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c/o Courtland Homes, Inc.
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morenoa

DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR
NORTH COPPER CANYON

Dated: November 1, 2016

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND EASEMENTS FOR NORTH COPPER CANYON**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS is executed as of the 1st day of November, 2016, by Austin Ranch, LLC, an Arizona limited liability company and Courtland Homes, Inc., and Arizona corporation ("**Declarant**").

RECITALS

A. Declarant is the beneficial owner and developer of land located in the City of Surprise, Maricopa County, Arizona, portions of which are proposed, without warranty or representation, to be developed or offered for development, as a part of a community to be known as North Copper Canyon. Fee title to portions of the property owned by the owners executing the Consent of Owners is attached hereto (the "**Consenting Owners**").

B. The property initially subject to this Declaration is described in Exhibit A attached hereto, and is defined herein as the "**Covered Property**." The Covered Property is subject to the terms and provisions hereof, and the remainder of the property described in Exhibit B hereto shall constitute the "**Annexable Property**", as defined herein, and shall be subject to the terms and provisions hereof only if annexed. It is acknowledged that certain areas may never be annexed, including without limitation certain commercial and other areas.

C. Declarant desires to see the Covered Property developed as one or more planned communities with residential and other areas, together with recreational areas, developed and undeveloped open spaces, pedestrian trails, bicycle paths and other facilities.

D. As part of the development of the Covered Property, and without obligation to do so, Declarant may provide for the Recordation of various additional covenants, conditions and restrictions apart from this Declaration in the form of separate Tract Declarations which shall cover certain portions of the Covered Property to be specified in such Tract Declarations.

E. Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) shall run with all of the real property comprising the Covered Property; (ii) shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof; and (iii) shall inure to the benefit of the aforementioned parties and their successors and assigns.

F. Declarant desires to form an Arizona nonprofit corporation to be known as the "North Copper Canyon Community Association," for the purposes of, among other things: (i) holding title in fee or otherwise to the Common Area; (ii) fostering the efficient preservation of the values and amenities of the Covered Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Area, Areas of Common Responsibility, and enforcing this Declaration and the Design Guidelines adopted pursuant hereto; and (iii) establishing, collecting, disbursing and enforcing the Assessments created herein.

G. Until such time as the Association is incorporated, Declarant shall and does hereby reserve to itself, its successors and assigns, the right to exercise the powers, rights and duties granted to or imposed upon the Association under this Declaration.

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

**ARTICLE 1
DEFINITIONS**

As used in this Declaration, the following terms shall have following meanings:

1.1 **"Additional Covenants"** shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any Tract Declaration, any Recorded contract, deed, declaration, or other instrument that may be permitted under this Declaration.

1.2 **"Administrative Fee"** shall mean the fee levied by the Board upon transfers as set forth in Section 8.6.2 of this Declaration.

1.3 **"Agency" or "Agencies"** shall mean the FHA, the VA, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and any other governmental agency or financial institution participating in the insuring or guaranteeing of home loans within the Covered Property.

1.4 **"Alleged Defect"** shall mean any allegation against the Declarant of a deficiency in the design, construction, manufacture, repair, alteration, remodeling or landscaping of any portion of Covered Property.

1.5 **"Alleged Defect Costs"** shall mean the costs of repairing or replacing any Alleged Defect..

1.6 **"Annexable Property"** shall mean any real property near or adjacent to the Covered Property and which may be annexed under the purview hereof subject to Declarant's written consent and Recordation of a Tract Declaration approved by the Declarant. Annexable Property includes, without limitation, the property identified in Exhibit B attached hereto.

1.7 **"Annual Assessments"** shall mean the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.

1.8 **"Apartment Parcel"** shall mean a Parcel designated in a Tract Declaration as having a Residential Apartment Development Land Use Classification.

1.9 **"Apartment Unit"** shall mean a Dwelling Unit located on a portion of the Covered Property which has been designated as being for Residential Apartment Development Land Use Classification, the occupancy of which is or is planned to be governed by a rental agreement as defined in A.R.S. §33-1310(11).

1.10 **"Area of Common Responsibility"** shall include (i) all Common Area, (ii) those areas, if any, which the Association does not own but which by the terms of this Declaration, any Tract Declaration, or other applicable covenants, or by contract become the responsibility of the Association, and (iii) all real property, and the improvements situated thereon, designated on a plat signed or ratified by the Association and/or Declarant as an area to be maintained, repaired or replaced by the Association.

1.11 "**Articles**" shall mean the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

1.12 "**Assessment Lien**" shall mean the charge and continuing servitude and lien against a Lot or Parcel for payment of Assessments as described in Section 8.1 of this Declaration.

1.13 "**Assessment Period**" shall mean each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration, as more particularly described in Section 8.10 below.

1.14 "**Assessments**" shall mean all Annual Assessments, Special Assessments, and Maintenance Assessments.

1.15 "**Association**" shall mean the "North Copper Canyon Community Association," an Arizona nonprofit corporation, its successors and assigns or such similarly named entity formed for the purpose of serving as the Association under this Declaration.

1.16 "**Association Rules**" shall mean the rules and regulations adopted by the Association pursuant to Section 6.3 and 12.2 of this Declaration.

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

1.18 "**Builder**" shall mean a Person in the business of developing, leasing, and/or selling real property and who has in a single transaction acquired one or more Lots or all or a portion of a Parcel in the Covered Property, in connection with, and in the course of, such business, for the purpose of developing, leasing or selling such Lots or Parcel, or portion thereof. A Builder must be designated as such by Declarant in a Recorded instrument.

1.19 "**Bylaws**" shall mean the Bylaws of the Association, as amended or restated from time to time.

1.20 "**City**" shall mean the City of Surprise, Arizona.

1.21 "**Claimant**" shall mean a Person making a claim pursuant to Article 15 below.

1.22 "**Common Area**" shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled, or operated by the Association (including, but not limited to, areas used for landscaping, flood control, drainage, bicycle or jogging paths, parks, recreational areas, open space, walkways, and pedestrian and vehicular ingress and egress), or with respect to which the Association has undertaken administrative, maintenance or other similar responsibilities. Common Area does not include public right-of-way or Lots.

1.23 "**Community-Wide Standard**" shall mean the standard of conduct, maintenance, or other activity required within the Covered Property. Such standard may contain both objective and subjective elements. Until the expiration of the Class B Membership, Declarant shall have the sole authority to establish the subjective elements of the Community-Wide Standard. The objective elements of the Community-Wide Standard shall be determined by the Board, subject to any specific requirements set forth in the Design Guidelines. The Community-Wide Standard may evolve as development progresses

and as the needs and demands of the community change. After the expiration of the Class B Membership, the Community-Wide Standard shall be the standard of conduct, maintenance, or other activity generally prevailing throughout the Covered Property at the subject point in time, as determined exclusively by the Board, or, in the Board's discretion, by the Design Review Committee with the approval of the Board.

1.24 "**Completed Lot**" shall mean any Lot owned by Declarant or a Builder within the Covered Property with a Dwelling Unit ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Covered Property (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed) and eligible for a certificate of occupancy whether or not a certificate of occupancy has been issued therefor.

1.25 "**Condominium Unit**" shall mean a Dwelling Unit constituting a "unit" in a "condominium," together with any appurtenant interest in all "common elements," as such terms are defined in Chapter 9, Title 33, Arizona Revised Statutes, as amended.

1.26 "**Covered Property**" shall mean the real property more particularly described on Exhibit A attached hereto, and such portions of the Annexable Property as may be annexed pursuant to the provisions hereof by Recordation of a Tract Declaration, all subject to the further provisions hereof dealing with withdrawal of land.

1.27 "**Declarant**" shall mean Austin Ranch, LLC, an Arizona limited liability company, and Courtland Homes, Inc., an Arizona corporation.

1.28 "**Declarant Affiliate**" shall mean any Person directly or indirectly controlling, controlled by, or under common control with Austin Ranch, LLC or its assignees, and shall include, without limitation, any general or limited partnership, limited liability company, corporation in which Austin Ranch, LLC or its assignees or another Declarant Affiliate is a general partner, managing member, majority member, or controlling shareholder, or a Trust in which Austin Ranch, LLC or its assignees or another Declarant Affiliate is a beneficiary, provided such Person or entity is designated in writing by Declarant as a Declarant Affiliate. Without limiting the foregoing, Declarant Affiliates shall include the following (and they are hereby designated as Declarant Affiliates): DVWDC, Inc., an Arizona corporation, Madstone Capital LLC, an Arizona limited liability corporation and Courtland Capital, L.L.C, an Arizona limited liability corporation.

1.29 "**Declaration**" shall mean this Declaration of Covenants, Conditions, Restrictions, and Easements for North Copper Canyon, as amended or supplemented from time to time.

1.30 "**Delinquent Amount**" shall mean any Assessment or Special Use Fee, or installment thereof, not paid when due.

1.31 "**Design Guidelines**" shall mean the rules and regulations adopted, amended and supplemented by the Design Review Committee pursuant to Section 4.4 of this Declaration, and shall include architectural and landscape Design Guidelines.

1.32 "**Design Review Committee**" shall mean the committee(s) formed pursuant to Article 4 of this Declaration. The Design Review Committee may elect to adopt any other name it may desire, including Architectural and Landscape Review Committee.

1.33 **"Dwelling Unit"** shall mean any building, or part thereof situated upon a Lot or Parcel and intended for use and occupancy as a residence by a Single Family.

1.34 **"Event of Foreclosure"** shall mean the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust, or other encumbrance inferior in priority to an Assessment Lien.

1.35 **"Exempt Property"** shall mean the following areas now or hereafter located within North Copper Canyon, none of which are subject to Assessment, but certain Exempt Property may be subject to maintenance by the Association, and no voting rights shall be associated therewith:

1.35.1 All Government Property;

1.35.2 All Common Area for so long as Declarant or the Association is the owner thereof;

1.35.3 All Limited Common Area;

1.35.4 All unmanned utility substations which provide utility services to all or any portion of the Covered Property unless and to the extent that the applicable Tract Declaration or other appropriate Recorded instrument indicates such a Lot or Parcel is subject to Assessments.

1.36 **"Exempt Transfer"** shall mean any transfer within Covered Property:

1.36.1 By or to the Declarant, Declarant Affiliate or Builder;

1.36.2 By a co-Owner to any Person who was a co-Owner immediately prior to such transfer;

1.36.3 To the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

1.36.4 To an entity wholly owned by the Owner or to a family trust created by the Owner for the direct benefit of the Owner and his or her spouse and/or heirs at law; provided, any subsequent transfer of an ownership interest in such entity shall not be an Exempt Transfer;

1.36.5 To a corporation, limited liability company, partnership or other entity in which the Owner owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Fund Contribution;

1.36.6 To an institutional lender as security for the performance of an obligation pursuant to a mortgage or pursuant to a foreclosure sale; or

1.36.7 By or to the Association.

1.37 **"FHA"** shall mean the Federal Housing Administration.

1.38 **"Final Turnover"** shall mean the process pursuant to which control of the Association is transferred from Declarant to the Class A Membership following termination of the Class B Membership,

and also includes the various procedures to be undertaken at or about that time in accordance with the terms hereof including, without limitation, the provisions of Section 6.7.2 below.

1.39 **"First Mortgage"** shall mean any mortgage or deed of trust on any Lot or Parcel, or portion thereof, with the first priority over any other mortgage or deed of trust encumbering such Lot or Parcel, or portion thereof.

1.40 **"First Mortgagee"** shall mean the holder of any First Mortgage.

1.41 **"Funds"** shall mean all funds and property collected and received by the Association from any source.

1.42 **"Governing Documents"** shall mean this Declaration, the Articles of Incorporation and Bylaws of the Association, the Design Guidelines, and the Association Rules, or other documents the Board determines as necessary to govern the Covered Property provided they are not in conflict with the Declaration, as the same may from time to time be amended.

1.43 **"Government Property"** shall mean all land and improvements owned by or dedicated to a public or governmental agency or authority or a quasi-governmental agency or authority for so long as the public or governmental agency or authority or quasi-governmental agency or authority is the owner or beneficiary thereof, except for land or improvements, or both, owned and/or operated by a public or governmental agency or authority quasi-governmental agency or authority acting in a proprietary capacity, or owned and occupied as a residence by a Single Family.

1.44 **"Land Use Classification"** shall mean a classification of a portion of the Covered Property, as set forth in a Tract Declaration, restricting development to the applicable classification(s).

1.45 **"Limited Common Area"** shall mean all areas of any Parcel now or hereafter designated on a Recorded Tract Declaration or a Recorded subdivision plat as an area to be used in common by the Owners or Occupants of a particular Parcel or subdivision, but not by all Owners or Occupants of the Covered Property, which areas shall also be maintained by and at the expense of the Owners or Occupants of such Parcel or subdivision established with respect to such Parcel or subdivision.

1.46 **"Lot"** shall mean:

1.46.1 an area of real property within the Covered Property designated as a "Lot" on any Recorded subdivision plat and which has a designated Land Use Classification of Single Family Residential Development Use; or

1.46.2 a Condominium Unit within the Covered Property.

1.47 **"Maintenance Assessments"** shall mean the Assessments, if any, levied by the Board pursuant to Sections 8.8 and 11.2 through 11.5 of this Declaration.

1.48 **"Member"** shall mean any Owner, including Declarant.

1.49 **"Membership"** shall mean the amalgam of rights and duties of Owners, including Declarant, with respect to the Association.

1.50 "**Net Acre**" shall mean a gross acre of forty-three thousand five hundred sixty (43,560) square feet, less any dedicated rights-of-way for collector, arterial and parkway roads, Net Acre computations shall be rounded to the nearest one-hundredth of an acre.

1.51 "**Notice of Alleged Defect**" shall mean written notice by certified mail, return receipt requested, delivered to Declarant specifying in reasonable detail the Alleged Defect on Common Area only and no other areas. "Reasonable detail" includes a detailed and itemized list that describes each Alleged Defect, the location that each Alleged Defect has been observed and the impairment to the Common Area that has occurred as a result of each of the Alleged Defects or is reasonably likely to occur if the Alleged Defects are not repaired or replaced.

1.52 "**Occupant**" shall mean:

1.52.1 each Tenant who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Tenant who reside on the Covered Property;

1.52.2 each Owner who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Owner who reside on the Covered Property; and

1.52.3 such other Person or Persons as the Board, in its absolute discretion, may designate.

1.53 "**Owner**" shall mean (a) a record holder of beneficial or equitable title, and legal title if legal title has merged with the beneficial or equitable title, to the fee simple interest in any Lot or Parcel, including without limitation Declarant and all Builders; The foregoing does not include persons or entities who hold an interest in any Lot or Parcel merely as security for the performance of an obligation, or a lessee or Tenant of an Owner as defined above, or a purchaser or buyer under any executory contract of sale which has not been fully consummated with a Recorded deed to the purchaser.

1.54 "**Parcel**" shall mean any parcel of land within the Covered Property, including a Parcel designated for non-residential use, other than Common Area to be owned in fee title by the Association, and including any portion, pad, or subparcel thereof, if such portion, pad, or subparcel shall have been created by a parcel split or subdivision approved or permitted in accordance with this Declaration. Notwithstanding the foregoing, a Parcel shall cease being a Parcel upon Recording of a subdivision plat or a declaration of condominium creating Lots or Condominium Units in regard thereto. In the case of the staged development of a Parcel having a Land Use Classification of Single Family Residential Development Use, those areas of such Parcel not yet covered by a Recorded subdivision plat or declaration of condominium creating Lots shall continue to be a Parcel for purposes of this Declaration.

1.55 "**Party Walls**" shall have the meaning set forth in Section 4.4 of this Agreement.

1.56 "**Person**" shall mean a corporation, partnership, limited liability company, joint venture, individual, trust or any other legal entity.

1.57 "**Record**", "**Recording**" and "**Recorded**" shall mean placing or having placed a document of public record, or the act of recording, in the Official Records of Maricopa County, Arizona.

1.58 "**Residential Apartment Development**" shall mean a development comprised of Apartment Units and the surrounding area which is intended to be integrated and under the same ownership.

1.59 "**Retail Purchaser**" shall mean a Person who purchases a Lot in a retail transaction and shall not include Declarant, any Declarant Affiliate, any Builder, or any other Person who acquires a Lot (i) in a bulk sale transaction for purposes of resale or (ii) by distribution (as distinguished from purchase).

1.60 "**Single Family**" shall mean a group of persons living together and maintaining a single nonprofit housekeeping unit together with their domestic servants.

1.61 "**Single Family Residential Parcel**" shall mean a Parcel designated in a Tract Declaration as having a Single Family Residential Development Use Land Use Classification.

1.62 "**Special Assessments**" shall mean the assessments, if any, levied by the Board pursuant to Section 8.4 of this Declaration.

1.63 "**Taking**" shall mean condemnation by eminent domain or sale or other transfer under threat of condemnation.

1.64 "**Tenant**" shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in A.R.S. §33-1310(11) or otherwise.

1.65 "**Tract**" shall mean a legally definable area within a Plat that may be turned over to the Association for ownership and/or maintenance and included as part of the Covered Property.

1.66 "**Tract Declaration**" shall mean any declaration of covenants, conditions, and restrictions or like instrument Recorded after the Recording of this Declaration in regard to one or more Parcels or Tracts, or portions thereof, or group(s) of Lots, by Declarant or the Owner of such Parcels or portions thereof, or group(s) of Lots, which shall in all cases be consistent with and subordinate to this Declaration. Tract Declarations may establish the Land Use Classification of Covered Property. A Tract Declaration may designate a party as a Builder.

1.67 "**Turnover**" shall mean the continual process by which Areas of Common Responsibility are turned over for Association maintenance following construction of any improvements thereon by or at the direction of Declarant, a Walkthrough, and, if applicable, the cure of Alleged Defect for that specific area in accordance with this Declaration in accordance with the terms hereof including, without limitation, the provisions of Section 6.7.1 below, or Final Turnover, as applicable.

1.68 "**Use Restrictions**" shall mean the use restrictions attached as **Exhibit C**, as they may be modified, canceled, limited, or expanded under Article 5.

1.69 "**VA**" shall mean the United States Veterans' Administration.

1.70 "**Visible From Neighboring Property**" shall mean, with respect to any given object, that such object is or would be visible to a Person six (6) feet tall, standing at ground level on neighboring property (including Common Area) six (6) feet back from the property line of the neighboring property,

provided, however, that the Design Review Committee shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the Design Review Committee shall be binding in that regard, subject to any appeal rights to the Board.

1.71 **"Walkthrough"** shall mean an inspection of specific Areas of Common Responsibility that are constructed by or at the direction of Declarant in order for the Association to accept maintenance of said area.

ARTICLE 2 PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 **General Declaration.** Declarant desires to see the Covered Property developed in substantial conformance with the City approved plats and site plans, as may be amended from time to time in the sole and absolute discretion of Declarant, and to dedicate or convey to other Persons the Lots and Parcels or other portions of the Covered Property. As portions of the Covered Property are developed, Declarant, without obligation, intends to Record one or more Tract Declarations that will, among other things, create Parcels, designate Land Use Classifications, designate Common Area and Limited Common Area, and establish such additional covenants, conditions and restrictions as may be appropriate for the respective portions of the Covered Property. Declarant hereby declares that all of the Covered 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 and any Tract Declarations applicable thereto, as amended or modified from time to time. Notwithstanding the preceding sentence, except as expressly provided herein, property owned by or dedicated to a governmental agency or to the public shall not be subject to this Declaration, provided, however, that any restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Covered Property. This Declaration shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Covered Property and their successors in interest. Nothing in this Declaration or in any Tract Declaration shall be construed to prevent Declarant from modifying any part of any plat or site plan with respect to property as to which a Tract Declaration has not been Recorded, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot, a Parcel, or Common Area.

2.2 **Owners and Occupants Bound.** Upon the Recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Parcel or Lot to or from such Owners or Occupants.

2.3 **Association Bound.** Upon the incorporation of the Association, this Declaration shall be binding upon and benefit the Association, and its successors and assigns.

2.4 **Government Property.** Notwithstanding any other provision herein, Government Property comprising a park, or other property owned in fee by a town, city, or county, shall not be deemed encumbered by any of the provisions of this Declaration. Owners shall, however, be restricted in their use of Government Property consisting of roads (i.e., signage and other regulations hereof).

**ARTICLE 3
EASEMENTS AND RIGHTS OF ENJOYMENT
IN THE COMMON AREA**

3.1 **Easements and Rights of Enjoyment.** Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Area, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner's Lot or Parcel. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Area so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

3.1.1 The right of the Association to set special use fees for dedicated use by a specific group for a specified period.

3.1.2 The right of the Association to suspend the voting rights and the rights to use and enjoy the Common Area (other than roadways) of any Owner or Occupant, as the case may be:

(a) for any period during which an Assessment remains delinquent;

(b) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Tract Declaration, the Association Rules, or the Design Guidelines, or for so long as the Owner remains in violation, whichever is longer; or

(c) for successive sixty (60)-day periods if any such delinquency or infraction is not corrected during any preceding suspension period.

3.1.3 The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Area; and

3.1.4 The right of the Association to regulate use of the Common Area in accordance with this Declaration, except that notwithstanding the foregoing, at any time during the pendency of the Class B Membership Declarant shall have the right to convey, or cause the Association to convey, minor, insignificant, or immaterial portions of the Common Area (such as those caused by encroachment by adjacent or nearby lands, encroachment areas, boundary line discrepancies, survey errors and other such matters) without the consent or vote of any other Person or Member, should Declarant determine that such conveyance or transfer is necessary. Any sale or disposition of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof. The rights of the Association hereunder with respect to the Common Area shall include, but is not limited to, conveyance and dedication to the public roads, streets, drainageways, culverts, and sewer facilities, none of which shall require the approval of any Owners or Members of the Association. In addition, the Association shall have the right, without a vote of the Members, to dedicate to the public any private park, school site, or open space, including pedestrian trails.

3.2 **Delegation of Use.** Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his/her rights of use and enjoyment in the Common Area to the members of his/her family or occupants and guests subject to the limitations set forth herein and in the Association Rules; provided, however, that the Association Rules may restrict or limit the use of Common Area by Tenants, guests, and invitees.

3.3 **Waiver of Use.** No Owner shall be exempted from personal liability for Assessments, nor shall the Owner's Parcel be released from liens or charges arising under this Declaration or any Tract Declaration, by waiver of any rights of use or enjoyment of the Common Area.

3.4 **Acceptance of Certain Common Area.** In the course of development and sale of Parcels within the Covered Property, fee title to land which is, or is to be, restricted to use as future common area ("**Restricted Tracts**") may be transferred by Declarant to Persons acquiring fee title to one or more Parcels. In such event, and notwithstanding that fee title to the Restricted Tracts may be held by Persons other than the Association (or Declarant), such Restricted Tracts, shall upon acceptance by the Association, if such is the case, become Common Area hereunder upon the platting thereof. If such areas become Common Area of the Association, all Owners and Occupants shall have the easements, licenses, and rights to the use and enjoyment of such Restricted Tracts as with respect to the other Common Area generally, subject in all cases to the provisions of this Declaration and the Association Rules.

3.5 **Temporary Sign Easement.** Declarant hereby reserves for Builders, itself, and its agents and assignees a temporary easement over, upon, and across those portions of the Common Area adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property, and otherwise promoting the Covered Property or any property owned by Declarant. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities within the area of the Covered Property or Annexable Property, but in no event later than expiration of the Class B Membership.

3.6 **Exclusive Use and Benefit Easements.** On certain Common Area, including those along streets and thoroughfares, Declarant (during Class B Membership) or Association (after Class B Membership and with the approval of the Design Review Committee) construct walls partially within the Common Area at varying minor distances from the adjacent Lot line, for purposes of enhancing the visual appearance of the property and avoiding monotony of design that would otherwise be inherent in straight runs of patio walls or other yard walls, including perimeter walls. Portions of the Common Area may be located on the Lot side of any such wall ("**Easement Area**"). Each Easement Area may adjoin and be contiguous to a Lot ("**Dominant Lot**"). In the case of a Dominant Lot, there shall be a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot for the use, benefit, and enjoyment of that Owner ("**Easement**"). The Easements contemplated hereby are to be minor and limited in scope, and shall only be for the purposes stated. Each Easement shall be deemed to exist upon approval by the Design Review Committee of the improvements depicting the encroachment, but only after completion of construction in accordance with such approval, and no consent of the Owner of the Dominant Lot shall be required. Each Easement runs with the land and is appurtenant to the abutting Dominant Lot and may not be sold, transferred or otherwise conveyed apart therefrom. The Easements are limited to the extent that no structure or improvement of any nature may be placed, maintained or permitted to remain in any Easement Area. The Association will have no possession or control of the Easement Areas. Each Easement Area must be possessed, controlled, maintained and insured by the Owner of the abutting Dominant Lot and not by the Association. Any separate insurance maintained by the Association is excess and non-contributory. Each Owner of a Dominant Lot shall indemnify, protect, defend and hold harmless the Association for, from and against any and all losses, costs, claims, actions, damages, expenses, and liabilities of any kind whatsoever arising from or in connection with the Easement Area abutting that Owner's Dominant Lot.

3.7 **Blanket Easements.** There is hereby created a blanket easement in favor of Builders and Declarant and its assigns upon, over, and under each Lot, each Parcel, the Common Area, and the Limited Common Area for ingress to, and egress from, all portions of the Covered Property and the installation, replacement, repair, and maintenance of all utility equipment and service lines and systems (including electric, gas, telephone, cable, water, and sewer), as such equipment, lines, and systems are installed in connection with the initial development of Lots, Parcels, Common Area, Limited Common Area and Area of Common Responsibility and the construction of buildings thereon; provided that such easements shall be specifically and permanently described and fixed by Recorded instrument either:

(a) at the time a subdivision plat, approved as required by this Declaration, is Recorded with respect to the portion of the Covered Property to be served or burdened by such easement(s), as applicable; or

(b) as required by this Declaration and by the appropriate governmental agencies prior to Final Turnover of all Common Areas.

3.8 **Declarant and Builder Use of Covered Property.**

3.8.1 Declarant and Builders shall have the right to maintain sales or leasing offices, management and business offices, and model Dwelling Units throughout the Covered Property (including in any building designated as a clubhouse or recreational amenity) and to maintain advertising, model, and directional signs on the Common Area while the Declarant is currently selling or intending in the future to sell Lots or Parcels in the Covered Property. Declarant reserves for itself and for Builders the right to place models, management, business, sales, and leasing offices in any Dwelling Units owned by Declarant or such Builder and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate, and to utilize the Common Area for other business purposes, including, without limitation, marketing functions.

3.8.2 Declarant or Builders may from time to time relocate models, management and business offices, and sales and leasing offices to different locations within the Covered Property owned by Declarant or such Builder. Upon the relocation of a model or management, business, sales, or leasing office located on Common Area, Declarant and any Builder may remove all personal property and fixtures therefrom owned by Declarant or Builder, respectively.

3.8.3 So long as Declarant or any Builder is currently selling or intending in the future to sell Lots or Parcels in the Covered Property, such Builder(s) and Declarant shall have the right to reserve parking spaces on the parking areas that are part of the Common Area for use by prospective Lot or Parcel purchasers or lessees, Declarant's employees and others engaged in sales, leasing, maintenance, construction, or management activities on or about the Covered Property. Declarant also reserves the right for itself and for Builders to enter all or a portion of the Common Area for purposes of showing the Common Area to prospective purchasers or lessees.

3.8.4 Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction, and maintenance of the Covered Property that has not been conveyed to of the Association. Declarant reserves the right to remove from the Covered Property any and all goods and improvements used in development, marketing, and construction, whether or not they have become fixtures.

3.8.5 Declarant reserves the right to utilize areas within Common Areas for Association maintenance facilities. These areas and facilities may include, but are not limited to, walls, gates, equipment storage, materials storage, vehicular access, irrigation facilities, etc.

3.9 **Temporary Sales Easement.** Declarant hereby reserves for Builders and itself and its agents, successors, and assignees a temporary non-exclusive blanket easement over, upon, and across the Covered Property for purposes of ingress, egress, and parking in connection with construction, display, maintenance, sales, and exhibit purposes in connection with the erection of structures and sale or lease of Lots or Parcels within the area of the North Copper Canyon project. Such easements may be used by Builders and Declarant or its successors, assigns, guests, and invitees for any purpose whatsoever relating to sales, advertising, and promotional activities in relation to the Covered Property or in relation to land marketed and developed as part of the same general community. The easement reserved hereby shall expire and terminate when any Builder and Declarant is no longer selling and has no intent to sell in the future Lots or Parcels within the area of the North Copper Canyon project.

3.10 **Change of Use or Conveyance of Common Area.**

3.10.1 **Resolution of Board.** The Association, upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Area is no longer in the best interests of the Owners and Occupants, and upon the approval of Declarant so long as Declarant is a Class B Member of the Association, shall have the power and right to change the use of Common Area, and in connection therewith to take whatever actions are required to accommodate the new use, including adjustments of fence lines or boundary walls, expansions or relocation of private streets, and conveyance of Common Area.

3.10.2 **Dedications.** The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public authority, utility or public service corporation without the approval of the Members, and without a vote or meeting of Members, but with the approval of Declarant so long as Declarant is a Class B Member of the Association. In addition, Association may make such other dedications, provided that the Board in its sole discretion determines that such a transfer or dedication does not have a material and substantial adverse effect on the enjoyment of the remaining Common Area by the Owners and Occupants and such transfer shall be approved by the Declarant so long as it is a Class B Member.

ARTICLE 4 DESIGN REVIEW COMMITTEE

4.1 **Organization of Design Review Committee.** The Board shall establish a Design Review Committee and shall adopt the procedural rules and regulations for the performance of the duties of the Design Review Committee. The Design Review Committee shall be organized as follows:

4.1.1 **Powers and Duties.** The Design Review Committee shall have all of the powers, authority, and duties conferred upon it by this Declaration or by the Articles, Bylaws, or Association Rules, or by any Tract Declaration or similar Recorded instrument approved in advance by the Board. Without limiting the generality of the foregoing, it shall be the duty of the Design Review Committee to consider and act upon all proposals or plans submitted to it pursuant to the provisions of this Declaration or the Design Guidelines, including approval of all landscaping to be planted or placed upon the Covered

Property, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration

4.1.2 **Committee Composition.** The Design Review Committee shall consist of up to five (5) members; provided, however, that the number of members may be increased or decreased at any time by a vote of the Board. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent, or employee of Declarant.

4.1.3 **Alternate Members.** In the event of the absence or disability of a regular member or members of the Design Review committee, the remaining regular members, even though less than a quorum, may designate an alternate member to act as a substitute regular member of the Design Review Committee so long as any one or more regular members remain absent or disabled.

4.1.4 **Term of Office.** Unless a member of the Design Review Committee has resigned or been removed, his or her term of office shall be for a period of two (2) years, or until the appointment of his or her respective successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members of the Design Review Committee who have resigned, been removed or whose terms have expired may be reappointed.

4.1.5 **Appointment and Removal.** Except as hereinafter provided, the right to appoint and remove all regular and alternate members of the Design Review Committee at any time shall be and is hereby vested solely in the Board; provided, however, that no regular or alternate member may be removed from the Design Review Committee by the Board except by the vote or written consent of at least fifty-one percent (51%) of the members of the Board.

4.1.6 **Resignations.** Any regular or alternate member of the Design Review Committee may at any time resign from the Committee by giving written notice thereof to the Board.

4.1.7 **Vacancies.** Vacancies on the Design Review Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Design Review Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

4.1.8 **Control by Declarant.** Notwithstanding the foregoing, in order to: (i) enhance the value of the Covered Property and (ii) to maintain general conservational aspects of desert landscape palates within the Covered Property, until the Class B Membership ceases, Declarant shall have the right:

(a) to appoint and remove all regular and alternate members of the Design Review Committee; and ✓

(b) to supplement and amend the Design Guidelines, as deemed necessary by Declarant.

To better assist in the review and administration of submittals pursuant to the Design Guidelines, until such time as Declarant relinquishes its control of the Design Review Committee it may, in its sole and absolute discretion, appoint an advisory committee, of a size and composition determined solely by Declarant, and composed of representatives of Declarant and/or Builders.

4.2 **Multiple Committees.** The Board may, at its discretion, create more than one Design Review Committee and give each such Committee the authority to perform duties delegated to it by the Board with respect to specific portions of the Covered Property.

4.3 **Meetings and Compensation of Design Review Committee.** The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the members of the Design Review Committee or written consent of a majority of the members of the Design Review Committee shall constitute the act of the Design Review Committee. The Design Review Committee shall keep and maintain a written record of all actions taken by it. Although members of the Design Review Committee shall not be entitled to compensation for their services, consultants hired by such Committee, if such are authorized by the Board, may be, entitled to compensation at the discretion of the Board.

4.4 **Design Guidelines.** Subject to the written approval of the contents thereof by the Declarant for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.1.8 of this Declaration, the Board shall adopt, and may from time to time amend, supplement and repeal, the Design Guidelines, which may be different for various portions of the Covered Property. The Design Guidelines shall interpret, implement, and supplement this Declaration, and shall set forth procedures for Design Review Committee review, standards for development within the Covered Property, fees and charges for the review of plans and other materials submitted, and such further content as may be appropriate. The Design Guidelines shall include, without limitation, provisions regarding:

4.4.1 architectural design, with particular regard to the harmony of the design with surrounding structures and topography;

4.4.2 placement of buildings;

4.4.3 landscaping design, content and conformity with the natural character or design intent of the Covered Property including conformance with City zoning requirements;

4.4.4 requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning yard and building ornaments, recreational equipment, exterior lighting and exterior furniture, and other items or improvements Visible From Neighboring Property.

4.4.5 signage and mailboxes; and

4.4.6 perimeter and screen wall design and appearance.

The Design Guidelines may elaborate upon types of acceptable plants and shrubs and may contain rules for the treatment and control of plants which may pose a public or private nuisance. These Design Guidelines will also help to enforce the vision of the Declarant as it pertains to considering conservation (where appropriate) while also enhancing the value of the Covered Property. The Design Guidelines shall have the same force and effect as the Association Rules.

In addition to the foregoing, the Design Guidelines shall govern the placement of common or shared walls or fences between Lots, Tracts or Parcels ("**Party Walls**"). Unless otherwise approved by the Design Review Committee, rear and side yard walls built upon any lot line between Lots shall be placed upon the dividing line between adjacent Lots shall become Party Walls. Any Owner attaching to a Party

Wall built by an adjacent Owner shall reimburse such Owner for one-half the reasonable cost of the shared portion of the wall to which attachment is made. The Design Review Committee shall in all cases have the discretion to mandate that patio or yard walls be Party Walls on the Lot line, and may mandate that attachment be made by an adjacent Owner. The Design Guidelines may further amplify the provisions hereof.

4.5 **Obligation to Obtain Approval.**

4.5.1 No building, fence, wall, pool, roadway, driveway, or other structure or improvement, nor any excavation, grading, landscaping, or other work, shall be commenced, erected, repaired, or maintained within the Covered Property, nor shall any exterior addition or change or alteration be made to or in any such structure or improvement (irrespective of whether any improvement, change or alteration is affixed to an exterior surface), including, without limitation, awnings, rolling shutters (interior or exterior), patio covers, antennas, exterior walls, fences, or the color of any structure or improvement on any Lot, Tract or Parcel, except in compliance with plans and specifications therefor that have been submitted to and approved by the Design Review Committee and any applicable Subsidiary Committee in accordance with this Declaration and the Design Guidelines. All approvals must be in writing, and no Owner may rely on oral statements, nor shall any member of the Design Review Committee be deemed to have apparent authority.

Notwithstanding the foregoing, no review or approval by the Design Review Committee shall be deemed to represent concurrence, acquiescence, approval, or evaluation of code compliance or proper construction or engineering techniques, nor shall the Design Review Committee, by reason of its function or processes, in any way be responsible for defects in construction, design or other aspects of development or improvement of real property. Each Owner fully releases and discharges the Design Review Committee from all liability and responsibility in any way relating to or arising out of the nature of improvements built following plan submittal, review and approval. Without limitation, the Design Review Committee shall in no way be deemed to have condoned any particular construction method or means, including, but not limited to, any grading, filling, compaction, drainage facility, engineering design or feature, or other matter.

4.5.2 No trees, bushes, shrubs, plants, or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with this Declaration and the Design Guidelines.

4.5.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Design Review Committee, shall be permitted without approval of the change or deviation by such Committee.

4.6 **Waiver.** 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 any similar plan, drawing, specification or matter subsequently submitted for approval.

4.7 **Liability.** Neither Declarant nor the Design Review Committee nor any member thereof shall be liable to the Association, any Owner or any other party for any damage, loss, or prejudice suffered or claimed on account of:

4.7.1 the approval or disapproval of any plans, drawings, or specifications, whether or not defective;

4.7.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications;

4.7.3 the development of any Lot, Tract or Parcel; or

4.7.4 the execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct.

4.8 **Appeal to Board.** Except as provided in this Declaration, any Owner or Occupant who submitted plans or specifications to the Design Review Committee for improvement, alteration, landscaping or other change to such Owner's Lot or Parcel, and who is aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established in the Design Guidelines. 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. Notwithstanding the foregoing, for so long as Declarant retains control over the Design Review Committee as provided in herein, no Owner or Occupant shall have the right to appeal any decision of the Design Review Committee to the Board and the decisions of the Design Review Committee shall be final.

4.9 **Fee.** The Board may establish reasonable processing fees, and classifications of fees, to defer the costs of the Design Review Committee in considering any requests for approvals submitted to the Design Review Committee or for appeals to the Board, which fees shall be paid at the time the request for approval or review is submitted. The Board may set fees for custom homes, production homes, and commercial buildings in different amounts, and may adjust such fees from time to time.

4.10 **Inspection.** Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee, or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Parcel, after reasonable notice to the Owner or Occupant of such Lot or Parcel, in order to inspect the improvements constructed or being constructed on such Lot or Parcel to ascertain that such improvements have been, or are being, built in compliance with the Design Guidelines, this Declaration, and any applicable Tract Declaration.

ARTICLE 5 LAND USE CLASSIFICATIONS, PERMITTED USES AND USE RESTRICTIONS

5.1 **Land Use Classifications.** As portions of the Covered Property are readied for development, the Land Use Classifications shall be fixed, in Declarant's sole discretion, in a Tract Declaration which may be Recorded. Each Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof as if all of the provisions thereof were set forth herein; provided,

however, that if any provision of a Tract Declaration is inconsistent with any provision of this Declaration, the provision of this Declaration shall control.

Except with respect to Covered Property owned by Declarant, no Tract Declaration, or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be Recorded against any Lot or Parcel without the written approval of the Declarant or, if Declarant has waived and relinquished such right, of the Board, which approval shall be evidenced on the Recorded instrument, and without such approval such Tract Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall be null and void. All Tract Declarations or other Recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration and shall contain such provisions as Declarant shall reasonably require. A Tract Declaration shall not be amended except as specifically permitted by this Declaration or by such Tract Declaration.

The Land Use Classifications contemplated as of the date of this Declaration are:

5.1.1 **"Single Family Residential Development Use,"** consisting of Lots with Dwelling Units with Single Family residential housing (but not including Condominium Units);

5.1.2 **"Residential Apartment Development Use,"** which shall include congregate care or similar facilities; and

5.1.3 **"Common Area."** Unless otherwise specifically provided in this Declaration, the definitions and characteristics of the Land Use Classifications and specific permitted and prohibited uses of the real property within a particular Land Use Classification shall be set forth in the respective Tract Declarations. Such uses may at any time be amended to permit other uses, provided the provisions of the Tract Declaration dealing with amendment have been met. In the event of any ambiguity or dispute regarding the nature and scope of permitted and prohibited uses of the real property within a particular Land Use Classification, the provisions of Section 15.5 hereof shall apply. Notwithstanding the foregoing listing, Declarant shall not be obligated to establish within the Covered Property each of the uses listed above, nor shall such listing prohibit the establishment by Declarant other Land Use Classifications. Without limitation, certain commercial uses may be established near or adjacent to the Covered Property, and the Covered Property may or may not actually contain any commercial uses. Should Declarant determine that a particular commercial use should be a portion of the Covered Property, Declarant may annex such land as a part of the Covered Property and establish a Tract Declaration therefor, setting forth uses, voting rights, assessment obligations, and other restrictions.

Each Owner acknowledges the potential different land uses and understands that the initial plan for the land, including land which may never be annexed, includes certain uses such as commercial sites, a school site(s), a fire station, public open space or park areas, and other areas, all subject to change at the discretion of the Declarant.

A Lot or Parcel shall, prior to being used or improved, be defined and limited to a specific development type or land use by a Tract Declaration approved by Declarant in accordance with the provisions hereof. Declarant may require imposition of special conditions in a Tract Declaration in any case where deemed appropriate in the sole and absolute discretion of said Declarant, and may require adequate provisions for assessments, maintenance of property and improvements and such other provisions as are

deemed proper. Should for any reason a Parcel be subdivided and developed or partially developed prior to Declarant's Recordation of a Tract Declaration establishing the Land Use Classification therefor, then Declarant may later Record the appropriate Tract Declaration with the consent of the Owner of the property in question, and until such time the Land Use Classification shall be deemed to be Single Family Residential Development Use.

Declarant may approve of other Land Use Classifications in the case of Annexable Property annexed under the purview hereof, in which case the Tract Declaration shall set forth such Land Use Classification.

5.2 Covenants, Conditions, Restrictions, and Easements Applicable to All Land Use Classifications. The following covenants, conditions, restrictions, and reservations of easements and rights shall apply to all Lots and Parcels in the Covered Property included within all Land Use Classifications, and to the Owners and Occupants thereof:

5.2.1 Use Restrictions. Declarant has a plan of development for the Covered Property as a planned community in order to protect the aesthetics and environment within the Covered Property, and the vitality of and sense of community within the Covered Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the Covered Property. The Covered Property is subject to the land development, architectural, and design provisions described in Article 4, the other provisions of this Declaration governing individual conduct, and uses of or actions upon the Covered Property, and the initial Use Restrictions attached as **Exhibit C**, as each may be amended from time to time, all of which establish affirmative and negative covenants, easements, and restrictions on the Covered Property. The Association shall provide, without cost, a copy of the Use Restrictions and Association Rules then in effect to any requesting Member.

During the pendency of the Class B Membership, Declarant may amend, modify, cancel, limit, create exceptions to, or expand the Use Restrictions. Thereafter, the Board may amend, modify, cancel, limit, create exceptions to, or expand the Use Restrictions provided that any such action may be nullified by the affirmative vote of Owners representing at least sixty-seven percent (67%) of the total Class A votes entitled to be cast by the Membership. At least thirty (30) days prior to the effective date of any such action taken by the Board, a copy of the amendment or rule, specifying the effective date shall be posted in a prominent place within the Covered Property or delivered to the Members. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. In addition to posting or delivering the amendment or rule, if such amendment or rule modifies, cancels, limits, creates exceptions to, or expands the Use Restrictions, the Association shall Record an amendment to this Declaration setting forth the amendment or rule.

This Declaration may be amended only as provided herein.

5.2.2 Party Walls. Except as hereinafter provided, the rights and duties of Owners of Party Walls shall be as follows:

(a) each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests, or family, the Owner or Occupant as the case may

be, shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided in Subsection 5.2.2(d) below;

(c) in the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an Owner or the Owner's Occupants, agents, guests, or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots or Parcels adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots or Parcels on the damaged or destroyed Party Wall;

(d) in the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Design Review Committee; whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final;

(e) notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Area and Lots or Parcels; or (b) situated on Common Area within or adjacent to a Lot or Parcel, the Owners and Occupants of such Lots or Parcels shall be responsible, at their expense, for all maintenance, repair, painting, and replacement thereof.

(f) this Section 5.2.2 does not and is not intended to control or relate to Party Walls between residential condominium developments or Condominium Units.

5.2.3 **Restrictions on Further Subdivision, Property Restrictions, and Rezoning.**

(a) During the pendency of the Class B Membership, all proposed site plans, subdivision plats, condominium declarations, easements, or further covenants, conditions, or restrictions, or applications for rezoning, variances, or use permits for any Lot or Parcel, or any portion of a Lot or Parcel, other than those owned by Declarant, must be approved in writing by the Declarant. Upon expiration of the Class B Membership, or such earlier time as Declarant may relinquish its right of approval herein reserved, the Board shall succeed to such right of approval, unless Declarant has assigned such right to one or more Builders, in which case the Board shall succeed to such rights only after such Builder no longer owns any portion of the Covered Property. All submittals shall be reasonably reviewed and approved. The required approval shall be evidenced by the signature of the Declarant or of an authorized representative of the Board, as applicable. Except for property owned by the Declarant or Consenting Owner, after a subdivision plat has been approved, no Lot or Parcel, or any portion of a Lot or Parcel, shall be further subdivided and no portion less than all of the Lot or Parcel, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Declarant or, if applicable the Board, unless such subdivision, conveyance or transfer:

(i) is made in connection with the development of one or more pads, lots, or other subdivisions of a Parcel; and,

(ii) is made in accordance with a site plan for such Lot or Parcel approved by the Board.

(b) No site plan, subdivision plat, condominium declaration, or further covenants, conditions, restrictions, or easements, and no application for rezoning, variances, or use permits, shall be made, filed, submitted to, or recorded with City or any other governmental authority or agency unless it has first been approved as provided in this Section. No changes or modifications shall be made in any such documents, instruments, or applications once they have been approved as provided in this Section (whether requested by the City or otherwise) unless such changes or modifications have also been approved in advance, in writing, in accordance with this Section. This Section 5.2.3 does not apply to portions of the Covered Property owned by Declarant or to site plans, subdivision plats, condominium declarations, or further covenants, conditions, restrictions, or easements, or applications for rezoning, variances, or use permits, made, filed, submitted, or Recorded by Declarant and pertaining to portions of the Covered Property owned by Declarant.

5.2.4 Permissible Encroachments. Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by a Builder may from time to time encroach in minor degree upon the Common Area or other Lots in the Covered Property. Such encroachments caused incidentally and which are minor in scope and degree, such as those caused by good faith survey error, and where removal of improvements would cause gross economic waste, shall be deemed acceptable. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

5.2.5 Model Homes, Etc. Nothing contained herein or in any applicable Tract Declaration shall prohibit the construction and maintenance of model homes, model apartments, sales offices, apartment rental offices, property management offices, and parking incidental thereto by Declarant and Builders; provided, however, that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and local ordinances of the City. No other model homes or offices shall be maintained on the Covered Property by persons other than the Declarant and Builders, unless approved in writing by the Declarant or by the Board.

Notwithstanding the foregoing, unless Declarant should in writing grant special permission to the contrary, the Board shall have the right to require that an Owner (other than Declarant) limit its sales and management offices and model homes to locations in subdivisions or areas where it continues to own one or more Lots.

5.3 Covenants, Conditions, and Restrictions Applicable to Commercial Use. Should any portion of the Covered Property be permitted by Declarant to be used for a nonresidential use, Declarant may Record Additional Covenants as a part of a Tract Declaration therefor, and may establish in such Tract Declaration special provisions for voting rights, assessment obligations, and other pertinent restrictions under the purview of the Association.

5.4 Declarant and Builder Exemption. Nothing contained in this Declaration shall be construed to prevent, restrict or otherwise limit the construction, installation, or maintenance by Builders, Declarant, or Declarant's agents during the period of development and construction on the Covered Property of improvements, landscaping, or signs deemed necessary or convenient by Declarant, in Declarant's sole discretion, to the development or sale of property within the Covered Property. Declarant

may assign, in whole or in part, its rights and privileges under this Section, and Declarant may grant, in its sole discretion, any similar rights and privileges to any Builder.

ARTICLE 6 ORGANIZATION OF ASSOCIATION

6.1 **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

6.2 **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. During the pendency of the Class B Membership, the Board shall consist of at least three (3) directors all of whom shall be appointed by and may be removed solely by Declarant. Commencing with the first annual meeting of the Members when there is no longer a Class B Membership, or at such earlier time as Declarant relinquishes its rights to appoint the Board, the Board shall consist of, and the voting Members shall elect, not more than seven (7) directors, but never an even number, all of whom must be Members, or an individual designated by a corporate, partnership or other non-individual Member.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Class B Members to the Class A Members.

6.3 **Association Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area; provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property, the Common Area, and the Limited Common Area. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association.

6.4 **Personal Liability.** No Board member, officer, committee member, employee, or representative of the Association, or the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors, or negligence; provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5 **Maintenance Assessments.** If the Board, in its discretion, determines that certain improvements such as private streets or roadways, or any open space, recreational or other common facilities, or any guard gates, or any Limited Common Area exclusively or disproportionately benefit the Owners of certain groups of Lots or Parcels, the Board may designate such Lots or Parcels with a Maintenance Assessment and assess all (or such appropriate portion as the Board shall determine in its discretion) of the cost of such maintenance, repair, replacement, repaving, resurfacing, operation, and if

applicable, ownership, solely against the Lots or Parcels within the designated area as a Maintenance Assessment.

One of the purposes of this Section is to establish a mechanism whereby various facilities intended and designed solely or primarily for use by the Owners of Lots or Parcels within a particular area or subdivision may be owned and maintained by the Association at the sole and primary expense of such Owners, rather than to require formation of another Association entity to undertake such ownership and maintenance.

6.6 Mergers or Consolidations. The Association shall have the right, power, and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association ("**Merger Candidate**"). During the pendency of Class B Membership no mergers or consolidations shall occur without the prior written approval of Declarant, in its sole discretion. Following the expiration of Class B Membership, a merger or consolidation of the Association with a Merger Candidate, in addition to other requirements at law, must be approved in advance by Members holding at least two-thirds (2/3) of the votes in each class of Members of the Association, whether in Person or by proxy, at a meeting duly called for such purpose. The Association's properties, rights, and obligations shall be transferred to and assumed by the surviving or consolidated corporation by operation of law, or, alternatively, the properties, rights, and obligations of the Merger Candidate shall be transferred by operation of law to the Association as the surviving corporation. The surviving or consolidated corporation, at a minimum, shall have the same administrative responsibilities and enforcement rights established by this Declaration in regard to the Covered Property.

6.7 Turnover and Final Turnover.

6.7.1 Turnover. Turnover is the process by which the Declarant turns over and the Association accepts an Area of Common Responsibility for maintenance and/or ownership during the pendency of Class B Membership. At any time (should no improvements be required on the Area of Common Responsibility) or following completion of any improvements on or about any Area of Common Responsibility, the Declarant may designate such Area of Common Responsibility as ready for Turnover. Following such designation, the Declarant and the Association shall conduct a Walkthrough of such Area of Common Responsibility. For purposes of conducting such Walkthrough, Declarant may, at its option, designate either (i) a reasonable number of persons, not to exceed three [3] familiar with Association affairs, who may be (but who are not obliged to be) residents of the Covered Property (although it is acknowledged that it is desirable that at least one (1) such person should be a resident of the Covered Property), who are reasonably deemed by Declarant not to be affiliated with Declarant or (ii) a third-party consultant familiar with the operation and management of homeowners associations (the "**Association Representatives**") to participate in such Walkthrough. Class A Members shall, if requested by Declarant, reasonably cooperate in endeavoring to designate Association Representatives and shall, in general, interface with Declarant in effecting a continuous and smooth Turnover process. If the Declarant and the Association Representatives either (a) determine that no further repairs are identified as a result of the Walkthrough or (b) agree on any required repairs to any Area of Common Responsibility as part of the Walkthrough and such repairs are completed by Declarant, such Area of Common Responsibility (the "**Accepted Common Areas**") shall be deemed approved by the Association and accepted for maintenance. The Association shall accept from Declarant at the time such Areas of Common Responsibility become Accepted Common Areas all records and books then in Declarant's possession or control relating to the Accepted Common Areas, together with any existing insurance coverages relating to

the Accepted Common Areas. The Association shall assume all of the other obligations and responsibilities of the Association hereunder and under the other Governing Document at that time for the Accepted Common Areas. If any of the insurance coverages transferred above are effective both before and after the date an Area of Common Responsibility becomes an Accepted Common Area, an equitable pro ration shall be made (and appropriate reimbursement made to Declarant from Association Funds) for any paid-up coverages transferred to the Association.

Any Alleged Defect within an Accepted Common Area shall be provided to Declarant within a twenty-four (24) month period after acceptance of maintenance by the Association, provided the Accepted Common Area had a Walkthrough at the initial maintenance acceptance conducted by the representatives of the Class A Members or a third party homeowner association professional, Association and Declarant (and/or its designees). If either (a) no further repairs for this Accepted Common Area are agreed upon by the Declarant and the Association Representatives during this twenty-four (24) month period or (b) the Declarant completes any repairs to an Accepted Common Area identified and agreed upon by the Declarant and the Association as part of notice provided by the Association Representatives, Turnover shall be deemed complete for that Accepted Common Area and Declarant shall have no further obligations with respect to that Accepted Common Area.

No dispute between the Association Representatives and the Declarant regarding any Alleged Defect or other work to be performed by the Declarant with respect to any Area of Common Responsibility shall excuse the required acceptance of any Area of Common Responsibility by the Association, but the Association shall have the rights outlined in Article 15. Although Turnover shall not be deemed complete upon completion of a Walkthrough, the Declarant shall remain liable to take any action that may be required as a result of the dispute resolution procedures set forth therein, and the Association shall cooperate with the Declarant in taking such actions. In addition, if the Association or Association Representatives do not make themselves available for a Walkthrough, it shall be deemed to have irrevocably waived the same and to have waived any rights it may have against Declarant and any Declarant Affiliate or agent to claim any Alleged Defect in the Area of Common Responsibility which could have been discovered by a Walkthrough or which should have been known to a reasonable observer/investigator who utilized/conducted a Walkthrough.

6.7.2 **Final Turnover.** Final Turnover is the process by which the Declarant, near the end of the period when Class B Membership exists, turns over any remaining Areas of Common Responsibility, and then upon the end of Class B Membership control of the Association is transferred to the Class A Members. A reasonable time prior to expiration of the Class B Membership, Declarant shall use commercially reasonable efforts to give notice to the Association Representatives, for all Areas of Common Responsibility that have not previously become an Accepted Common Area. The parties shall follow the process outlined in Section 6.7.1 for the Walkthrough, attendees at Walkthrough and resolution of any issues to be corrected as a result of Walkthrough, however upon termination of Class B Membership the Association or Association Representatives shall have hereby accepted all Common Areas and shall now and in the future have no rights to claim Alleged Defects against Declarant after Final Turnover.

Following the Final Turnover of any Area of Common Responsibility, the Association shall, after Final Turnover, continue the maintenance level of the Area of Common Responsibility improvements and other required maintenance obligations at substantially the level which had been established by Declarant theretofore (giving appropriate regard to the fact that maintenance levels established by Declarant may have been based upon the relative recent installation of all or any portion of the Area of

Common Responsibility improvements, and therefore the Association understands that maintenance efforts may have to be stepped-up/increased after said items have been installed and remained in place for a period of time) and shall not allow any of the improvement to deteriorate for lack of attention/maintenance. The Association shall also cause any contractors of the Association to meet with Declarant's representatives to cause the Final Turnover to be a smooth one and shall cause such contractor personnel to cooperate and to carry out the obligations of the Association hereunder. Any contractors' warranties impliedly given by Declarant shall be deemed given from the respective dates that any such improvement was completed and no warranty shall be deemed extended by virtue of any remedial work undertaken by Declarant. The Association shall, in the ordinary course of business, utilize reserves to correct/upgrade/maintain Area of Common Responsibility improvements (including landscaping) and shall not claim an Alleged Defect by virtue of the Association's failure to maintain and upkeep areas as they were previously. The Association shall continue a maintenance schedule of all Area of Common Responsibility improvements (including, without limitation, landscaping) provided by Declarant at the time of Final Turnover. It being understood that it is not the obligation, but a right, of Declarant to provide such maintenance schedule. The Association shall not reduce reserves or assessments after Final Turnover in a manner which would impair the Association's continuing maintenance obligations hereunder.

The Association acknowledges that, at the time of Final Turnover, no Alleged Defects shall apply for any Accepted Common Area that has been accepted for maintenance within the last twenty-four (24) months. The Association also acknowledges that, at the time of Final Turnover, all Association improvements, including, without limitation, landscaping; permanent sidewalk, street, curb, lighting, recreational and other similar facilities; irrigation/watering facilities; drainage; type and nature of ground cover; etc. shall have been installed and completed in substantial accordance with as-built plans and not necessarily in accordance with plans as initially provided to the City. The Association recognizes that in-field changes are often made to plans previously provided to the City and, so long as in-field changes do not materially and adversely affect the Area of Common Responsibility's condition. Failure to continue the required level of maintenance shall not be the cause of a defect or give rise to any other action against Declarant or its agents/contractors. The Association shall, post-Final Turnover, keep open and working all easements, storm drains, irrigation and watering facilities and any other Area of Common Responsibility improvements as installed by Declarant, so as not to allow the Area of Common Responsibility improvements to deteriorate.

ARTICLE 7 MEMBERSHIPS AND VOTING

7.1 Votes of Owners of Lots and Parcels. Every Owner of a Lot or Parcel within the Covered Property (but not an Owner who owns solely Exempt Property) shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner shall have the following applicable number of votes in regard to votes of the Members of the Association:

In the case of Lots, one (1) vote for each Class A Member and three (3) votes for the Class B Member for each Lot owned;

In the case of a Single Family Residential Parcel which has not been divided into Lots by a Recorded subdivision plat or other Recorded instrument, six (6) votes for each Class A Member and

eighteen (18) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote).

The votes allocable to Apartment Parcels or other non-Single Family Residential Parcels shall be set forth in the Tract Declaration for such Parcel.

If a subdivision plat, condominium declaration or other instrument creating Lots is Recorded which covers all or part of a Parcel, then the votes attributable to the Lots shall be determined as set forth above. If a subdivision plat, condominium declaration or other instrument creating Lots for such Parcel is later Recorded showing a different number of Lots, the number of votes shall be adjusted to reflect the actual number of Lots as set forth in the Recorded subdivision plat, condominium declaration or other instrument creating Lots. All votes attributed to an unsubdivided Parcel as a "Parcel" shall cease and be made applicable to Lots when all of the area is platted or otherwise divided into Lots.

7.2 Membership is Appurtenant to Ownership. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. There shall be only the Memberships for each Lot and Parcel as are described herein. Joint ownership or ownership of undivided interests in any property as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot or Parcel.

7.3 Declarant. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B Membership.

7.4 Voting Classes. The Association shall have two classes of voting Members:

7.4.1 Class A. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1. Notwithstanding the foregoing, a Builder who is paying a reduced Assessment for any Lot or Parcel pursuant to Section 8.4 (without regard to any amount paid pursuant to Section 8.15) shall have a corresponding reduced vote with respect to such Lot or Parcel, e.g., a Builder who is paying twenty-five percent (25%) of the Assessment shall be entitled to only twenty-five percent (25%) of the vote(s) such Builder would otherwise be entitled to were such Builder paying a full Assessment for such Lot or Parcel. In order to effectively pursue the development of the Covered Property, and solely for the purposes of calculating voting rights of the Class B Member pursuant to this Article, Declarant shall at all times during the pendency of the Class B Membership be deemed to possess, in addition to its votes by reason of its ownership of Lots and Parcels, those additional three to one weighted votes determined by assuming that Declarant is the Owner of those Lots and Parcels owned by a Builder paying partial or reduced Assessments pursuant to Section 8.4 below (and not determined by Declarant to have voting rights); provided, however, that upon expiration of the Class B Membership, Declarant shall be deemed to have relinquished its votes with respect to Lots or Parcels owned by Class A Members paying reduced Assessments pursuant to Section 8.4, in which case said Class A Members shall have the votes Class A Members would otherwise have with respect to such Lots or Parcels.

7.4.2 Class B. The Class B Member(s) shall be any entity which is included in the definition of Declarant that owns any portion of the Covered Property. The Class B Member(s) shall have

the number of votes as provided in Section 7.1 of this Declaration for all property owned in the Covered Property identified herein or in a Tract Declaration. The Class B Membership shall terminate and be converted to a Class A Membership upon the happening of the first of the following events:

(a) the period of time expiring when one hundred percent (100%) of the total number of Dwelling Units which are permitted to be built both within the Covered Property and Annexable Property have had certificates of occupancy (or the equivalent approval) issues and have been conveyed to a Retail Purchaser;

(b) the date which is fifty (50) years after the date this Declaration is Recorded; or

(c) the date on which the Class B Member(s) relinquishes its Class B Membership by notifying the Class A Members in writing.

The Class B Membership shall revive if, once the Class B Membership previously expired, subsequent Declarant acquisitions or other events should cause additional Declarant controlled lands to be located within the Covered Property.

Declarant shall have the right to assign its rights and privileges as the Declarant and as the Class B Member, which assignment may be in whole or in part. Such assignment may include the special voting provisions set forth herein.

7.5 Right to Vote. No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof, for example, the Recorded deed showing the name of the Owner of such Lot or Parcel. The vote for each Member must be cast as a single unit. Fractional votes shall not be allowed, except as provided in Section 7.1 relating to apartments. In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Parcel, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot or Parcel all such votes shall be deemed void.

7.6 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the Design Guidelines.

7.7 Assignment of Voting Rights. Notwithstanding anything to the contrary herein, all voting rights associated with the Class A Memberships held by Builders, as of the date of this Declaration and hereafter acquired, shall be deemed to be assigned to the Declarant, with the assignment to continue with respect to each Class A Membership until the earliest of the following to occur: (a) the sale of the Lot or Parcel to which the Class A Membership is appurtenant to a Retail Purchaser; (b) the date that the Declarant notifies the Builder, in writing, that it is terminating the assignment of that Builder's voting rights; or (c) the date that neither the Declarant nor any Declarant Affiliate owns, directly or indirectly, any of the Covered Property or the Annexable Property. The Board shall have the right to waive this assignment of voting rights.

7.8 **Transfer of Membership.** The rights, duties, and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel, and then only to the transferee thereof. Such transfer may be accomplished by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot or Parcel shall operate to transfer the Membership appurtenant to ownership to the new Owner.

ARTICLE 8 ASSESSMENTS AND CREATION OF LIEN

8.1 **Creation of Assessment Lien; Personal Obligation of Lot or Parcel Owner.** Each Owner, other than Declarant, by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree, to pay to the Association the Assessments when due. The amount and time for payment of the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Assessments, the Board may give such consideration as it determines appropriate to any surplus Funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate. Assessments, together with interest thereon and the costs and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such Assessments become due and payable.

8.2 **Annual Assessments.** The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth herein. The Annual Assessments levied by the Association shall be used to balance the following: (i) recreation, health and welfare of the Owners and Occupants while considering conservational characteristics within the Covered Property, (ii) to preserve and enhance the value of the Covered Property, (iii) to pay the costs of administration of the Association and the maintenance of the Areas of Common Responsibility, to establish reasonable reserves, and (iv) to otherwise further the interests of the Association as the Board deems appropriate. Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

8.3 Rate of Assessment. The amount of the Annual Assessments, Maintenance Assessments, and Special Assessments shall be established by the Board in its sole discretion. In establishing its budget and creating its plan for Assessments each year, the Board shall first establish an Annual Assessment per Lot payable for each Lot ("**Base Assessment**"). In the case of a Single Family Residential Parcel(s) that has not been subdivided into Lots, the Board shall consider the timing of any maintenance or other obligations based upon future development timing for said Parcel in the Base Assessment. In the case of a non-Single Family Residential Parcel being added to the Covered Property, the Board shall consider the Base Assessment of the non-Single Family Residential Parcel based upon the property density and/or use of said Parcel and the proposed amenities (if any) proposed within the non-Single Family Residential Parcel and shall set forth the Assessments in a Tract Declaration.

8.4 Obligation of Builder.

8.4.1 Unfinished Lots or Parcels. A Builder of a Lot or Parcel within the Covered Property is entitled to pay only twenty-five percent (25%) of the otherwise applicable Annual Assessments and Special Assessments for such Lot or Parcel until the earlier of (a) twenty-four (24) months from the date of the initial conveyance by Declarant of the Lot or Parcel (or the Parcel from which such Lot was established) to the first Builder thereof, (b) the date it is a Completed Lot, and (c) the date of initial conveyance of the Lot or Parcel to a Retail Purchaser. Following the date set forth in subsection (a) or (b) above, a Builder shall pay one hundred percent (100%) of the applicable Annual Assessments and Special Assessments.

8.4.2 Model Homes. A Builder of a Lot that is a Completed Lot on which a model home is constructed shall not be entitled to reduced Annual Assessments and Special Assessments with respect to such Lot or Parcel.

8.4.3 Non-Single Family Residential and Apartment Parcels. A Builder of a Parcel designated for Apartment or non-Single Family Residential Use, is entitled to pay only twenty-five percent (25%) of the otherwise applicable Annual Assessments and Special Assessments for such Parcel until the date of completion of construction of improvements on the Parcel as determined by the Board in its sole discretion.

In the case of a site plan approved by the Design Review Committee for a Parcel which contemplates the construction of more than one non-Single Family Residential building, the Parcel shall, for the purposes of this Section only, be deemed subdivided into the number of sub-parcels equal to the number of approved buildings set forth on the approved site plan.

If a Builder ceases to qualify for the reduced rate or qualifies for an alternative reduced rate as provided herein during any Assessment Period, that Builder shall immediately notify the Board, in writing, of its change in status. If an Owner of a Lot or Parcel who qualifies to pay a reduced Assessment amount as provided for in this Declaration, fails to notify the Board of the date the payment amount is to be increased, that Owner shall still be liable for the full amount of the Assessment as of the date it was required to pay the full amount of the Assessment and such Owner's failure to notify the Board shall not relieve the Owner of liability for the full amount of the Assessment. The Association may at any time request that any Builder which is being assessed at a reduced rate furnish the Association with evidence that such Builder continues to be qualify for a reduced assessment rate under this Section. If such Builder fails to produce such evidence within thirty (30) days after the date of the Association's request, or if the

evidence which is furnished is unsatisfactory, in the Board's reasonable discretion, to demonstrate that Builder's continued qualification for the reduced assessment rate, the Board may terminate the reduced assessment rate as of a date reasonably deemed appropriate by the Board.

8.5 Special Assessments. In addition to the Annual Assessments, the Board, may levy a Special Assessment (a) for the purpose of constructing improvements to Areas of Common Responsibility; (b) correcting an inadequacy in the Association's accounts; (c) defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement owed by the Association; or (d) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments shall be approved at any annual or special meeting of the Members with the approval of two-thirds (2/3) of the total votes of Owners voting in person or by proxy. During the pendency of the Class B Membership, Declarant shall have the sole right to cause the Board to make and levy Special Assessments.

8.6 Assessments Upon Transfer.

8.6.1 Working Capital Fund. To ensure that the Association shall have adequate reserves and Funds to meet its expenses or to purchase necessary equipment and services, each Owner of a Lot or Parcel other than Declarant or a Builder shall pay to the Association, upon each sale of such Lot or Parcel, an amount determined by the Board, which is three-quarter (3/4) percent of the gross sales price of such Lot or Parcel paid through escrow at the time of transfer ("**Working Capital Fund Contribution**"). A Working Capital Fund Contribution shall continue to be payable upon each subsequent sale of a Lot or Parcel. 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 and the Articles and Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as payment of any Assessments levied by the Association pursuant to this Declaration.

8.6.2 Administrative Fee. Upon each transfer of title to a Lot, the new Owner shall pay to the Association immediately upon becoming the Owner of the Lot, an Administrative Fee to cover administrative costs of Membership transfer in such amount as is established from time to time by the Board, not to exceed the amount permitted by applicable law.

8.6.3 Exempt Transfers. Notwithstanding the above, no Working Capital Fund Contribution or Administrative Fee shall be levied upon an Exempt Transfer.

8.7 Notice and Quorum for Any Action Authorized Under This Article. Written notice of any meeting of the Members of the Association called for the purpose of conducting a vote required under this Article shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of such meeting. At such meeting, the presence of Members or of absentee ballots entitled to cast ten percent (10%) of all the votes of the Members (without segregation as to class of Member) shall constitute a quorum. If the required quorum is not present or represented by absentee ballot, another meeting shall be called for such purpose, subject to the foregoing notice requirements, and the required quorum at the subsequent meeting shall be one-half of the quorum required at the initially scheduled meeting. The subsequent meeting shall be held within sixty (60) days following the date of the initially scheduled meeting.

8.8 Maintenance Assessments. In addition to any Annual Assessment or Special Assessment, the Board has the authority to levy and collect Maintenance Assessments for costs, reserves and expenses arising out of any special characteristics or needs of a particular Lot or Parcel, or if the Owner of a Lot or Parcel contracts with the Association for the Association to provide particular maintenance services to such Owner's Lot or Parcel. Furthermore, if any common expense is caused by the misconduct of an Owner of a Lot or Parcel, his/her tenants, guests, invitees or licensees, including any misconduct leading to the imposition of any fine or penalty against such Owner, or expense by the Association to bring such Owner into compliance with the provisions hereof, the Association may assess that expense exclusively against that Owner and such Owner's Lot or Parcel, but in such events only after notice and an opportunity for a hearing, including as required by law. Maintenance Assessments may be enforced in the same manner as Annual Assessments.

8.9 Fines and Penalties. If any Owner, his or her family, or any licensee, invitee, Tenant, or lessee violates the provisions hereof, or any provision of any of the Design Guidelines or other rules of the Association, the Board after providing the Owner with notice of the violation and an opportunity for a hearing, may levy a fine upon the Owner and may suspend the violator's right to use the Common Area. The Board may impose a fine for each day a violation continues after the Board has provided the Owner with written notice of the violation. The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date may be collected in the same manner as delinquent Assessments.

8.10 Annual Assessment Period. Except as otherwise provided herein below, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence upon conveyance of the first Lot or Parcel from Declarant to a Builder, and shall terminate on December 31 of the same year. The Annual Assessments shall be prorated for the initial Assessment Period.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the Delinquent Amount of any Assessment and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. Delinquent payments shall, to the extent permitted by law, apply first to delinquent Assessments, including late fees and other sums due, and then to accrued interest and attorneys' fees and other legal costs, including litigation related expenses and expert witness fees, if any.

8.11 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. No Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice thereof prior to the commencement of such foreclosure or enforcement. The notice shall be addressed to the Owner at the address of the Owner on the records of the Association. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any non-refunded prepayments made by a prior Owner. In case the Owner of a Lot or Parcel having a right to pay a reduced payment amount as provided herein fails to notify the Board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the

increased amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for such increased Assessment.

8.12 Collection Costs and Interest on Delinquent Amounts. Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within thirty (30) days after notice thereof, addressed to the Owner at the address of the Owner on the records of the Association, is given. In addition, the Delinquent Amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, or the then prevailing interest rate on loans insured by FHA or VA. The Owner shall be liable for all costs, including but not limited to attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount.

8.13 Statement of Payment. Upon receipt of a written request therefor from any Owner or Resident, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that as of the date of that statement:

8.13.1 all Assessments (including collection fees, if any in regard thereto), have been paid with respect to such Owner's or Occupant's Lot or Parcel; or

8.13.2 if such have not been paid, the amount then due and payable.

The Association may make a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth therein.

8.14 Exempt Property. Exempt Property shall be exempt from Assessments and the Assessment Lien, and shall have no voting rights in the Association, provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and shall have voting rights in the Association as otherwise determined in this Declaration. Notwithstanding the foregoing, any Owner of Exempt Property, except Government Property comprising a park, and except for Common Area of the Association, shall nevertheless remain subject to reasonable architectural review and approval by the Design Review Committee, and the owners thereof shall be required to submit plans and specifications for approval of improvements, structures and landscaping as required herein.

8.15 Declarant's Exemption. Anything in this Declaration to the contrary notwithstanding, the Declarant shall not be liable for and shall not be required to pay Assessments upon Lots or Parcels owned by Declarant. Nor shall Declarant be liable for the payment of any Assessments for any Lot that, having been previously sold to a purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure, unless such Lot is a Completed Lot.

8.16 Deficiency. Any Builder of a Lot or Parcel paying a reduced rate of assessment agree to pay, on a pro rata basis, as reasonably determined by the Board, the actual shortfall or deficiency, if any, of necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Areas of Common Responsibility, but only up to the full Annual Assessment for each such Lot or Parcel actually owned by Builder. Each pro rata share shall be determined by dividing the number of Lots or Parcels owned by a Builder for which Builder is paying a reduced rate by the total number of Lots and Parcels owned by Declarant and all Builders subject to a reduced rate of assessment. A shortfall or deficiency shall exist if current ordinary expenses of the

Association are greater than the revenues of the Association from all sources for the Assessment Period in question. Notwithstanding anything contained in this paragraph to the contrary, Declarant and Builders shall not be obligated to pay to the Association as part of the deficiency any funds for the establishment of replacement and maintenance reserves. Declarant and any Builder may at any time at its sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay up to the full Annual Assessment for each Lot or Parcel owned by Declarant and any such Builder instead. If Declarant or Builder elect to pay the full Annual Assessment for each Lot when Assessments are due, this shall relieve Declarant or Builder of its shortfall or deficiency obligation. The obligation to contribute toward a deficiency as provided herein is supported by a lien on such Lots and Parcels, as applicable.

Should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignees shall, in the case of any deficiency as described above (and meeting the conditions set forth above), be liable for its ratable share of same, up to the full amount of the Annual Assessment for each Lot or Parcel owned, and not more. In addition, such assignees' exemption, if any, shall expire with respect to any Lot or Parcel upon which construction of improvements has been completed.

In no event shall Declarant be required to contribute to any deficiency after the termination of the Class B Membership.

ARTICLE 9 ENFORCEMENT AND THE ASSESSMENT LIEN

9.1 **Association Remedies to Enforce Assessments.** If any Owner fails to pay any Assessments when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either remedy the Association does not prejudice or waive its right to exercise the other remedy):

9.1.1 Bring an action at law against the Owner to recover judgment against the Owner who is personally liable for the Assessments; and

9.1.2 Foreclose the Assessment Lien against the appropriate Lot or Parcel in accordance with then-prevailing Arizona law, and the Association may bid for and purchase the Lot or Parcel at any foreclosure sale.

9.2 **Subordination of Assessment Lien.** The Assessment Lien shall have priority from the date of Recording of this Declaration, and shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any Lot or Parcel except as provided by law. Without limitation, the Assessment lien is junior to:

9.2.1 the lien of any First Mortgage encumbering the Lots and Parcels; and

9.2.2 the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot or Parcel pursuant to any First Mortgage foreclosure or any

proceeding in lieu thereof, shall extinguish the Assessment Lien only as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a Person obtaining an interest in a Lot or Parcel through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

ARTICLE 10 USE OF ASSOCIATION FUNDS

10.1 **Use of Association Funds.** In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all Funds to the performance of the duties and obligations of the Association and the Board hereunder, or under the Articles and Bylaws, and toward such other ends and purposes as the Board may reasonably determine. The Funds may be used, among other things, to insure, acquire, construct, alter, maintain, provide, and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies, and systems, within the Covered Property and the Area of Common Responsibility, which may be necessary, desirable or beneficial to the interests of the Owners and the Occupants.

10.2 **Borrowing Power.** The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate.

10.3 **Association's Rights in Spending Funds from Year to Year.** The Association shall not be obligated to spend in any year all Funds received by it in such year, including without limitation any reserves fund, and the Board 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.

ARTICLE 11 MAINTENANCE

11.1 **Common Area and Public Rights-of-Way.**

11.1.1 **Areas of Association Responsibility.** The Association, or its duly delegated representative, shall maintain and otherwise manage all Area of Common Responsibility and other areas required to be maintained as a result of development of the Property; provided, however, that the Association shall not be responsible for providing or maintaining the landscaping or structures on any Lots or Parcels unless:

(a) such landscaping or structures are intended for the general benefit of the Owners and Occupants; and

(b) the Association assumes in writing the responsibility for such maintenance and such instrument is Recorded.

Area of Common Responsibility, or other areas required to be maintained as a result of development of the Property, may be identified on Recorded subdivision plats approved by Declarant, or in a Tract Declaration or in deeds from Declarant, but the failure to so identify such areas shall not affect the

Association's rights or responsibilities with respect thereto. The Association shall maintain landscaping and similar improvements within public rights of way located within or adjacent to the Covered Property as required by plats or other documents, and if not required, may also in its discretion elect to maintain landscaping and similar improvements within public rights of way located within the Covered Property to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity to such public rights of way.

The Association shall also maintain any license or easement areas near or adjacent to the Covered Property, including any facilities therein, which may consist of entry monuments, special entry features, gated entries and similar features, and the Association shall assume the obligations thereunder.

Unless specifically stated to the contrary in any plat recorded for Covered Property, the Association shall be responsible for any right-of-way or easement maintenance responsibilities required pursuant to such plat.

11.1.2 Delegation of Responsibilities. In the event any Recorded subdivision plat, Tract Declaration, Recorded map of dedication, Recorded deed restriction, or this Declaration permits the Association to determine whether Owners of certain Lots or Parcels shall be responsible for maintenance of certain Areas of Common Responsibility, the Board shall have the sole discretion to determine whether the Association or an individual Owner or group of Owners should be responsible for such maintenance, considering cost, uniformity of appearance, location and other relevant factors. The Board may also cause the Association to contract with others for the performance or such maintenance and other obligations of the Association and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Association and the Owner may agree.

11.1.3 Standard of Care. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Areas of Common Responsibility so that the Covered Property will reflect a high degree of pride of ownership. Many of the Areas of Common Responsibility are, or have been specifically, designed to mimic the natural desert and may be subject to differing landscape maintenance standards than the balance of the Covered Property. The Board shall be the sole judge as to the appropriate level of maintenance of all Areas of Common Responsibility.

11.2 Assessment of Certain Maintenance Costs. In the event the need for maintenance or repair of areas maintained by the Association is caused through the willful or negligent act or omission of any Owner (or of any other Person for whom such Owner is legally responsible under applicable state law), the cost of such maintenance or repair shall be added to and become a part of the Assessments to which such Owner and such Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. Any charges to be paid by an Owner in connection with a maintenance contract entered into by the Association shall also become a part of such Assessments and be secured by the Assessment Lien.

11.3 Improper Maintenance and Use of Lots and Parcels. Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot, including buildings, improvements, private drives, easement areas, and grounds thereon, in a well-maintained, clean, neat, and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations, and requirements. To the extent not maintained by the service provider, each Owner shall be responsible for the maintenance and repair of all utility lines, including sewer, located within such Owner's

Lot, and such maintenance obligation shall include maintenance and repair beyond the Lot boundary to the point of service line connection or junction in the adjacent street, Common Area or easement area. In the event any portion of any Lot, Parcel, or Apartment Unit is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot, Parcel or other area, or is used in a manner which violates this Declaration or any applicable Tract Declaration, or in the event the Owner of any Lot or Parcel fails to perform such Owner's obligations under this Declaration, any applicable Tract Declaration, the Association Rules, or the Design Guidelines, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys' fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. The provisions of this Section shall not apply to Declarant or to Lots or Parcels owned by Declarant.

11.4 Excess Maintenance Costs. In the event any use of, or activity on, any Lot or Parcel causes the maintenance or repair costs incurred or to be incurred by the Association with respect to any portion of the Area of Common Responsibility to be substantially greater than those costs which would typically be incurred for such portion of the Area of Common Responsibility whether such use or activity is of a continuing nature or an isolated event, the Board may, by resolution, make a finding to such effect, of the amount of the excess costs incurred or expected to be incurred by the Association and of the method of determining such excess costs. Upon the adoption of such a resolution, the amount of such excess costs at any time or from time to time incurred by the Association for the reasons specified in the resolution shall be added to and become a part of the Assessments for which the Owner of any Lot or Parcel upon which such use or activity is conducted is liable and all of such Assessments shall be secured by the Assessment Lien on such Owner's Lot or Parcel.

11.5 Certain Maintenance Activities. Where the Association has undertaken, by virtue of its obligations hereunder or pursuant to any special contract executed by the Association, the responsibility to maintain, repair, replace, repave, resurface or operate private streets or private roadways or any open space, recreational, or other common facilities or any guard gates, the Board, if in its discretion determines that such private streets or private roadways (or appurtenant equipment and facilities) or open space, recreational, or other common facilities or guard gates, exclusively or disproportionately benefit the Owners of Lots within a particular subdivision of other Lots or Parcels, may assess all (or such appropriate portion as the Board shall determine in its discretion) of the cost of such maintenance, repair, replacement, repaving, resurfacing and operation solely against the Lots within such subdivision (and the respective Owners thereof) as additional Maintenance Assessments, which shall be assessed equally against each of the Lots within such subdivision and shall be secured by the lien for Assessments as described herein. Such additional Maintenance Assessments may also include amounts to establish and fund reserves as the Board may deem reasonable and appropriate. One of the purposes of this Section is to establish a mechanism whereby various facilities intended and designed solely or primarily for use by the Owners of Lots within a particular subdivision may be owned and maintained by the Association at the sole and primary expense of such Owners rather than require formation of a separate association to undertake such ownership and maintenance.

ARTICLE 12
RIGHTS AND POWERS OF ASSOCIATION

12.1 **Rights, Powers and Duties of the Association.** 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 the Articles and Bylaws, together with such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

12.2 **Rules and Regulations.** In addition to the right to adopt, amend, and repeal rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend, and repeal rules and regulations with respect to all other aspects of the Association's rights, activities, and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles, and the Bylaws. Upon adoption, the Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

12.3 **Association's Rights of Enforcement.** The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration and all Additional Covenants that shall have been executed pursuant or subject to the provisions of this Declaration or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. If the Association shall fail or refuse to enforce the provisions of this Declaration or the Additional Covenants after receipt of written request to enforce from any Owner, then any Owner (including Declarant, so long as Declarant is an Owner) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

12.4 **Enforcement Methods and Means.** The Association may enforce the provisions hereof at law or in equity, including, but not limited to:

12.4.1 Imposing reasonable monetary penalties after notice and an opportunity to be heard, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her guests, invitees and Tenants or residents;

12.4.2 Suspending an Owner's right to vote;

12.4.3 Suspending an Owner's rights to use and enjoyment of the Common Area (other than roadways);

12.4.4 Suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than fifteen (15) days delinquent in paying any Assessment or other charge owed to the Association;

12.4.5 Exercising self-help or taking action to abate any violation of the provisions hereof;

12.4.6 Requiring an Owner at the Owner's expense to remove any offending condition, structure, or Improvement on the Owner's property, and further requiring the said Owner to

restore his or her property to the condition in which it previously existed, without such action being a trespass;

12.4.7 Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform and further activities on the Covered Property;

12.4.8 Towing vehicles which are parked in violation of the provisions hereof; and

12.4.9 Filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate;

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

12.5 **Contracts with Others.** Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with the other contracting party; provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association must be for a term not exceeding one year and must be terminable, without penalty, by the Association for cause at any time and without cause upon no more than thirty (30) days' notice.

ARTICLE 13 EMINENT DOMAIN INVOLVING THE COMMON AREA

13.1 **Eminent Domain.** The term "**Taking**" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association. In the event of a total Taking, the Board may, in its sole discretion, retain any award in the general Funds of the Association or distribute pro rata all or a portion thereof to the Owners, and all holders of liens and encumbrances, as their interest may appear of Record.

13.2 **Representative of Owners.** The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under or relating to any Taking of Common Area. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee to negotiate on its behalf.

ARTICLE 14 INSURANCE

14.1 Association's Insurance Requirements. The Association shall purchase and maintain at all times the following types of insurance, but only to the extent reasonably available and reasonably priced, and any other insurance the Association deems appropriate:

14.1.1 Commercial General Liability and Property Insurance. Commercial general liability insurance covering bodily injury and property damage liability insurance covering all Areas of Common Responsibility maintained by the Association, if any, and all other areas under the jurisdiction or control of the Association, excluding the Lots and Parcels. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or of any other Owners.

The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use to the Properties. Coverage shall be for at least one million dollars (\$1,000,000.00) combined single limit.

Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Areas of Common Responsibility maintained by the Association; legal liability arising out of lawsuits related to employment contracts of the Association; and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, garage keeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Such coverage shall also include standard directors and officers coverage in amounts determined reasonably necessary by the Board, insuring the members of the Board, the officers of the Association, and any property managers to the extent the Board shall so determine.

14.1.2 Insurance of Area of Common Responsibility. Fire and other hazard insurance covering improvements constructed on the Area of Common Responsibility. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in the area of Surprise.

Such policies of property insurance shall contain a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement," if possible. The Association shall also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and coverage on personal property owned by the Association.

If the Area of Common Responsibility or any portion thereof is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage for improvements on the Area of Common Responsibility has been made available

under the National Flood Insurance Program, then such a policy of flood insurance shall, if deemed necessary by the Board, be obtained on the Area of Common Responsibility in an amount at least equal to the lesser of:

(a) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(b) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

14.1.3 **Workers' Compensation Insurance.** Workers' Compensation insurance to the extent necessary to comply with any applicable laws.

14.1.4 **Fidelity Insurance.** At the Board's discretion, fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling Funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, that is, in no event, less than one and one-half times the insured's estimated annual operating expenses and reserves, and provide for at least thirty (30) days' notice to the Association before cancellation or substantial modification thereof. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

14.2 **Exceptions.** The foregoing insurance and endorsements shall be maintained only to the extent available and reasonably priced and, without limitation, the Board of Directors may elect to dispense with certain endorsements if, in the discretion of the Board of Directors it is determined that the cost of such endorsements is excessive or the coverage not reasonably available.

14.3 **Waiver of Subrogation; Claims Against Declarant, etc..** Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, each Builder, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members, and employees and a provision, if reasonably available in the discretion of the Board, preventing any cancellation or modification thereof, except upon at least thirty (30) days' written notice to the insureds.

Liability insurance hereinabove specified shall name as separately protected insureds Declarant, the Association, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property.

To the extent that each such policy will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Declarant, the Board, and each Builder and such other persons or entities named in said insurance policies, and against the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

14.4 **Association's Insurance Premiums a Common Expense.** Premiums for insurance purchased or obtained by the Association shall be a common expense payable through Assessments of Lots and Parcels, and all such insurance coverage obtained by the Board shall be written in the name of the Association.

14.5 **Insurance for Residences and Lots.** All Owners shall, at their own expense, obtain insurance for their Dwelling Units, Lots, and Parcels insuring against fire, accident, and casualty, which insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of any such loss or losses.

Each Owner and Occupant shall also provide such other insurance which is not carried by the Association as such Person desires. No Person shall maintain any insurance which 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 Improvements or fixtures on the Area of Common Responsibility. Neither the Association, nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

14.6 **Use of Insurance Proceeds.** In the event of damage or destruction by fire or other casualty to any Dwelling Unit, Lot or other property covered by insurance written in the name of an individual Owner, said Owner shall use any insurance proceeds for the repair of the damaged property.

ARTICLE 15 CLAIM AND DISPUTE RESOLUTION

15.1 **Approval of Litigation.** Except for any legal proceedings initiated by the Association to: (i) enforce the Use Restrictions; (ii) enforce the Association Rules; (iii) enforce the Design Guidelines; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) collect any "small claims" (i.e., matters in which the amount in controversy related to such claim and all their similar or related claims is eligible to be heard in a "small claims division" of court in accordance with A.R.S § 22-501, et seq.) (items described in clauses (i) through (v) immediately above, collectively, "**Routine Disputes**"), the Association shall not incur litigation expenses, including, without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or third-party claims or is joined as a plaintiff in legal proceedings, without the prior approval of Declarant (for so long as it is a Class B Member) or thereafter of at least two-thirds (2/3) of the Members of the Association entitled to vote, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserves Funds or other reserves, or use monies collected for other specific Association obligations. Each Owner shall notify prospective purchasers of such legal proceedings initiated by the Board and not included in the above exceptions and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 15.5 of this Declaration. Nothing in this Section 15.1 shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to: (a) enforce the Governing Documents; (b) comply with the statutes or regulations related to the operation of the Association or the Common Area; (c) amend the Governing Documents as provided in this Declaration and/or therein; (d) grant easements or convey Common Area as provided in this

Declaration; (e) perform the obligations of the Association as provided in this Declaration; or (f) prosecute or defend Routine Disputes.

Notwithstanding anything herein to the contrary, this Section 15.1 may not be modified or amended without the prior vote and approval of two-thirds (2/3) of the members of the Association entitled to vote and the approval of Declarant (for so long as it is a Class B Member). It is intended that the Common Area, each Lot, and all improvements constructed on the Covered Property will be constructed in substantial compliance with all applicable building codes and ordinances and/or in a manner reasonably believed by Declarant not to be objectionable to local building authorities and that all improvements will be of a quality that is consistent with reasonably good construction and development practices in the area where the Covered Property is located. It is acknowledged that the Common Area will be built in accordance with its "as-built" plans and specifications and not necessarily in accordance with plans and specifications initially provided to any City unit. Each Owner by accepting a deed to any portion of the Covered Property acknowledges that certain decisions are made "in the field" or other items are made and choices are undertaken in good faith by Declarant and its contractors and variation between the "as-built" plans and City-approved plans will not be or give rise to a cause of an Alleged Defect unless said Defect is not otherwise a reasonable construction practice or is not in violation of zoning, Declarant development agreements or City code. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding Alleged Defects will be resolved amicably, without litigation. Accordingly, Declarant, the Association, the Board, and all Owners shall be bound by the following claim resolution procedures.

15.2 Right to Cure Alleged Defect. If a Claimant claims, contends, or alleges an Alleged Defect in accordance with this Declaration, Declarant shall have the right to inspect, repair, replace or pay diminution in value for such Alleged Defect as set forth herein. It is provided, however, that to the extent provided by law, Declarant shall have such additional periods and/or rights to cure as may be afforded Declarant in such law from time to time in addition to, and not a limitation of, other enumerated rights of Declarant hereunder.

15.2.1 Notice of Alleged Defect. As a precondition to a Claimant having any rights hereunder, the Notice of the Alleged Defect must be issued within two (2) years after substantial completion of the improvement or acceptance of maintenance, whichever occurs first for the area where the Alleged Defect originated.

15.2.2 Right to Inspect and Repair, Replace, or pay Diminution Damages. After receipt of the Notice of Alleged Defect, the Declarant may inspect the subject property to determine the nature and cause of the Alleged Defect and the nature and extent of any repairs or replacements necessary to remedy the Alleged Defects. The Claimant shall ensure that the premises are made available for inspection no later than ten (10) days after the Claimant receives the Declarant's request for an inspection. The Declarant may use reasonable measures, including testing, to determine the nature and cause of the Alleged Defects and the nature and extent of any repairs or replacements necessary to remedy the Alleged Defects.

(a) Within sixty (60) days after receipt of the Notice of Alleged Defect, the Declarant shall send to the Claimant a good faith written response to the Notice of Alleged Defect. In the Declarant's sole and unfettered discretion, the response may include the Declarant's notice of intent to (1)

repair or replace any or all of Alleged Defects, (2) have any or all of the Alleged Defects repaired or replaced at the Declarant's expense or (3) provide monetary compensation for the Alleged Defects. The written notice of intent to repair or replace shall describe in reasonable detail all repairs or replacements that the Declarant intends to make or provide and an estimate of the date by which the repairs or replacements will be made. Alternatively, the Declarant may offer monetary compensation or other consideration instead of or in addition to a repair or replacement. The Association may accept or reject an offer of monetary compensation or other consideration, other than repair or replacement and, if rejected, may pursue Alternative Dispute Resolution under Section 15.6 of this Declaration after completion of any repairs or replacements the Declarant intends to make or provide. If the Declarant does not submit a written response within sixth (60) days after receiving the Notice of Alleged Defect, Alternative Dispute Resolution may be pursued under this Article 15. The parties may negotiate for a release if an offer involving monetary compensation or other consideration is accepted. Any warranties impliedly given shall be deemed given from the respective dates that any such improvement was originally completed and no warranty shall be deemed extended by virtue of any repairs or replacements undertaken by Declarant.

(b) If the Declarant's response states an intent to repair or replace the Alleged Defects, the Declarant will be allowed a reasonable opportunity to repair or replace the construction defects or cause the construction defects to be repaired or replaced pursuant to the following:

(i) Both parties, which may include the Declarant's construction professionals, shall coordinate to commence repairs or replacements within sixty (60) days after the Declarant's notice of intent to repair or replace was sent.

(ii) If a permit is required to perform the repair or replacement, reasonable efforts shall be made to begin repairs or replacements within ten (10) days after receipt of the permit or sixty (60) days after the Declarant's notice of intent to repair or replace was sent pursuant to this section, whichever is later.

(iii) All repairs or replacements shall be completed using reasonable care under the circumstances and within a commercially reasonable time frame considering the nature of the repair or replacement, any access issues or unforeseen events that are not caused by the Declarant or the Declarant's construction professionals.

(iv) The Claimant shall provide reasonable access for the repairs or replacements.

(v) At the conclusion of any repairs or replacements, if the Claimant is dissatisfied with the repairs or replacements, the Claimant may pursue Alternative Dispute Resolution under Section 15.6 of this Declaration and subject to all remedies, limitations, and waivers contained in Article 15.

15.2.3 **Assignment of Claims; Covenant not to Execute.** The Declarant does not itself perform construction-related work but instead hires consultants, contractors, and other professionals ("Construction Professionals") to perform construction-related services. As such, the Declarant shall have the right, in its sole discretion, to assign its rights against the Construction Professionals who performed work related to an Alleged Defect to the Claimant in lieu of repairing, replacing, or paying diminution damages under Section 15.2.2. If the Declarant assigns its rights against Construction

Professionals to a Claimant, then the Claimant shall accept that assignment in lieu of pursuing any claims against the Declarant's or any Declarant Affiliates. Upon receiving an assignment of rights against Construction Professionals for an Alleged Defect, the Claimant will not pursue any claim or execute any judgment against the Declarant or any Declarant Affiliate but will instead seek to execute solely against the assets of the Construction Professionals. Any assignment of rights against Construction Professionals shall relate solely to the Alleged Defect, and the Declarant shall retain all other rights. The Declarant makes no representation regarding the adequacy or effectiveness of an assignment of rights, and the Claimant's covenant not to execute against the Declarant or the Declarant Affiliates shall be effective regardless of whether the claims against the Construction Professionals are valid, collectible, or adequate to make the Claimant whole.

15.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing in this Declaration creates or implies a warranty, guarantee, or other duty regarding the Covered Property or any portion thereof. Nothing set forth in this ARTICLE 155 shall be construed to create or imply any duty, obligation or liability not otherwise existing in law or equity, nor shall it impose any duty or obligation on the Declarant to inspect, test, repair replace, or pay for any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law. All warranties including merchantability, fitness or otherwise, whether express, implied, or statutory and whether regarding personal property, consumer goods, environmental conditions or actual construction (including without limitation, any implied warranty of workmanship or habitability) are expressly disclaimed and waived to the extent permitted by law. The right reserved to the Declarant 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 the Declarant except by a written document executed by the Declarant. Without limiting the foregoing, the Declarant has no duty or obligation whatsoever regarding any Alleged Defects in any lot or improvement transferred to an Owner from a Builder. The Declarant's exercise of rights or its participation in any process identified in this Article 15 does not constitute a waiver of any defenses nor does it imply any rights for any claimant.

15.4 Limitation of Remedies. Claimants' remedies are limited as stated in this Article 15. Except as provided in this Article 15, the Association, every Owner, and every other Claimant hereby waives the right to pursue an action against Declarant and Declarant Affiliates for any monetary damages of any nature, including, without limitation, actual, special, indirect, incidental, consequential, exemplary and punitive damages. To the extent Claimants are entitled to pursue a claim against the Declarant for Alleged Defects under applicable law, Claimants shall only be entitled to seek remedies against Declarant for Alleged Defects that constitute a Material Deficiency. "**Material deficiency**" means a deficiency that actually impairs the structural integrity, the functionality or the appearance of the subject property at the time of the claim, or is reasonably likely to actually impair the structural integrity, the functionality or the appearance of the premises in the foreseeable future if not repaired or replaced.

15.5 Legal Action. Pursuant to A.R.S. §12-1362(A), all legal actions initiated by a Claimant shall be brought in strict accordance with, and expressly subject to, this Article 15. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against the Declarant alleging: (1) damages for Alleged Defect Costs; (2) the diminution in value of any real or personal property resulting from such Alleged Defect; or (3) any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from the Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of

such Alleged Defect shall be paid into the Association's reserves. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against Declarant, which notice shall include at a minimum: (1) a description of the Alleged Defect; (2) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Arizona that such Alleged Defect exists, along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the action against Declarant; and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

15.6 Alternative Dispute Resolution. Except for Routine Disputes, any dispute or claim between or among: (a) Declarant and Declarant Affiliates (or their brokers, agents, consultants, contractors, subcontractors, or employees), on the one hand, and any Owner(s) or the Association, on the other hand; (b) any Owner(s) and another Owner(s); or (c) the Association and any Owner, regarding any controversy or claim between the parties, including any claim based on contract, tort, equity, or statute, arising out of or relating to: (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of the Covered Property; or (iii) an Alleged Defect, but excluding, in all cases, Routine Disputes (collectively, "**Dispute**"), shall be subject to negotiation, mediation and arbitration as set forth in this Section 15.6 prior to any party to the Dispute instituting litigation with regard to the Dispute.

15.6.1 Negotiation. Each party to a Dispute shall meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to represent the Association in resolving the Dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with such negotiation. For Disputes involving Alleged Defects to Common Areas, the parties shall comply with Section 15.2 in lieu of Negotiation under this Section 15.6.1.

15.6.2 Mediation. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 15.6.1 above within such time period as may be agreed upon or if the parties cannot agree, sixty (60) days from the time the initiating party gives specific written notice to the other party(ies) of the existence and nature of the Dispute by such parties or within the time specified in Section 15.2 for claims involving Alleged Defects in Common Areas ("**Termination of Negotiations**"), the party instituting the Dispute ("**Disputing Party**") shall have thirty (30) days after the Termination of Negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute after full disclosure of the interest. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to

create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty (30) days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing in this paragraph 16.6.2 shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

(a) **Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Maricopa County or such other place as is mutually acceptable to the parties to the Dispute.

(b) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute agree to assume the expenses of obtaining such advice as provided in Section 15.6.2(e) below. The mediator shall not have the authority to impose a settlement on any party to the Dispute.

(c) **Exclusion of Settlement Discussions.** Any admissions, offers of compromise, or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum pursuant to A.R.S. § 12-2238.

(d) **Parties Permitted at Sessions.** Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be confidential as provided in A.R.S. § 12-2238. There shall be no stenographic or other record of the mediation process.

(e) **Expenses of Mediation.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed otherwise. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with such mediation.

(f) **Termination of Mediation.** Because the mediation settlement process may continue past the mediation meeting, the mediation shall not be deemed to terminate until one of the following events occur:

- (i) The parties execute a binding written settlement agreement;
- (ii) The mediator declares the mediation terminated;

(iii) The parties to the dispute agree in writing that the mediation is terminated.

(iv) The passage of 14 consecutive days after the mediation during which no written negotiations are exchanged and no follow-up mediation date is scheduled.

15.6.3 Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 15.6.2 above, the Disputing Party shall have thirty (30) days following termination of the mediation proceedings to submit the Dispute to arbitration in accordance with the Commercial Arbitration Rules for Real Estate Disputes (Consumer Rules, if only less than five [5] Owners are involved in the action) of the American Arbitration Association, as modified or as otherwise provided in this Section 15.6.3. If the Disputing Party does not submit the Dispute to arbitration within thirty (30) days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings. The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. Declarant shall not be required to participate in the arbitration proceeding if all parties against whom Declarant would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 15.6.3, the arbitrator shall have the authority to try all issues, whether of fact or law.

(a) **Place.** The arbitration proceedings shall be heard in Maricopa County.

(b) **Arbitration.** A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant matters which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Covered Property. The arbitrator shall not have participated in any proceeding involving any issues with Declarant or any entity related to Declarant. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

(c) **Commencement and Timing of Proceeding.** The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(d) **Pre-hearing Conferences.** The arbitrator may require one or more pre-hearing conferences.

(e) **Discovery.** The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including, but not limited to, destructive or invasive testing; and (vi) trial briefs. Declarant shall also be entitled to conduct further tests and inspections as provided in Section 15.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause

or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(f) **Scope of Arbitration for Alleged Defects.** For Disputes arising out of or related to Alleged Defects, the arbitrator's scope of inquiry shall be limited to determining whether an Alleged Defect constitutes a Material Deficiency. If the Alleged Defect constitutes a Material Deficiency, then the arbitrator shall also identify the following three (3) items:

- (i) The cost to repair the Alleged Defect caused by Declarant
- (ii) The extent to which the value of the Claimant's property is diminished by the Alleged Defect caused by Declarant, and
- (iii) Out of pocket expenses reasonably incurred and actually paid by the Claimant to mitigate damages attributable to the Alleged Defect caused by Declarant.

If Declarant is not the sole cause of the Alleged Defect, then the arbitrator shall reduce the three amounts identified above in proportion to the extent that the Declarant caused the Alleged Defect. After the arbitrator makes the findings identified in this Section 15.6.3(f), Declarant shall pay its portion of the out-of-pocket expenses reasonably incurred and actually paid by the Claimant to mitigate damages plus, in Declarant's sole option, pay (1) the Claimant for Declarant's portion of the cost to repair the Material Deficiency, or (2) the Claimant Declarant's portion of the diminution of value attributable to the Material Deficiency, or (3) contractors to remedy the Material Deficiency. This payment will constitute the Claimant's sole remedy for the Alleged Defect. If Declarant fails to make an election within 10 days, then the Claimant shall have the right to affirm the arbitrator's ruling in court for Declarant's portion of out-of-pocket expenses reasonably incurred and actually paid by the Claimant to mitigate damages attributable to Material Deficiency plus the lesser of (1) Declarant's portion of the cost to repair the Material Deficiency, or (2) Declarant's portion of the diminution in value attributable to the Material Deficiency.

(g) **Limitation on Remedies/Prohibition on the Award of Punitive Damages.** Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages or attorneys' fees. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

(h) **Motions.** The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge. The arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(i) **Expenses of Arbitration.** Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges incurred by the arbitrator unless otherwise agreed by the parties.

15.7 **Waiver.** DECLARANT, ON ONE HAND, AND OWNER OR ASSOCIATION, ON THE OTHER, BY ACCEPTING A DEED FOR OR TO THE COMMON AREA OR A LOT, AS THE CASE MAY BE, AGREE TO HAVE ANY DISPUTE TO WHICH THIS ARTICLE 15 IS APPLICABLE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 15 AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE AND SUCH DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 15. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE SUCH DISPUTES AS PROVIDED IN THIS ARTICLE 15, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A COURT OR JURY.

15.8 **Statutes of Limitations.** Nothing in this Article shall be considered to toll, stay, or extend any applicable statute of limitations or repose.

15.9 **Enforcement of Resolution.** If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Subsections 15.6.1 or 15.6.2 above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an award of arbitration is made in accordance with Subsection 15.6.3 and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or the award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties jointly and severally), all costs incurred to enforce (but not to obtain) the terms of the negotiation or mediation or the award including, without limitation, attorneys' fees and court costs.

15.10 **Conflicts.** Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article and any other provisions of the Governing Documents, this Article shall control.

15.11 **Amendment of Article.** Without the express prior written consent of Declarant, this Article may not be amended prior to expiration of the Class B Membership or expiration of the statute of repose under A.R.S. § 12-552 (whichever occurs later). The provisions of this Article shall be deemed severable, and should any portion be declared unenforceable by any court of competent jurisdiction, the remaining provisions shall be unaffected. **BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 155 ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND PARCELS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE 15, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS AND PARCELS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS.**

ARTICLE 16 TERM; AMENDMENTS; TERMINATION

16.1 **Term; Method of Termination.** This Declaration shall be effective upon its Recordation and, as amended from time to time, shall continue in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes entitled to be cast by the entire Membership. Upon the Recording of a Certificate of Termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall

have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona.

16.2 Amendments. Until the first conveyance of a Lot within the Covered Property to a Retail Purchaser for use and occupancy as a Dwelling Unit, this Declaration may be amended by Recorded instrument duly executed by Declarant, without the necessity of calling a meeting of Owners or obtaining the consent of Owners. Thereafter, this Declaration may be amended by Recording an amendment, duly executed by the President or Vice President of the Association, which amendment shall set forth in full the text of the amendment adopted, and, except as provided in Section 16.3, or except as otherwise provided below, shall certify that, with or without a meeting, Owners representing two thirds (2/3) of the total votes entitled to be cast by the entire Membership consented to or voted affirmatively for such amendment.

Any amendment during such time as Declarant is a Member of the Association shall require the written approval of the Declarant.

In addition to the foregoing, Declarant shall have the right, so long as it owns any Lot or Parcel, to amend this Declaration of its own volition, and without the requirement of any further consent or approval if such amendment is to correct errors or eliminate ambiguities, and to make changes designed to further the intent of this instrument by further elaborating on existing powers, privileges, and restrictions in cases where correction, clarification or elaboration is warranted.

A Tract Declaration may be amended as provided in such Tract Declaration, but only with the consent of Declarant so long as Declarant owns a single Lot or Parcel in the Covered Property. Thereafter, a Tract Declaration may be amended as provided therein, and with the approval of the Board.

16.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institution. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration or a Tract Declaration as may be requested or required by the FHA, VA, or any other Agency with whom Declarant elects to do business, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot or Parcel or purchasing loans secured thereby. Any such amendment shall be effected by Declarant Recording an amendment duly executed and acknowledged by Declarant specifying the Agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such amendment shall be deemed conclusive proof of the Agency's or institution's request or requirement and such amendment, when Recorded, shall be binding upon all of the Covered Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Covered Property. If any amendment requested or required pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Covered Property and Owners without a vote of the Owners.

ARTICLE 17 ANNEXATION AND WITHDRAWAL OF PROPERTY

17.1 Annexation by Declarant. During the pendency of the Class B Membership, Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners,

annex to the Covered Property the Annexable Property or any portion or portions thereof. To effect such annexation, a Tract Declaration covering the Annexable Property (or the applicable portion or portions thereof) shall be executed and Recorded by Declarant. The Recordation of such Tract Declaration shall constitute and effectuate the annexation of the Annexable Property (or the applicable portion or portions thereof) described therein, making such Annexable Property (or the applicable portion or portions thereof) and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association. In addition to the foregoing, and notwithstanding any decision to not annex the additional property or any portion thereof, Declarant may grant easements for ingress, egress, utilities, and other purposes for the benefit of such Annexable Property, all on terms deemed by Declarant to be reasonable.

17.2 Annexation by Owners. After the period of Class B Membership expires, the Association may, from time to time, add portions of the Annexable Property to the Covered Property provided that such annexation has been approved by (i) the owner of the portion of the Annexable Property to be annexed and (ii) the Owners possessing at least seventy-five percent (75%) of the total votes then entitled to be cast with or without a meeting. To effect such annexation, a Tract Declaration covering the portion of the Annexable Property shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the portion of the Annexable Property to be annexed. The execution of such Tract Declaration document shall constitute and effectuate the annexation of the Annexable Property described therein.

Any annexation during the pendency of the Class B Membership shall have the written approval of the Class B Members and, for a period of fifty (50) years after the Recording hereof, the Declarant as well. Absent such approval, any such annexation shall be deemed void.

17.3 Tract Declarations. The annexations authorized hereunder shall be made by Recording a Tract Declaration, in similar fashion as for any Parcel originally subject to this Declaration. A Tract Declaration may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof). In no event, however, shall any such Tract Declaration revoke or conflict with this Declaration. If a part of the Annexable Property (or the applicable portion or portions thereof) is annexed through a Tract Declaration, the number of Parcels and Lots shall be adjusted accordingly, and said Parcels and Lots (or applicable portion or portions thereof) shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration, including, without limitation, the provisions regarding Assessments.

17.4 Adding Annexable Land and Annexation Declarations. During the pendency of Class B Membership, the Declarant from time to time may add additional lands to the annexable area ("**Additional Annexable Lands**"). It is specifically understood that this right may be exercised in Declarant's sole and absolute discretion. The execution to carry out this action shall be called an "Annexation Declaration" and shall constitute and effectuate the annexation of the Additional Annexation Lands as described therein. After the Class B Membership is over, the Association will be afforded the same rights (right to add Additional Annexable Lands) provided that such action has been approved by the owner of the Additional Annexable Lands and Owners possessing at least seventy-five percent (75%) of the total votes then entitled to be cast by the Membership with or without a meeting. To effect such annexation, an Annexation Declaration covering the Additional Annexation Lands shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the Additional Annexation Land. Only upon execution of a separate Tract

Declaration (not Annexation Declaration) will the Additional Annexable Lands be added to the Covered Property, thus making such Additional Annexable Lands and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

The actions authorized under this section shall be made by Recording an Annexation Declaration, in similar fashion as for any land originally subject to this Declaration. An Annexation Declaration may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof). In no event, however, shall any such Annexation Declaration revoke or conflict with this Declaration or any Tract Declaration. If a part of any Additional Annexable Property (or the applicable portion or portions thereof) is annexed through a Tract Declaration, the number of Parcels and Lots shall be adjusted accordingly, and said Parcels and Lots (or applicable portion or portions thereof) shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration, including, without limitation, the provisions regarding Assessments.

17.5 Withdrawal of Covered Property. Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners or Members, from time to time until fifty (50) years after Recordation of this Declaration, withdraw any real property subject to this Declaration by executing and Recording a Notice of Withdrawal, making reference to this Declaration, and specifically describing the withdrawn property. The property so described shall be deemed completely excluded from this Declaration and shall no longer be a part of the Covered Property. Declarant may, in connection therewith, cancel any Tract Declaration for the land withdrawn.

Notwithstanding the foregoing, except as otherwise provided in the applicable Declaration of Withdrawal, withdrawal of any portion or portions of the Covered Property will not be effective until the Owner of the property to be withdrawn has paid all unpaid Assessments applicable to such property, prorated to the date of withdrawal.

It is specifically understood that this right of withdrawal may be exercised in Declarant's sole and absolute discretion, and that once withdrawn, none of the provisions hereof shall apply to or encumber the land. Further, Declarant may cause the Association to grant and convey such easements as may be necessary to benefit such land withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

ARTICLE 18 PROJECT DISCLOSURES

18.1 View Impairment. Neither Declarant, nor the Association, guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot, from adjacent Lots or Area of Common Responsibility will be preserved without impairment. Neither Declarant nor the Association shall have the obligation to prune, thin, remove or replace trees or other landscaping except as required by the Design Review Committee or Community Wide Standard. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view which exists at any point in time for a Lot may be impaired or obstructed by further construction, including, without limitation, by construction of improvements (including without limitation, landscaping) by Declarant or by any third Person (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including, without limitation, any

broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

18.2 Limited Access and Privacy. The Association may maintain or support certain activities and improvements within the Covered Property (or portions thereof) designed to afford the Covered Property (or portions thereof) limited access and greater privacy than they otherwise might enjoy; provided, however, unless otherwise specifically indicated in this Declaration, the Association shall not be obligated to maintain or support such activities or improvements. Neither the Association, the members of the Board, the officers of the Association, nor the Declarant or Declarant Affiliates make any representations or warranties that (a) any activities within the Covered Property are designed to afford the Covered Property (or portions thereof) limited access and greater privacy and will provide security and safety to other Owners, lessees, Occupants, and their families, invitees, and licensees, nor shall any such Persons in any way be considered insurers or guarantors of security within the Covered Property; or (b) patrolling of the Covered Property, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, entry gates, or other security system designed by or installed according to guidelines established by Declarant or the Association (i) may not be compromised or circumvented; or (ii) will prevent loss by burglary, theft, hold-up, or otherwise; nor (iii) will in all cases provide the detection or protection for which the system is designed or intended. Furthermore, gated entrances may restrict or delay entry into the Covered Property (or portions thereof) by the police, fire department, ambulances and other emergency vehicles or personnel.

Each Owner and Occupant, for itself and its family, invitees, and licensees, assumes the risk that any such activities or improvements within the Covered Property designed to afford the Covered Property limited access and greater privacy may not provide security and safety and may restrict or delay entry into the Covered Property by the police, fire department, ambulances, and other emergency vehicles and personnel. Neither the Association, the members of the Board, the officers of the Association, the Association's management company, nor the Declarant or Declarant Affiliates, nor any director, officer, agent, or employee of any of the foregoing, shall be liable to any Owner, Occupant, or their families, invitees, or licensees for any claims or damages resulting, directly or indirectly, from (1) the construction, operation, existence, maintenance, or ineffectiveness of any such activities or improvements within the Covered Property designed to afford the Covered Property limited access and greater privacy or (2) any Person granted or denied admission to the Covered Property at any entry gate operated by or for the Association.

18.3 Airport. North Copper Canyon is located in the vicinity of Luke Air Force Base and its auxiliary bases ("**Airport**"). As a result, Lots may be subject to aircraft overflights, noise, vibrations, or other adverse effects of aircraft activity originating from one or more of the Airports, each of which may have potentially detrimental effects to the residential use of the Covered Property. In addition, an aviation easement in favor of the Airport may be Recorded over all or a portion of the Covered Property. Neither Declarant, nor any Declarant Affiliate or Builder have made any representations or warranties, nor has any Owner or Occupant, or any guest, or invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to aircraft activities in the proximity to the Covered Property, potential noise intrusion as a result of such activities, or the general location of the Airport relative to the Covered Property.

18.4 404 Permit Disclosures.

18.4.1 Certain washes of the Covered Property are subject to a permit issued by the Army Corps of Engineers ("**Corps**") pursuant to Section 404 of the Federal Clean Water Act because they are considered to be (or to affect) waters of the United States (this permit and its accompanying attachments, including conditions imposed by the State of Arizona pursuant to Section 401 of the Clean Water Act, are referred to herein as the "**404 Permit**"). A copy of the 404 Permit will be kept in the official records of the Association.

18.4.2 Any work within the Covered Property that affects the drainage of surface waters, or the condition of any structure or area required as a condition of the 404 Permit, may fall under the terms of the 404 Permit or may otherwise be regulated pursuant to Section 404 of the Clean Water Act. Any Person proposing to undertake such work must become familiar with the terms of the 404 Permit and Section 404 of the Clean Water Act and comply with those requirements if the Person applies to complete the contemplated work. The Association will provide a copy of the 404 Permit to any contractor or other Person employed or allowed by the Association to perform work within areas subject to the 404 Permit upon request.

18.5 **Proximity to Landfill.** Each Owner and Occupant is advised that the Northwest Regional Landfill Management Facility (Disposal), a facility that provides disposal services for communities, businesses, and industries serving Phoenix and other cities within Arizona, located at 19401 West Deer Valley Road, Surprise, Arizona, accepts non-hazardous materials for disposal, including asbestos – non-friable, auto shredder fluff, construction and demolition debris, drum management – liquids, drum management – solids, industrial and special waste, municipal solid waste, and yard waste. Waste materials delivered to this facility and the transport of waste to this facility may expose Owners and Occupants of the Covered Property to noise, traffic, noxious odors, or other effects that may be disturbing to some individuals. Declarant makes no representation or warranty regarding the levels of such effects within the Covered Property and all inquiries regarding the same should be referred to Waste Management at (800) 963-4776.

18.6 **Transmission Lines.** Electrical transmission lines are located within the vicinity of the Covered Property. Declarant makes no representation or warranty regarding electric or magnetic field levels within the Covered Property and all inquiries regarding the same should be referred to the responsible party for such lines, which may be Western Area Power Authority (WAPA), Arizona Public Service (APS), or Salt River Project (SRP).

18.7 **Grazing.** North Copper Canyon is located near a rural, agricultural area where neighboring property owners may be permitted by applicable law to maintain cattle, horses, poultry, and other livestock and conduct ranching and farming activities that produce adverse noise, odors, and other conditions associated with agricultural areas. Portions of the Covered Property were formerly used or may currently be used for agricultural purposes, including livestock grazing. Declarant, any Declarant Affiliate and Builder make no representation or warranty regarding the risk of personal injury, illness, inconvenience, or any other loss or damage relating to agricultural activities within or in the proximity to any Covered Property.

18.8 **Natural Gas Pipeline.** Each Owner and Occupant is advised that a natural gas line is located in the vicinity of and within the Annexable Property, generally within the Deer Valley Road right-of-

way. Please note that additional natural gas pipelines will likely occur as development progresses in the area. Declarant, any Declarant Affiliate, Builder make no representation or warranty regarding any risks to health or safety that may be posed by the pipeline and all inquiries regarding the same should be referred to Transwestern Pipeline Company (505) 260-4000 or to Southwest Gas Company at 1 (877) 860-6020.

18.9 McMicken Dam. Each Owner and Occupant is advised that McMicken Dam is located south and east of the initial Covered Property, and Owners and Occupants may be impacted by operations of McMicken Dam, including, without limitation, noise, dust associated within maintenance of the facility and the potential for flooding over and across Deer Valley Road., impacting access to Covered Property from Deer Valley Road. Declarant, any Declarant Affiliate or Builder make no representation or warranty regarding the risk of personal injury, illness, inconvenience, or any other loss or damage relating to operations of McMicken Dam in proximity to North Copper Canyon.

18.10 Ongoing Construction Activities. Construction of North Copper Canyon will continue for a number of years. There will be a significant amount of construction related activities (i.e., construction traffic, dust, dirt, debris, noise, as well as rock crushing areas) at varying times of the day. Although Declarant and the other parties constructing the community will make efforts to alleviate and mitigate such construction related activities, none will assume responsibility for any discomfort or inconvenience that Owners and Occupants may experience during this period.

18.11 Wastewater Treatment Plants. Each Owner and Occupant is advised that several wastewater treatment plants are located within the vicinity of the Covered Property that provide wastewater treatment facilities for the City of Surprise. The closest wastewater treatment plant to the initial Covered Property is approximately one-half (1/2) mile south of Deer Valley Road along 183rd Avenue. These facilities may expose Owners and Occupants of the Covered Property to noise, traffic, noxious odors, or other effects that may be disturbing to some individuals. Declarant makes no representation or warranty regarding the levels of such effects within the Covered Property and all inquiries regarding the same should be referred to the City of Surprise at (623) 222-6000.

18.12 Water Production Facilities. Each Owner and Occupant is advised that several water production facilities (wells and water campus) are located within the vicinity of the Covered Property and provide the potable water facilities for the Covered Property. These facilities may expose Owners and Occupants of the Covered Property to noise, traffic, noxious odors, or other effects that may be disturbing to some individuals. Declarant makes no representation or warranty regarding the levels of such effects within the Covered Property and all inquiries regarding the same should be referred to Beardsley Water Company through First National Management at (480) 677-6080.

18.13 Arizona State Trust Land. North Copper Canyon is located in proximity to State Trust Land. The Arizona State Land Department administers over 9.3 million acres of State Trust Land. This is not public land. Trust land may be subject to future development and may not be preserved or saved for open space without compensation. A person must have prior approval to use State Trust Land. Temporary recreational use is allowed with certain restrictions and conditions through purchase of a recreational permit. Use of State Trust Land without proper approval is a trespass. MANY ROADS ON RURAL TRUST LANDS ARE NOT LEGAL TRAVEL ROUTES, EXCEPT FOR STATE LESSEES AND HUNTERS, AND DO NOT PROVIDE LEGAL ACCESS TO PRIVATE LAND. STATE TRUST LAND MAY BE SOLD OR LEASED FOR USES WHICH MAY EXCLUDE RECREATION. RECREATION IS A

TEMPORARY USE THAT MAY BE TERMINATED AT ANY TIME. For additional information, visit the State Land Department web page at www.azland.gov or call (602) 542-4631.

ARTICLE 19 MISCELLANEOUS

19.1 **Interpretation of the Covenants.** Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including, without limitation, the Use Restrictions contained herein and in any Tract Declarations. In the absence of any adjudication to the contrary by an arbitrator, or if permitted hereunder, 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 benefited or bound by this Declaration.

19.2 **Severability.** Any determination by an arbitrator, or if permitted hereunder, by a 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.

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

19.4 **Declarant's Disclaimer of Representations.** Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of North Copper Canyon can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (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 real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel 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 the Lot or Parcel agrees to hold Declarant harmless therefrom.

19.5 **Declarant's Rights.** All rights, exemptions, and privileges of the Declarant hereunder shall be assignable in whole or in part. Any such assignment shall be evidenced by a Recorded instrument executed by Declarant and its successors or assigns. Without limitation, Declarant may assign to one or more successors or assigns, in whole or in part, some or all of Declarant's rights, exemptions or privileges hereunder, including its rights as the Class B Member, and its exemption from the payment of Assessments, while at the same time reserving such rights to itself with respect to Lots it retains, any such assignment may be on such terms as Declarant may in its discretion determine are appropriate. Notwithstanding any other provision hereof, so long as Declarant owns any Lot, its written consent shall be required for any assignment of Declarant rights. Any attempted assignment without Declarant's written consent shall be void. None of the covenants, conditions, restrictions, easements, or other provisions in

this Declaration shall be construed or deemed to limit or prohibit any promotional act of Declarant or its employees, agents, and contractors, or parties designated by them which is reasonable or customarily incidental to the sale or leasing of Lots, the Property, or any part thereof.

19.6 **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, and words in the singular shall include the plural and vice versa.

19.7 **Captions.** 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.

19.8 **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 any resolution of the Board to be given to any Owner or Occupant 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 Maricopa County. 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.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

DECLARANT:

Austin Ranch, LLC, an Arizona limited liability company

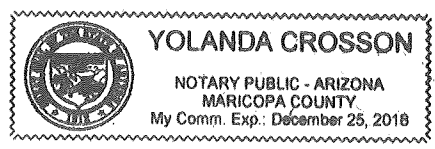
By: Alan Hamberlin
Name: ALAN HAMBERLIN
Title: MANAGER

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 1st day of November, 2016, by Alan Hamberlin, the Manager of Austin Ranch, LLC, an Arizona limited liability company, on behalf of the corporation.

Yolanda Crosson
Notary Public

My commission expires:
12-25-18



DECLARANT:

Courtland Homes, Inc, an Arizona corporation

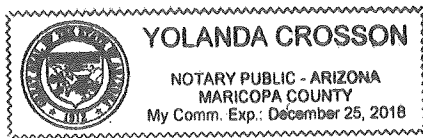
By: Alan Hamberlin
Name: Alan Hamberlin
Title: President

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 1st day of November, 2016 by Alan Hamberlin, the President of Courtland Homes, Inc., an Arizona corporation, on behalf of the corporation.

Yolanda Crosson
Notary Public

My commission expires:
12-25-18



CONSENT OF OWNERS

The undersigned Consenting Owners, as the owners of portions of the Covered Property, hereby consent to the recordation of this Declaration and hereby subject their portions of the Covered Property thereto.

IN WITNESS WHEREOF, the undersigned have caused this Consent of Owners to be duly executed on the date set forth on page one of this Declaration.

DVWDC, Inc., an Arizona corporation

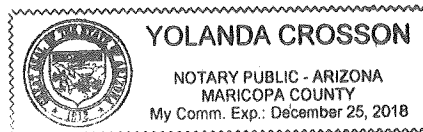
By: *Alan Hamberlin*
Name: Alan Hamberlin
Title: President

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 1st day of November, 2016, by Alan Hamberlin, the President of DVWDC, Inc., an Arizona corporation, on behalf of the corporation.

Yolanda Crosson
Notary Public

My commission expires:
12-25-18



SIGNATURE PAGE FOR CONSENT OF OWNERS

Madstone Capital LLC, an Arizona limited liability corporation

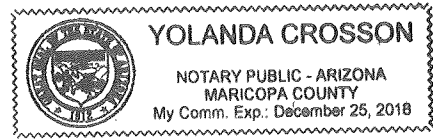
By: [Signature]
Name: Deborah Hamberlin
Title: Managing Member

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 1st day of November, 2016, by Deborah Hamberlin, the Managing Member of Madstone Capital LLC, an Arizona limited liability company, on behalf of the company.

[Signature]
Notary Public

My commission expires:
12-25-18



SIGNATURE PAGE FOR CONSENT OF OWNERS

Courtland Capital LLC, an Arizona limited liability corporation

By: Alan Hamberlin
Name: Alan Hamberlin
Title: Manager

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 1st day of November, 2016, by Alan Hamberlin, the Manager of Courtland Capital, L.L.C, an Arizona limited liability company, on behalf of the company.

Yolanda Crosson
Notary Public

My commission expires:
12-25-18

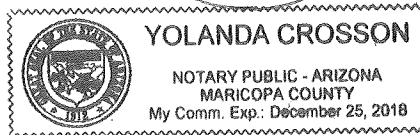


EXHIBIT A**COVERED PROPERTY**

The initial Covered Property shall consist of those certain UNRECORDED subdivisions of Maricopa County described as follows:

Lots 1 through 420, inclusive, and Tracts A through F, inclusive, G1, G2, I, J, K1, K2, M, N, O-1, O-2, O-3, P, Q, and AL, as shown on that plat for Austin Ranch West Parcel 1, recorded in Book ____ of Maps, Page __, Official Records of Maricopa County, as Instrument No. _____.

Lots 811 through 948, inclusive, and Tract AH and Tracts II through QQ, inclusive, as shown on that plat for Austin Ranch West Parcel 4 recorded in Book ____ of Maps, Page __, Official Records of Maricopa County, as Instrument No. _____.

Currently described as Follows:

LEGAL DESCRIPTION OF
PARCEL 1

BEING A PART OF SECTION 15, TOWNSHIP 4 NORTH, RANGE 2 WEST OF THE GILA AND SALTRIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 15;

THENCE S 89°57'47" W, COINCIDENT WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 2051.97 FEET;
 THENCE N 00°10'51" W, A DISTANCE OF 187.27 FEET;
 THENCE N 64°03'54" W, A DISTANCE OF 42.58 FEET;
 THENCE N 00°10'51" W, A DISTANCE OF 232.05 FEET;
 THENCE S 89°49'09" W, A DISTANCE OF 276.66 FEET TO A POINT OF CURVATURE;
 THENCE ALONG A CURVE ON AN ARC TO THE RIGHT, HAVING A RADIUS OF 152.50 FEET, THROUGH A CENTRAL ANGLE OF 19°25'26", A DISTANCE OF 51.70 FEET TO A POINT OF TANGENCY;
 THENCE N 70°45'25" W, A DISTANCE OF 100.73 FEET TO A POINT OF CURVATURE;
 THENCE ALONG A CURVE ON AN ARC TO THE LEFT, HAVING A RADIUS OF 97.50 FEET, THROUGH A CENTRAL ANGLE OF 18°15'23", A DISTANCE OF 31.07 FEET TO A POINT OF TANGENCY;
 THENCE N 89°00'49" W, A DISTANCE OF 39.44 FEET;
 THENCE N 00°10'51" W, A DISTANCE OF 55.01 FEET;
 THENCE N 44°35'50" W, A DISTANCE OF 28.24 FEET;
 THENCE N 00°10'51" W, A DISTANCE OF 751.75 FEET;
 THENCE S 89°55'14" W, A DISTANCE OF 80.00 FEET;
 THENCE N 00°10'51" W, A DISTANCE OF 249.42 FEET;
 THENCE N 45°10'51" W, A DISTANCE OF 28.28 FEET;
 THENCE N 00°10'51" W, A DISTANCE OF 55.00 FEET;
 THENCE N 44°49'09" E, A DISTANCE OF 28.28 FEET;
 THENCE N 00°10'51" W, A DISTANCE OF 8.34 FEET TO A POINT OF CURVATURE;
 THENCE ALONG A CURVE ON AN ARC TO THE RIGHT, HAVING A RADIUS OF 390.00 FEET, THROUGH A CENTRAL ANGLE OF 08°40'58", A DISTANCE OF 59.10 FEET TO A POINT OF TANGENCY;
 THENCE N 08°30'07" E, A DISTANCE OF 191.95 FEET TO A POINT OF CURVATURE;
 THENCE ALONG A CURVE ON AN ARC TO THE LEFT, HAVING A RADIUS OF 310.00 FEET, THROUGH A CENTRAL ANGLE OF 08°40'58", A DISTANCE OF 46.98 FEET TO A POINT OF TANGENCY;
 THENCE N 00°10'51" W, A DISTANCE OF 7.68 FEET;
 THENCE N 89°54'22" E, A DISTANCE OF 3.00 FEET TO A POINT ON THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 15;
 THENCE N 00°10'51" W, COINCIDENT WITH SAID MID-SECTION LINE, A DISTANCE OF 655.70 FEET;
 THENCE N 89°49'09" E, A DISTANCE OF 77.00 FEET;
 THENCE N 00°10'51" W, A DISTANCE OF 7.80 FEET TO A POINT OF CURVATURE;

THENCE ALONG A CURVE ON AN ARC TO THE LEFT, HAVING A RADIUS OF 390.00 FEET, THROUGH A CENTRAL ANGLE OF 08°04'00", A DISTANCE OF 54.91 FEET TO A POINT OF TANGENCY;
THENCE N 08°14'50" W, A DISTANCE OF 44.50 FEET;
THENCE S 79°29'05" E, A DISTANCE OF 525.23 FEET;
THENCE S 65°59'47" E, A DISTANCE OF 809.51 FEET;
THENCE S 33°48'39" E, A DISTANCE OF 1125.90 FEET;
THENCE S 47°11'58" E, A DISTANCE OF 242.68 FEET;
THENCE S 08°20'08" E, A DISTANCE OF 43.76 FEET;
THENCE S 56°12'41" E, A DISTANCE OF 82.73 FEET;
THENCE N 70°29'40" E, A DISTANCE OF 55.00 FEET TO A POINT ON A NON-TANGENT CURVE FROM WHICH POINT THE CENTER BEARS N 70°29'40" E AT A DISTANCE OF 372.50 FEET;
THENCE WITH THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 372.50 FEET, THROUGH A CENTRAL ANGLE OF 25°20'38", A DISTANCE OF 164.77 FEET TO A POINT OF TANGENCY;
THENCE S 44°50'59" E, A DISTANCE OF 349.81 FEET TO A POINT OF CURVATURE;
THENCE ALONG A CURVE ON AN ARC TO THE RIGHT, HAVING A RADIUS OF 345.84 FEET, THROUGH A CENTRAL ANGLE OF 16°53'25", AN ARC DISTANCE OF 101.95 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15;
THENCE S 00°12'48" E, COINCIDENT WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 664.27 FEET TO THE TRUE POINT OF BEGINNING;

CONTAINING IN AREA 4,977,894 SQUARE FEET OR 114.278 ACRES MORE OR LESS.

LEGAL DESCRIPTION OF
PARCEL 4

BEING A PART OF THE SOUTH HALF OF SECTION 15, TOWNSHIP 4 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 15;
 THENCE S 89°56'08" W, COINCIDENT WITH THE SOUTH LINE OF THE
 SOUTHWEST QUARTER OF SAID SECTION 15, A DISTANCE OF
 1383.64 FEET;
 THENCE N 00°03'52" W, A DISTANCE OF 40.00 FEET;
 THENCE N 44°36'15" E, A DISTANCE OF 28.45 FEET;
 THENCE N 00°03'52" W, A DISTANCE OF 98.40 FEET;
 THENCE N 06°55'28" E, A DISTANCE OF 82.18 FEET;
 THENCE N 00°03'52" W, A DISTANCE OF 422.80 FEET;
 THENCE N 89°56'08" E, A DISTANCE OF 30.00 FEET;
 THENCE N 00°03'52" W, A DISTANCE OF 513.71 FEET TO A POINT OF CURVATURE;
 THENCE WITH THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 150.00 FEET, THROUGH
 A CENTRAL ANGLE OF 11°12'22", AN ARC DISTANCE OF 29.34 FEET;
 THENCE N 78°43'45" E, A DISTANCE OF 30.00 FEET;
 THENCE S 49°28'25" E, A DISTANCE OF 11.32 FEET;
 THENCE N 00°03'52" W, A DISTANCE OF 107.42 FEET;
 THENCE N 89°55'14" E, A DISTANCE OF 1325.81 FEET;
 THENCE S 00°10'51" E, A DISTANCE OF 751.75 FEET;
 THENCE S 44°35'50" E, A DISTANCE OF 28.24 FEET;
 THENCE S 00°10'51" E, A DISTANCE OF 55.01 FEET;
 THENCE S 45°24'10" W, A DISTANCE OF 27.67 FEET;
 THENCE S 00°10'51" E, A DISTANCE OF 405.82 FEET;
 THENCE S 45°06'21" E, A DISTANCE OF 28.32 FEET;
 THENCE S 00°10'51" E, A DISTANCE OF 40.00 FEET TO A POINT ON
 THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15;
 THENCE S 89°57'47" W, COINCIDENT WITH THE SOUTH LINE OF THE
 SOUTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF
 60.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT ANY PART LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEING A PART OF THE SOUTHWEST QUARTER OF SAID SECTION 15, MORE PARTICULARLY
 DESCRIBED AS FOLLOWS:
 COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 15;
 THENCE N 00°10'51" W, COINCIDENT WITH THE EAST LINE OF SAID
 SOUTHWEST QUARTER, A DISTANCE OF 656.16 FEET TO THE TRUE POINT OF BEGINNING OF
 THE PARCEL HEREIN DESCRIBED;

THENCE S 89°55'41" W, A DISTANCE OF 660.83 FEET;
THENCE N 00°10'20" W, A DISTANCE OF 327.92 FEET;
THENCE N 89°55'27" E, A DISTANCE OF 660.78 FEET TO A POINT ON
THE EAST LINE OF SAID SOUTHWEST QUARTER;
THENCE S 00°10'51" E, COINCIDENT WITH SAID EAST LINE, A DISTANCE OF 327.97 FEET TO THE
TRUE POINT OF BEGINNING.

CONTAINING IN AREA 1,592,298 SQUARE FEET OR 36.55 ACRES MORE OR LESS.

EXHIBIT B
ANNEXABLE PROPERTY

ALL PROPERTY WITHIN A FIVE (5) MILE RADIUS OF THE INITIAL COVERED PROPERTY.

EXHIBIT C**USE RESTRICTIONS**

1. **Single Family Residential Use.** No structure whatsoever, other than one private, Single Family residence, together with a private garage showing not more than a three (3) car garage shall be erected, placed, or permitted on any Lot designated in a Tract Declaration as having a Single Family Residential Development Use Land Use Classification. No mobile homes, manufactured homes, or prefabricated homes shall be permitted unless approved in writing by Declarant and set forth in an amendment hereto.

2. **Plat Notes.** In addition to the restrictions contained herein, the Covered Property shall be subject to all restrictions and limitations set forth on each Recorded plat, as it may be amended from time to time.

3. **Prohibited Uses.** The following uses are prohibited:

- a. medical or recreational marijuana growing operations or dispensaries;
- b. any use which is offensive, as determined by the Board of Directors, by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation, or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Lot, Parcel or Owner; and,
- c. any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception, or special use ordinance or regulation) of the United States, the State of Arizona, the City, or any other governmental entity having jurisdiction over the Covered Property.

4. **Temporary Occupancy and Temporary Buildings; Outside Storage.** No trailer, tent, shack, garage, barn, or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed, or maintained on a Lot or Parcel with the prior written approval of the Design Review Committee, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot or Parcel from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semifinished products, or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property; provided, however, that during construction of improvements on any Lot or Parcel, necessary construction materials and supplies may be stored on the Lot or Parcel without the need for a solid visual barrier, provided such materials and supplies are kept in neat order considering the construction activities. The Design Review Committee is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

The Design Review Committee may approve structures outside the principal residence of said Lot depending on the quality of construction materials, aesthetics, color and general appeal of the structure provided such structure is approved by the adjoining Lots.

5. **Repair of Buildings.** No building or improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such building and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the building or improvement. In the event any building or improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or improvement shall be immediately repaired, rebuilt, or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within the time limits established by the Board, the Board and its agents and representatives are empowered to enter on the Lot or Parcel and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

6. **Maintenance of Landscaping and Driveways.** Unless otherwise provided in a Tract Declaration, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

a. on the Owner's Lot or Parcel (including set back areas), except that in the event the maintenance of any portions of such Owner's Lot or Parcel is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility;

b. portions of the Common Area adjacent to an Owner's Lot or Parcel and which are on the Lot's or Parcel's side of any wall erected on the Common Area; and,

c. public right-of-way area; between sidewalks (or bicycle paths or equestrian trails) and the street curb on the adjacent frontage of Owner's Lot or Parcel, or other public or easement areas adjacent to the Owner's Lot or Parcel, except that in the event the maintenance of such areas is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

As used herein, maintenance shall include, but not be limited to, keeping the areas neatly trimmed, cultivated, and free of trash and unsightly materials. All lawn areas shall be timely mowed as needed to keep an even, well-groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive. All trees, shrubs, plants, and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant, or ground cover shall be removed and replaced immediately. Landscaping may be required to be placed on a Lot or Parcel within certain time frames established by the Design Review Committee. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways, and parking areas, located on the Owner's Lot or Parcel. Any Owner who fails to properly maintain the landscaping upon the Lot or Parcel shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot or Parcel, after receiving

notice from the Board to do so, the Association is empowered to enter upon the Lot or Parcel, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as Assessments.

7. **Nuisances; Dust Control; Construction Activities**. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or Parcel so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot and Parcel shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots and Parcels must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot or Parcel, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or Parcel, or which shall interfere with another Owner's or Occupant's quiet enjoyment of his/her Lot or Parcel.

8. **Diseases and Insects**. No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

9. **Antennas and Dishes**. No television, radio, or other electronic towers, aerials, antennae, satellite dishes, or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed, or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to Declarant's rights pursuant to Section 5.2.25 nor to those antennae specifically 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.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Residence and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

Notwithstanding any provision of this Declaration, Declarant shall not be prohibited from erecting or maintaining on the Covered Property wireless antennas and devices for the transmission or reception of data, communication, sound, video, or other signals, whether or not such facilities serve more than just the Covered Property, or may be considered "hub" facilities under the federal Telecommunications Act of 1996, or amendments thereto, or under any regulations or rulings of the Federal Trade Commission. Such activities shall not constitute prohibited activity hereunder. The facilities governed by this paragraph shall be limited to antennas either reasonably hidden from sight within other structures, or which are no more than one meter in diameter, and which have appurtenant facilities no more than seven (7) feet in height and which are reasonably screened from view.

10. **Solar Devices.** No solar heating equipment or device is permitted outside the Dwelling Unit except devices whose installation and use is protected by Applicable Law. Notwithstanding such protection, an application for such equipment or device must be submitted for approval to the Design Review Committee prior to installation and approval will be granted only if (a) such equipment or device is designed for minimal visual intrusion when installed (i.e., is located in a manner which minimizes visibility from the street or an adjacent Lot); and (b) the equipment or device complies with the Design Review Guidelines, within the confines of the Applicable Laws and governmental regulations.

11. **Mineral Exploration.** No Lot or Parcel shall be used in any manner to explore for, quarry, mine, remove, or transport any oil or other hydrocarbons, minerals, gravel, gas, earth, or any earth substance of any kind, except in each case as Declarant shall specifically approve. No well may be drilled or operated on any Lot unless owned and operated by a city, town, or public service corporation and approved by the Board. This provision shall not prohibit the operation of wells on Common Area if approved either by Declarant or the Board.

12. **Clothes Drying Facilities.** No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot or Parcel without the prior written consent of the Design Review Committee unless they are not Visible From Neighboring Property.

13. **Overhead Encroachments.** No tree, shrub, or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path, or any other pedestrian way from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee. The Association shall have the right to trim any offending tree, shrub, or planting.

14. **Vehicles and Parking.** As used in this Section: (i) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, motorcycle, all-terrain vehicle, utility vehicle, pickup truck, or other motor vehicle; "Recreational Vehicle" shall mean a vehicle designed as temporary living quarters for recreational, camping, travel or seasonal use, and may include motorized (motorhomes) or towable (travel trailers, folding camping trailers and truck campers) and (ii) "Streets" means the streets shown on any Plat of the Covered Property or private roadways.

It is intended that Recreational Vehicles will be parked or stored within the fenced yard for Lots designed to accommodate them. As long as the Recreational Vehicle is part of Lots designed to accommodate them, is permitted as stated in a Tract Declaration, and the Recreational Vehicle is located inside the fenced and located in the sideyard of said Lots, then the Recreational Vehicle shall be allowed on the Lot.

No Motor Vehicle classed by manufacturer rating as exceeding one ton (except where such vehicle is owned by the Lot owner and is used for daily transportation to and from work), mobile home, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed, or repaired on any Lot or Common Area if Visible From Neighboring Property, or on any Street within the Covered Property. None of the vehicles described above or Recreational Vehicles, or any other vehicle, may be used as a living area or otherwise occupied while located on the Covered Property. This Section shall not prohibit the parking of vehicles protected by A.R.S. §33-1809 or other Applicable Laws.

No Motor Vehicles designed or used for carrying merchandise, supplies, or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for vehicles parked entirely within an enclosed garage and the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers, or vendors of Declarant, Association, or the Owners or Occupants.

The Board shall have the right and power to adopt Association Rules governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section, and establishing certain exceptions that may in certain cases be warranted. In the event of any conflict or inconsistency between the provisions of this Section and the Association Rules adopted by the Board, the provisions of this Section shall control.

The Association may adopt additional parking restrictions, including the establishment of fines and assessments for their violation, enforceable as all other Assessments and in the same manner as other provisions of this Declaration.

15. **Health, Safety and Welfare.** In the event uses of, activities on, or facilities upon or within a Parcel or Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of Owners or Occupants, the Board or the Design Review Committee may make rules restricting or regulating their presence.

16. **Incidental Uses.** Subject to the provisions of any applicable Tract Declaration, the Board may approve, regulate, and restrict incidental uses of property within a Land Use Classification. By way of example and not of limitation, the Board may permit private roadways, tennis and/or swimming clubs intended primarily for the benefit of all or certain Owners or Occupants, tennis courts, swimming pools, and other recreational facilities.

17. **Window Coverings.** No exterior window covering, awning, rolling shutter, or reflective covering may be placed, or permitted to remain, on or adjacent to any window of any building, structure, or other improvement without the prior written approval of the Design Review Committee. No interior window screening may be of highly reflective material.

18. **Parcel Coverage.** The percentage of each Lot or Parcel which may be covered by buildings within a Single Family Residential Land Use Classification (as well as the location of such buildings and other improvements on each Lot or Parcel) shall be subject to the review and approval of the Design Review Committee as part of the Design Review Committee's review of plans for proposed improvements on such Lot or Parcel pursuant to this Declaration, but shall in no event violate City ordinances and regulations in effect from time to time or impose onerous conditions on any Owner thereby frustrating the development of an allowed use.

19. **Duty of Maintenance.** Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot or Parcel, including buildings, improvements, private drives, easement areas, and grounds thereon, in a well-maintained, clean, neat, and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations, and requirements.

20. **Utility Lines and Connections.** All utility wires, lines, pipes, conduits, facilities, connections, and installations, including, without limitation, electrical, telephone, cable television, water, gas, and sanitary sewer, shall be installed and maintained underground or concealed in, under, or on

structures approved in writing in advance by the Design Review Committee, except that Declarant, in its discretion, may install or cause to be installed certain overhead utility lines and facilities if made reasonably necessary due to existing overhead facilities. All transformers shall be placed on or below the surface of the Lot or Parcel. Temporary aboveground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of the Declarant while under Class B Membership or the Design Review Committee thereafter.

21. **On-Site Grading and Drainage.** No water shall be drained or discharged from any Lot or Parcel, or building thereon, except in accordance with: (a) the drainage study, Conditional Letter of Map Revision or Letter of Map Revision for each subdivision, if any, including any amendments thereto, approved by the appropriate governmental agency(ies) and Declarant (if under Class B Membership) or the Design Review Committee (after termination of Class B Membership); and (b) grading plans approved by the Declarant (if under Class B Membership) or Design Review Committee (after termination of Class B Membership) in accordance with Article 4 and applicable City ordinances.

22. **Building Exteriors.** All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved in accordance with Article 4. All materials used for the exterior of the buildings shall be quality, long-life, low maintenance materials.

23. **No Commercial Use.** No gainful occupation, profession, trade, or other nonresidential use shall be conducted on or in any Lot or Parcel except as set forth in this subparagraph. The Declarant and a Builder may maintain sales offices, construction offices, and sales models on the Covered Property and an Owner or Occupant may carry on a "Home Occupation" as provided below. A "Home Occupation" as permitted hereby means work within the Dwelling Unit (such as the performance of accounting work, creation of art work, etc.) provided that:

a. the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;

b. the business activity conforms to all zoning requirements for the Lot;

c. the business activity does not involve solicitation of Owners or Occupants by anyone, whether or not a resident; and

d. the business activity is consistent with the residential character of the neighborhood and does not constitute a nuisance or hazard or offensive use, nor threaten the security or safety of other residents of the Covered Property as determined in the discretion of the Board.

Notwithstanding the foregoing, a child or adult day care business shall not be prohibited, provided it complies with applicable zoning. If the Board determines that the Home Occupation violates the provisions hereof, then the Board shall have the authority to require that the Home Occupation in question cease immediately. In no event shall any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, be permitted within the Covered Property, except that this prohibition shall not apply to group homes or similar living or care arrangements which by Applicable Law may not be prohibited by enforcement of private restrictive covenants.

The provisions of this Section shall not apply to construction or sales activities of Declarant or any Builder or to lots and parcels with a non-residential Land Use Classification to the extent permitted by an applicable Tract Declaration.

24. Leasing; Obligations of Tenants and Other Occupants.

a. Governing Documents. All tenants within the Covered Property shall be subject to the terms and conditions of Governing Documents. Each Owner shall cause the Occupants of its Lot to comply with the Governing Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such Occupants, notwithstanding the fact that such Occupants are also fully liable for any violation of each and all of the Governing Documents.

b. Definition of Lease. For purposes of this Section 24, a lease is defined as any occupancy of the Lot (whether or not money is exchanged), by anyone other than (i) the Owner, (ii) the Owner's spouse, (iii) the Owner's or the Owner's spouse's children or parents, (iv) any individuals living with the Owner who are maintaining a common household with Owner, or (v) guests of an Owner residing with the Owner.

c. Entire Lot; Lease Term. No Owner may lease less than its entire Lot. No Lot may be leased for a period of less than three (3) consecutive months.

d. Tenant Information Form. Within fifteen (15) days of the effective date of any new lease term or renewal term, the Owner of a leased Lot shall furnish the Board with a tenant information form (to be provided by the Board). The tenant information form shall include: (i) the name and contact information for any adults occupying the Lot; (ii) the time period of the lease, including the beginning and ending dates of the tenancy; (iii) a description and license plate number of the tenants' vehicles; and (iv) any other information that the Association may request by law. Any Owner that leases such Owner's Lot shall keep the Association informed at all times of the Owner's address and telephone number.

e. Lease Fee. The Association's managing agent (or, if self-managed, the Association) may charge the Owner who leases a Lot an administrative fee of Twenty-Five Dollars (\$25.00), or such greater amount as may be permitted by law, for each new tenancy of the Lot, provided that such fee shall not be charged for any lease renewal. Such fee shall be paid by the Owner within fifteen (15) days from the postmarked request, and shall be subject to the Assessment Lien.

f. Third-Party Beneficiary; Enforcement. The Association is a third-party beneficiary of any such lease solely for the purpose of enforcing this Declaration, and shall have the right to establish and charge fines against any Owner failing to enforce the provisions of the Governing Documents with respect to tenants of its Lot.

g. Exempt Leases. The provisions of this Section 24 shall not apply to the use of Lots and Dwelling Units owned by or leased to Declarant, any Declarant Affiliate, or any Builder as a model home or for marketing purposes.

25. Animals. No animal, livestock, poultry, or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care,

housing, or confinement of any permitted pet shall be Visible From Neighboring Property. The Board shall have the right by the Association Rules or other documents to determine what shall constitute a generally recognized house pet, and what shall constitute a reasonable number of such pets, in any instance. Notwithstanding the foregoing, no permitted pets may be kept on or in any Lot which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot, unless in a defined fenced in area within Common Area specifically allowed for pets to be off-leash, owned by the pet's owner or where the pet's owner is a tenant, guest, or invitee. The Board has the right, after notice and the opportunity for a hearing, to require the removal of any pet which the Board, in its sole discretion, has determined is a nuisance. Persons walking pets shall carry an instrument designed for removing animal excrement from the ground with them at all times and shall remove the pet's excrement from the Covered Property.

26. **Garbage.** No garbage or trash shall be allowed, stored, or placed on a Lot or Parcel except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and Parcel and shall not be allowed to accumulate thereon. The Board may establish regulations as to the times and duration that waste containers may be Visible From Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers.

27. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated, stored, or maintained upon any Lot or Parcel, except:

a. during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures, or improvements thereon;

b. that which Declarant or the Association may require for the development, operation, and maintenance of the Covered Property or other portions of the Covered Property; or

c. personal items ordinarily associated with the Covered Property such as lawn mowers, tools, gardening equipment, and the like.

28. **Signs.** No signs of any nature shall be placed on the Common Area except with respect to Association or Common Area matters as approved by the Board and except as allowed by Declarant. No signs of any nature shall be placed on any Lot or Parcel, except:

a. signs required by legal proceedings;

b. a maximum of two (2) identification signs for Dwelling Units, each with a maximum face area of seventy-two (72) square inches or less;

c. "for sale" and "for lease" signs, and subdivision, condominium, and apartment identification signs, the nature, number, location, content, and design of which shall comply with the Design Guidelines; and

d. such other signs as the Design Review Committee shall approve.

29. **Model Homes, Etc.** Nothing contained herein or in any applicable Tract Declaration shall prohibit the construction and maintenance of model homes, model apartments, sales offices, apartment rental offices, property management offices, and parking incidental thereto by Declarant and Builders; provided, however, that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and local ordinances of the City. No other model homes or offices shall be maintained on the Covered Property by persons other than the Declarant and Builders, unless approved in writing by the Declarant or by the Board.

Notwithstanding the foregoing, unless Declarant should, in writing, grant special permission to the contrary, the Board shall have the right to require that an Owner (other than Declarant) limit its sales and management offices and model homes to locations in subdivisions or areas where it continues to own one or more Lots.

30. **Use of Trails.** Passive pedestrian trails may be permitted and developed within portions of the Covered Property. No horses or motorized vehicles shall be permitted within any pedestrian trails, unless specifically granted through an easement executed by Declarant.

31. **Variances.** The Board may, at its sole discretion, grant variances from Use Restrictions set forth herein or use restrictions set forth in any Tract Declaration if the Board determines that:

a. either (i) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts, or (ii) a change of circumstances has rendered the particular restriction obsolete; and

b. the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants.

The request for a variance must be made in writing and be accompanied by adequate supporting documentation. The Board shall approve or disapprove the request, in writing, as promptly as possible under the particular circumstances. All decisions of the Board shall be final and nonappealable. No variance granted by the Board, if other than Declarant, may be given that reverses or alters a decision made by Declarant unless Declarant consents thereto. If any Use Restriction is adjudged or deemed to be invalid or unenforceable as written by reason of any Applicable Law, then the Board may interpret, construe, rewrite, or revise such restriction to the fullest extent allowed by Applicable Law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.