboring Property, from their appearance on the date this Declaration is Recorded be made or done without the prior written approval of the Design Review Committee pursuant to the provisions of *Article 14* below.

4.3.2 **Animals – Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on a Lot (as used in this paragraph, the term “domestic household pet” shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner or Occupant may keep on a Lot more than a total of four (4) cats and/or dogs, in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic household pets will be allowed on any Lot other than within the residence, or the fenced yard space associated therewith, unless confined to a leash. The Board may restrict pets to certain areas within the Owner's or Occupant's Lot. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on a Lot, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by applicable law. All pets not confined to a residence must wear collars with appropriate identification tags. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner or Occupant, upon written notice, may be required to remove the pet from such Owner's or Occupant's Lot. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. Capturing, killing or trapping wildlife is prohibited within the Property unless performed by a government official or licensed professional acting in his or her official capacity, except in any circumstance in which there is an imminent threat to the health or safety of persons or domestic household pets, as determined by a majority of the members of the Board.

4.3.3 **Temporary Occupancy and Temporary Buildings.** No trailer, mobile home, motor 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 residence, either temporary or permanent. Temporary buildings or structures approved by the Design Review Committee for use during the construction of a Dwelling Unit or other structure on any property shall be removed immediately after the completion of construction. This Section shall not prevent the use by Declarant or a Designated Builder of a mobile home or trailer 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.

4.3.4 **Landscaping; Maintenance.** Unless a written variance is obtained from the Design Review Committee, each Owner of a Lot shall be required to complete the landscaping (including all related irrigation systems) of the front yard, any rear yard which is visible from any adjacent Common Areas whether through a "view fence" or otherwise, and all areas visible from the street adjacent to the Lot within three (3) months (six (6) months with respect to rear yards which are visible from adjacent Common Areas) following the issuance of the certificate of occupancy for the Dwelling Unit or building constructed on such Lot, or such shorter time period as may be provided for in any other covenants, conditions or restrictions affecting the Lot. If any Owner fails to landscape its Lot in accordance with the requirements of this **Section 4.3.4**, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping improvements as the Association deems appropriate. The cost of any such installation by the Association shall be paid to the Association by the Owner of the Lot upon demand by the Association. Any amount payable to the Association by an Owner pursuant to this **Section 4.3.4** shall be secured by the Assessment Lien, and the Association may enforce collection of such amount in the same manner and to the same extent as provided herein for the payment of Assessments. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot (including set back areas), (ii) planted public right-of-way areas between sidewalks (or bike paths) and the street curb in front of his property, if any, (iii) any other public right-of-way or easement area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path or similar area, and (iv) any non-street public right-of-way, neatly trimmed and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area which (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a Recorded instrument as provided in **Section 10.1** of this Declaration; (3) the City or other public agency assumes responsibility, for so long as the Association or the City or other public agency assumes or has responsibility as provided in (1), (2) or (3) above; or (4) the Association has responsibility under this Declaration. Notwithstanding the foregoing, the Board having jurisdiction, or Declarant, may require the Owner of any Lot adjacent to the areas described in subsections (ii), (iii) and (iv) above to install and maintain landscaping in such areas on such terms and conditions established by the Design Review Committee or Declarant, as the case may be. The Board may impose such conditions as may be determined to be reasonably necessary (including, without limitation, the requirement that certain improvements be constructed or that any landscaping be installed and maintained by the Owner for a sufficient grow-in period) prior to accepting any portion of a Lot intended to be dedicated for use as Common Area or prior to accepting any maintenance responsibility. Each Owner

understands and acknowledges that it is subject to a potential fine to be imposed and established by the Board, and payable to the Association, for any violation of the provisions of this **Section 4.3.4**. Any such fine shall be considered a Maintenance Charge imposed pursuant to **Section 10.2** hereof but shall be limited as may be required by applicable law (including, without limitation, Arizona Revised Statutes § 33-1803(B)).

4.3.5 Nuisances; Construction Activities. No rubbish, debris, petroleum products or similar products, of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials, together with any construction equipment stored on a Lot, may be kept only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of Improvements may be kept only in areas approved by the Design Review Committee, which may also require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

4.3.6 Diseases and Insects. No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

4.3.7 Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by **Section 4.3.1** above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

4.3.8 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 or other Improvement so as to be Visible From Neighboring Property, unless approved by the Design Review 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 such Owner's 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.

4.3.9 **Mineral Exploration.** No Lot 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, except for grading and excavation work and the removal of fill material including, but without limitation, gravel, rock and sand, in connection with the construction of Dwelling Units or other Improvements which have been approved in writing by the Design Review Committee except for grading, excavation and removal work being performed by, or on behalf of, Declarant.

4.3.10 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved in writing by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only in compliance with the Community Rules or as may be specified in the Design Guidelines. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

4.3.11 **Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.

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

4.3.13 **Signs.** No signs which are not owned or maintained by the Association, the County or any other applicable governmental agencies (including, but not limited to, commercial, political and similar signs) shall be erected or maintained on any portion of the Common Areas or within any area in the Property that is not a Lot. No signs whatsoever

(including, but not limited to, commercial, political and similar signs) which 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 Arizona Revised Statutes § 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 4.3.13(b)** earlier than 71 days before an election day or more than 3 days after an election day; and provided, further, however, that the size of all such political signs shall not exceed nine square feet in the aggregate but if the City regulates the size of any such political signs on a Lot, then such political sign shall not be of a size larger than that regulated by the City;
- (c) No more than two (2) address 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 or any Improvements thereon, provided, however, that the Board may adopt additional rules regulating such signs provided such rules comply with the provisions of Arizona Revised Statutes § 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 Design Review 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 (3') 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 Design Review 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 Arizona Revised Statutes §33-1808 or other applicable law does not prohibit such regulation.

4.3.14 Restriction on Further Subdivision, Property Restrictions and Rezoning.

No Lot shall be further subdivided or separated into smaller Lots by any Owner other than Declarant, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner other than Declarant, without the prior written approval of the Board, which approval must be evidenced on the Recorded plat or other Recorded instrument creating the subdivision, easement or other interest. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void. For so long as Declarant is the Owner of any Lot in the Property, this **Section 4.3.14** shall not be applicable to or binding upon Declarant with respect to any such Lot.

4.3.15 Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewer, gas, telephone, electricity, television cable or communication lines and systems, etc., as such utilities are installed in connection with the initial development of each Lot and the construction of the first Dwelling Unit or other building thereon. Pursuant to this easement, a providing utility or service company may install and maintain, upgrade or modify facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots.

4.3.16 Party Walls and Theme Walls. Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls and Theme Walls shall be as follows:

(a) The Owners of contiguous Lots who have a Party Wall shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment of same by the other Owner.

(b) If any Party Wall is damaged or destroyed through the act of an Owner or any of his Tenants, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in subparagraph (e) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(c) In the event any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Tenants, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such Party Wall to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the Party Wall.

(d) Notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall or 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.

(e) 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, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(f) In the case of Theme Walls (a) between Common Areas or public rights-of-way and Lots, or (b) constructed by Declarant, any Builder or the Association on Common Areas, the Association shall be responsible for all maintenance thereof, subject to the provisions of **Sections 10.2 and 10.3**, except that each Owner of a Lot shall be responsible for painting the portion of the Theme Wall facing his Lot or the portion thereof which is not a portion of the Common Area.

(g) Notwithstanding anything to the contrary set forth above, the provisions of this **Section 4.3.16** shall not apply to any Party Wall which separates the interiors of two (2) Dwelling Units and the rights of the Owners of such Dwelling Units with respect to Party Walls shall be governed by plats and any covenants, conditions and restrictions to be Recorded by the Builder of the Dwelling Units on the real property on which the Dwelling Units are located.

4.3.17 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signs, shall be erected, placed or maintained anywhere in or upon any Lot 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 as may be otherwise approved by the Design Review 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 approved by the Design Review Committee.

4.3.18 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight feet (8') without the prior written approval of the Design Review Committee.

4.3.19 Vehicles and Parking. As used in this Section, (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 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.

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 Design Review 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. 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.

Notwithstanding any other provision of this Section 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 4.3.19** shall not apply to vehicles of Declarant, any Builder, Developer 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 Community 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 4.3.19**. 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 Community Rules, the provisions of this Section shall control.

The provisions of this **Section 4.3.19** will not be construed to prohibit the parking of any vehicle within the Property to the extent required by Arizona Revised Statutes §33-1809 or other applicable law.

4.3.20 **Right of Entry.** During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Design Review Committee, any member of the Board, or any authorized representative of either of them, shall have the right, without any obligation, to enter upon and inspect any Lot, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration, the Design Guidelines or the Community Rules have been, or are being, complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

4.3.21 **Declarant's Use for Sales and Leasing Purposes.** Notwithstanding any other provision of this Declaration, Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Property and to maintain one (1) or more advertising signs on the Common Area while the Declarant is selling Lots and other property in the Property. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots or other property owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate so long as Declarant is marketing Lots or other property, Declarant shall have the right to restrict the use of the parking spaces on

the Common Area. Such right shall include reserving such spaces for use by prospective purchasers, Declarant's employees and other engaged in sales, leasing maintenance, construction or management activities.

4.3.22 **Health, Safety and Welfare.** In the event additional uses, activities and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Tenants and Residents, the Board may make rules restricting or regulating their presence on the Property as part of the Community Rules, or may direct the Design Review Committee to make rules governing their presence on Lots as part of the Design Guidelines.

4.3.23 **Model Homes; Sales Offices.** 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.

4.3.24 **Reserved.**

4.3.25 **Towing of Vehicles.** The Association shall have no obligation to enforce the provisions of this Declaration with respect to parking of motor vehicles; provided, however, that the Board shall have the right, but not the obligation, to have 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, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessments.

4.3.26 **Environmental Protections.** No Lot, nor any facilities on the Lot, shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste in violation of any Environmental Law. As used in this paragraph, "Hazardous Substances" means any substances, water, pollutants, contaminants or materials which pose a risk of injury or threat to health or the environment or becomes regulated under any Environmental Law including, without limitation, petroleum and petroleum derivatives and asbestos; "Environmental Law" means any federal, state or local law, including statutes, ordinances, rules, common law and

guidelines now in effect and hereinafter enacted which pertains to, or is applicable to, or governs: hazardous materials or substances, or the use, permitting and/or environmental condition of real property, or which pertains to health, industrial hygiene or the regulation or protection of the environment including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Superfund Amendments and Recovery Act, the Toxic Substances Control Act, the Superfund Amendments and Reauthorization Act, the Clean Air Act, the Clean Water Act, the Safe Water Drinking Act and Solid Waste Disposal Act.

4.3.27 **Drainage.** All drainage plans for Lots shall be subject to the approval of the Design Review Committee. No Owner or other occupant of a Lot shall interfere with the drainage established for such Owner's Lot, or any other property within the Property.

4.3.28 **Window Coverings.** 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.

4.3.29 **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 Design Review 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 Design Review 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 4.3.29** shall be subject to any limitations imposed by Arizona Revised Statutes §§ 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 4.3.29** may cause glare which may impact surrounding Owners and Residents and (z) that the Design Review Committee is not responsible for potential glare from such solar panels and devices. Each Owner and Resident further: (a) agrees that neither the Declarant, any Builder, the Design Review Committee or the Association shall 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 4.3.29** 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 Arizona Revised Statutes § 33-1816(B). All solar panels and devices installed by or on behalf of the Declarant shall be deemed approved by the Design Review Committee and in compliance with this *Section 4.3.29*.

4.3.30 **Basketball Goals.** No permanently installed basketball goals shall be permitted. Portable or temporary basketball goals are permitted so long as any such goals are stored so as not to be Visible From Neighboring Property at any time that such goal is not in use. 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.

4.3.31 **Dust Control.** The areas on each Lot that are not improved with buildings ("Clear Areas") shall be landscaped as provided in *Section 4.3.4*. After a sale of any Lot by Declarant or any Commercial Developer or Designated Builder to a third-party 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 such Owner's Lot in a manner that minimizes the possibility of dust being transmitted into the air and over adjacent properties.

4.3.32 **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 property 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 Arizona Revised Statutes § 33-1808(A) and (B), as amended.

4.3.33 **Crime and Drug Free Community; Restriction on Offenders.** To the extent not prohibited by Arizona Revised Statutes § 33-1806.01, as amended, and other applicable law, the Association shall have the right and power to (i) enact rules prohibiting

criminal and drug activity on the Property, including the right to assess fines and evict tenants who engage in such activity and (ii) require Residents and Owners to sign reasonable contracts and forms that assure there is no criminal and drug related activity on the Property.

Notwithstanding the foregoing to the contrary, 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. Finally, pursuant to the authority granted to the Association in A.R.S § 33-1806.01, as amended, or other applicable law, no Person who is required to be registered pursuant to Arizona Revised Statutes § 13-3821, as amended, or other applicable law, and who is classified as a level two or level three offender may be a Resident of any portion of the Property. The foregoing provision shall only be applicable and enforceable to the extent allowed by applicable law.

4.4 **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 deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of Lots within the Property.

4.5 **Waivers.** The Board, in its good-faith discretion, may grant such waivers of the restrictions contained in this **Article 4** as it shall deem appropriate, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration.

ARTICLE 5.

ORGANIZATION OF ASSOCIATION

5.1 **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. The Association's powers shall include ownership, maintenance, management and operation of property and facilities, as well as service provision and creation. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and may contract with a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board may determine the compensation to be paid to the manager or any other employee of the Association. Unless this Declaration specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

5.3 **The Community 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 Community Rules pertaining to: (i) the management, operation and use of the Common Areas including, but not limited to, any recreational facilities situated upon the

Common Areas; (ii) minimum standards for any maintenance of Lots; or (iii) the health, safety or welfare of the Owners and Residents; provided, however, that the Community Rules shall not be inconsistent with this Declaration, the Articles, or the Bylaws. Upon adoption, the Community Rules shall have the same force and effect, and shall be enforceable in the same manner and to the same extent, as if they were set forth in and were a part of this Declaration.

5.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee or representative of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this **Section 5.4** shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct. To the fullest extent permitted by law but subject to any mandatory limitations imposed by Arizona Revised Statutes § 10-3202, § 10-3850 through § 10-3858 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 Design Review Committee), or any settlement of any such proceeding: (i) every director and officer of the Association; (ii) every member of the Design Review 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 shall be entitled to indemnification whether or not that Person is a director, officer, member of the Design Review 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 5.4**, the Board shall determine, in good faith and in accordance with Arizona Revised Statutes § 10-3855, as amended, that the Person to be indemnified has met the standard of conduct set forth in Arizona Revised Statutes § 10-3851, as amended. 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.

5.5 Sub-Associations. In the event any homeowners or similar association is to be formed by the developer (other than the Declarant) of multiple Lots in the Property, the covenants, conditions and restrictions, the articles of incorporation and bylaws or other governing documents for such Sub-Association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that such Sub-Association and the rights of its members are subject and subordinate to this Declaration, the Articles and Bylaws of the Association, any applicable Tract Declaration and the Community Rules.

ARTICLE 6.
MEMBERSHIPS AND VOTING

6.1 **Owners of Lots.** Each Owner (including the Declarant) of a Lot shall be a Member of the Association. Each such Owner (including the Declarant) shall have one (1) Membership for each Lot owned by the Owner. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

6.2 **Declarant.** The Declarant shall be a Member of the Association for so long as it owns any Lot or any other part of the Property.

6.3 **Right to Vote.** There shall be one (1) vote for each Membership held by an Owner. 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 (1) Owner 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. Except as prohibited by law, during the Declarant Control Period, all voting rights shall be vested in the Declarant (who shall have the rights to approve and disapprove such matters as more fully set forth herein) and no Member shall be entitled to vote. In addition, any Member who is not required to pay a full Annual Assessment shall not possess any voting rights in the Association.

6.4 **Reserved.**

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

6.6 **Transfer of Membership.** The rights and obligations of the Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot. 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 ownership to a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

6.7 **Suspension of Voting Rights.** Any Member who fails to pay the Annual Assessments, Special Assessments, Special Service Area Assessments, Maintenance Charges or Special Fees provided herein within sixty (60) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest, late charges, attorneys' fees and/or collection costs are paid in full.

ARTICLE 7.
COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation of Assessment and Maintenance Charges. Declarant, for each Lot now or hereafter established within the Property, hereby covenants and agrees, and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following assessments, fees and charges:

- (a) Annual Assessments established by this *Article 7*;
- (b) Special Assessments for capital improvements or other extraordinary expenses or costs established by this *Article 7*;
- (c) Special Service Area Assessments for expenses incurred in providing improvements or services that benefit Lots in a Special Service Area as established by this *Article 7*;
- (d) Reserve Contributions as established by this *Article 7*;
- (e) Maintenance Charges established by *Sections 10.2* and *10.3*; and
- (f) Special Fees as hereinafter described.
- (g) The Annual Assessments, Special Assessments, Special Service Area Assessments, Reserve Contributions, Maintenance Charges and Special Fees together with interest, late charges, incidental and taxable costs, and reasonable attorneys' fees, and all other sums which may become due and payable to the Association by an Owner shall be a charge on the Lot and shall be a continuing servitude and lien upon the Lot against which each such Assessment is made (the "Assessment Lien"). The Annual, Special, and Special Service Area Assessments and Reserve Contributions against each Lot shall be based on the number of Memberships appurtenant to the Lot. Each such Annual Assessment, Special Assessment, Special Service Area Assessment, Reserve Contribution, Maintenance Charge and Special Fees, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, Reserve Contribution, Maintenance Charge or Special Fee fell due. The personal obligation for delinquent Assessments, Maintenance Charges and Special Fees shall not pass to the successors in title of the Owner unless expressly assumed by them. However, such exemption does not apply to the obligation of the successor in title of the Owner to correct any violation of the Declaration, the Community Rules, or the Design Guidelines by the Owner pursuant to *Section 16.15*; however, the transfer of title shall not extinguish any Assessment Lien except a transfer pursuant to foreclosure of a superior lien in which the Assessment Lien has been extinguished by such foreclosure proceeding. The Assessment Lien shall be subject to any limitations imposed by Arizona Revised Statutes §§ 33-1803 and 33-1807 or other applicable law as amended from time to time.

7.2 **Annual Assessments.** To provide for the uses and purposes specified in *Article 9* hereof, including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which the Declaration is Recorded, shall assess against each Lot which is an Assessable Lot an Annual Assessment. The amount of the Annual Assessment shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in *Article 9*.

7.3 **Declarant's Exemption.** Notwithstanding anything in this Declaration to the contrary, during the Declarant Control Period, Lots owned by Declarant shall not be subject to Assessments.

7.4 **Other Exemptions.** During the Declarant Control Period, Declarant may, in its sole discretion, elect to: (a) exempt any unplatted or unimproved portion of the Property from Assessments, (b) delay the levy of Assessments against any portion of the Property, or (c) reduce the levy of Assessments against any portion of the Property. In the event Declarant elects to delay or reduce Assessments pursuant to this *Section 7.4*, the duration of the delay or the amount of the reduction will be set forth in an instrument reflecting the same and Recorded against the applicable portion of the Property. Declarant may terminate, extend, or modify any delay or reduction set forth in a previously Recorded instrument by the Recording of a replacement instrument.

7.5 **Computation of Annual Assessments; Annual Budget.** The Annual Assessments shall commence on the first day of the calendar month following conveyance of the first Lot by Declarant to a Builder. 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. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot an Annual Assessment. The Annual Assessment shall be uniform. 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 Arizona Revised Statutes § 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 7.6*, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners.

7.6 **Increase to Annual Assessments.** The Annual Assessment to be established by the Board may not be increased by an amount that is more than twenty percent (20%) greater than the Annual Assessment for the immediately preceding fiscal year, except for assessment increases approved by a vote of two-thirds (2/3) of the votes entitled to be cast by the Members who are voting in person or by proxy at a meeting duly called for such purpose or which are necessary for emergency situation as hereinafter described. An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Property or any part thereof for which the Association is responsible where a threat to personal safety is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Property or any part thereof for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing a budget for the fiscal year. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

Notwithstanding anything contained herein to the contrary, increases in Annual Assessments shall be subject to any limitations imposed by Arizona Revised Statutes §33-1803 or other applicable law.

7.7 **Special Assessments for Capital Improvements and Extraordinary Expenses.** In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that Assessment Period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses; provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this Section shall not preclude or limit the assessment, collection or use of the Annual Assessments for the aforesaid purposes.

7.8 **Special Service Area Assessments.** If the Board determines, in its sole, absolute and arbitrary discretion, that certain services provided, or to be provided, by the Association benefit any Lots in a disproportionate manner (e.g., maintenance of private streets, electronic gates or certain Common Area, or providing guard service or sanitation services), or if a Member or Members owning one or more Lots contract with the Association for the Association to provide particular services with regard to such Lots, the Board shall be entitled to assess Special Service Area Assessments against the Memberships appurtenant to the Lots benefited by such services as determined by this Board. Owners receiving benefits in a disproportionate manner may be located in more than one Special Service Area, and thus subject to more than one Special Service Area Assessment. The Special Service Area Expenses pertaining to a specific Special Service Area shall be assessed solely against the Lots which are benefitted by services provided to Lots located in that Special Service Area. No Special Service Area Expense shall be used in computing the Annual Assessments to be levied pursuant to **Section 7.2** of this Declaration. Special Service Area

Assessments shall be levied against the Lots located in the particular Special Service Area at a uniform amount per Membership determined in the sole discretion of the Board, with the objective of providing to the Association all funds required to pay all Special Service Area Expenses incurred by the Association in providing the operational, maintenance and other services to the particular Special Service Area. Special Service Area Assessments shall commence upon the date established by the Board. If the Board determines during any Assessment Period that Special Service Area Assessments with respect to any Special Service Area are, or will become, inadequate to meet all Special Service Area Expenses pertaining to that Special Service Area for any reason, including, without limitation, non-payment of Special Service Area Assessments by Members, the Board may increase that Special Service Area Assessment for that Assessment Period and the revised Special Service Area Assessment shall commence on the date designated by the Board. The amount of any Special Service Area Assessments shall be determined in a manner consistent with the Board's determination of the respective benefits each Parcel receives from such services.

7.9 **Special Fees.** The Association shall be authorized to charge Special Fees for such other or additional services or facilities that may from time to time be provided or made available by the Association. All Special Fees shall be subject to the provisions of **Section 9.4** herein, and the Board shall have the sole discretion to specify the amount of and method of determining the Special Fee with respect to such services. Declarant expressly intends that no cost or expense for which a Special Fee is charged shall be used in computing the Annual Assessments to be levied pursuant to **Section 7.2** of this Declaration. The Board of Directors shall set the Special Fee each year and shall give notice to the Association Members in the same manner as for the Annual Assessment. If there are insufficient funds in the Special Fee account to cover the costs associated with providing the services for any reason, the Association shall advance the necessary funds to cover such costs and will be reimbursed within a reasonable period of time as determined by the Board. Non-use of services provided to all Owners in the Property shall not exempt any Owner from the obligation to pay Special Fees for such services. In any contracts or agreements with third parties for the provision of services within the Property, the Board may assign to the service provider the right to bill Owners directly and to pursue all legal and equitable remedies otherwise available to the Board in the collection of such bills.

7.10 **Notice and Quorum for Any Action Authorized Under Sections 7.6 and 7.7.** Written notice of any meeting called for the purpose of taking any action authorized under **Sections 7.6** and **7.7** of this Article shall be sent to all Members subject to such Assessment no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes then entitled to be cast (i.e., exclusive of suspended voting rights and voting rights that do not exist for Members not required to pay a full Annual Assessment) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.11 **Establishment of Annual Assessment Period.** The period for which the Annual Assessment is to be levied (the "**Assessment Period**") shall be the calendar year, except that the first Assessment Period shall commence upon the Recording of this Declaration and terminate on

December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by giving notice thereof to the Members of the Association.

7.12 **Rules Regarding Billing and Collection Procedures.** The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of Annual Assessments, Special Assessments, Special Service Area Assessments, Special Fees, Reserve Contributions and the Maintenance Charges imposed pursuant to ***Sections 10.2 and 10.3***, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days' written notice, prior to such foreclose or enforcement at the address of the Member on the records of the Association, that the Assessment, or any installment thereof is, or will be, due, and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots shall be given credit on a prorated basis for prepayments made by prior Owners. If the owner of a Membership becomes liable for payment of an increased sum pursuant to this Article during the Assessment Period, such Member shall notify the Association, but such Member's failure to notify the Association shall not relieve the Member of liability for such amounts. Members must notify Association of a change in mailing address when applicable.

7.13 **Collection of Costs and Interest on Delinquent Assessments.** Any Assessment or installment thereof not paid within fifteen (15) days when due (or such longer period as may be required by Arizona law) shall be deemed delinquent and may be subject to interest charges from the due date until paid at a rate equal to twelve percent (12%) per annum, and the Member whose Assessment is delinquent shall be liable for all taxable and incidental costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The applicable interest rate on such delinquent amounts shall be determined on a daily basis. Late fees may be established by the Board, the amount of which shall be determined by the Board from time to time and which shall not exceed the maximum permitted under Arizona law, may be assessed for each late occurrence. The initial late charge shall be the greater of (i) fifteen dollars (\$15.00) per month or (ii) ten percent (10%) of the unpaid Assessment. The fifteen-day delinquency period and late charges shall be subject to any limitations imposed by Arizona Revised Statutes § 33-1803, as amended, or other applicable law. The Board may also Record a Notice of Delinquent Assessment against any Lot as to which any such amount is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien. The Owner shall also pay all reasonable collection fees and reasonable attorney fees and costs incurred by the Association in seeking to collect such Assessments and other amounts.

7.14 **Evidence of Payment of Annual and Special Assessments; Reserve Contributions and Maintenance Charges.** Upon receipt of a written request by a Member or any other interested person, the Association, within a reasonable period of time thereafter, subject to and in accordance with applicable law, shall issue to such Member or other interested person a written certificate

stating (i) that all Annual, Special, and Special Service Area Assessments, Reserve Contributions and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided in **Section 7.9** above) have been paid with respect to any specified Lot as of the date of such certificate, or (ii) if all Annual, Special, and Special Service Area Assessments, Reserve Contributions and Maintenance Charges have not been paid, the amount of such Annual, Special, and Special Service Area Assessments, Reserve Contributions and Maintenance Charges (including interest, late charges, costs and attorneys' fees, if any) due and payable as of such date. Upon receipt of a written request therefor, the Association shall issue, or cause an appropriate officer to issue, to a lienholder, Member or Person designated by a Member, a statement setting forth the amount of any unpaid Assessment against the specified Lot. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

7.15 Property Exempted from Assessments, Fees and Assessment Lien. Exempt Property shall be exempted from the assessment of the Annual, Special, and Special Service Area Assessments, Reserve Contributions and Special Fees, and except as provided in **Section 10.3** from Maintenance Charges and the Assessment Lien; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual, Special, Reduced, Deficiency and Special Service Area Assessments, Reserve Contributions and Special Fees, and if theretofore exempt therefrom, Maintenance Charges (prorated as of the date such Exempt Property becomes subject to assessment) and the Assessment Lien.

7.16 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each person or entity who purchases a Lot shall pay to the Association immediately upon becoming the Owner of the Lot an amount equal to one-third (1/3rd) of the Annual Assessment or such other amount as may be established from time to time by the Board. Funds paid to the Association pursuant to this Section 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 shall be nonrefundable and shall not be offset or credit against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration and shall be used by the Association in compliance with Arizona Revised Statutes § 33-442(C)(3), as amended, this Declaration, and any other applicable laws.

7.17 Transfer Fee. Each Person or entity who purchases a Lot from a Person other than Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. The transfer fee may be in addition to amounts charged pursuant to Arizona Revised Statutes § 33-1806, as amended, or other applicable law, for information provided pursuant to such section or law. The transfer fee shall be used by the Association in compliance with Arizona Revised Statutes § 33-442(C)(3), as amended, this Declaration, and any other applicable laws.

7.18 Capital Reserve Fund; Capital Reserve Fee; Reserves.

7.18.1 Establishment of Capital Reserve Fund. The Board shall establish reserves for the future periodic maintenance, repair, or replacement of the major components of the Common Areas. The reserves may be funded from Annual Assessments, Special Assessments, contributions to any working capital fund paid pursuant to this Declaration, Special Service Area Assessments, the Reserve Contributions paid pursuant to this Declaration, or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board in a separate bank account (the account and all such funds therein shall be collectively referred to herein as the "Capital Reserve Fund") 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 Capital Reserve Fund may only be used to pay costs and expenses related to the periodic maintenance, repair, and replacement of the Common Areas, unless the expenditure of any or all of the funds in the Capital Reserve Fund for other purposes is approved by the vote of Owners holding at least two-thirds (2/3rds) of the votes in the Association. The Board may obtain a reserve study and updates thereafter as reasonably determined necessary by the Board. The Board may modify the budget in accordance with the findings of any reserve study. Neither the Board, nor the Declarant, shall be liable to the Association, the Members, the Owners, or the Residents, if the reserves collected are inadequate.

7.18.2 Reserve Contribution. Except as otherwise provided in this *Section*, each Purchaser shall pay to the Association immediately upon becoming the Owner of a Lot with a completed Dwelling Unit constructed thereon, a sum equal to one-sixth (1/6th) of the current Annual Assessment for such Lot (the "Reserve Contribution"), which sum shall be placed in the Capital Reserve Fund. 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. All Reserve Contributions shall be deposited in the Capital Reserve Fund 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 7.18.2* shall not be used in calculating the maximum Annual Assessment pursuant to *Section 7.6* hereof. Reserve Contributions payable pursuant to this *Section* 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. The Reserve Contribution shall be used by the Association in compliance with Arizona Revised Statutes § 33-442(C)(3), as amended, this Declaration, and any other applicable laws.

7.18.3 Exemption from Reserve Contribution. 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 Person 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 Arizona Revised Statutes 33-741, et seq.

7.18.4 **Annual Audit.** The Board shall comply with Arizona Revised Statutes § 33-1810 and other applicable law as amended from time to time. As of the date of the recording of this Declaration, Arizona Revised Statutes § 33-1810 requires that: (i) the Board provide for an annual financial audit, review or compilation of the Association and (ii) that such audit, review or compilation shall be completed no later than one hundred eighty (180) days after the end of the Association's fiscal year and shall be made available upon request to the Members within thirty (30) days after its completion. The Board may, if it elects, use a certified public accountant to assist in the completion of the foregoing.

ARTICLE 8.

ENFORCEMENT OF PAYMENT OF ASSESSMENTS

AND OF ASSESSMENT LIEN

8.1 **Association as Enforcing Body.** The Declarant, during the Declarant Control Period, and the Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Declarant and Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce the provisions thereof on behalf of the Association, by any appropriate action, whether in law or in equity but not at the expense of the Association.

8.2 **Association's Remedies to Enforce Payment of Annual, Special, and Special Service Area Assessments, Reserve Contributions and Maintenance Charges.** If any Member fails to pay the Annual, Special, or Special Service Area Assessments, Reserve Contributions or any installments thereof when due, or the Maintenance Charges assessed pursuant to *Section 10.2* and *10.3* the Association may, subject to any limitations imposed by applicable law (including Arizona Revised Statutes §§ 33-1803 and 33-1807 as amended), enforce the payment of the Annual, Special or Special Service Area Assessments, Reserve Contributions or Maintenance Charges in accordance with its Assessment collection policies as adopted by the Board from time to time and which may include without limitation, by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its rights to exercise the other remedy);

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments or Maintenance Charges;

(b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency) and the Lot may be redeemed after foreclosure sale as provided by law. The Association shall have the right to bid at any foreclosure sale.

8.3 Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to liens and encumbrances Recorded prior to the Recordation of this Declaration, any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to: (a) liens and encumbrances Recorded prior to the Recordation of this Declaration, (b) consensual mortgages or deeds of trust Recorded before the date on which the Assessment became delinquent, and (c) liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot, specifically including, but not limited to, the assessment lien of any Sub-Association. The sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual, Special, and Special Service Area Assessments, Reserve Contributions and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except such prior liens and encumbrances, liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual, Special, and Special Service Area Assessments, Reserve Contributions, Maintenance Charges, Special Fees, and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

8.4 Costs to be Borne by Member in Connection with Enforcement of Payment of Annual, Special, and Special Service Area Assessments, and Maintenance Charges. In any action taken pursuant to *Section 8.2* of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual, Special, and Special Service Area Assessments, Reserve Contributions and Maintenance Charges together with interest and the Association's incidental and taxable costs including collection costs and attorneys' fees, including those costs and fees specified in *Section 7.9*. The Assessment Lien shall also secure payment of any other sums which may become payable to the Association by an Owner pursuant to this Declaration.

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, Special

Assessments, Reserve Contributions, 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 acquisition, construction, alteration, management, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Property, which may be necessary, desirable or beneficial to the general common interests of the Property, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas, public right-of-way and drainage areas within the Property, recreation, obtaining of liability insurance, supplying of utilities and other public services, providing for communication, education and transportation within and dissemination of information concerning the Property, indemnification of, and insurance for the benefit of, officers and directors of the Association and generally protecting the health and safety of the Members and the Residents. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

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.

9.3 **Association's Rights to 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 Annual, Special, and Special Service Area Assessments, 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.

9.4 **Administration of Special Fees.** The Association is authorized to establish, bill for, sue for, collect, administer and disburse all Special Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvement to which they pertain.

9.5 **Insurance; Scope of Coverage.** The Association shall maintain insurance as to 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) Commercial 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 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 and non-owned automobile liability coverage.

(b) All-risk Property insurance on all Common Areas, insuring against all risk of direct physical loss except those that are specifically excluded, in an amount equal to the maximum insurable replacement cost of the Common Areas exclusive of land, excavations, foundations, deductibles, and other items normally excluded from a property policy. Said property insurance shall include Agreed Amount and Inflation Guard endorsements.

(c) Workers' compensation insurance to the extent necessary to meet the requirements of the laws of the State of Arizona.

(d) 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's agents, servants, or employees, or 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 or 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 carrier shall notify any first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reductions, or cancellation of the policy.

9.6 **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.

9.7 **Payment of Insurance Proceeds.** With respect to any loss to any Common 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 Common 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.

9.8 **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 Common Areas are not repaired or replaced, insurance proceeds attributable to the damaged Common 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 Working Capital Fund.

9.9 **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 10.

MAINTENANCE

10.1 **Common Areas and Public Right of Way.** The Association, or its duly delegated representative, shall maintain and otherwise manage, all Common Areas, including, but not limited to, the landscaping, walkways, paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon the Common Areas, as well as all

Theme Walls pursuant to the provisions of **Section 4.3.16(f)** above; provided, however, the Association shall not be responsible for providing or maintaining the landscaping, structures or other Improvements on any Common Areas which are part of the Lots unless (i) such landscaping, structures or other Improvements are available for use by all Owners and Residents or are within easements intended for the general benefit of the Property; and (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in a Recorded instrument as hereinafter provided. In addition, prior to the commencement of construction of drainage improvements within the Flood Control Basin by the Flood Control District, the Association shall maintain the Flood Control Basin as if the Flood Control Basin were a part of the Common Areas. The Association shall not maintain areas which (i) the City or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot pursuant to **Section 4.3.4** of this Declaration unless the Association elects to maintain such areas and as to which the Association has not previously made such an election to maintain. Specific areas to be maintained by the Association may be identified on subdivision plats Recorded or approved by the Declarant and in Deeds from the Declarant to a transferee of a Lot. Failure to so identify such specific areas to be maintained by the Association shall not affect the Association's rights and responsibilities.

10.1.1 **Association's Maintenance of Common Area.** The Board shall use a standard of reasonable care in providing for the repair, management and maintenance of the Common Area so that the Property will reflect a high pride of ownership. In this connection, the Association may, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon Association Land;
- (b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of the Common Area used as a road, street, walk, driveway, parking area, except that no permanent improvements shall be made by the Association on any Common Area that is not Association Land and the Association shall provide only maintenance on Common Areas which are not Association Land;
- (c) 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 and for aesthetic purposes;
- (d) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (e) Do all such other and further acts which 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.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association.

10.1.2 Delegation of Responsibility for Maintenance of Common Area. In the event any subdivision plat or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or public rights-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, Lessees, 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 10 and, 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.

10.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. If the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject, and shall be secured by the Assessment Lien. 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 become a part of such Assessment and shall be secured by the Assessment Lien.

10.3 Improper Maintenance and Use of Lots. In the event any portion of any Lot 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 or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration applicable thereto, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration or the Design Guidelines, standards and rules and regulations of the Design Review Committee, as applicable, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which 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 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered, but shall not be required, to cause such action to be taken and the cost thereof (together with a fee determined by the Board in its sole discretion on a case by case basis to compensate the Association for its overhead and supervision relating to such action) shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, and shall be secured by, the Assessment Lien.

10.4 No Obligation for Providing Security. Notwithstanding anything contained in this Declaration to the contrary, neither the Declarant or the Association shall have any obligation to provide for security services with respect to the Common Area or any other portions of the Property.

ARTICLE 11.
DISPUTE RESOLUTION AND MANDATORY BINDING ARBITRATION
FOR MATTERS INVOLVING DECLARANT

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 the Association, which approval must also contain, at a minimum, (i) the approval of an estimated budget for the arbitration or litigation being approved by the Owners and (ii) the approval of a resolution establishing one or more Special Assessments to fund the litigation being approved by the Owners and such arbitration or litigation specific Special Assessment shall be the only funds of the Association that may be used by the Association to pay arbitration or litigation fees and costs, and contingent fee agreements shall not be permitted. A Member holding a proxy (if proxies are then allowed by applicable law, such as Arizona Revised Statutes § 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. Claims and litigation brought by the Association subject to this *Section 11.1.1* must be disclosed by any Owner selling to a prospective purchaser and must be disclosed by the Association if the prospective purchaser requests any information from the Association. This *Section 11.1.1* 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. Except for the various matters that are excluded from the scope of "Claims" in *Section 11.1.3* below, in no event shall the cost of any legal proceeding(s) commenced by the Association be funded out of any Assessments other than one or more Special Assessments that are expressly for such legal proceedings, and such legal proceedings shall also not be funded from reserves, loans, or contingent fee agreements.

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 or Person 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 any purchase agreement and/or any Additional Declaration recorded by a Builder against any portion of the Property owned by such Builder and which has been approved by Declarant (an "Additional Declaration"), the dispute resolution provisions of the purchase agreement and/or Additional Declaration shall control between the buyer of a Dwelling Unit under such purchase agreement and subsequent purchasers of such Dwelling Unit, on the one hand, and the Builder on the other hand, as to the portion of the Property subject to the purchase agreement and/or Additional Declaration, but the provisions hereunder shall apply as to the Common Areas and actions brought by or on behalf of the Association with respect to such Common Areas. Notwithstanding the foregoing, in addition to the provisions of **Section 11.1.4**, claims involving a Defect or Alleged Defect defined in **Section 11.2** 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 7 (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 14 (Design Review);
- (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) INTENTIONALLY DELETED;
- (f) those matters set forth in the last sentence of **Section 11.1.1**; and

- (g) disputes between the buyer of a Dwelling Unit and subsequent purchasers of such Dwelling Unit, on the one hand, and the Builder, on the other hand, not involving Common Areas, which are governed by dispute resolution provisions set forth in such buyer's purchase agreement and/or any Additional Declaration as provided above in this **Section 11.1.3**.

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 the Association 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 thirty (30) days after the later date of the Notice and, for Claims involving an Alleged Defect, 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 thirty (30) days to submit the Claim to mediation and shall serve the other Party with written notice of the claimant's election of

mediation and include the names of at least two (2) mediators that Party consents to serve as mediator. The Respondent shall respond in writing within ten (10) calendar days to the notice of election to mediate and either consent to at least one of the proposed mediators or provide the names of two (2) other mediators to which the Respondent consents to serve as mediator. If within ten (10) additional calendar days the Parties are unable to agree on a mediator, each party will designate one (1) mediator and those mediators will confer and select a third mediator to conduct the mediation as sole mediator. A

- (iii) Unless otherwise expressly agreed to by the Parties, the mediator conducting the mediation will be a current member of the State Bar of Arizona and have at least ten (10) years of active Arizona litigation experience with firsthand involvement in construction cases. Failure of any Party to designate two (2) proposed mediators who meet the criteria (or not agreeing to the other Parties' otherwise qualified proposed mediators) will be deemed a failure to participate in good faith.
- (iv) The mediation will take place in the Phoenix, Arizona metropolitan area, and without the express agreement of all of the Parties, last no longer than twelve (12) hours in one (1) calendar day. The Parties shall abide by the process and procedures for the mediation as established by the mediator. In the event the Parties reach a resolution of their dispute during mediation, any such agreement shall be memorialized in writing, and if there is any dispute in the terms of such agreement, either in formalizing the agreement or interpreting the agreement, such dispute will be resolved solely and conclusively by the mediator.

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) In the event that none of the foregoing process and procedures have resolved all of the Parties' Claims for Alleged Defects, then the Parties agree that mandatory binding arbitration shall be the sole and

exclusive procedure for resolving any and all remaining claims, disputes, disagreements and controversies relating to Claims for Alleged Defects. No later than sixty (60) days following completion of the mediation required above, any Party who seeks resolution of any remaining claims, disputes, disagreements or controversies relating to Alleged Defects shall notify the other Party in writing of its intent to invoke this arbitration provision.

- (ii) The arbitration shall take place in the Phoenix, Arizona metropolitan area and Arizona law shall apply to all such disputes. The arbitration shall be conducted by a single arbitrator, agreed upon by the Parties. The arbitrator designated by the Parties shall be selected from a list of those arbitrators who are current members of The Arizona Academy of Mediators and Arbitrators ("AAMA"), designated by the AAMA as possessing experience with construction litigation and have no less than ten (10) years' experience practicing law in the State of Arizona.
- (iii) In its initial correspondence notifying the other Parties of its intent to invoke mandatory binding arbitration, the moving Party shall include a designation of no less than three (3) individuals from AAMA it accepts as serving as the arbitrator. No later than ten (10) days thereafter, the responding Party shall either indicate agreement to have the arbitration conducted by one of the three (3) individuals designated by the moving Party or submit a list of three (3) individuals from AAMA, which such responding Party is agreeable to serve as the arbitrator. If within five (5) business days the Parties still have not agreed on an arbitrator, then each Party shall designate one (1) arbitrator from the AAMA and those individuals shall meet and confer within five (5) business days to select the individual who will serve as the sole arbitrator. Unless the selected arbitrator notifies the Parties of a conflict of interest impacting the ability to serve as arbitrator in a fair and impartial capacity, this arbitrator designation shall be binding on the Parties.
- (iv) No later than ten (10) calendar days following the designation of an arbitrator, the moving Party shall serve a Complaint on the responding Party and the arbitrator in a format substantially similar to that required by the Arizona Rules of Civil Procedure. Within ten (10) calendar days after receiving the Complaint, the responding Parties shall serve an Answer or other responsive pleading upon the moving Party and arbitrator. Within thirty (30) days after the submission of the responsive pleading, the arbitrator shall hold a scheduling conference with the Parties. Going forward, the arbitrator shall substantially follow the Arizona Rules of Civil Procedure and Arizona Rules of Evidence, unless otherwise agreed by the Parties. The arbitration shall be conducted no later than 180 days following

the moving Party serving of the Complaint and a decision rendered not later than thirty (30) days following the last day of the arbitration. The arbitrator's decision and award must be in writing and contain findings of fact and conclusions of law supporting the decision and award.

- (v) The Parties shall share equally the arbitrator's fees and any other costs or expenses imposed by the arbitrator. The Parties shall bear their own attorneys' and consultants' fees and other costs or expenses incurred leading up to and during the arbitration, and no Party shall be entitled to an award against any of the other Parties of attorneys' or consultants' fees or other costs or expenses as part of the arbitration award.
- (vi) The arbitration award may be confirmed and/or enforced in any court of competent jurisdiction.
- (vii) **THE PARTIES HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIMS OR CAUSES OF ACTION FOR ALLEGED DEFECTS AND/OR FOR DEFECTS.**

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 (sometimes an "Alleged Defect" or "Alleged Defects") 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, a Dwelling Unit constructed on any Lot, 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" or "Defects" shall mean a "Construction Defect" as defined in Arizona Revised Statutes § 12-1361.4(a), (b) and (c) 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 thirty (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 include, at a minimum, information

constituting "reasonable detail" as described in Arizona Revised Statutes § 12-1363(A), as amended, 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 (20) years from the date of the Recording of this Declaration.

11.3 **Conflicts.** Notwithstanding anything to the contrary in this Declaration, with the exception of **Section 14.5**, 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 Statute—currently codified at Arizona Revised Statutes § 33-2001, et seq., and Arizona Revised Statutes § 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 11** (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 any Builder may, at its sole election, include its contractors, subcontractors 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 section shall not affect the validity or enforceability of the remaining portions of this Section. This **Article 11** does not limit the rights of Declarant or a Builder against their respective contractors, subcontractors and suppliers whether at contract or at law.

11.9 **No Amendment of Article 11.** Without the prior written consent of Declarant and any and all Builders, **Article 11** may not be amended for a period of twenty (20) years from the date of the Recording of this Declaration.

ARTICLE 12.
EXPRESS WARRANTY; DISCLAIMER OF OTHER WARRANTIES

12.1 **Express Warranty.** Declarant warrants to the Owners with respect to their Lot with Improvements as defined respectively in *Sections 1.33 and 1.32* whether purchased directly from the Declarant or from the Original Buyer or Subsequent Purchaser(s) (hereinafter both defined) of the Lot with Improvements thereon and to the Association with respect to the Common Elements as defined in *Section 1.17* that the respective Lots with Improvements thereon and the Common Elements have been constructed in a good workmanlike manner and are free from Construction Defects as defined in *Section 11.2(a)*, and the Declarant agrees to make good to the reasonable satisfaction of the Owners and/or the Association any portion of the respective Lots with Improvements thereon and/or Common Elements which prove to be rendered or constructed with Construction Defects thereon or therein (“**Express Warranty**”). The period of the Declarant’s Express Warranty hereunder to the Association with respect to the Common Elements shall be for one (1) year for materials and two (2) years for labor from the date of issuance of Certificates of Occupancy covering all of the Lots, Improvements and Common Elements constructed by or on behalf of the Declarant. The period of the Declarant’s Express Warranty hereunder to the Owners shall be for one (1) year for materials and two (2) years for labor from the dates the initial Owners closed on the acquisition of their respective Lots with the Declarant. Notwithstanding the foregoing provisions of this *Section 12*, the commencement date(s) of the Express Warranty herein provided for shall not be deemed in any manner to extend the commencement date(s) for the running of the Arizona Statute of Limitations and Repose with respect to such Lots with Improvements thereon and Common Elements, which date(s) commence on the date(s) of substantial completion of the respective Improvements to the Lots and related Common Elements.

12.2 **Disclaimer of Warranties.** OTHER THAN THE DECLARANT’S EXPRESS WARRANTY SET FORTH IN *SECTION 12.1* AND IN THE PURCHASE CONTRACTS OF THE ORIGINAL BUYER WITH THE DECLARANT, THE DECLARANT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY LOT, IMPROVEMENTS OR ANY OF THE COMMON ELEMENTS, OR THAT THERE ARE NO LATENT CONSTRUCTION DEFECTS IN THE LOT, IMPROVEMENTS OR COMMON ELEMENTS OR WITH RESPECT TO ANY CONSUMER PRODUCTS OR OTHER THINGS THAT MAY BE INSTALLED OR THAT ARE CONTAINED IN OR RELATE TO THE LOTS, IMPROVEMENTS AND/OR COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES BEING GIVEN BY DECLARANT TO THE ASSOCIATION OR OWNERS, AND, BY TAKING TITLE TO A LOT WITH IMPROVEMENTS THEREON FROM THE DECLARANT, EACH OWNER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS (INCLUDING SUCCESSOR OWNERS OF THE LOT), AND THE ASSOCIATION SPECIFICALLY WAIVES ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE LOT WITH IMPROVEMENTS THEREON, COMMON ELEMENTS AND/OR ANY PERSONAL PROPERTY OR FIXTURES BEING PROVIDED TO THE OWNER AND THE ASSOCIATION BY DECLARANT.

12.3 NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS DECLARATION, THE DECLARANT MAKES NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER TO ANY THIRD-PARTY BUILDER THAT TAKES TITLE TO A LOT FROM THE DECLARANT, AND ANY SUCH BUILDER SHALL BE DEEMED TO HAVE ACQUIRED TITLE TO SUCH LOT OR LOTS IN AN AS-IS, WHERE-IS CONDITION, SUBJECT ONLY TO SUCH TERMS AND PROVISIONS AS MAY BE PROVIDED FOR IN THE PURCHASE AGREEMENT BY AND BETWEEN THE DECLARANT AND THE BUILDER WITH RESPECT TO THE ACQUISITION FROM THE DECLARANT BY THE BUILDER OF ANY SUCH LOT OR LOTS.

ARTICLE 13.
NOTICE TO SUBSEQUENT PURCHASERS

Notice is hereby given to all Persons that purchase a Lot with Improvements thereon constructed by or on behalf of Declarant from an Owner thereof, other than from the Declarant (herein a “**Subsequent Purchaser**”) that the purchase contract entered into between the Declarant, as seller, and the first non-Declarant Owner, as buyer (herein an “**Original Buyer**”), contains an acknowledgement by the Original Buyer that said Original Buyer has received a copy of this Declaration and has read, understands and has agreed to be bound by all the terms of this Declaration. Subsequent Purchasers shall be deemed upon acquisition of a Lot with Improvements thereon constructed by or on behalf of Declarant to be subject to and the beneficiary of all of the provisions provided for in the Declaration, including, but not limited to, the mandatory binding arbitration, waiver of trial by Jury and Express Warranty provisions of the Declaration.

ARTICLE 14.
DESIGN REVIEW COMMITTEE

14.1 **Establishment.** Declarant shall establish a Design Review Committee to perform the functions of the Design Review Committee set forth in this Declaration and shall adopt the Design Guidelines and the procedural rules and regulations for the performance of such duties by the Design Review Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The Design Review Committee shall consist of such number of regular members and alternate members as the Declarant may designate and such members shall be appointed by the Declarant. The appointees need not be architects, Owners, or Residents and do not need to possess any special qualifications of any type except such as the Declarant may, in its discretion, require. The Design Review Committee may hold regular meetings as needed, in accordance with its procedural rules and regulations. A quorum for such meetings, which shall consist of a majority of the members, shall be necessary for any decision of the Design Review Committee. A duly appointed alternate member, approved by the Declarant, may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Design Guidelines shall interpret and implement this Declaration by setting forth the procedures for Design Review Committee review and the standards for development within the Property, including, but not limited to, architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, signage, wall design and similar matters.

Subject to the provisions of **Section 14.4** of this Article, the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

14.2 **Purpose.** The purpose of the Design Review Committee is to maintain uniformity of architectural and landscaping standards throughout the Property and thereby enhance the aesthetic and economic value of the Property. The Design Review Committee may recommend supplements and amendments to the Design Guidelines and its procedural rules and regulations to the Board for approval to the extent and with the frequency it deems necessary; provided, however, that such modifications are in general conformity with the standards set forth in this Declaration.

14.3 **Operation/Authority.** It shall be the duty of the Design Review Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. The Design Review Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections. The Design Review Committee shall have broad discretionary powers in determining whether an application is in conformance with the Design Guidelines. In addition, the Design Review Committee may disapprove any application if it, in its discretion, believes the applicant has not supplied sufficient or accurate information for the Design Review Committee to exercise the judgment required by this Declaration. The Design Review Committee has the authority to grant variances to the Design Guidelines in accordance with **Section 14.9** hereof by an affirmative vote of the majority of the members of the Design Review Committee. The Design Review Committee shall keep complete written or electronic records of all applications for approval submitted to it (including one set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Guidelines. All such records shall be maintained for a minimum of three (3) years after approval or disapproval. If construction does not commence on a project for which plans have been approved within one (1) year after the date of approval, such approval shall be deemed withdrawn and the Owner shall reapply for approval before commencing the proposed work. Any work not completed within the required time shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

14.4 **Appeal.** Any Owner or other Resident aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established by the Board. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the Board's opinion warrant a reconsideration. If the Board fails to allow an appeal or if the Board, after appeal, again rules in a manner aggrieving the appellant, the decision of the Board is final. In the event the decision of the Design Review Committee is overruled by the Board on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board and, for purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Design Review Committee. In this regard, the Board shall have the authority to modify or overrule the decision of the Design Review Committee on any matter presented to it.

14.5 **Appointment of Design Review Committee Members.** Design Review Committee members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's right to appoint Design Review Committee members shall cease and the Board shall be

vested with that right and all other rights of the Declarant pertaining to the Design Review Committee as stated in this **Article 14**, at such time Declarant no longer owns any property within the Property, or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first. Notwithstanding the foregoing, in accordance with Arizona Revised Statutes § 33-1817(B)(1), as amended, the Design Review Committee shall, at all times, include at least one member of the Board who shall serve as chairperson of the Design Review Committee.

14.6 **Non-Liability for Approval of Plans.** Plans, drawings and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, but the Design Review Committee takes no responsibility for engineering design or for compliance with zoning and building ordinances, and by approving any such plans, drawing or specifications, no member of the Design Review Committee, the Association, any Member, the Board, nor the Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans, drawings and specifications. Neither the Design Review Committee, any member thereof, the Association, the Board, nor the Declarant shall be liable to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (iii) the development, or manner of development, of any property within the Property. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty, whether express or implied, that said plans or specifications comply with applicable governmental ordinances or regulations including, without limitation, zoning ordinances and building codes, and industry standards for design or construction.

14.7 **Waiver.** Each Owner acknowledges that it may not always be possible to identify objectionable features of proposed activity within the scope of this **Article 14** until the work with respect thereto is completed, in which case it may be unreasonable to require changes to the Improvements involved. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval.

14.8 **Exemptions.** The Design Review Committee, by resolution, may exempt certain activities from the application and approval requirements of this **Article 14**, provided such activities are undertaken in strict compliance with the requirements of such resolution. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of such Owner's Improvements, including any Dwelling Unit, without approval. Modifications to the interior of screened porches, patios, and similar portions of such Owner's Improvements which are visible from outside the structure shall be subject to approval.

14.9 **Variances.** The Design Review Committee may, in its sole and absolute discretion, authorize variances from compliance with any guidelines and procedures (i) in narrow circumstances where the design meets the intent of the provision sought to be varied and where granting of the

variance would enhance design innovation and excellence, or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require, but only in accordance with duly adopted rules and regulations. A variance may be granted only when special circumstances so dictate and no variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (iii) estop the Design Review Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any government agency, issuance of any permit, or the terms of any financing shall not constitute hardships.

ARTICLE 15.

RIGHTS AND POWERS OF ASSOCIATION

15.1 **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 or as provided by Arizona common law or statute. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which 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. In addition to all other rights and remedies granted to the Association by this Declaration, the Association shall have the power to impose reasonable fines against an Owner for any violation of this Declaration or the Community Rules by the Owner, a Tenant of the Owner or by any Resident or occupant of the Owner's Lot, but such fines shall be limited as may be required by applicable law (including, without limitation, Arizona Revised Statutes § 33-1803(B)).

15.2 **Association's Rights of Enforcement of Provisions of This and Other Instruments.** The Association, as the agent and representative of the Owners, shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. Notwithstanding the foregoing, Declarant expressly intends that neither the foregoing nor anything else in this Declaration shall obligate or be construed to obligate Declarant or the Association, or their respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, or any provision hereof, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

15.3 **Contracts with Other for Performance of Association's Duties.** Subject to the restrictions and limitations contained herein and the laws of the State of Arizona (including, without limitation, Arizona Revised Statutes § 33-1811, as amended), the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more

directors or officers of the Association or members of any committee are 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 which shall authorize any contract or transaction described above or grant or deny and approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

15.4 Change of Use of Association Land and Procedure Therefor. Upon (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners and the Common Area is no longer in the best interests of the Owners and Residents, and (ii) the approval of such resolution by a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and other Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations).

15.5 Dispute Resolution. Declarant, each Sub-Association, and each Owner agree that it is in the best interest of all concerned to resolve disputes among and between Sub-Associations and among and between any Sub-Association or Owner and the Board without the emotional and financial costs of litigation. Accordingly, the Board is empowered to impose and enforce procedures and rules designed to encourage the resolution of disputes, including requiring written notice of claims and the structured negotiation or mediation of disputes. Prior to the initiation of any administrative or judicial proceeding by one Sub-Association against another or by a Sub-Association or any Owner against the Board, the party initiating such action shall comply with the Board's procedures and rules. This Section shall serve as an agreement by the Sub-Associations and the Owner to submit their claims to such procedures or rules and the failure to abide by such requirements shall serve as a defense to any such action. The requirements of this Section shall not apply to any action by the Board to collect assessments or other fees or charges authorized by this Declaration or a Sub-Association declaration, which actions may proceed in the Board's discretion directly without any prior procedure for claims resolution.

ARTICLE 16.

ANNEXATION AND DEANNEXATION

16.1 Annexation Without Approval. All or any part of the Additional 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, by the execution and Recording of a Supplemental Declaration by Declarant or its successors and assigns (and by the fee title holder(s) of the portion of the Additional Property sought to be annexed, in the event Declarant or its successors and assigns does not hold fee title to all of said property), describing the part of the Additional Property to be Annexed. No Supplementary Declaration shall be so executed

and Recorded pursuant to this Section more than fifteen (15) years after the later of: (i) the Recording of this Declaration, or (ii) the last Recording of a Supplementary Declaration. Thereafter, or at such earlier time that the Declarant no longer owns any part of the Property or the Additional Property, the Association shall have the right to annex and subject to this Declaration all or any part of the Additional Property by executed and Recording a Supplementary Declaration. The Recording of said Supplementary Declaration shall constitute and effectuate the annexation of said portion of the Additional Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said property shall be part of the Property and all of the Owners of Parcels and Lots in said property shall automatically be Members of the Association. Although Declarant, its successors and assigns, or the Association shall have the ability to so annex all or any portion of the Additional Property, neither Declarant, nor its successors and assigns, or the Association shall be obligated to annex all or any portion of the Additional Property, and such Additional Property shall not become subject to this Declaration unless and until a Supplementary Declaration annexing such Additional Property shall have been so executed and Recorded.

16.2 De-annexation Without Approval. Any portions of the Property, including without limitation, the Flood Control Basin, may be de-annexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Association without the approval, assent or vote of the Association or its Members; provided that a Certificate of De-annexation covering the portion of the Property sought to be de-annexed shall be executed and Recorded by Declarant or its successors and assigns, the portion of the Property covered by such Certificate of De-annexation is owned by Declarant or its successors and assigns. No Certificate of De-annexation shall be so executed and Recorded pursuant to this Section more than fifteen (15) years subsequent to the Recording of this Declaration.

16.3 Supplemental Declarations and Certificate of De-annexation. The annexations and de-annexations authorized under the foregoing Sections shall be made by Recording in the office of the County Recorder of Maricopa County, Arizona, a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument with respect to the Additional Property which shall extend the plan of this Declaration to such property, or a Certificate of De-annexation which shall remove the portion of the Property covered thereby from the plan of this Declaration. Any Supplementary Declaration may contain such complementary additions and modification of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additional Property so annexed and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration revoke or modify the covenants established by this Declaration within the existing Property.

ARTICLE 17.

TERMS; AMENDMENTS; TERMINATION

17.1 Term; Method of Termination. This Declaration shall be effective upon the date of Recording hereof and, as may be amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended from time to time, shall be automatically extended for successive

periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at an election held for such purpose in person or by proxy within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may likewise be terminated at any time if ninety percent (90%) of the votes entitled to be cast by the Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, 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 and the covenants contained herein shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

17.2 **Amendments.** This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in ***Section 17.1*** of this Article. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in ***Section 17.3*** of this Article, shall certify that, the amendment has been approved by the affirmative vote or written consent, or any combination thereof, of the members entitled to cast at least seventy-five percent (75%) of the votes of the Association then entitled to be cast. Notwithstanding the foregoing to the contrary, (i) all amendments must be approved by the Board, and (ii) all amendments to ***Section 8.3*** affecting lienholder priority must be approved by the holders of any and all first mortgages and deeds of trust affected thereby.

17.3 **Right of Amendment if Requested by Governmental Agency or Lending Institutions.** Anything in this Article to the contrary notwithstanding, Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend all or any part of this Declaration to such an extent and with such language as may be requested by the FHA or VA, and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, if made by the Declarant, or by the Board if made by the Board, of a Certificate of Amendment, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting for the amendatory language requested by such agency or institution. The Recording of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Property and all persons having an interest therein.

17.4 **Declarant Approval.** So long as the Declarant owns any Lot, or any interest of record in any part of the Additional Property, any amendment of this Declaration must be approved in writing by the Declarant.

17.5 **Declarant's Right of Amendment.** Notwithstanding anything in this Article to the contrary, during the Declarant Control Period, Declarant shall be entitled to unilaterally amend this Declaration to correct minor errors and omissions.

ARTICLE 18.

GENERAL PROVISIONS

18.1 **Interpretation of the Declaration.** Except for judicial construction, the Declarant, during the Declarant Control Period, and thereafter, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Covenants and provisions hereof. When used herein, the terms "include" or "including" shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. The term "Person", "person", "Persons" or "persons" shall include an individual, corporation, partnership, trust, estate or any other entity. The words "herein," "hereof," "hereunder," and other similar compounds of the word "here" when used in this Declaration, unless otherwise expressly stated, shall refer to the entire Declaration and not to any particular provision, section or exhibit.

18.2 **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.

18.3 **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue by the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

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

18.5 **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.

18.6 **Declarant's Disclaimer of Representations.** Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Recorded plat or other instrument Recorded in the office of the County Recorder of Maricopa County, Arizona, Declarant makes to warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can, or will be, carried out, or that any land now owned or hereafter acquired by it is, or will be, subjected by this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to, or developed for, a particular (or any) use, or that if such land 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 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 agrees that Declarant shall have no liability with respect thereto.

18.7 **References to the Covenants in Deeds.** Deeds to, and instruments affecting, any Lot or any part of the Property may contain the Covenants 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 shall be binding upon the grantee/Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

18.8 **Successors and Assigns of Declarant.** Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written, recorded instrument expressly assigning such rights and powers.

18.9 **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.

18.10 **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.

18.11 **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, Tenant 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 County or the Property. This Section 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.

18.12 **Conveyance or Encumbrances of Association Land.** The Association Land shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Owners representing at least two-thirds (2/3) of the votes in the Association and by the Declarant during the Declarant Control Period.

18.13 **Attorneys' Fees.** In addition to any other remedies set forth in this Declaration regarding costs and attorneys' fees, in the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Declaration, Articles, Bylaws, Community Rules or Design Guidelines, the offending Owner or other person or entity shall pay to the Association, upon demand, all attorney

fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the Assessment Lien.

18.14 **Remedies Cumulative.** Each remedy afforded the Association herein is cumulative and not exclusive.

18.15 **Responsibility of Successors in Interest to Owner's Violations.** Successors in title of an Owner to a Lot are obligated to correct any violation of this Declaration or the Design Guidelines by any preceding Owner of the Lot.

[signature page follows]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the day and year first above written.

HBT OF RYDER RANCH LLC, an Arizona limited liability company

By: Towne Development, Inc., an Arizona corporation
Sole Member

Kevin G. Kiesel

By: Kevin G. Kiesel
Its: Vice President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

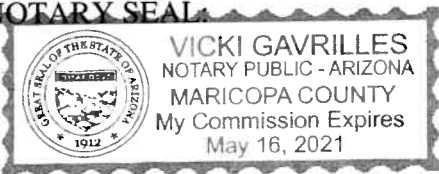
On this 5th day of April, 2021, before me, the undersigned officer, personally appeared Kevin G. Kiesel, who acknowledged ~~her~~/himself to be the Vice President of Towne Development, Inc., Sole Member of HBT of Ryder Ranch LLC:

X whom I know personally;
_____ whose identity was proven to me on the oath of
_____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of her/his

and ~~she~~/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

NOTARY SEAL:



Vicki Gavrilles

Notary Public

Exhibit "A"
Legal Description of Property

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 3 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 14, BEING MARKED BY A BRASS CAP FLUSH, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 14, BEING MARKED BY A BRASS CAP FLUSH, BEARS SOUTH 00 DEGREES 10 MINUTES 43 SECONDS WEST, 2640.40 FEET;

THENCE SOUTH 00 DEGREES 10 MINUTES 43 SECONDS WEST, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 14, 1307.77 FEET;

THENCE DEPARTING SAID EAST LINE, SOUTH 89 DEGREES 48 MINUTES 52 SECONDS WEST, 1567.01 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 08 SECONDS WEST, 316.90 FEET;

THENCE NORTH 89 DEGREES 48 MINUTES 52 SECONDS EAST, 584.03 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 08 SECONDS WEST, 633.80 FEET;

THENCE SOUTH 89 DEGREES 48 MINUTES 52 SECONDS WEST, 570.97 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 08 SECONDS WEST, 357.07 FEET TO THE EAST-WEST MID-SECTION LINE OF SAID SECTION 14;

THENCE NORTH 89 DEGREES 48 MINUTES 55 SECONDS EAST, ALONG SAID MID-SECTION LINE, 1562.26 FEET SAID EAST LINE AND THE POINT OF BEGINNING.

COURTESY RECORDING INSTRUCTIONS TO FIRST AMERICAN TITLE INSURANCE COMPANY
(No Escrow Involved)

First American Title Insurance Company is hereby handed the following document(s):

You are hereby authorized and instructed as a courtesy to deliver for recording to the
Maricopa County Recorder's Office said document(s), with these instructions to be attached to
and recorded as part of the first mentioned document.

The undersigned understands and acknowledges that First American Title Insurance Company is acting in the capacity of messenger only, without consideration and is not responsible for the correctness of the form, content or execution of any of the document(s) and that First American Title Insurance Company is hereby released of any and all liability in connection with the same. Further, the undersigned understands and acknowledges that First American Title Insurance Company assumes no responsibility or liability for any inconvenience or loss which might be sustained due to any delay in recordation of said document(s).

The undersigned states that the real property affected by the document(s) is not involved in an open escrow, title insurance or other transaction pending with any office of First American Title Insurance Company.

The undersigned understands and acknowledges that at the time of recordation, the documents will NOT be insured by First American Title Insurance Company. First American Title Insurance Company is hereby instructed **NOT** to do any title search in conjunction with this courtesy recording.

It is further understood and acknowledged that there shall be no liability and/or responsibility for a payment of any consideration by First American Title Insurance Company to any party as this service is performed as a courtesy only.

"First American Title Insurance Company" shall include First American Title Insurance Company and any of its subsidiary companies.

Recording fees in the amount \$ 0.00 are enclosed
(All checks MUST BE MADE PAYABLE TO FIRST AMERICAN TITLE INSURANCE COMPANY.)

DATED xxxxxxxxxxxxxxxxxx 4/27/2021 Ryder Ranch CC & R's

SIGNATURES:

Vicki Gavrilles
Party Making Delivery

Party Making Delivery

Address: HBT Construction of Arizona Inc. 706 East Bell Road
Suite 212 Phoenix, AZ 85022 602.996.6800

Phone #: _____

Party to Document

Party to Document

First American Title Insurance Company forwarding documents to a recording desk:

By: _____