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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE VILLAGES AT BARNETT**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE VILLAGES AT BARNETT

This Declaration of Covenants, Conditions, and Restrictions for The Villages at Barnett (the "**Declaration**") is made this 21st day of September, 2018, by RB Land Barnett Partners, LLC (the "**Declarant**").

INTRODUCTION

A. The Declarant is the owner of fee title to the real property described on Exhibit A attached to this Declaration (the "**Property**").

B. The Declarant desires to reserve to the Declarant the right to expand the real property subject to this Declaration by annexing and subjecting to this Declaration all or any part of the Additional Property.

C. By executing and recording this Declaration with the County Recorder of Pima County, Arizona, the Declarant intends to impose upon the Project mutually beneficial covenants, conditions, restrictions and easements to establish a flexible and reasonable procedure for the overall development, administration, maintenance, use and preservation of the Project. The Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Project and which will be binding upon all future Owners of all or any portion of Project and any other Person acquiring any right, title or interest in or to all of any portion of the Project.

D. The Declarant desires to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Areas of Association Responsibility and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Areas of Association Responsibility and the enforcement of the covenants, conditions and restrictions contained in this Declaration.

ARTICLE 1
DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

"**Additional Property**" means any real property that is adjacent to any real property that is then subject to this Declaration. Property shall be deemed adjacent if contiguous at any point or if separated only by a street, alley, right-of-way or easement.

"**Affiliate**" means any Person that (either directly or indirectly, through one or more intermediaries) controls, is under common control with or is controlled by, another Person, and any Person that is a director, trustee, officer, co-venturer, subsidiary or member of any of the foregoing. For purposes of this definition, the term "control" means the direct or indirect power to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract or otherwise.

"**Alleged Defect**" means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot.

"**Areas of Association Responsibility**" means: (a) all Common Area; (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot or a public right-of-way which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration, or a Supplemental Declaration, or other Recorded document executed by the Declarant or the Association; and (c) all land or right-of-way easements which are dedicated to the public, the Town or any other governmental body or agency, but which the Association has agreed to maintain with the approval of the governmental body or agency.

"**Articles**" means the Articles of Incorporation of the Association, as amended from time to time.

"**Assessable Lot**" means a Lot which is not Exempt Property.

"**Assessment**" means a Regular Assessment, Special Assessment, Enforcement Assessment or Benefited Property Assessment.

"**Assessment Lien**" means the lien created and imposed by Article 6.

"**Assessment Period**" means the period set forth in Section 6.7.

"**Association**" means the Arizona non-profit corporation to be organized by Declarant to administer and enforce this Declaration and to exercise the rights, powers and duties set forth in this Declaration, the Articles and the Bylaws, and its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association "**The Villages at Barnett Community Association**," and hereby reserves the right to use any similar name if, for any legal or other reason, "The Villages at Barnett Community Association" cannot or should not be used.

"**Association Expenses**" means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including, but not limited to, any allocations to reserves determined by the Board to be necessary and appropriate, any funds requested by the Design Review Committee, and all other financial liabilities of the Association.

"**Association Rules**" means the rules adopted by the Board pursuant to Section 5.7.

"Benefited Property Assessment" means an assessment levied against less than all of the Lots pursuant to Section 6.5.

"Benefited Property Assessment Area" means a portion of the Project designated in this Declaration or in a Supplemental Declaration as an area containing Limited Common Area or as an area in which the Association will provide Special Services.

"Benefited Property Expenses" means the actual or estimated expenses, including allocations to reserves, incurred or anticipated to be incurred by the Association for the maintenance, repair and replacement of Limited Common Areas or to provide Special Services to the Owners, Lessees and Residents in a Benefited Property Assessment Area.

"Board" or "Board of Directors" means the Board of Directors of the Association.

"Bound Parties" means: (a) the Declarant; (b) any Affiliate of the Declarant; (c) a Builder; (d) the Association; (e) all Lot Owners, Lessees and Residents; and (f) any contractor or subcontractor, architect, engineer, consultant or other Person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of the Common Area or the Lots and who agrees in writing to be bound by the provisions of Article 9.

"Builder" means (a) any Person that is regularly engaged in the business of constructing residences for the purpose of resale or lease in the ordinary course of such Person's business and that has purchased one or more Lots for the purpose of constructing a residence thereon for later sale, who has been designated by Declarant as a Builder pursuant to a Recorded instrument, and (b) any land banking entity that has purchased one or more Lots for the purpose of selling the Lots to any Person that is regularly engaged in the business of constructing residences for the purpose of resale or lease in the ordinary course of such Person's business, who has been designated by Declarant as a Builder pursuant to a Recorded instrument.

"Bylaws" means the Bylaws of the Association, as amended from time to time.

"Claim" means: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Area or the Lots or any other part of the Project, including, without limitation, any claim or cause of action for construction defects with respect to the design and construction of the Common Area or the Lots; or (b) any claim or cause of action against the Declarant or a Builder or their respective employees, agents, directors, members or officers or any Affiliate of the Declarant or any Affiliate of a Builder or their respective employees, agents, directors, members or officers arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

"Collection Costs" means all costs, fees, charges and expenditures including, without limitation, attorneys' fees (whether or not a legal action is filed), court costs, filing fees and recording fees incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, demand fees, interest or other amounts payable to the Association pursuant to this Declaration.

"Common Area" means all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or by any deed in lieu of foreclosure.

"Community Documents" means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules and the Design Guidelines.

"Construction" means any devegetation, excavation or grading work or the construction, erection or installation of any Improvement on a Lot.

"Design Guidelines" means the procedures, standards and guidelines adopted by the Design Review Committee pursuant to Section 3.1, as amended or supplemented from time to time.

"Declarant" means RB Land Barnett Partners, LLC, an Arizona limited liability company, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument. At any time when there is more than one Declarant, (a) all rights, exemptions, and privileges granted to Declarant that do not require affirmative action for exercise shall be available to each Declarant, (b) all rights, exemptions, and privileges granted to Declarant that may be exercised as to a specific Lot or portion of the Property may be exercised only by the Declarant that owns such Lot or portion of the Property, and (c) the following rights and privileges of the Declarant shall require the unanimous consent of all Declarants and/or their respective successors or assigns: (i) annexation of Additional Property into the Declaration, pursuant to Section 2.2(a), (ii) execution and recordation of Supplemental Declarations, pursuant to Section 2.3(a), (iii) approval and execution of an amendment to a Supplemental Declaration, pursuant to Section 2.3(b), (iv) withdrawal of property from the Declaration, pursuant to Section 2.4, (v) changes or modifications to the development plan for the Project, pursuant to Section 2.6, (vi) approval of the matters described in Section 2.7, (vii) determination of the number of members on the Design Review Committee and the appointment and removal of the members of the Design Review Committee, pursuant to Section 3.1(a), (viii) grant, assignment and reservation of any easements, rights-of-way and licenses, pursuant to Sections 4.2 and 4.3, (ix) appointment and removal of the members of the Board, pursuant to Section 5.1(a), (x) approval of any encumbrance or conveyance of Common Area, pursuant to Section 5.9, (xi) approval of the termination of the Declaration, pursuant to Section 11.2, (xii) approval of an amendment to the Declaration, pursuant to Section 11.3(a), (xiii) amendment of the Declaration, pursuant to Section 11.3(b), and (xiv) any other actions

that require the vote or approval of the Declarant under the terms of the Community Documents.

"Declarant Control Period" means the period commencing upon the Recording of this Declaration and ending on the earlier of (a) the date that neither the Declarant nor any Builder owns or holds an option to purchase any part of the Property or any part of the Additional Property, or (b) the date on which the Declarant notifies the Association in writing that the Declarant is terminating the Declarant Control Period.

"Declaration" means this Declaration of Covenants, Conditions, and Restrictions for The Villages at Barnett as amended from time to time.

"Design Review Committee" means the committee created pursuant to Article 3.

"Eligible Votes" means the total votes in the Association, except for any votes allocated to Owners whose voting rights have been suspended by the Association.

"Enforcement Assessment" means an assessment levied pursuant to Section 6.4.

"Exempt Property" means: (a) all Lots owned by the Declarant or an Affiliate of Declarant, except as otherwise provided in Section 6.6; and (b) all land and improvements owned by or dedicated to the Town or other public or governmental agency or authority for so long as the public or governmental authority agency or authority is the owner thereof.

"First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

"First Mortgagee" means the holder or beneficiary of any First Mortgage.

"Improvement" means: (a) a Residence or other building; (b) a fence or wall; (c) a swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (d) a road, driveway or parking area; (e) a tree, plant, shrub, grass or other landscaping improvement of any type and kind; (f) a statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind; and (g) any other structure of any type, kind or nature.

"Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of the lessee's or tenant's interest under a lease.

"Limited Common Area" means real property, and the Improvements situated thereon, which are part of the Common Area and which are designated in this Declaration or in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Limited Common Areas may include, without limitation, private streets, access gates, guardhouses, drainage or retention areas or landscape medians.

"**Lot**" means a parcel of land within the Project, whether improved or unimproved, intended for independent ownership and use and designated as a "lot" on a Plat and any Residence, building, structure or other Improvements situated thereon

"**Maintenance**" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

"**Member**" means a Person who is a member of the Association.

"**Modification**" means any addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot.

"**Motor Vehicle**" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle.

"**Neighborhood Association**" means any homeowners association, condominium association or similar association formed or organized pursuant to a Neighborhood Declaration.

"**Neighborhood Common Area**" means all real property, and all Improvements located thereon, owned or leased by a Neighborhood Association for the common use and benefit of the members of the Neighborhood Association.

"**Neighborhood Declaration**" means any Declaration of Covenants, Conditions and Restrictions, or similar instrument (other than this Declaration or a Supplemental Declaration) recorded against any part of the Project.

"**Owner**" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. In the case of a Lot subject to a Recorded option, the optionor shall be deemed to be the Owner. Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of Arizona Revised Statutes. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots subject to a deed of trust pursuant to Arizona Revised Statutes, the Trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

"**Owner's Agent**" means any employee, agent, contractor or subcontractor acting on behalf of or pursuant to a contract with an Owner.

"**Permitted Motor Vehicle**" means a car, mini-van, sport utility vehicle, pick-up truck, motorcycle, jeep or station wagon, except for any such vehicle that is designed or used for carrying persons, merchandise, supplies or equipment for commercial purposes.

"**Person**" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, governmental subdivision or agency, or other legal or commercial entity.

"**Plat**" means any subdivision plat recorded against all or any part of the Project.

"**Property**" or "**Project**" means the real property described on Exhibit A attached to this Declaration, together with all Improvements located thereon, and any part of the Additional Property, and all Improvements situated thereon, which is annexed and subjected to this Declaration pursuant to Section 2.2.

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

"**Recording**" means placing an instrument of public record in the office of the County Recorder of Pima County, Arizona, and "**Recorded**" means having been so placed of public record.

"**Regular Assessment**" means any assessment levied and assessed pursuant to Section 6.2.

"**Residence**" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

"**Resident**" means each natural person occupying or residing in any Residence.

"**Special Assessment**" means any assessment levied and assessed pursuant to Section 6.3.

"**Special Services**" means services designated in this Declaration or in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Special Services may include, without limitation, guard services (including the maintenance of guard gates or guardhouses) and landscape maintenance services for landscaping situated on Lots.

"**Supplemental Declaration**" means a Supplemental Declaration executed by the Declarant and Recorded pursuant to Section 2.3.

“Town” means the Town of Marana, Arizona.

“Visible From Neighboring Property” means, with respect to any given Improvement, that such Improvement is or would be visible to a natural person six (6) feet tall, standing at ground level on any part of any Lot, Common Area, Neighborhood Common Area, any public street or other real property within or adjacent to the Project.

ARTICLE 2

PROPERTY AND PERSONS BOUND BY DECLARATION; ESTABLISHMENT OF GENERAL PLAN OF DEVELOPMENT

2.1 Purpose and Binding Effect. Declarant intends by this Declaration to impose upon the Project covenants, conditions, restrictions and easements to create a general plan of development for the Project and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use and enjoyment of the Project. The Declarant declares that all of the Project shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Project. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Project and shall be binding upon and inure to the benefit of the Declarant, the Builders and all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Project or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Project, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association.

2.2 Annexation of Additional Property.

(a) So long as the Declarant or any Affiliate of the Declarant owns any Lot or any part of the Additional Property, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property. The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording a Declaration of Annexation setting forth the legal description of the Additional Property being annexed and stating that such portion of the Additional Property is annexed and subjected to this Declaration. If the portion of the Additional Property being annexed is not owned by the Declarant, the Declaration of Annexation must be signed by the Owner of fee title to the portion of the Additional Property being annexed.

(b) The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The Additional Property annexed by the Declarant pursuant to this Section need not be contiguous with other property already subject to this Declaration, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any

other portion of the Additional Property. The Declarant makes no assurances as to which, if any, part of the Additional Property will be annexed.

(c) After neither the Declarant nor any Affiliate of the Declarant owns any Lot or any part of the Additional Property, the Association may annex and subject all or any part of the Additional Property to this Declaration by executing and Recording a Declaration of Annexation containing the information required for a Declaration of Annexation Recorded by the Declarant pursuant to this Section, provided the annexation is approved by Owners holding at least sixty-seven percent (67%) of the Eligible Votes, and the Declaration of Annexation is signed by the owners of fee title to the portion of the Additional Property being annexed.

2.3 Supplemental Declarations.

(a) The Declarant shall have the right to record one or more Supplemental Declarations for various parts of the Project. If the property covered by the Supplemental Declaration is not owned by the Declarant, then the Supplemental Declaration must also be signed by the owners of fee title to the property subject to the Supplemental Declaration. A Supplemental Declaration may designate Common Areas or other Areas of Association Responsibility and impose such covenants, conditions, restrictions and easements as the Declarant deems appropriate for the property subject to the Supplemental Declaration. A Supplemental Declaration may also designate Limited Common Areas, and Special Services. If a Supplemental Declaration designates any Limited Common Areas or Special Services, the Supplemental Declaration shall also designate the Benefited Property Assessment Area containing the Lots which will be subject to a Benefited Property Assessment.

(b) A Supplemental Declaration may only be amended by a written instrument executed by: (1) the Owners representing more than sixty-seven percent (67%) of the votes in the Association held by the Owners of all of the Lots subject to the Supplemental Declaration; (2) the Association; and (3) the Declarant so long as the Declarant or an Affiliate of the Declarant owns any Lot or any part of the Additional Property. After the expiration of the Declarant Control Period, if an amendment to a Supplemental Declaration adds, deletes or changes any Limited Common Areas or Special Services or any Benefited Property Assessment Area, then such amendment must also be approved by at least sixty-seven percent (67%) of the votes held by Owners of Lots within such Benefited Property Assessment Area or by such greater percentage of votes as may be required by the Supplemental Declaration, and, if the proposed amendment will convert any Limited Common Areas to Common Areas maintained by the Association without a Benefited Property Assessment, by the Class A Members holding more than fifty-percent (50%) of the votes allocated to Lots owned by the Class A Members and located outside of the area formerly subject to the Benefited Property Assessment. Any amendment to a Supplemental Declaration approved in accordance with this Section shall be executed by the Association and shall be effective only upon the Recording of the Supplemental Declaration.

2.4 Withdrawal of Property. The Declarant shall have the right to withdraw property from this Declaration without the consent of any other Owner or Person. The

withdrawal of all or any portion of the Project from this Declaration shall be effected by the Declarant Recording a Declaration of Withdrawal setting forth the legal description of the property being withdrawn. If the Declarant does not own the property to be withdrawn, then the Declaration of Withdrawal must be signed by the owners of fee title to the property to be withdrawn. Upon the withdrawal of any property from the Property pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in the Community Documents.

2.5 Disclaimer of Representations and Implied Covenants. The Declarant and Builders make no representation or warranty that the Project will be developed in accordance with the development plan for the Project approved by the Town, as such development plan exists as of the Recording of this Declaration. Each Owner, Lessee, Resident and other Person acquiring any Lot or other property in the Project acknowledges that the development plan for the Project may be amended from time to time with the consent of the Town. The Declarant and Builders make no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to the Project. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration or any part of the Additional Property.

2.6 Development Plan. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, with the approval of the Town, but without obtaining the consent of any other Owner or other Person, shall have the right to make changes or modifications to the development plan for the Project previously approved by the Town in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the Project owned by the Declarant or changing the nature or extent of the uses to which the Project, or any part thereof, may be devoted.

2.7 Further Subdivision, Property Restrictions, Rezoning and Timeshares. Without the prior written approval of the Declarant and the Association, no Owner other than the Declarant or an Affiliate of the Declarant shall do any of the following: (a) further subdivide a Lot or separate a Lot into smaller lots; (b) convey or transfer less than all of a Lot; (c) replat a Lot or combine a Lot with other Lot or Lots; (d) record covenants, conditions, restrictions or easements against any Lot; (e) file any application for zoning, rezoning, variances or use permits pertaining to any Lot with the Town; or (f) subject or use a Lot for any timesharing, cooperative, weekly, monthly or any other type of revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

2.8 Conveyance of Common Areas. Any area designated by a Plat as "common area" shall be conveyed to the Association, and the Association shall accept such conveyance, upon the completion of the improvements to such common area in accordance with the approved plans. Such common area shall be conveyed to the Association, free of all monetary encumbrances (including mechanics' and materialmen's liens), except current real and personal

property taxes and other easements, conditions, reservations and restrictions then of record, including without limitation, this Declaration. The foregoing shall not preclude the Association from accepting fee title to any common area tracts prior the completion of any improvements.

ARTICLE 3
ARCHITECTURAL CONTROL

3.1 Design Review Committee.

(a) A Design Review Committee will be established to perform the duties and exercise the power and authority imposed or granted to the Design Review Committee by the Community Documents. Until the expiration of the Declarant Control Period, the Declarant shall have the sole right to determine the number of members on the Design Review Committee and to appoint and remove the members of the Design Review Committee. After the expiration of the Declarant Control Period, the Board shall determine the number of members of the Design Review Committee and the members of the Design Review Committee shall be appointed and removed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Design Review Committee, and in that event the Declarant may require that until the expiration of the Declarant Control Period, specified actions of the Design Review Committee, as described in a Recorded instrument executed by the Declarant, must be approved by the Declarant before they become effective. All approvals and disapprovals of the matters by the Design Review Committee must be in writing.

(b) The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. The Design Guidelines may include, without limitation, provisions regarding: (1) the size and height of Residences, buildings or other improvements; (2) architectural style or design; (3) placement of Residences and other buildings including establishing building envelopes; (4) landscaping design, content and conformance with the character of the Project and permitted and prohibited plants, trees or bushes; (5) requirements concerning exterior color schemes, exterior finishes and materials; (6) signage; (7) perimeter and screen wall design and appearance; (8) time periods for commencement and completion of any approved Construction or Modification; and (9) rules and regulations governing construction activities; and (10) standards and procedures for submissions and approval of plans. After the expiration of the Declarant Control Period, any repeal or amendment of the Design Guidelines must be approved by the Board. Any approval by the Design Review Committee of standard plans for use by a Builder shall apply to all Lots on which such Builder desires to use such plans and shall not be subject to subsequent rescission or modification without the Builder's consent.

3.2 Approval Required.

(a) No Construction or Modification shall be made or done without the prior written approval of the Design Review Committee; provided, however, that the provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required

for, any Construction or Modification or any other work made by, or on behalf of, the Declarant or any Affiliate of the Declarant.

(b) The Design Review Committee may exempt certain Construction or Modification from the application and approval requirements of this Article 3, provided such Construction or Modification is undertaken in strict compliance with the requirements of such exemption. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild an Improvement in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a Residence or other building without approval so long as such activity does not affect the exterior appearance of the Residence or building.

(c) Any Owner desiring approval of the Design Review Committee for any Construction or Modification shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification which the Owner desires to perform. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the improvements and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request.

(d) In the event that the Design Review Committee fails to approve or disapprove an application for approval within forty-five (45) days after the complete application, together with any fee payable pursuant to Section 3.7 and all supporting information, plans and specifications requested by the Design Review Committee, have been received by the Design Review Committee, approval will not be required, and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any Construction or Modification subsequently submitted for approval.

(e) The Design Review Committee may delegate to a Neighborhood Association the authority to review and approve or disapprove any Construction or Modification within the property subject to the jurisdiction of the Neighborhood Association. Any delegation by the Design Review Committee of its authority or power under this Article 3 shall be subject to such conditions and limitations as may be imposed by the Design Review Committee and may be revoked at any time by the Design Review Committee by written notice to the Neighborhood Association to whom the power or authority had been delegated.

3.3 Review of Plans.

(a) In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant including, but

not limited to: (1) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Design Review Committee but not yet constructed; (2) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (3) the exterior design, finish materials and color of the proposed Improvements; and (4) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.

(b) Decisions of the Design Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration, subject to an appeal of the decision to the Board as provided in this Section.

(c) The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

(d) All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations onto any Lot.

(e) After the expiration of the Declarant Control Period, any Owner aggrieved by a decision of the Design Review Committee may appeal the Design Review Committee's decision to the Board of Directors. Any appeal to the Board of Directors shall be made in accordance with such procedures as may be adopted by the Board of Directors.

3.4 Variances. The Design Review Committee may grant variances from compliance with any provision of the Design Guidelines in circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or when circumstances such as topography, natural obstructions, economic or procedural hardship, or aesthetic or environmental considerations so require, and the Design Review Committee determines, that the objective of the particular requirement can still be achieved. No variance approved by the Design Review Committee shall be effective until the variance is set forth in a written document signed by or on behalf of the Design Review Committee. No variance shall amend or modify any provision of this Declaration or prevent the Design Review Committee from denying a variance in other circumstances. For purpose of this Section, the inability to obtain approval of any governmental agency or the issuance of any license or permit, or to comply with the terms of any financing shall not constitute an economic or procedural hardship.

3.5 Construction of Improvements. Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall proceed with the Construction or Modification approved by the Design Review Committee as soon as practicable and within such time as may be prescribed by the Design Review Committee. After commencement of the approved construction or modification, the Owner shall diligently pursue such Construction or Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee.

3.6 No Changes Without Approval. Any Construction or Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.

3.7 Review Fee. The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any Construction or Modification, which fee shall be payable by the Owner at the time the application for approval is submitted to the Design Review Committee. The fee charged by the Design Review Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Design Review Committee in processing the application and in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Design Review Committee may retain architects, engineers or other persons as deemed necessary to review applications. The Builders shall not be required to pay a design review fee for any Construction or Modification.

3.8 No Warranty; Limitation of Liability. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a warranty or representation by the Design Review Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation. The Design Review Committee shall not be liable or bear any responsibility for any of the following: (a) ensuring the structural integrity, quality, soundness or workmanship of any Construction or Modification approved by the Design Review Committee, (b) ensuring compliance with building codes or other governmental requirements; or (c) ensuring that all Improvements are of comparable quality, value, size or similar design.

3.9 Improvements to Areas of Association Responsibility. If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement. This Section shall not apply to the initial Improvements constructed by Builders within the Project.

3.10 Compliance Deposit. The Design Review Committee shall have the right, on a case-by-case basis and in its sole discretion, to condition the approval by the Design Review Committee of plans submitted by an Owner, upon the receipt by Design Review Committee of a deposit (the "**Compliance Deposit**") to secure the performance of the Owner's obligations under Section 7.7 to clean up and/or remove equipment, building materials, dirt, debris and similar materials, and to protect from damage and repair any damage to improvements sustained, in connection with construction activities by or for the benefit of Owner and to ensure that the Construction or Modification will be made in accordance with the plans and specifications approved by the Design Review Committee. The Compliance Deposit shall be in such amount as may reasonably be determined by the Design Review Committee. The Design Review Committee may not require a Compliance Deposit from a Builder. The Design Review Committee may apply the Compliance Deposit toward payment of any of the following: (a) any costs incurred by the Design Review Committee with respect to any construction cleanup or removal required and/or the repair or replacement of any damaged or destroyed Improvements, the cost for which the Owner is responsible under Section 7.7; (b) any costs incurred by the Design Review Committee in connection with the inspection of the Construction or Modification to ascertain whether the Construction or Modification is being made in accordance with the approved plans; and (c) any attorney fees, court costs and other costs (including, but not limited to, costs incurred to correct the violation) incurred by the Design Review Committee or the Association in connection with any violation of the Community Documents related directly or indirectly to the Construction or Modification. Following receipt by the Design Review Committee of a written request from an Owner delivered subsequent to the completion of the Construction or Modification, and following confirmation by the Design Review Committee that any necessary cleanup work or damages attributable to the Owner or the Owner's Agent has been properly performed, repaired or replaced, as applicable, that all costs attributable to the Owner in connection therewith have been paid in full and that the Construction or Modification was made in accordance with the plans and specifications approved by the Design Review Committee, the Design Review Committee shall return to such Owner the unapplied portion of the Owner's Compliance Deposit. The liability of an Owner to promptly cleanup such Owner's Lot and any surrounding area of the Project and to repair or replace any improvements damaged or destroyed by an Owner or the Owner's Agent shall not be limited to the amount of such Owner's Compliance Deposit, and in no event shall the posting of a Compliance Deposit limit or prejudice the right of the Design Review Committee or the Association to pursue any available legal remedies against the Owner or any of Owner's Agents causing the need for cleanup or causing the damage or destruction.

ARTICLE 4

EASEMENTS AND DEVELOPMENT RIGHTS

4.1 Easements for Use of Common Area.

(a) Every Owner, Lessee and Resident and their guests shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot, subject to:

(1) The right of the Association, subject to Section 5.9, to dedicate, convey, transfer, lease or encumber the Common Area; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner, Lessees and Residents of the Lot and their guests and invitees;

(2) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area not intended for use by the Owners, Lessees or Residents, including without limitation landscaped areas and areas designated for use as natural area open space;

(3) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Community Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation;

(4) The rights and easements reserved by or granted to the Declarant, or a Builder by the Community Documents;

(5) The right of the Association to rent or lease any portion of the Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees;

(6) The right of the Association to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area;

(7) The right of the Association to permit the use of any recreational facility or amenity situated on the Common Area by Persons other than Owners or Residents and their guests upon payment of such fees as may be established by the Board; and

(8) The rights and easements, if any, reserved or granted to the Declarant, a Builder or any other Person in the deed conveying the Common Area to the Association.

(b) The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot to which such right is appurtenant.

(c) Notwithstanding any other provision of this Section to the contrary, the right to use and enjoy any Limited Common Area shall only extend to the Owners and Residents designated in the Supplemental Declaration establishing such Limited Common Area as the Owners and Residents solely or primarily benefited by the Limited Common Area.

4.2 Utility and Development Easements. A non-exclusive, perpetual blanket easement is hereby granted over, under and through the Common Area and any public utility easements shown on any Plat executed by a Declarant or approved by the Declarant or the Association for any of the following purposes: (a) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Project or adjacent land any utilities (including, without limitation, water, sewer, drainage, gas, electricity, telephone, digital and other data transmission service and television service), whether public or private; and (b) ingress and egress to install, construct, operate, maintain, repair and replace such equipment. Such easement is hereby granted to any Person providing such utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility shall be installed or relocated only where permitted by the Declarant or the Design Review Committee or, where contemplated on any site plan approved by the Declarant or the Design Review Committee. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant or the Design Review Committee. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the surrounding vegetation and improvements to their original condition as soon as possible.

4.3 Rights and Easements to Facilitate Development.

(a) The Declarant hereby reserves to itself and its successors and assigns a non-exclusive blanket easement over and through the Project for all purposes reasonably related to the completion of Improvements in the Project.

(b) The Declarant hereby reserves to itself, its successors and assigns the right and easement to do any of the following: (1) use any Lots owned or leased by the Declarant, any other Lot with written consent of the Owner thereof, or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction

offices, customer service offices or sales office or model home parking areas; and (2) install and maintain on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof, such marketing or promotional flags and flag poles and such marketing, promotional, identification, direction or other signs which the Declarant deems necessary for the development, sale or lease of Lots in the Project. The Declarant shall have the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in this Section or for any other purpose necessary or desirable for the orderly development of the Project. The Declarant may make any dedications and grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

(c) Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements and rights granted or reserved to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all of Project by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

(d) The Declarant hereby grants to each Builder and the Builder's agents, employees and contractors the right and easement to do any of the following: (1) use any Lots owned or leased by the Builder, any other Lot (with written consent of the Owner thereof) or any portion of the Common Area (with the prior written consent of Declarant) as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office or model home parking areas; and (2) install and maintain on the Common Area (with the prior written consent of the Declarant), any Lot owned or leased by the Builder or any other Lot (with the consent of the Owner thereof), such marketing or promotional flags and flag poles and such marketing, promotional, identification, direction or other signs which the Builder deems necessary for the development, sale or lease of Lots in the Project.

(e) In the event of any conflict or inconsistency between this Section and any other provision of the Community Documents, this Section shall prevail.

4.4 Easement for Maintenance and Enforcement. The Association and its directors, officers, agents, and employees, and the Design Review Committee and its directors, officers, agents and employees are hereby granted an easement and right of access over and through any Lots (excluding the interior of any Residence) for the following purposes: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Design Review Committee and that all Improvements are being properly maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or in any Common Area threatening another Lot, the Common Area or any Neighborhood Common

Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on Areas of Association Responsibility situated within the boundaries of the Lots; and (e) correcting any condition which violates the Community Documents.

4.5 Easements for Encroachments. If any Improvement on any Lot, Common Area or Neighborhood Common Area now or hereafter encroaches on any other property by reason of the original construction thereof, deviations within normal construction tolerances in the Maintenance of any Improvement or the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's gross negligence or willful misconduct.

ARTICLE 5
THE ASSOCIATION

5.1 Formation and Powers of the Association.

(a) The Association shall be an Arizona nonprofit corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona law and all powers necessary or desirable to do any of the following: (1) perform the Association's duties and obligations under the Community Documents or imposed by law; (2) exercise the rights and powers of the Association set forth in the Community Documents; and (3) foster and promote the common good and general welfare of the Project, the Owners, Residents and Lessees, and the surrounding community. The Association may exercise any right or privilege given to the Association expressly by the Community Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Community Documents or reasonably necessary to effectuate any such right or privilege. The Association shall be managed by a Board of Directors. Until the expiration of the Declarant Control Period, the Declarant shall have the right to appoint and remove the members of the Board. After the expiration of the Declarant Control Period, the members of the Board shall be elected by the Owners in accordance with the Articles and Bylaws. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Board, and in that event the Declarant may require that until the expiration of the Declarant Control Period, specified actions of the Board, as described in a Recorded instrument executed by the Declarant, must be approved by the Declarant before they become effective. The Association shall not be dissolved unless another entity has agreed to assume the operation and maintenance responsibilities of the Association under the Community Documents.

(b) The Association may create profit or nonprofit subsidiaries which may be tax-exempt organizations and delegate to such subsidiaries portions of the powers and authority of the Association under the Community Documents. The Association may engage in activities to benefit persons other than Owners, Lessees and Residents and may operate,

manage and maintain property not owned by the Association (including, without limitation, property dedicated to public use) if the Association determines in its discretion that such action confers some benefit upon the Project.

5.2 Authorized Community Activities, Services and Programs.

(a) The Association may organize, fund and administer community-building activities, services and programs as the Association deems necessary, desirable or appropriate. Examples of such activities, services and programs include, but are not limited to, the following:

- (1) Operation and management of the Areas of Association Responsibility;
- (2) Primary and adult education programs;
- (3) Recreation and social programs;
- (4) Activities designed to promote compliance with the Community Documents through education and communication;
- (5) Public relations activities on behalf the Project;
- (6) Cultural, arts, environmental and wellness programs;
- (7) Community service activities for the benefit of Owners, Lessees or Residents of the Project and the surrounding community;
- (8) Community internet and intranet sites;
- (9) Charter clubs and other volunteer organizations and activities; and
- (10) Other services, activities and programs which enhance the sense of community in the Project.

(b) Nothing in this Section shall be construed as a representation by the Declarant or the Association as to what, if any, activities, services and programs will be provided by the Association. In addition, the Association may modify or cancel existing activities, services and programs in its discretion. Nonuse of any activities, services or programs offered by the Association shall not exempt any Owner from the obligation to pay Assessments.

5.3 Relationship with Other Entities. The Association may enter into cooperative agreements and expend funds for facilities, services and activities which benefit the Project and the surrounding community. The Association may provide, or provide for, such services and facilities for all of the Owners, Lessees and Residents and their Lots, and the Association is authorized to enter into and terminate contracts or agreements with other entities, including the Declarant or any Affiliate of the Declarant, to provide such services and facilities. The Association may charge use or service fees for any such services and facilities provided, but may also include all or a portion of the cost thereof in the Association's budget as an Association Expense and assess it as part of the Regular Assessment if the services and facilities are provided to all Lots or may also include all or a portion of the cost thereof in a Benefited Property Assessment if the services and facilities are provided to less than all of the Lots. In any contracts or agreements with third parties for the provision of services within the Project, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Association for the collection of such bills.

5.4 Oversight of Neighborhood Associations. The Association shall have oversight authority over any action taken or proposed by a Neighborhood Association and may, in its discretion, veto any action or decision of a Neighborhood Association determined to be contrary to the general scheme of development for the Project. In addition, the Association shall have the power to take action against, or require that specific action be taken by, a Neighborhood Association, and to enforce the terms of any Neighborhood Declaration. Such actions may include requiring specific maintenance or repairs to Neighborhood Common Area.

5.5 Identity of Members. The members of the Association shall be Owners of the Lots. All Owners of Lots shall be mandatory members of the Association. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be limited to the Declarant and the Owners of Lots.

5.6 Classes of Members and Voting Rights. The Association shall have the following two (2) classes of voting membership:

Class A. Class A members shall be all Owners of Lots, except for the Declarant and Builders. Each Class A member shall be entitled to one (1) vote for each Lot owned by such Member.

Class B. The Class B members shall be the Declarant and Builders. Each Class B member shall be entitled to three (3) votes for each Lot owned by such Class B member.

5.7 The Association Rules. The Board may adopt, amend and repeal rules and regulations pertaining to any of the following: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities

situated upon the Areas of Association Responsibility; and (b) minimum standards for the Maintenance of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

5.8 Personal Liability. No director, officer, employee or agent of the Association or the Design Review Committee or of any committee of the Association, and no other Person acting on behalf of the Association or the Design Review Committee shall be personally liable to any Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such Person's duties and responsibilities under the Community Documents provided such Person acted in good faith.

5.9 Conveyance, Lease or Encumbrance of Common Area. The Association may dedicate parts of the Common Area to the Town or any public agency, authority or utility for such purposes and subject to such conditions as the Board may determine to be in the best interests of the Project. The Association may convey portions of the Common Area for the purpose of adjusting the boundary lines between the Common Area, Limited Common Area and adjoining Lots or dedicated rights-of-way. The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project. The Association may lease all or any part of the Common Area for such purposes and on such terms and conditions as the Board determines to be necessary or desirable; provided, however, that any lease entered in to after the expiration of the Declarant Control Period must be approved by Owners entitled to cast more than fifty percent (50%) of the Eligible Votes. After the expiration of the Declarant Control Period, the Common Area shall not be mortgaged or conveyed by the Association without the prior written consent or affirmative vote of Members holding at least sixty-seven percent (67%) of the Eligible Votes and by the Declarant so long as the Declarant or any Affiliate of Declarant owns any Lot or any part of the Additional Property.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree to pay to the Association all Assessments, Collection Costs and all other fees and costs which may become payable by the Owner to the Association under the Community Documents. All Assessments shall be established and collected as provided in this Declaration. Each Assessment, together with all interest thereon, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each

Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Design Review Committee to take some action or perform some function required of them. Neither the Declarant nor any Affiliate of the Declarant shall be obligated to pay any Assessments, and the Association shall not levy any Assessment or other fee or charge of any kind against any Lot owned by the Declarant nor any Affiliate of the Declarant.

6.2 Regular Assessments.

(a) At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget (the "**Budget**") of the estimated Association Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The Budget shall also reflect the sources and estimated amount of funds required to pay such Association Expenses, which sources may include any surplus to be applied from prior years, any income expected from sources other than Assessments and the amount to be generated through Assessments against the Lots. The Budget shall separately reflect any Benefited Property Expenses.

(b) Concurrently with the adoption of the Budget, the Board shall determine the amount of the Regular Assessment for each Assessable Lot. The Regular Assessment shall be the same amount for each Assessable Lot. The amount of the Regular Assessment for an Assessment Period for each Assessable Lot shall be calculated by dividing the Budget amount for the applicable Assessment Period, which Budget amount shall be based on the completed Project, by the total number of Lots within the Property and the number of Lots reasonably estimated by the Board to be included in the Annexable Property. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.

(c) The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board nor relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a Budget for any Assessment Period, then until and unless such Budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect.

(d) If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Association Expenses for any reason, including, without limitation, nonpayment of Assessments, the Board may amend the Budget and increase the Regular Assessment for that Assessment Period and the revised Regular Assessment shall commence on the date designated by the Board.

6.3 Special Assessments. The Association may levy against each Assessable Lot a Special Assessment for the purpose of obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area (including

fixtures and personal property related thereto), or to pay unbudgeted expenses or expenses in excess of the amount budgeted. The Special Assessment shall be the same amount for each Assessable Lot. After the termination of the Declarant Control Period, any Special Assessment must be approved by Members holding at least sixty-seven percent (67%) of the votes cast with respect to the proposed Special Assessment. The presence in person or by absentee ballot of Members holding more than fifty percent (50%) of the Eligible Votes shall constitute a quorum for any vote with respect to a proposed Special Assessment.

6.4 Enforcement Assessment. The Association may impose against an Owner as an Enforcement Assessment any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; and any monetary penalties levied against the Owner. The Enforcement Assessment shall be automatically imposed against an Owner at such time as the Collection Cost or other amounts are incurred by the Association or, in the case of a monetary penalty, the date the monetary penalty is imposed on the Owner by the Board.

6.5 Benefited Property Assessments. All Association Expenses pertaining to the Maintenance of Limited Common Areas or pertaining to the providing of Special Services shall be shown separately in the budget adopted by the Board. The Association Expenses pertaining to the Maintenance of a Limited Common Area or to the providing of Special Services shall be assessed solely against the Lots within the Benefited Property Assessment Area as established by the Supplemental Declaration designating the Benefited Property Assessment Area. No Association Expenses pertaining to the Maintenance of Limited Common Area or pertaining to providing Special Services shall be used in computing the Regular Assessments to be levied pursuant to Section 6.2. Unless otherwise provided for in the applicable Supplemental Declaration, Benefited Property Assessments shall be levied against the Assessable Lots within the Benefited Property Assessment Area at a uniform amount per Assessable Lot. If the Board determines during any Assessment Period that any Benefited Property Assessment is, or will, become inadequate to pay all Association Expenses to be paid by the Benefited Property Assessment for any reason, including, without limitation, nonpayment of Benefited Property Assessments by Owners, the Board may increase the Benefited Property Assessment for that Assessment Period and the revised Benefited Property Assessment shall commence on the date designated by the Board.

6.6 Reduced Assessments; Deficiencies.

(a) A Builder shall be obligated to pay only twenty-five percent (25%) of the Regular Assessments attributable to any Lot owned by such Builder until the earliest of: (i) the date on which a certificate of occupancy or similar permit is issued by the Town for the Residence on that Lot; or (ii) two (2) years after the Lot was first conveyed by Declarant to the first Builder to acquire that Lot. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of Assessment during any Assessment Period, the Regular Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

(b) The Lots owned by a Declarant are not Assessable Lots and therefore Declarant is exempt from payment of Regular Assessments on Lots owned by the Declarant. If a Lot ceases to be owned by Declarant and therefore becomes subject to Assessment during any Assessment Period, the Assessment shall be prorated on the basis of the number of days in the Assessment Period that the Lot is not owned by Declarant.

(c) Prior to the first Assessment Period, the Declarant and each Builder shall pay to the Association such funds ("**Deficiency Payments**") as may be necessary to pay all Association Expenses of the Association as they become due. From and after the first Assessment Period, the Declarant and each Builder paying reduced assessments pursuant to Section 6.6(a) above shall pay such Deficiency Payments as may be necessary, when added to the Regular Assessments, to pay all Association Expenses of the Association as they become due. From and after the first Assessment Period, in no event shall the Declarant or any Builder be obligated to contribute funds to the Association in excess of the amount of Regular Assessments that would have been payable by the Declarant or Builder if the Lots owned by the Declarant or Builder had been assessed as Assessable Lots and at the full rate of Regular Assessment. Any Deficiency Payments shall be allocated among Declarant and the Builders on the basis of the respective number of Lots owned by each of them as of the date that the Board determines payment is necessary under this Section. Payments under this Section shall be made by Declarant and Builders on such basis as the Board may determine from time to time, but in no event more often than monthly or less often than annually. Any estimated payment by the Declarant or the Builders in excess of such Person's actual obligation for Deficiency Payments shall, at Declarant's option, be credited toward payment of Declarant's and such Builder's next due Deficiency Payment or refunded to the applicable payor.

6.7 Assessment Period. The period for which the Regular Assessment and Benefited Property Assessments shall be levied shall be the calendar year, except that the first Assessment Period shall commence on the first day of the first month after the conveyance of the first Lot to a Purchaser or such other date as may be selected by the Board of Directors and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period, including the Assessment Period for Additional Property.

Notwithstanding anything stated to the contrary herein, upon annexation of any Additional Property, unless otherwise provided in the Declaration of Annexation, the Owners of Lots within the annexed Additional Property shall have no obligation to pay Assessments until the first Lot within the annexed Additional Property is conveyed to a Purchaser, or the first Common Area tract within the annexed Additional Property is transferred to and accepted for maintenance by the Association, whichever is earlier.

6.8 Rules Regarding Billing and Collection Procedures. Regular Assessments and Benefited Property Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of

the Association to send a bill to an Owner shall not relieve any Owner of such Owner's liability for any Assessment or charge under this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

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

(a) Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of ten percent (10%) per annum or such other rate of interest as may be established by the Board from time to time. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

(b) The Association shall have a lien on each Lot for any Assessment levied against that Lot from the time the Assessment becomes due and for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments. The Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may be foreclosed in the same manner as a mortgage on real estate. Fees, charges, late charges, monetary penalties and interest charged pursuant to Arizona Revised Statutes, other than charges for late payment of Assessments, are not enforceable as Assessments under this Section 6.9. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment of the Assessment becomes due. The Association has a lien for fees, charges, late charges (other than charges for late payment of Assessments), monetary penalties or interest charged pursuant to Arizona Revised Statutes after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the records of the County Recorder of Pima County, Arizona, as otherwise provided by law. The Association's lien for monies other than for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may not be foreclosed and is effective only on conveyance of any interest in the Lot. The recording of this Declaration constitutes record notice and perfection of the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Association's lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments which are secured by the Association's lien. If the Association records a notice of lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

(c) The Assessment Lien shall have priority over all liens or claims except for: (1) liens and encumbrances Recorded before the Recording of this Declaration; (2) liens for real estate taxes and other governmental assessments and charges; and (3) the lien of any First Mortgage or seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

(d) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments and any other sums due to the Association in any manner allowed by law including, but not limited to: (1) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien; or (2) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.10 Purposes for which Association's Funds May Be Used. The Association may use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the purpose of any of the following: (a) discharging and performing the Association's duties and obligations under the Community Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Community Documents or applicable law; (c) providing for promotion activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Project and the Owners, Lessees and Residents; (d) contracting for services (including, without limitation, cable television) to be provided to Owners, Lessees and Residents; (e) providing the Design Review Committee with such funds as may be requested by the Design Review Committee; and (f) taking such other action as the Association deems necessary, appropriate or desirable for the management and administration of the Association or for the benefit of the Association or of the Project.

6.11 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Regular Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the financial security of the Association and the accomplishment of its purposes.

6.12 Contribution to Reserves.

(a) Except as otherwise provided in this Section, each Purchaser shall pay to the Association, immediately upon becoming the Owner of a Lot, a contribution in the amount of one-sixth (1/6th) of the amount of the annual Regular Assessment (the "**Reserve Contribution**") to the reserves to be established pursuant to Section 6.13. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but following the expiration of the Declarant Control Period the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the Eligible Votes. The Reserve Contribution shall be deemed a contribution to the capital of the Association.

(b) No Reserve Contribution shall be payable with respect to the following: (1) the transfer or conveyance of a Lot by devise or intestate succession; (2) a transfer or conveyance of a Lot from the Declarant to a Builder; (3) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (4) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution; or (5) the transfer or conveyance of a Lot as a result of a trustee's sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. 33-741, et seq.

6.13 Reserves. The Board shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of the Association Responsibility. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 6.12 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "**Reserve Account**") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. To assist the Board in determining the appropriate amount of reserves, the Board shall obtain a reserve study at least once every three years, which study shall at a minimum include the following: (a) identification of the major components of the Project which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

6.14 Transfer Fee. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time

to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C.

6.15 Contribution to Working Capital.

(a) Except as otherwise provided in this Section, each Purchaser of a Lot shall pay to the Association, immediately upon becoming the Owner of a Lot, a contribution in the amount of one-sixth (1/6th) of the amount of the annual Regular Assessment (the "**Working Capital Contribution**"). The Working Capital Contributions may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration including the establishment of reserves. The Board of Directors may from time to time thereafter increase or decrease the amount of the Working Capital Contribution, but following the expiration of the Declarant Control Period the amount of the Working Capital Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the Eligible Votes. The Working Capital Contribution shall be deemed a contribution to the capital of the Association.

(b) No Working Capital Contribution shall be payable with respect to the following: (1) the transfer or conveyance of a Lot by devise or intestate succession; (2) a transfer of a Lot from the Declarant to a Builder; (3) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (4) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Contribution; or (5) the transfer or conveyance of a Lot as a result of a trustee's sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. 33-741, et seq.

ARTICLE 7 **MAINTENANCE**

7.1 Areas of Association Responsibility. The Association shall be responsible for the management, operation and Maintenance of all Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate Maintenance of all Areas of Association Responsibility, but the Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility

without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management, operation or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon.

7.2 Lots. Each Owner of a Lot shall be responsible for the Maintenance of his Lot, and all buildings, Residences, landscaping or other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, which is an Area of Association Responsibility. All buildings, Residences, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Design Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property. All Lots upon which no Residence has been constructed shall be maintained in an attractive manner and shall be maintained such that weeds are trimmed on a regular basis.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for Maintenance of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such Maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.4 Improper Maintenance and Use of Lots. In the event (a) any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project, (b) any portion of a Lot is being used in a manner which violates the Community Documents, or (c) the Owner of any Lot is failing to perform any of its obligations under the Community Documents, the Board may give notice to the offending Owner of the corrective action that must be taken and the date by which the corrective action must be completed. If the required corrective action is not completed by the completion date established by the Board, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.5 Boundary Walls.

(a) Each wall or fence which is located between two (2) Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section, the general rules of law regarding boundary walls shall apply.

(b) The Owners of contiguous Lots who share a boundary wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. In addition to meeting the other

requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary wall shall first obtain the written consent of the adjoining Owner(s).

(c) Each Owner shall maintain the exterior surface of a boundary wall facing such Owner's Lot.

(d) Except as otherwise provided in this Section, the Owners of contiguous Lots who share a boundary wall shall each pay fifty percent (50%) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for fifty percent (50%) of such cost. In the event that any boundary wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners who share the boundary wall. The right of any Owner to payment from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

(e) In the event any boundary wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share such boundary wall for so long as the boundary wall exists.

7.6 Maintenance of Walls other than Boundary Walls. Any wall (including a view wall) which is placed on the boundary line between a Lot and either an Area of Association Responsibility or a public right-of-way shall be maintained, repaired and replaced by the Association, except that (i) if any such wall is damaged or destroyed through the acts of an Owner, his agents, tenants, licensees, guests or family (regardless of whether such acts are negligent, willful or otherwise), then the Association shall be entitled to recover from the Owner of the Lot the cost to repair and/or replace such wall, including, without limitation, by imposition and collection of an Enforcement Assessment, and (ii) the Owner shall be responsible for painting and maintenance of the surface of the wall which faces the Owner's Lot. In the event any such wall encroaches upon the Area of Association Responsibility, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be, for so long as the wall exists.

7.7 Construction Activities. Normal construction activities and parking in connection with the Construction or Modification of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration. Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Design Review Committee. The

Design Review Committee may also require screening of said storage areas. Each Owner shall keep such Owner's Lot, as well as surrounding areas of the Project, including, without limitation, all pedestrian and road rights-of-way and drives, reasonably clean and clear of equipment, building materials, dirt, debris and similar materials in connection with or related to construction activities by or for the benefit of such Owner. Each Owner also shall make reasonable efforts to protect from damage, and in any event to promptly repair or rebuild, any buildings, structures, landscaping or other Improvements (including, without limitation, any improvements that are, or are intended to be, Common Area, Neighborhood Common Area, Areas of Association Responsibility or owned and/or maintained by the Town or any political subdivision or utility provider) that are damaged or destroyed through the act of any Owner or an Owner's Agent in connection with or related to construction activities by or for the benefit of such Owner, whether or not such act is negligent or otherwise culpable.

7.8 Installation of Landscaping. Within one hundred twenty (120) days after the date on which a Lot is first conveyed to a Purchaser other than a Builder, landscaping must be installed and substantially completed in the front yard and side yard of the Lot, and in the rear yard of any Lot that is Visible From Neighboring Property. All landscaping in the front yard and side yard, and all landscaping in any portion of the rear yard which is Visible From Neighboring Property must comply with the Design Guidelines and must be approved by the Design Review Committee, and any alterations or modifications made to the landscaping of a Lot as originally installed must be approved in advance by the Design Review Committee. If any Owner does not install and complete approved landscaping within the applicable time required by this Section, the Association, after giving the Owner thirty (30) days written notice to cure any such default, shall have the right (but not the obligation) to cause the necessary landscaping to be installed, and in such event, the Owner shall pay the Association, upon demand, all costs incurred by the Association in connection with the installation of the landscaping, together with interest thereon at the rate of fifteen percent (15%) per annum.

ARTICLE 8

USE AND OCCUPANCY RESTRICTIONS

8.1 Residential Use. All Lots shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that the Owner, Lessee or other Resident of a Residence may conduct a business activity within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (c) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Lessees or Residents in the Project; (d) the use of the Residence for trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (f) the trade or business is conducted by a Resident or Residents of the Residence with no employee working in or from such Residence who is not a Resident thereof; (g) the volume of vehicular or

pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) the use of the Residence for a trade or business does not violate any other provision of the Community Documents. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

8.2 Nuisances. No trash or debris of any kind shall be placed or permitted to accumulate on any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No condition shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property. No Person shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind.

8.3 Animals.

(a) No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that a reasonable number of dogs, cats or small birds or animals which are commonly accepted household pets may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have the authority to determine (i) whether a particular animal or bird is permitted to be kept on a Lot pursuant to this Section and (ii) what is a reasonable number of dogs, cats or small birds or animals which are commonly accepted household pets for any particular Lot, and the Board's determination shall be final. All dogs, cats, birds or animals permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

(b) No dog, cat, bird or animal permitted to be kept on a Lot pursuant to this Section shall be allowed to become a nuisance. No structure for the care, housing or confinement of any dog, cat, bird or animal permitted to be kept on a Lot pursuant to this

Section shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular dog, cat, bird or animal permitted to be kept on a Lot pursuant to this Section is a nuisance. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

(c) The Board may adopt rules and regulations further restricting and governing animals within the Project, which rules may include, without limitation rules providing for the removal from the Project of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Residents.

8.4 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot. All machinery or equipment as permitted above shall be stored as to not be Visible From Neighboring Property, except for machinery and equipment used for Construction or Modification of Improvements on a Lot, which shall be stored per Section 7.7.

8.5 Vehicles and Parking.

(a) No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property.

(b) Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area. No Motor Vehicles designed or used for carrying persons, merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents. Permitted Motor Vehicles may be parked on Lots or Common Area only in accordance with the provisions of this Section.

(c) A Permitted Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage situated on the Lot to the extent space is available in the garage for the parking of such Permitted Motor Vehicles. If space is not available in the garage, then the Permitted Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot. Permitted Motor Vehicles owned or leased by an

Owner, Lessee or Resident of a Lot may only be parked on a driveway extension constructed with the approval of the Design Review Committee if space for the parking of such Permitted Motor Vehicles is not available either in the garage or in the driveway constructed as part of the initial construction or Improvements on the Lot. The parking of a Permitted Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot on a driveway extension is also subject to such rules and regulations as may be adopted by the Board.

(d) No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot for a maximum of seven (7) days.

(e) Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident may be parked in the driveway on a Lot only for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

(f) No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on any part of the Common Area. No inoperable Motor Vehicle may be stored or parked on any part of the Common Area.

(g) The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the streets and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board of Directors, the provisions of this Section shall control.

8.6 Garages. Garages shall not be converted to living spaces or altered or used for purposes which would prevent the use of the garage for the parking of the number of vehicles for which it was designed, except that the Declarant or a Builder may use a garage in one or more model homes for a sales office and/or a construction office. The interior of all garages shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

8.7 Rooftop HVAC Equipment; Solar Energy Device. No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Residence or other building so as to be Visible From Neighboring Property. No solar energy device shall be installed on the roof of any Residence or elsewhere on a Lot so as to be Visible From Neighboring Property without the prior written approval of the Design Review Committee. The Association or the Design Review Committee may adopt reasonable rules regarding the placement of a solar energy device on the roof of a

Residence or elsewhere on a Lot if such rules do not prevent the installation, impair the functioning of the solar energy device or restrict its use or adversely affect the cost or efficiency of the device. The restrictions in this Section shall be subject to any limitations imposed by law.

8.8 Basketball Goals and Backboards. No portable basketball goals or backboards may be kept or stored on a Lot so as to be Visible From Neighboring Property. Permanent basketball goals or backboards attached to a free standing pole may be constructed, installed or maintained on a Lot, provided the location, design, material and color of the pole and the basketball goal or backboard are approved by the Design Review Committee and they are used in accordance with the Design Guidelines and Association Rules, both of which may govern the hours of use and placement thereof.

8.9 Playground Equipment. No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Design Review Committee.

8.10 Rental of Lots. No Owner may lease less than his entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Community Documents and that any violation of this Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease. There shall be no subleasing of Residences or assignments of leases. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the time period of the lease including the beginning and ending dates of the tenancy; (b) the name and contact information for each adult occupying the Residence during the lease term; and (c) a description and license plate numbers of the Lessees' vehicles. Any Owner who leases his Lot and the Residence situated thereon must provide the Lessee with copies of this Declaration, the Design Guidelines and the Association Rules. Any lease of a Lot or Residence situated thereon must be for an initial term of at least one (1) month. The Owner shall be liable for any violation of this Declaration, the Design Guidelines or the Association Rules by the Lessees or other persons residing in the Residence and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

8.11 Screening Materials. All screening materials, whether fences, hedges or walls, shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the initial construction of such Improvements by a Declarant or a Builder or as approved by the Design Review Committee pursuant to Article 3.

8.12 Lights. Except as initially installed by the Declarant or a Builder, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Design Review Committee.

8.13 Window Cover Materials. Within one hundred and twenty (120) days of occupancy, each Owner of a Residence shall install permanent window treatments on all windows Visible From Neighboring Property. All window coverings facing the street must show white or beige colors unless otherwise approved in writing by the Design Review Committee. No reflective materials (including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items) and no sheets, bedding or similar items shall be installed or placed upon the exterior or interior of any windows of a Residence without the prior written approval of the Design Review Committee. Except as provided in this Section, no enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence shall be constructed or installed without the prior written consent of the Design Review Committee.

8.14 Trash Containers and Collection. No trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers on a Lot be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All trash shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

8.15 Temporary Occupancy and Temporary Buildings. No trailer, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the Construction or Modification of Improvements approved by the Design Review Committee shall be removed immediately after the completion of Construction or Modification, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee.

8.16 Antennas. Except for antennas, satellite dishes and other over-the-air receiving devices covered by the FCC rules governing Over-the-Air Reception Devices; Television Broadcast Service and Multi-channel Multipoint Distribution Service (the "FCC Rule"), no antenna for the transmission or reception of television or radio signals or for access to the internet shall be installed on any Lot unless approved by the Design Review Committee. Any antenna, satellite dish or other receiving device covered by the FCC Rule may be installed on a Lot without the prior approval of the Design Review Committee provided the antenna, satellite dish or receiving device is placed inside a Residence or other Building or is placed on the portion of the Lot which is the least Visible From Neighboring Property and does not interfere with the viewer's ability to install, maintain or use the antenna, satellite dish or receiving device. The Design Review Committee shall have the right to adopt rules and regulations with respect to the installation and placement of antennas, satellite dishes and other receiving devices; provided, however, that the Design Review Committee shall not impose or enforce any rule or regulation which is inconsistent with or prohibited by the FCC Rule.

8.17 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the Construction or Modification of Improvements approved by the Design Review Committee.

8.18 Signs. No signs whatsoever (including, but not limited to, "for sale" or "for lease" signs) may be erected, posted or displayed on any Lot in a location that is Visible From Neighboring Property without the prior written approval of the Design Review Committee, except for the following: (a) signs constructed or erected by the Declarant or by the Association and (b) signs which the Association is required by applicable law to permit to be displayed on a Lot, but the Association may regulate the size, location, design, content and appearance of such signs to the extent permitted by law.

8.19 Drainage. No Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the Town.

8.20 Flags and Flagpoles. Except for flags that cannot be prohibited by law, no flag may be displayed on a Lot if the flag is Visible From Neighboring Property without the prior written approval of the Design Review Committee. The Design Review Committee may adopt reasonable rules and regulations regarding the placement and manner of display of flags, including flags that cannot be prohibited by law. The Association may adopt rules and regulations regulating the location and size of flagpoles, limiting an Owner or Resident to displaying no more than two (2) flags at once and limiting the height of a flagpole to no more than the height of the rooftop of the Residence located on the Lot on which the flagpole is installed.

ARTICLE 9 **DISPUTE RESOLUTION**

9.1 Agreement to Resolve Certain Disputes Without Litigation. All Bound Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 9.

9.2 Notice of Claim. Any Bound Party having or alleging to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to

resolve the Claim. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against the Declarant or any other Bound Party which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of any Declarant or other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or other Bound Party to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the claim against a Declarant or other Bound Party and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Declarant or other Bound Party and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action against the Declarant or other Bound Party, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or other Bound Party, and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Arizona Revised Statutes (a "**Licensed Professional**"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Arizona Revised Statutes.

9.3 Mediation. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("**Termination of Negotiations**"), the Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("**AAA**") or such other independent mediation service agreed to by the Claimant and Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation Notice**"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

9.4 Binding Arbitration.

(a) In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 9.4. If the Claimant fails to timely submit the

Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 9.4. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration.

(b) If the Claimant submits the Claim to binding arbitration in accordance with this Section 9.4, the arbitration shall be conducted by a single arbitrator in accordance with the AAA Commercial Arbitration Rules, or such other AAA rules as the AAA determines to be applicable (the "**AAA Rules**") and the Arizona Revised Uniform Arbitration Act (the "**Arbitration Act**"). In the event of any conflict or inconsistency between the Arbitration Act and the AAA Rules, the Arbitration Act shall control. A Respondent may join as a party to the arbitration any Bound Party who may be liable to the Respondent or the Claimant with respect to the Claim.

(c) The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall award the prevailing party reasonable attorney fees and reasonable expenses of the arbitration. The Arbitrator shall not grant any damages or other remedy not permitted by this Declaration or grant any damages or other remedy which could not be granted by a court.

9.5 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by the Declarant or other Bound Party of a Claim Notice, the Declarant or other Bound Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residence constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant or other Bound Party, to correct, repair and/or replace any Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Declarant or other Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section shall be construed to impose any obligation on the Declarant or other Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant or other Bound Party is not otherwise obligated under applicable law or any limited warranty provided by the Declarant or other Bound Party in connection with the sale of the Lots and/or the Improvements constructed thereon. The right

of the Declarant and other Bound Parties to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Declarant or other Bound Party. In no event shall any statutes of limitations be tolled during the period in which the Declarant or other Bound Party conducts any inspection or testing of any Alleged Defects.

9.6 Use of Funds. In the event the Association recovers any funds from a Declarant or any other Person as a result of a claim involving an Alleged Defect, the funds shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any excess funds shall be paid into the Association's reserve fund.

9.7 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 9.2.

9.8 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 9.4. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

9.9 Federal Arbitration Act. Because many of the materials and products that will be incorporated into the Residences and other Improvements constructed on the Lots will be manufactured in other states, the development and conveyance of the Lots evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et. seq.) now in effect or as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

9.10 Conflicts. In the event of any conflict between this Article 9 and any other provision of the Community Documents, this Article 9 shall control. In the event of any conflict between the provisions of this Article 9 and the terms of any express warranty provided to a Purchaser by the Declarant or a Builder or any third party home warranty company in connection with the purchase of a Lot from the Declarant or a Builder, the provisions of the express warranty shall control; provided, however, that if the Claim is being asserted by the Association, the approval of the members of the Association required by Section 9.7 must be

obtained prior to the Association demanding arbitration of the Claim or filing any legal action with respect to the Claim.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 9 AND WAIVES THE RIGHT TO PURSUE ANY BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 9. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 9, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF AN OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY BOUND PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 9 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE PIMA COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE 9 ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER IN THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THE RESPECTIVE SUCCESSORS AND ASSIGNS.

ARTICLE 10
INSURANCE

10.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

(b) Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(d) Directors and officers liability insurance providing coverage in an amount determined by the Board, but not less than \$1,000,000;

(e) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

(f) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (1) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (2) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or

be a condition to recovery on the policy; (3) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (4) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (5) statement of the name of the insured as the Association; and (6) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy. The premiums for any insurance obtained by the Association pursuant to this Section 10.1 shall be included in the budget of the Association and shall be paid by the Association.

10.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article 10 shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article 10 may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

10.3 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article 10, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 10.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

10.4 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance.

ARTICLE 11 **GENERAL PROVISIONS**

11.1 Enforcement.

(a) The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to the following:

(1) imposing reasonable monetary fines after notice and an opportunity to be heard by the Board is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;

(2) suspending an Owner's right to vote;

(3) suspending any Person's right to use any recreational facilities situated on the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(4) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner fails to pay any Assessment or other charge owed to the Association within fifteen (15) days after demand for payment is made;

(5) exercising self-help or taking action to abate any violation of the Community Documents;

(6) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot that is in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right (but not the obligation) to enter the Lot, remove the violation and restore the Lot to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(7) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in the Project;

(8) towing vehicles which are parked on Common Area in violation of this Declaration or the Association Rules;

(9) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled; or

(10) record a written notice of a violation by any Owner, Lessee or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; and (iv) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

(b) The Association may elect not to take any enforcement action with respect to a particular violation of the Community Documents if the Board determines, in its sole discretion, that because of the strength of any possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy.

(c) Each Owner, the Design Review Committee and the Declarant shall have the right to enforce this Declaration in any manner available at law or in equity. The failure of the Association, the Declarant, the Design Review Committee or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association, the Declarant, the Design Review Committee or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association, the Declarant, the Design Review Committee or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

11.2 Duration; Termination. This Declaration, as it may be amended pursuant to Section 11.3, shall run with the land and bind the Project and be in full force and effect in perpetuity unless terminated as provided in this Section. This Declaration may be terminated at any time if such termination is approved by the following: (a) the Declarant so long as the Declarant or any Affiliate of the Declarant owns any part of the Property or Additional Property; and (b) by the Owners holding ninety percent (90%) or more of the Eligible Votes. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.3 Amendments.

(a) This Declaration may be amended at any time by the affirmative vote or written consent of Members holding not less than sixty-seven percent (67%) of the Eligible Votes. Any amendment to this Declaration approved by the Members also must be approved in writing by the Declarant if the Declarant or any Affiliate of the Declarant owns any part of the Property or Additional Property at the time the amendment is approved by the Members.

(b) During the Declarant Control Period, the Declarant shall have the right to unilaterally amend the Declaration to: (1) comply with or make the Declaration consistent with any applicable federal, state or local law, ordinance or regulation, whether existing at the time the Declaration was Recorded or enacted after the Declaration was Recorded; or (2) correct any error or inconsistency or resolve any ambiguity in the Declaration.

(c) Any amendment approved by the Members pursuant to Section 11.3(a) shall be signed by the President or Vice President of the Association and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

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

11.4 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of the Community Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board'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. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or the Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and Design Guidelines or the Association Rules, the Bylaws shall control. Except for judicial construction,

the Design Review Committee shall have the exclusive right to construe and interpret the Design Guidelines. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Design Review Committee's construction or interpretation of the Design Guidelines shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

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

11.6 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.

11.7 Laws, Ordinances and Regulations. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Design Review Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

11.8 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

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

11.11 Notices. All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been

duly given and served if delivered personally, sent by Federal Express or other overnight delivery service, sent by United States mail, postage prepaid or sent by fax, electronic mail or other form of wireless communication, as follows: (a) if to an Owner, at the mailing address, email address or fax number which the Owner provides to the Secretary of the Association for the purpose of notice or, if no such mailing address, email address or fax number is provided, at the street address of the Lot of such Owner; or (b) if to the Association, at the principal place of business of the Association as shown on the records of the Arizona Corporation Commission or at such other mailing address, email address or fax number as may be designated by the Association in a written notice to the Owners pursuant to this Section. Notice given by personal delivery, overnight delivery service, fax, electronic mail or other form of wireless communication shall be deemed to have been received by the Person to whom the notice was addressed when the notice is actually received. A notice given by United States mail shall be deemed to have been received by the Person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Lot is owned by more than one Person, notice to one of the Owners shall constitute notice to all Owners of the same Lot.

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RB Land Barnett Partners, LLC,
an Arizona limited liability company

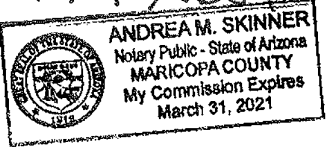
Randall M. Bury
Randall M. Bury, Manager

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this 27 day of September, 2018, by Randall M. Bury, the
Manager of RB Land Barnett Partners, LLC, an Arizona limited liability company, on behalf of the
limited liability company.

Andrea M. Skinner
Notary Public

My Commission Expires:

3/31/2021


LENDER CONSENT

The undersigned, in its capacity as the "Beneficiary" under that certain Deed of Trust and Assignment of Rents recorded on January 14, 2016 as Sequence No. **2016-0140496**, Official Records of the Pima County Recorder, Pima County, Arizona (as amended from time to time, the "**Deed of Trust**"), hereby ratifies, confirms and approves the terms and conditions of the foregoing Declaration. Further, the undersigned, in its capacity as the "Beneficiary" under the Deed of Trust, hereby agrees that the Declaration shall not be modified, disturbed or extinguished by any judicial or statutory foreclosure of the Deed of Trust, or deed in lieu thereof, and that any purchaser or taker under the Deed of Trust, by foreclosure or otherwise, shall take title to the real property encumbered by the Deed of Trust subject to the Declaration.

Dated this 2nd day of Oct, 2018.

Barnett Family Trust Agreement dated August 19, 1993

By: Elinor Louise Barnett Under Power of Attorney
Elinor Louise Barnett, Co-Trustee

By: Fred C. Barnett
Fred C. Barnett, Co-Trustee

State of Arizona)
) ss.
County of Pima)

Acknowledged before me this 2nd day of Oct, 2018, by Elinor Louise Barnett and Fred C. Barnett, as Co-Trustees of the Barnett Family Trust Agreement dated August 19, 1993, for and on behalf of the Trust

[Signature]
Notary Public



EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That portion of the West half of the Northwest quarter of Section 28, Township 11 South, Range 11 East, Gila and Salt River Base and Meridian, Town of Marana, Pima County, Arizona, more particularly described as follows:

Commencing at a brass disk marking the West quarter corner of said Section 28, from which the Northwest corner of said Section 28 bears North 00 degrees 29 minutes 31 seconds West, a distance of 2632.80 feet;

Thence North 00 degrees 29 minutes 31 seconds West, along the West line of the Northwest quarter of said Section 28, a distance of 25.08 feet;

Thence North 89 degrees 30 minutes 29 seconds East, a distance of 30.00 feet to a point on the East right-of-way line of Sanders Road, said point being the **Point of Beginning**;

Thence North 00 degrees 29 minutes 31 seconds West, along said East right-of-way line of Sanders Road, on a line parallel with and 30 feet East of said West line of the Northwest quarter, a distance of 2277.71 feet;

Thence North 89 degrees 21 minutes 35 seconds East, a distance of 370.00 feet;

Thence North 00 degrees 29 minutes 31 seconds West, a distance of 87.00 feet;

Thence North 89 degrees 21 minutes 35 seconds East, a distance of 919.04 feet, to a point on the East line of the West half of the Northwest quarter of said Section 28;

Thence South 00 degrees 30 minutes 57 seconds East, along said East line of the West half of the Northwest quarter of Section 28, a distance of 2364.53 feet to a point on the Northerly right-of-way line of Barnett Road;

Thence along said Northerly right-of-way line of Barnett Road, parallel with and 25.00 feet North of the South line of the Northwest quarter of said Section 28, South 89 degrees 21 minutes 07 seconds West, a distance of 1290.03 feet to the **Point of Beginning**.