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TFNTI  
OT IRONWOOD LLC  
2940 N SWAN RD 212  
TUCSON AZ 85712



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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
OASIS-GOLF LINKS**

(Replacing Instrument Recorded in Docket 13562, Page 457, Instrument No. 20090970162)

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DECLARATION OF COVENANTS, CONDITIONS,  
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(Replacing Instrument Recorded in Docket 13562, Page 457, Instrument No. 20090970162)

This Declaration is made this 5th day of August, 2009, by **Fidelity National Title, under Trust No. 60,267**, and not otherwise, hereinafter referred to as "Declarant".

**RECITALS:**

A. Declarant is the owner of certain real property in the County of Pima, State of Arizona, which is more particularly described as:

All of the real property which is the subject of the plat of subdivision for Oasis-Golf Links, Lots 1-46 & Common Areas "A" and "B-1" Thru "B-3" and "C-1" thru "C-3" and "D-1 Thru D-2", an RCP Subdivision and recorded in the Office of the County Recorder, Pima County, Arizona, in Book 63 of Maps and Plats at page 45

which real property shall hereinafter be referred to as the "Properties".

B. On or about June 19, 2007 Fidelity National Title, under Trust No. 60,267, as the prior declarant, executed that certain Declaration of Covenants, Conditions, Restrictions and Easements for Oasis Golf Links, which was recorded in the official records of Pima County, Arizona, on January 25, 2008, in Docket 13229, Page 1352 and Instrument No. 20080170324 ("Prior Declaration").

C. On or about May 20, 2009 Fidelity National Title, under Trust No. 60,267, as the prior declarant, executed that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Oasis Golf Links, which was recorded in the official records of Pima County, Arizona, on May 20, 2009, in Docket 13562, Page 457 and Instrument No. 20090970162 ("Prior Declaration").

D. Declarant and/or the Developer (as hereinafter defined) proposes to construct improvements upon the Properties and to sell and convey the same, subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitude's, charges and liens hereafter set forth, each of which is for the benefit of the Properties and the subsequent owners thereof.

**WITNESSETH:**

NOW, THEREFORE, Declarant hereby declares that the Properties are and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitude's, charges and liens

(hereinafter collectively referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. The Restrictions set forth herein shall run with the Properties, shall be binding upon all persons having or acquiring any interest therein, and shall inure to the benefit of, be binding upon and enforceable by all Owners, Declarant, the Association and their successors in interest. This Declaration is intended to, and shall completely amend, restate and replace the Prior Declaration.

No provision contained herein shall be construed to prevent or limit Declarant's or Developer's right to complete development of the Properties and construction of improvements thereon, nor Declarant's or Developer's right to maintain model homes, construction, sales or leasing offices, nearby parking areas or similar facilities on the Properties, nor Declarant's or Developer's right to post signs incidental to construction, sales or leasing, nor Declarant's or Developer's right to do anything that is reasonably necessary and proper for the full development of the Properties.

## ARTICLE I

### DEFINITIONS

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

1.1 "Articles" shall mean the Articles of Incorporation of the Association and amendments thereto which are or shall be filed in the Office of the Arizona Corporation Commission.

1.2 "Association" shall mean and refer to The Mesquites on Pantano Homeowners Association, Inc., its successors and assigns.

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

1.4 "By-Laws" shall mean the By-Laws of the Association, together with any amendments thereto.

1.5 "Common Area" or "Common Areas" shall mean all real property and improvements thereon designated as Common Area on the Plat, owned and controlled by the Association for the common use and enjoyment of the Owners.

1.6 "Declarant" shall mean Fidelity National Title, under Trust No. 60,267, and not otherwise, and its successors or assigns who have been designated in writing by Declarant as the successor to all or a portion of Declarant's rights hereunder and who own one or more Lots in the Properties.

1.7 "Declaration" shall mean and refer to this instrument and any amendment thereto or restatement thereof.

1.8 "Developer" shall mean OT Builders L.L.C., dba Mesquite Homes an Arizona Limited Liability Corporation. An assignment by recorded instrument of all of Developer's rights

shall vest in the assignee all of Developer's rights hereunder on the same terms that they were held by Developer hereunder. A recorded assignment of part of Developer's rights shall vest in the assignee the specific Developer's right(s) named in the instrument of assignment on the same terms they were held by Developer. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Developer's rights shall not deprive the assignor of any protection, indemnity or freedom from liability which would otherwise exist under this Declaration if the assignor had retained all of Developer's rights hereunder.

**1.9 "Drainage Easement"** shall mean the drainage easements shown on the Plat or by separate recorded instruments.

**1.10 "Dwelling Unit" or "Unit"** shall mean any improvements placed within the confines of any Lot.

**1.11 "First Mortgagee"** shall mean the holder of any Mortgage under which the interest of any Owner of a Lot is encumbered and which mortgage has first and paramount priority (referred to herein as a "First Mortgage"), subject only to the lien of general or ad valorem taxes and assessments and such other matters as are recognized in such First Mortgage as permitted exceptions.

**1.12 "Lot"**, unless otherwise indicated by the context, shall first mean and refer to any numbered parcel of real property within the Properties shown on the Plat, as may be amended, together with the Dwelling Unit, if any, thereon, and in the event of annexation shall include all additional lots annexed and shown on a plat for the annexed land. The term Lot shall also include any Lots combined to become a single lot, in which case the Lots so combined shall be considered one lot for all purposes, including voting and assessments.

**1.13 "Member"** shall mean and refer to every person and/or entity who holds membership in the Association ("Membership") pursuant to Section 2.1 hereof.

**1.14 "Mortgage"** shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

**1.15 "Owner" or "Homeowner"** shall mean and refer to (1) the record owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same has merged) of any Lot, or (2) the purchaser of a Lot under a recorded contract for the sale of real property as set forth in Arizona Revised Statutes Section 33-741 et seq. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, or a tenant of an owner as defined above, or a purchaser or vend under any executory contract of sale which has not been fully consummated with a deed to the purchaser recorded in the office of the County Recorder of Pima County, Arizona.

**1.16 "Person"** shall mean a natural individual, corporation or other entity with the legal right to hold title to real property.

**1.17 "Plat"** shall mean the plat of the real estate that is subject to this Declaration recorded in the office of the County Recorder of Pima County, Arizona, and any amendment thereto or resubdivision thereof.

1.18 "Properties" shall mean and refer to the real estate described herein defined as such above.

1.19 "Restrictions" shall mean the covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth in this Declaration.

1.20 "Rules" shall mean any and all rules adopted by the Board pursuant to the By-Laws.

## ARTICLE II

### ASSOCIATION

2.1 **Membership in the Association.** Each Owner (including Declarant) of a Lot, by virtue of being an Owner, shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to each Lot owned and shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership to a Lot, and then only to the transferee thereof. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Owner thereof. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

2.2 **Voting Rights and Classes of Membership.** The Association shall have two classes of voting membership.

(a) **Class A.** Class A Members shall be all Owners other than Declarant and each such Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners may determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

(b) **Class B.** The Class B Members shall be Declarant and Developer, who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earlier of the following events:

- (1) upon the sale of the last Lot owned by Declarant or Developer, or
- (2) upon the date that Declarant and Developer shall relinquish the Class B Membership by written notice to the Association.

2.3 **Purpose of Association.** The Association is a non-profit corporation which will serve as the governing body for all Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, the By-Laws, and the Rules.

**2.4 Rights and Responsibilities of Association.** The Association, through the Board of Directors, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall be responsible for the proper and efficient management and operation of the Common Area and any other areas for which it is responsible under the terms of this Declaration or for which it has assumed responsibility (which shall be carried out in its sole and absolute discretion), which shall include, without limitation:

- (a) Maintaining, operating, and rebuilding improvements on the Common Areas;
- (b) Maintaining and landscaping property owned or controlled by the Association, including landscape easements and other easement rights, if any;
- (c) Operating, maintaining, rebuilding and insuring improvements originally constructed by Declarant or Developer or later constructed by the Association on the Common Area;
- (d) Paying real estate taxes, assessments and other charges on the Common Area;
- (e) Insuring all improvements which the Association is obligated to maintain against damage by casualty with such companies and in such limits as provided herein and as the Association deems appropriate;
- (f) Hiring, firing, supervising and paying employees and independent contractors including, but not limited to, workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;
- (g) Maintaining such liability insurance as the Association deems necessary from time to time to protect the Members and the Board of Directors of the Association from any liability caused by occurrences or happenings on or about the Common Area;
- (h) Maintaining workmen's compensation insurance for the employees of the Association, if any;
- (i) Purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;
- (j) Establishing and maintaining such adequate cash reserves as the Association may, in its sole and absolute discretion, deem reasonably necessary for the periodic maintenance, repair and replacement of the Common Areas and improvements which it is responsible to maintain;
- (k) Providing for and payment of all utility services for the Common Area if deemed appropriate by the Board;

- (l) Entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Properties as a first-class, residential development;
- (m) Granting licenses, easements and other agreements for the use of Common Area;
- (n) Maintaining any personal property owned by the Association; and
- (o) Such other matters as are provided for in this Declaration, the Articles of Incorporation, and the By-Laws.

Notwithstanding any other provision hereof, the Association shall not make or permit any changes, repairs, or modifications to the Common Area or the landscape easements shown on the Plat, or install or construct any improvements thereon that would conflict with any development conditions imposed by the City of Tucson, Arizona or Pima County, Arizona.

**2.5 Articles and By-Laws.** The manner in which the Association holds meetings and attends to other corporate formalities shall be controlled by the provisions of the By-Laws, the Articles and this Declaration, which Declaration shall control in the event of conflict.

**2.6 Board of Directors.** The Board of Directors of the Association shall be elected by majority vote of the total votes cast by both classes of the membership at a meeting attended by a quorum as called for by the By-Laws, except that so long as Declarant retains the Class B membership, Declarant reserves the exclusive right, to appoint the officers and directors of the Association and may do so without calling a meeting of members.

**2.7 Rules and Regulations of the Association.** The Board shall be empowered to adopt, amend or repeal from time to time such rules and regulations as it deems reasonable and appropriate (collectively the "Rules"), which shall be binding upon all persons subject to this Declaration and shall govern the use and occupancy of the Properties. The Rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area. The Rules may be amended at any special or regular meeting of the Board.

The Rules, as adopted from time to time, are deemed incorporated herein by this reference and shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding upon all persons having any interest in, or making any use of, any part of the Properties, whether or not copies of the Rules are actually received by such persons. References to the covenants and restrictions contained herein shall be deemed to refer also to the Rules (except to the extent the rules are in conflict herewith). The Rules, as adopted, amended or repealed, shall be available for review at the principal office of the Association to each person reasonably entitled thereto. It shall be the responsibility of each person subject to the Rules to review and keep abreast of any changes in the provisions thereof. In the event of any conflict between any provision of the Rules and any provisions of this Declaration, or the Articles

or By-Laws, the provisions of the Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or By-Laws to the extent of any such conflict.

**2.8 Non-Liability of Officials.** To the fullest extent permitted by law, neither Declarant, Developer, the Board, nor any committees of the Association nor any Member thereof, nor any officers, directors or employees of the Declarant, Developer or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, Developer, the Board or such committees or officers reasonably believed to be within the scope of their respective duties or rights.

**2.9 Managing Agent.** All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon ninety (90) days' written notice; provided, however, that the Association may terminate the agreement for cause upon thirty (30) days' written notice. The Association is expressly authorized to contract with Declarant or Developer or an affiliate of Declarant or Developer, to provide management services or to perform other duties of the Association or the Board.

**2.10 Disputes.** In the event of any dispute or disagreement between any Owners or any other persons subject to this Declaration relating to the Properties or any question of interpretation or application of the provisions of this Declaration, the Articles, By-Laws or Rules, this Declaration shall govern and control.

**2.11 Records and Accounting.** The Association shall keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Such books and records, together with current copies of this Declaration, the Articles, By-Laws and Rules, shall be available for inspection by all Owners and First Mortgagees of record at reasonable times during regular business hours.

### ARTICLE III

#### EXTERIOR MAINTENANCE

##### **3.1 Exterior Maintenance, Repair, Up-Keep and Repainting of Lots.**

- (a) **Dwelling Units.** Except as otherwise specifically provided herein, maintenance, repair, upkeep and repainting of Dwelling Units, including all other improvements and landscaping on a Lot, shall be the sole responsibility of each Owner.



All buildings, Dwelling Units, 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 Architectural Control Committee.

All Lots upon which no Dwelling Units building or other structures, landscaping or improvements have been constructed shall be maintained in a weed free and attractive manner.

- (b) **Walls.** Except as otherwise provided herein, each Owner shall maintain, repair and repaint (if applicable), the interior and exterior sides of any walls or fences appurtenant to his or her Lot, except that if such a wall or fence is a common wall or fence, an Owner shall be required to repair and repaint only that portion of the wall or fence exclusively used by that Owner.
- (c) **Plumbing.** Each Owner shall be responsible for sewer blockage, repair, maintenance, replacement and all other matters relating to sewer connection and service of and to all Dwelling Unit plumbing as well as the house connection line from the Dwelling Unit to its connection point in the main collection sewer line in the street.
- (d) **Exterior Lighting.** Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures located within the Owner's Dwelling Unit, or in the Common Area, provided such lighting in the Common Area is metered to the Owner's Dwelling Unit.
- (e) **Failure to Maintain.** Such maintenance, repair and repainting of a Dwelling Unit and other improvements on a Lot shall be undertaken in a manner and with such frequency as shall keep each Owner's Lot in an attractive, well-kept and maintained condition in conformity with all other Lots. In the event any Owner fails to fulfill his or her obligations under this Section, the Association, after approval of two-thirds (2/3) vote of the Board of Directors, shall have the right through its agents and employees, to enter upon the subject property, and to repair, maintain and restore the Lot, including the perimeter yard walls, or fences and any other improvements. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. The Board, in its sole discretion, shall have the right to determine whether or not a Lot is in need of maintenance, repair and upkeep in order to conform to the standards of the general neighborhood of the Properties and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the Lots as a whole will reflect a high pride of ownership.

- (f) **Maintenance of Walls and Landscape Easements and Areas.** The Association shall be responsible for maintaining and repairing the Landscape Easements and the perimeter walls surrounding the Properties as shown on the Plat, and such other walls and unimproved areas within the Properties as designated from time to time by the Board of Directors.
- (g) **Easement for Maintenance.** Each Owner or his or her authorized agent, in order to conduct such maintenance, repair or repainting, shall have the right of entry at reasonable times upon Lots adjacent to such Owner's Lot, provided reasonable notice of such entry is first given by such Owner to the Owner of the involved adjacent Lot. The Association shall have a right of entry and an easement upon each Lot for the purpose of fulfilling its responsibilities hereunder.

**3.2 Maintenance of Common Area.** The Association shall be responsible for maintenance, repair and upkeep of any Common Area improvements including, but not limited to, non-public streets, Common Area Recreation Area, Common Area sidewalks, landscaping, common trash/garbage collection areas, common mail facilities and equipment and parking areas, if any, if constructed on the Common Areas. The Association shall also be responsible for maintenance, repair and upkeep of any non-Common Area improvements if required by the City of Tucson, Arizona.

**3.3 Modifications to Common Area.** Notwithstanding any other provision hereof, the Association shall not make or permit any changes, repairs, or modifications to the Common Area or the Landscape Easements, or install or construct any improvements thereon that would conflict with any re-zoning conditions imposed by the City of Tucson, Arizona.

## **ARTICLE IV**

### **INSURANCE**

**4.1. Insurance Requirements.** The Association shall purchase and maintain at all times the following types of insurance, but only to the extent reasonably available and reasonably priced:

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

The scope of coverage of such policy or policies shall include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction,

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

(c) **Worker's Compensation Insurance.** Worker's Compensation insurance to the extent necessary to comply with any applicable laws.

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

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

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

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

**4.3 Insurance Premiums.** Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and all such insurance coverage obtained by the Board shall be written in the name of the Association.

**4.4 Additional Optional Insurance by Owner.** In addition to the aforesaid insurance required to be carried by the Association, each Owner shall, at his or her own expense, carry any other insurance deemed advisable; however, if available, said policy or policies shall provide that there shall be no contribution or offset between policies of the Association and policies an individual Owner may have in effect.

The Association shall have no duty whatsoever to insure, protect or maintain real or personal property located upon any Lot.

It shall be the individual responsibility of each Owner, at his or her own expense, to provide Owner's liability and property damage insurance, theft and other insurance covering personal and real property of the Owner.

**4.5 Destruction/Insurance Proceeds.** In the event of substantial damage or destruction of any part of the Common Area, no Owner of a Lot or other party shall have priority over a First Mortgagee with respect to the distribution of any insurance proceeds.

**4.6 Condemnation; Destruction.**

**(a) Condemnation.**

- (1) **Taking.** The term "taking", as used in this section, shall mean either (a) condemnation by eminent domain or (b) sale under threat of condemnation.
- (2) **Authority of Board.** In the event of a threatened taking of all or any portion of the Common Area, the Members hereby appoint the Board of the Association and such persons as the Board or the Association may designate to represent all of the Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.
- (3) **Partial Taking.** In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area as provided in Section 4.6.(b).
- (4) **Distribution of Proceeds.** Any awards received on account of the taking shall be paid to the Association and to mortgagees of record, as their interests may appear. In the event of a total taking, the Board may retain any award in the general funds of the Association, and any distribution of the award shall be on a reasonable and equitable basis. Notwithstanding anything to the contrary in this Section, the distribution of any award or awards for a taking of all or any portion of the Common Area shall be subject to the prior rights of mortgagees.

**(b) Destruction.**

- (1) **Duty of Association.** In the event of a partial or total destruction of the Common Area or improvements thereon, except as otherwise provided herein, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as is practicable and in a workmanlike manner. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of mortgagees whose interests may be protected by said policies.
- (2) **Destruction; Proceeds Exceed 80% of Reconstruction Costs.** If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty percent (80%) of the estimated costs of restoration and repair, a special assessment for reconstruction with each Owner contributing a like sum for each

Lot owned, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose, and such assessment shall not require the consent of any specified proportion of the Members.

- (3) **Destruction; Proceeds Less Than 80% of Reconstruction Costs.** If the amount available from the proceeds of insurance policies for such restoration and repair is less than eighty percent (80%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored through application of a special assessment unless such assessment is approved by the vote of two-thirds (2/3) of the Members.

(i) **Use of Hazard Proceeds.** Notwithstanding the foregoing, unless the Owners of at least two-thirds (2/3) of the Lots other than Declarant, and the holders of two-thirds (2/3) of the First Mortgages, have given their prior written approval, the Association shall not be entitled to use hazard proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such improvements.

(ii) **Common Area.** In the event of a determination not to replace or restore the improvements on the Common Area as set forth above, the Common Area shall be cleared and landscaped as open space to be used by the Owners pursuant to the provisions hereof; and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy of uniform special assessment for reconstruction in an amount determined by the Board.

## ARTICLE V

### OWNERSHIP AND USE OF THE COMMON AREA

**5.1 Owner's Easements of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with title to every Lot, subject to the provisions hereof.

**5.2 Conditional Use of Common Area.** Each Owner, his or her family members, licensees, invitees and tenants, or contract purchasers of a Lot, shall be entitled to use the Common Area subject to:

- (a) The provisions of the Articles, By-Laws, this Declaration and the Rules. Each Owner, invitee, licensee, and tenant agrees that in using the Common Area he or she will comply with the provisions of such Articles, By-Laws, this Declaration, and the Rules, as amended or adopted from time to time.

- (b) The right of the Association to charge a reasonable security deposit and clean-up fee for the use of any facility situated upon the Common Area.
- (c) The right of the Association to suspend the right of an Owner to use facilities, if any, of the Common Area for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association's published Rules. Each day an infraction continues to exist is to be deemed a separate infraction.
- (d) The right of the Association to take such actions as are reasonably necessary to protect the Common Areas against foreclosure; and to preclude access to areas which are used for or to house equipment or facilities relating to the use, operation, or maintenance of the Common Areas.
- (e) The right of the Association, in connection with any adopted Rules, to enforce reasonable rules and regulations with respect to the use of the Common Area, including specific provisions with respect to the parking of vehicles thereon.

**5.3 Delegation of Use.** Any Owner may delegate his or her right of enjoyment in the Common Area and facilities to the members of his or her family, his or her tenants or contract purchasers who reside in the Dwelling Unit, subject to such Rules as the Association may, from time to time, establish. Such delegation shall not relieve said Owner of his or her obligations and responsibilities as a Member under the By-Laws, Rules and this Declaration.

**5.4 Damage or Destruction of Common Area.** In the event any Common Area is damaged or destroyed by a willful or grossly negligent act of an Owner or any of his or her guests, tenants, licensees, agents, or members of his or family, such Owner shall be liable therefor to the extent of liability imposed by local law and such Owner does hereby irrevocably authorize the Association to repair the damaged property, and the Association shall so repair the damaged property in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association the amount actually expended for such repairs. Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon such Owner's Lot and shall continue to be a lien until fully paid.

The lien shall be subordinate to any First Mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (but not to exceed the maximum rate permitted by Arizona law). The amount of principal and interest owed by the Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

**5.5 Restriction on Conveyance of Common Areas and Facilities.** The Common Area and facilities owned by the Association may not by act or omission be abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior vote of two-thirds (2/3) of the Members of the Association, except that the Declarant and the Association shall have the right at all times to grant easements over the Common Area for the purpose of constructing,

erecting, operating or maintaining thereon, therein and thereunder: (a) roads, streets, walls, pathways and driveways; (b) temporary overhead or permanent underground lines, cables, wires, conduits or other devices for the transmission of electricity for lights, heating, power, telephone, cable TV and other purposes; and (c) sewers, storm drains and pipes, drainage easements, water systems, water heating and gas lines or pipes.

**5.6 Detention/Retention and drainage Facility Maintenance.** The Association shall be solely responsible for operation, maintenance and liability for any detention, retention and drainage basin(s) and facilities shown as tracts on the Plat (collectively the "Drainage Facilities"). The Association shall have an Arizona registered professional engineer prepare a certified inspection report for the Drainage Facilities at least once a year, and that these regular inspection reports will be on file with the Association for review by City of Tucson, Arizona staff, upon written request. The City of Tucson, Arizona staff may periodically inspect the Drainage Facilities to verify scheduled and unscheduled maintenance activities are being performed adequately. The Association agrees to reimburse the City of Tucson, Arizona for any and all costs associated with maintaining the Drainage Facilities, should the City of Tucson, Arizona notify the Association that it is deficient in its obligation to adequately operate and maintain the Drainage Facilities and the Association fails to take corrective measures.

## ARTICLE VI

### COVENANTS FOR MAINTENANCE ASSESSMENTS

**6.1 Creation of the Lien and Personal Obligation to Pay Assessments.** Each Owner, by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed, agrees and is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements, and (3) individual repair and maintenance assessments, such assessments to be established and collected as hereinafter provided. Any and all assessments levied against a Lot, together with interest thereon from the date of delinquency until paid and any late fees, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys fees, shall be a continuing lien upon the Lot at provided in ARS 33-1807.

Delinquent assessments, together with interest, late fees, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The sale or transfer of a Lot shall not relieve the prior Owner thereof from personal liability to pay delinquent assessments, plus interest, late fees, costs and attorney's fees. Such obligation shall remain the personal obligation of the defaulting Owner. The new Owner, except a First Mortgagee as set forth herein, shall take title to such Lot subject to the lien of the full amount of the delinquent assessment.

**6.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Common Area and for all purposes set forth in the Articles, By-Laws and this Declaration. The Board of the Association may provide that assessments include a reserve fund for maintenance, repairs and replacement of those elements of the Common Area owned by the Association.



### 6.3 Maximum Annual Assessment.

- (a) **Initial Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner which is not a Developer, the maximum annual assessment shall be One Thousand Two Hundred Dollars (\$1,200.00). Subject to the provisions of Subsection 6.3.(b) of this Section, the Board shall each year estimate the total expenses anticipated for the coming year and shall determine the necessary level of reserve balances for ordinary and unexpected expenses, and shall determine the annual assessment necessary to generate the required revenues. The annual assessment determined to be necessary in any given year may be set at any amount less than or up to the maximum annual assessment permitted for such year.
- (b) **Increases in Maximum Annual Assessment.** Subject to Subsection 6.3.(c) of this Section and Section 10.9, the Board shall not, in any given year, increase the maximum annual assessment by an amount greater than (i) twenty percent (20.00%) of the amount of the preceding year's maximum annual assessment or (ii) the percentage increase in the cost of living index of the United States Department of Urban Price Index-All Urban Consumers (1982-84=100) (hereinafter called the "Cost of Living Index Number"), whichever is greater. In the event that said department should fail to publish a comparable Cost of Living Index Number during any such years, but a comparable Cost of Living Index Number shall be published by any governmental agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the maximum annual assessment under the provisions of this Section 6.03.
- (c) **Approval of Membership.** Any increase by the Board in the annual assessment for capital expenditures, other than for repair or replacement, which is greater than the amount permitted under Section 6.3.(b) hereof, must be first approved by the holders of two-thirds (2/3) of the votes of the Membership who vote in person or by absentee ballot at a meeting called for this purpose in accordance with the By-Laws.

**6.4 Special Assessments.** In addition to the annual assessments authorized above, special assessments may be levied by the Board of Directors from time to time for (a) constructing or replacing capital improvements; (b) correcting an inadequacy in the current operating account; (c) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements on the Properties; (d) paying for such other matters as the Board may deem appropriate by a vote of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose and (e) the services and facilities provided for and described in Section 10.9.

**6.5 Individual Assessments.** The Association may also levy and collect from each Owner individual assessments against specific Lots, and shall have a lien therefore, should the

special circumstances of any Lot or Lots require special maintenance, expense or costs to be incurred by the Association for the protection of any of the Properties, Lots or Common Areas, or should the Association be required to perform maintenance or repair upon a Lot or take enforcement action hereunder. Such individual assessments may be levied by action of the Board.

**6.6 Notice and Quorum for an Action Authorized Under Section 6.3 and Section 6.4.** Written notice of any meeting called for the purpose of taking action authorized under Section 6.3 and Section 6.4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or their designated representative entitled to cast two-thirds (2/3) of the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**6.7 Uniform Rate of Assessment; Declarant and Developer Exempt.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, or other assessment period as determined by the Board of Directors from time to time. However, and subject to the limitations set forth in Section 6.3.(b) hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating costs of the Association.

Notwithstanding any provision to the contrary contained in this Declaration, the rate of annual and special assessments set for the Lots owned by Declarant or the entity identified herein as the initial Developer which are neither leased, rented, nor otherwise occupied as or improved with a residence or model home shall be zero during the Class B period, and shall be fixed at one-quarter (1/4) of the assessment rate for the other Lots after the termination of the Class B period. Neither Declarant nor the initial named Developer hereunder shall be liable for any individual assessments provided for herein. During the Class B period, when Declarant and the initial named Developer hereunder are paying no assessments, Declarant and the initial named Developer hereunder shall be responsible for regular operating shortfalls and related reserves. Said responsibility shall be apportioned based on the number of Lots then owned thereby. The rights of the Developer under this Section 6.7 may not be assigned without the prior written recorded consent of the Declarant, which may be withheld in its sole discretion.

**6.8 Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be in an amount equal to or less than the maximum annual assessment as determined by the Board, and shall be adjusted according to the number of months remaining in the calendar year. The Board thereafter shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto in the event of its increase or decrease from the last annual assessment. The due dates shall be established by the Board from time to time. However, until otherwise established, the annual assessments shall be paid quarterly on the first day of each July.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

**6.9 Effect of Non-Payment of Assessments; Remedies of the Association.** Each Owner agrees to the payment of interest and costs and to the collection and enforcement of the assessments in the manner herein specified.

- (a) **Interest, Late Fees, Costs and Attorneys Fees.** All delinquent assessments and fines shall bear interest at ten percent (10%) per annum (but not to exceed the maximum rate permitted by Arizona law) from the date due. In addition, the Board of Directors may impose a reasonable late fee. In the event the Association employs an attorney for collection of any assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner.
- (b) **Enforcement.** In the event of a default in payment of any such assessment when due, the Association may enforce each such obligation by taking any and all action available at law or in equity, including:
  - (1) **Enforcement of Personal Obligation.** The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon from the date of delinquency until paid, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner or Member.
  - (2) **Enforcement of Lien.** As provided in Section 6.1 above, all assessments, plus interest and costs connected therewith, shall be a continuing lien upon the Lot assessed. Such lien shall be deemed to have attached as of the date of recordation hereof and shall be senior to all matters other than liens placed prior to this lien, tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal or other governmental assessing unit, reservations in patents, and the lien of any First Mortgage.
  - (3) **Foreclosure of Lien.** Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the

Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien.

**6.10 No Exemption of Owner.** No Owner is exempt from liability for payment of assessments by waiver of the use or enjoyment of the Common Area or by abandonment of a Lot.

**6.11 Subordination of the Lien to First Mortgages; Sale or Transfer of Lots.** The lien of the assessments provided for herein, including without limitation any fees, costs, late charges, or interest which may be levied by the Association in connection with unpaid assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of such executory land sales contract, shall extinguish the lien of assessments or charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; provided, however, that any such delinquent assessments or charges, including interest, late charges, costs, and reasonable attorneys' fees, which are extinguished as provided herein, may be reallocated and assessed to all Lots as a common expense. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of such executory land sales contract, shall relieve any Owner of a Lot from liability for any assessments or charges thereafter becoming due, nor from the lien thereof. In the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrued prior to the acquisition of title to the Lot in question by such First Mortgagee.

**6.12 Mortgage Protection and Additional Assessment as Common Expense.** Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or By-Laws, or the Rules, the following provisions shall apply to and benefit each First Mortgagee of a Lot:

**(a) Liability for Assessments and Other Charges.**

- (1) First Mortgagees shall not in any case or manner prior to acquiring title to a Lot be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, Rule, Article or By-Law, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, nor shall a First Mortgagee be liable for any violation of the Restrictions that occurred prior to such First Mortgagee acquiring title.

- (2) At such time as the First Mortgagee shall become record Owner of a Lot, said First Mortgagee shall be subject to all of the terms, conditions and Restrictions of this Declaration, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.
- (b) **Right to Exercise Rights of Owner.** During the pendency of any proceeding to foreclose the First Mortgage, including any period of redemption, the First Mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to, the right to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.
- (c) **Right to Pay Charges on Common Area.** First Mortgagees are hereby granted the right to jointly, or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area owned by the Association, and such First Mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area and any First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.
- (d) **Priority.** Nothing in this Declaration shall in any manner be deemed to give a Lot Owner, or any other party, priority over any rights of a First Mortgagee of a Lot pursuant to the terms of such First Mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses to or a taking of any Lot or any part of the Common Area owned by the Association.
- (e) **Other Rights.** Each First Mortgagee shall, upon written notice to the Association identifying the name and address of the holder, and the Lot number or address of the Lot encumbered by its mortgage, be entitled to:
- (1) Inspect the books and records of the Association during normal business hours.
  - (2) Receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.
  - (3) Receive written notice of all meetings of Members.
  - (4) Receive written notice of any condemnation loss or casualty loss affecting a material portion of the Properties.
  - (5) Receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond.

**6.13 One Time Membership Fee.** At the close of escrow of each initial purchase of a lot from the Declarant or Developer, and for all subsequent resales, the Buyer shall pay to the Association a one-time membership fee. This will be a nonrefundable fee in an amount to be determined by the Board, but not to exceed \$500.00. This fee will be used to establish or maintain a reserve account for the benefit of the Association. The one-time membership fee shall be payable in addition to the annual assessment amount to be paid by such owner as provided in Section 6.3.

**6.14 Transfer Fee.** Subject to applicable laws, each purchaser of a Lot, shall pay to the Association, or party designated by 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.

## ARTICLE VII

### EASEMENTS AND COMMON WALLS

**7.1 Easement for Encroachments.** Each Lot and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer, including footings and walls thereon. A valid easement for said encroachments and for the maintenance of same, so long as any such encroachment stands or is rebuilt to stand, shall and does exist.

**7.2 Easement for Walls.** On certain Common Area, particularly where perimeter or similar walls are to be built (including yard walls, landscape walls, subdivision boundary walls and the like), such walls may be constructed within the Common Area at varying distances from the adjacent Lot line in order to avoid monotony of design. Portions of the Common Area may be located on the Lot side of any such dividing wall (each, an "Easement Area"). Each Easement Area will join and be contiguous to a Lot (each, a "Dominant Lot"). The Association may, in its sole discretion, at any time and from time to time, grant to the Owner of a Dominant Lot and record a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot for the use, benefit and enjoyment of that Owner (each, an "Easement"). Such Easement shall run with the land and be appurtenant to the abutting Dominant Lot and may not be sold, transferred or otherwise conveyed apart therefrom.

The Easements shall be limited to the extent that no other structure or improvement of any nature may be placed, maintained or permitted to remain in any Easement Area. The Association shall have no possession or control of the Easement Areas, except that the Association shall have the right of ingress or egress for the sole purpose of any maintenance and repair obligations the Association may have with respect to such dividing wall.

Each Easement Area shall be possessed, controlled, maintained and insured by the Owner of the abutting Dominant Lot and not by the Association. Any separate insurance maintained by the Association is excess and non-contributory. Each Owner of a Dominant Lot shall indemnify, protect, defend and hold harmless the Association for, from and against any and all losses, costs, claims, actions, damages, expenses and liabilities of any kind whatsoever arising from or in connection with the Easement Area abutting that Owners' Dominant Lot.

In addition to the Easement Areas set forth above, to permit a varying or undulating design of perimeter or yard walls visible from certain of the main spine roads within the Covered Property, there shall exist, and there is hereby granted and reserved, a valid, perpetual easement in favor of the Association for the maintenance and repair of landscaping and other improvements which may be accepted for maintenance by the Association and which may be installed or built on the street or Common Area side of any such wall built or to be built partly into the area of any adjacent Lot, as determined by the Architectural Control Committee at the time of original construction of improvements. The Association shall be solely responsible for maintaining any such Lot area upon which such easements exist and which have been accepted by the Association. The limit and extent of any such easement shall be determined by the Architectural Control Committee upon approval of designs and plans submitted by Owners.

**7.3 Electrical Service and Telephone Lines.** All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, except existing overhead lines; provided that no provisions hereof shall prohibit the erection of temporary power or telephone structures incident to construction.

**7.4 Pedestrian/Utility Easement.** If portions of the Lots are encumbered by a pedestrian or utility easement as shown on the Plat for the benefit of pedestrians or for the installation and placement of utilities, then by accepting a deed to any Lot, the Owner acknowledges and consents to such easement.

**7.5 Common Walls.** Notwithstanding anything in this Declaration to the contrary, certain Lots within the Covered Property may be developed as "zero lot line" Lots. Such Lots may entail Dwelling Units and patio walls situated on, or immediately adjacent to, common dividing lines between Lots, or between Lots and Common Area. Accordingly, there is hereby created perpetual reciprocal easements for ingress and egress, for the purpose of maintenance of both patio walls and walls of Dwelling Units, as well as all related improvements, including roofs, eaves, overhangs and other improvements. Such reciprocal easements shall be located on, over and across that portion of each contiguous Lot or Common Area, five (5) feet in width, immediately adjacent to the patio wall or Dwelling Unit wall of each Dwelling Unit with the Covered Property (each such easement being a "Side Wall Easement"). No Owner of a Lot encumbered by a Side Wall Easement may construct any structure, landscaping or improvement within the Side Wall Easement which would reasonably preclude and Owner from maintaining or repairing improvements, and no structure, landscaping or improvement may be installed in a Side Wall Easement without the prior written approval of the Architectural Control Committee. No Owner may use or modify a neighboring patio wall or wall of a Dwelling Unit, nor install any tangible object, including without limitation, art objects, barbeques, or other attachments, nor may an Owner paint, stucco or otherwise alter the aesthetic appearance of such adjacent patio or Dwelling Unit wall without the prior written approval of the Architectural Control Committee who shall, if the appearance is to be materially changed, consult the Owner of the improvements in question. Notwithstanding the foregoing limitations, the fee Owner of a Lot burdened by a Side Yard Easement may place ground-level rock or other inert materials within the Side Wall Easement provided that the same remains level and useable by the adjacent Owner for the purposes described above; and such fee Owner may store trash containers which are easily moveable on the Side Wall Easement.

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## ARTICLE VIII

### ARCHITECTURAL CONTROL COMMITTEE

**8.1 Composition of Committee.** The Architectural Control Committee (ACC) shall be deemed a committee of the Board and shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that except as otherwise provided, until all Lots have been conveyed to the first Owner thereof (i.e. other than the Declarant or Developer), Developer shall appoint the ACC without a meeting and without a vote of the Members, and during said period, no election of the Members of said committee shall be had unless Developer has in writing relinquished its rights of exclusive appointment. A majority of the ACC may designate a representative to act for it.

A member of the ACC shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of the Declarant.

**8.2 Review by Committee.** No Dwelling Unit, structure, improvement, (including but not limited to any building, mailbox, fence, wall, driveway or other surfaced area), or any attachment to an existing structure, shall be made, placed or constructed upon any Lot or the Properties (except by the Association upon the Common Area); no change of the exterior of a Dwelling Unit, structure, or improvement shall be made; no change in the final grade of any Lot shall be made; and no landscaping shall be installed or changed (except in enclosed rear yards), unless complete plans and specifications (including a construction schedule) showing the nature, design, kind, quality, shape, height, materials, color scheme and location of any such Dwelling Unit, improvement, structure, attachment, or landscaping, shall have first been submitted to and approved in writing by the ACC. The ACC shall exercise its best judgment to the end that all Dwelling Units, attachments, improvements, construction, landscaping and alterations to structures on lands located within the Properties (collectively referred to herein as "Architectural Improvements") conform to and harmonize with the existing surroundings and structures. Notwithstanding the foregoing and any other provision hereof, all improvements to any portion of the Properties, including any Lot, shall be subject to the restrictions and limitations, if any, set forth on the Plat and the tentative or preliminary plat for the Properties.

Notwithstanding the foregoing, neither the Declarant nor the Developer shall be required to submit any plans or specifications whatsoever to the ACC, nor shall any consent or approval of the ACC be required for the construction of any improvements by the Declarant or the Developer.

**8.3 Procedures.** The ACC shall approve or disapprove all plans and specifications for Architectural Improvements within thirty (30) days after submission and issuance by the Association of a receipt therefore. In the event the ACC fails to approve or disapprove the design, location or any other aspect of the proposed Architectural Improvements within thirty (30) days after said plans and specifications have been submitted to it, approval shall be deemed denied, except that the party submitting the plans and specifications may resubmit the same, and if no response is given for a period of thirty (30) days after a written request by certified mail for a decision, approval shall be deemed given. The ACC may establish its own rules amplifying or supplementing the foregoing procedures. The ACC may from time to time, without notice, establish, add to, delete or amend separate standards, rules, design guidelines and procedures,



which shall not be contrary to or inconsistent with these Restrictions, providing for or otherwise relating to the submission, processing, review and approval of plans and specifications for Architectural Improvements or various portions or stages thereof. The ACC shall not be bound by previous standards or interpretations of its standards; and any consent or approval of a prior set of plans and specifications shall not preclude disapproval of a subsequent identical or similar set of plans and specifications.

**8.4 Vote.** Except as otherwise provided herein, a majority vote of the ACC is required to approve a proposed change or improvement, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control.

**8.5 Liability.** The ACC and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

**8.6 Changes and Deviations.** No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the ACC, shall be permitted without approval of the change or deviation by the ACC.

**8.7 Verbal Statements.** In no event shall the ACC be bound by any verbal statements, no single member thereof having the right to bind the committee.

**8.8 Variance.** The ACC may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the Restrictions contained in this Article or Article IX hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Properties and shall not militate against the general intent and purpose hereof.

**8.9 Nonconforming Architectural Improvements.** In the event that the Architectural Improvements do not, upon the proposed date set forth in the construction schedule, conform to the plans submitted to and approved by the ACC, the ACC shall give written notice to the Owner of the property upon which such Architectural Improvements have been made. Such notice shall specify the nature of the nonconformity of the Architectural Improvements and shall grant the Owner a hearing before the ACC in accordance with the By-Laws.

If an Owner has not, within sixty (60) days of the mailing or delivery of the written notice, corrected the nonconformity of the Architectural Improvement, then the ACC shall have the right and an easement to direct its agents, employees or contractors to enter upon the said Owner's property for the purpose of making any or all of such improvements, alterations or repairs as are necessary to bring the Owner's Architectural Improvements into conformity with the plans submitted to and approved by the ACC.

All costs incurred by the Association in the course of the ACC's efforts to bring the nonconforming Architectural Improvements into conformity with the approved plans as provided above, including costs of labor, materials and all associated administrative costs reasonably

incurred by the Association in connection therewith, including reasonable fees and legal costs, shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien on such Owner's Lot and the improvements thereon, and shall be enforceable and collected as provided for herein.

**8.10 Color and Building Materials.** Without limiting the foregoing, no color changes nor any changes in the original building structure, composition or products shall be permitted without approval of the ACC.

**8.11 Fee.** The Association may establish a reasonable processing fee to defer the costs of the ACC in considering any requests for approvals submitted to ACC. The Association may amend such schedule from time to time, with respect to all or any portion or stage of the processing of plans and specifications as provided for in Section 8.3.

**8.12 Appeal to Board.** Any Owner who initially made application to the ACC and who is aggrieved by a decision of the ACC, may appeal the decision to the Board in accordance with procedures to be established in the Design Guidelines. In the event the decision of the ACC is overruled by the Board on any issue or questions, the prior decision of the ACC shall be deemed modified to the extent specified by the Board. There shall be no appeal from a decision of the ACC and no appeal may be taken so long as the Declarant has the right to appoint the members of the ACC.

## ARTICLE IX

### USES, OBLIGATIONS AND RESTRICTIONS

All the Properties shall be held, used and enjoyed, subject to the following limitations, obligations and restrictions (in addition to all other provisions hereof):

**9.1 Private Residential Purposes.** Dwelling Units and Lots shall be occupied and used by the respective Owners solely for private single family residential use of the Owner, his or her family, tenants and social guests and for no other purpose.

Sales offices, sales models and construction offices utilized by the Declarant or Developer on the Properties shall be permissible and need not be owned by either Declarant or Developer. Further, sales models and sales offices may be utilized on the Properties as sales models and sales offices for the benefit of other subdivisions of either Declarant or Developer.

**9.2 Animals.** No animal, livestock, poultry, or fowl of any kind shall be raised, bred, or kept, except that a reasonable number of generally recognized house or yard pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No animal shall be allowed to become a nuisance. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per household; provided, however, that the Board may determine, in its sole and absolute discretion, whether a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property.

Notwithstanding the foregoing, no permitted pets may be kept on any Lot which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. The Board has the right after notice and the opportunity for a hearing, to require the removal of any pet which the Board, in its sole discretion, has determined is a nuisance. Persons walking pets shall carry a "pooper scooper" (a hand held shovel or other instrument designed for removing animal excrement from the ground) with them at all times and shall remove the pet's excrement from the Covered Property.

**9.3 Trash Containers.** No garbage or trash shall be placed or kept on any Lot within the Properties, except in covered containers of a type, size, and style which have been approved by the Architectural Control Committee, and containers shall at all times be hidden from view except on days of trash pick-up. All rubbish, trash or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be allowed. In the event the municipality within which the Properties is located does not provide residential trash service to the Owners through a municipal contract, the Association, through the Board, shall have the authority to identify a single source refuse service provider for the entire Properties and all of the Owners. Upon notice from time to time from the Board to the Owners, the Owners shall only utilize the refuse service provider identified by the Board and each Owner shall pay for the services therefrom directly to said service provider and be responsible for all charges relating thereto; and no other refuse service provider shall be allowed onto the Properties in such event.

**9.4 Backboards.** No basketball backboards of any kind shall be placed or erected on any Lot or attached, by either a permanent or temporary method to any Dwelling Unit, unless approved by the ACC.

**9.5 Aerials.** Subject to applicable law, no aerial, antenna or satellite dish for use of TV, radio or other form of communication reception, of a temporary or permanent character, shall be erected on any Lot or attached to the principal residence located upon any Lot unless reasonably screened from view and approved by the ACC. The Association shall have the right of placement approval and to establish screening requirements regarding the placement of all reception devices protected through the Federal Tele-communications Act of 1996, together with any amendments to the Act.

**9.6 Outdoor Storage.** No yard equipment, wood piles or storage areas may be visible from ground level of neighboring property or streets.

**9.7 Nuisances.** After completion of construction of any dwelling units and landscaping of Lots, no rubbish or debris of any kind shall be placed or permitted thereon so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No loud or offensive noise, excessively glaring or bright lights, foul odors or other nuisance shall be permitted to exist or operate upon the Properties so as to be offensive or detrimental to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or

placed on any such property without the prior written approval of the Board. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

#### **9.8 Parking and Storage of Vehicles.**

- (a) **General Rule.** Any and all motor vehicles not prohibited by the provisions hereof shall be stored in a garage so as to conceal the same from view from ground level of adjoining property or from the street or public way, except that vehicles (other than recreational vehicles, commercial vehicles, motorhomes, campers, trailers, boats and similar vehicles, as provided below) may be parked upon the paved driveway surfaces of each Lot when there is insufficient room within an enclosed garage. This general rule however does not pertain to any vehicle exempt per ARS 33-1809, or any other applicable laws.
- (b) **Recreational Vehicles.** Parking and/or storing of recreational vehicles, commercial vehicles, motorhomes, campers, trailers, boats and similar vehicles is prohibited on all portions of the Properties, except within the confines of an enclosed structure which has been first approved by the AControl C, in its sole and absolute discretion. Such vehicles may be parked on the parking area of an Owner's Lot, but only for short periods of time solely for purposes of loading or unloading.

The foregoing prohibition shall not apply to: (i) trucks with no more than a 3/4 ton capacity with camper shells attached that are no more than eight feet in height as measured from ground level, (ii) small motorhomes that are no more than eight feet in height and no more than eighteen feet in length, or (iii) non-commercial pick-up trucks larger than 3/4 ton capacity that the Architectural Control Committee finds to be substantially similar in size and appearance to smaller vehicles; so long as any such vehicles are used on a regular and recurring basis for regular transportation and are parked in accordance with the provisions of Section 9.7(a).

- (c) **Use of Recreational Vehicle as Living Quarters and Storage of Motor Vehicles.** The use or occupancy of a recreational vehicle, motorhome, van, camper, trailer, or boat as living quarters on either a temporary or permanent basis is strictly prohibited on any portion of the Properties. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories. Nor shall there be any outside storage of vehicles that are inoperable or not currently registered with the Arizona Department of Motor Vehicles.

**9.9 Diseases and Insects.** No owner shall permit any thing or condition to exist upon any property which shall induce, breed or harbor infectious plant diseases or noxious insects.

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**9.10 Drainage and Detention/Retention Basin.** There shall be no interference with the established drainage pattern over any property unless approved by the Architectural Control Committee or unless adequate provision is made for proper drainage conforming to applicable city and county rules, regulations, ordinances and drainage criteria. For purposes hereof, "established drainage" is defined as the drainage including the detention/retention basin which exists at the time the overall grading of the Properties is completed, or which is shown on any plans conforming to applicable rules, regulations, ordinances, and applicable drainage criteria.

**9.11 Modification of Exterior Wall.** Unless approved by the Architectural Control Committee, no Dwelling Unit owner shall alter or modify the exterior wall of a Dwelling Unit by cutting any opening in or placing any window of any kind in said exterior wall.

**9.12 Utility Easements.** There is hereby created a blanket easement upon, across, over and under the Properties for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Properties and to affix and maintain wires, circuits and conduits on, in, and under the roofs and exterior walls of dwelling units. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Properties, except as initially designed and installed or thereafter approved by the Architectural Control Committee. This easement shall in no way affect any other recorded easements on the Properties. In no event shall any portion of the above-mentioned easements for utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines and other utilities under any permanent building structure constructed on the Properties. This easement shall be limited to improvements as originally constructed.

**9.13 Electrical Service and Telephone Lines.** All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead; provided, however, that the Declarant shall not be prohibited from erecting temporary power or telephone structures incident to construction.

**9.14 Temporary Structures, Mobile Homes.** No manufactured, prefabricated home or mobile home shall be permitted or placed upon any Lot or anywhere else in the Properties. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, temporary garage, or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until it complies with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction or alteration of a structure on any Lot, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof. The provisions of this Section shall not apply to the Declarant or Developer.

**9.15 Lots to be Maintained.** Each Lot shall at all times be kept by the owner in a clean, slightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot so that the same are visible from any neighboring Lot or street, except as necessary during the period of construction.

**9.16 Lots Not to be Subdivided.** No Lot shall be subdivided or resubdivided, except by Declarant, or except for the purpose of combining portions of a Lot with an adjoining Lot, provided that no additional building site is created thereby. Resubdivision by Declarant may result in additional Lots at its discretion.

**9.17 No Hazardous Activities.** No activities shall be conducted on the Properties and on improvements constructed on the Properties which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Properties and no open fires shall be lighted or permitted on the Properties, except in a contained barbecue unit while attended and in use for cooking purposes, or within a safe and well-designed firepit or interior fireplace, or except such campfires or picnic fires on property designated for such use by Declarant or Developer.

**9.18 Tanks.** No tanks of any kind, either elevated or buried, shall be erected, placed, or permitted upon any Lot, except for (a) portable compressed gas tanks for outdoor barbecue cooking purposes only, and (b) water softener tanks, the location of which is approved in advance in writing by the Architectural Control Committee.

**9.19 Signs.** Subject to applicable law, no billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any Lot or improvement thereon of this subdivision. Declarant and Developer are exempt from the provisions of this Section.

**9.20 Derricks; Boring.** No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Properties, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon products or minerals of any kind be produced or extracted therefrom.

**9.21 Landscaping.** All non-courtyard landscaping shall conform to and be compatible with the theme of the original landscaping installed by Declarant or Developer, and landscaping shall not be permitted to cause a nuisance nor shall landscaping be placed near foundations so as to require watering which may undermine the integrity of such foundations. All front or side yard landscaping shall require the prior approval of Architectural Control Committee, except for replacement of original landscaping installed by Developer.

**9.22 Party Walls.** Except as hereinafter provided, the rights and duties of Owners of contiguous Lots which have shared walls or fences ("Party Walls") shall be as follows:

- (a) Each Owner shall have the right to use the Party Wall, provided such use does not interfere with the other Owner's use and enjoyment thereof.
- (b) If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or

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

- (c) In the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild or repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots on the damaged or destroyed .
- (d) In the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute in writing to the Association, the matter shall be heard and determined by the Board, except that neither the Declarant or Develop shall be subject to this provision. The Declarant and Developer may modify a Party Wall without consent or approval whatsoever.
- (e) Notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Area and Lots; or, (b) situated on Common Area within or adjacent to a Lot, the Owners and Occupants of such Lots shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof.

**9.22 Minimum Driveway Requirements.** Installation or change of driveways on all Lots shall be approved by the Architectural Control Committee.

**9.23 Renting.** Each Owner shall have the right to lease or rent his Dwelling Unit; provided, however, that any lease agreement, including any agreement to lease the Dwelling Unit on a month to month basis, must be in writing and must provide that the failure of any tenant to comply with the Rules, By-Laws, Articles and provisions of this Declaration shall be a default under the lease. Any lease agreement shall be for a period of not less than thirty (30) days, and a copy thereof shall be delivered to the Association.

**9.24 Solar Devices.** Subject to applicable law, no solar devices, of any type, shall be placed, erected or installed on any Lot without the approval of the Architectural Control Committee<sup>1</sup> which shall give due regard to state law restricting the limitation of such devices.

**9.25 Insurance Rates.** Nothing shall be done or kept on any Lot or Common Area which will increase the rate of insurance on such property nor shall anything be done or kept on or in any Dwelling Unit or Common Area which will result in the cancellation of insurance on any such property or which would be in violation of any law, unless expressly approved by the Architectural Control Committee.

**9.26 Right of Inspection.** During reasonable hours, any member of the Board, or any authorized representative of the Board shall have the right upon reasonable notice to the Owner of a Dwelling Unit to enter upon and inspect the Lot (except the interior of Dwelling Unit), for

the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

**9.27 Exemption of Developer.** Nothing in these restrictions shall limit the right of Developer to complete excavation, grading, and construction of improvements to any property owned by Declarant, or to alter the foregoing, including alterations of design or materials or both, or to construct such additional improvements as Developer deems advisable in the course of development so long as any Lot or dwelling unit therein remains unsold, or to use any structure as a model home or real estate sales or leasing office.

## ARTICLE X

### GENERAL PROVISIONS

**10.1 Term.** The Restrictions in this Declaration shall remain in full force and effect for a period of fifty (50) years from the date of recordation thereof. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each, unless then repealed by the written consent of the Owners of at least sixty-six (66%) percent of the Lots.

#### 10.2 Amendments.

- (a) **Procedure.** This Declaration may be amended unilaterally by Declarant at any time and from time to time prior to the termination of the Class B Membership and, after the termination of the Class B Membership by the affirmative vote or written consent, or any combination thereof, of Declarant and/or Developer (in the event that either Declarant or Developer shall own any Lot) and of the Members representing not less than sixty-six percent (66.00%) of the votes cast by the Members at a duly called membership meeting as long as a quorum has been obtain pursuant to the By-Laws. After the termination of the Class B Membership, such an amendment shall be reflected in an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent of Declarant and/or Developer (in the event that either Declarant or Developer shall own any Lot) and of the Members representing not less than sixty-six percent (66.00%) of the votes cast by the Members at a duly called membership meeting as long as a quorum has been obtain pursuant to the By-Laws. Any such amendment of this Declaration shall be effective upon its recordation with the Pima County Recorder, Pima County, Arizona.
- (b) Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration without obtaining the approval of any other Owners, Members, or First Mortgagees as may be requested or required by the FHA, VA or any other agency with whom Declarant elects to do business as a condition precedent to such agency's approval of this

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provisions of this Declaration and all expenses incurred in connection therewith shall be paid to the Association by the Owner in violation.

- (c) **Fines and Penalties.** Each Owner, by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed, agrees and is deemed to covenant and agree to the provisions of fines and penalties after notice and an opportunity to be heard, provided for in these Restrictions. If any Owner, his or her family member, or any licensee, invitee, tenant or contractor thereof, violates these Restrictions, the Rules or the By-Laws, the Board may levy a fine upon the Owner for each violation. However, for each day a violation continues after written notice to cease or comply has been mailed, it shall be considered a separate violation and subject to the imposition of a fine. Any fines which remain unpaid for a period of fifteen (15) days after notice to pay shall be enforceable in accordance with applicable law. Any fine which is not timely paid shall be subject to the imposition of late fees and interest in accordance with applicable law. In the event the Association employs an attorney for collection of any fines, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner.
- (d) **Enforcement Procedures.** Prior to a fine or penalty being levied, notice of opportunity to be heard shall be delivered in accordance with ARS 33-1803.
- (e) **Recorded Notice of Violation.** If any Owner, his or her family member, or any licensee, invitee, tenant or contractor thereof, violates these Restrictions, the Rules or the By-Laws, the Association, after providing notice and an opportunity to cure the violation, has the right to record a "Notice of Violation" with the Pima County Recorder's Office, stating the name of the Owner, the Lot and the nature of the violation, and the Association's intent not to waive any of its rights of enforcement. Said notice shall remain of record until the violation is cured.
- (f) **No Obligation to Enforce.** The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's finances, 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.

- (g) **Violation of Law.** Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein or in the By-Laws.
- (h) **Rights and Remedies Cumulative.** Except as otherwise provided herein, all rights and remedies of the Association and Owners under the these Restrictions and at law or in equity are cumulative, and the exercise of one right or remedy shall not waive any right to exercise any other right or remedy.
- (i) **Non-Waiver.** Failure by the Declarant, the Developer, the Board, the Association, the Architectural Control Committee, or by any Owner or Member to enforce any of the provisions hereof at any time shall not constitute a waiver of the right thereafter to enforce any of such provisions; and no right of action shall accrue against the Declarant, the Developer, the Board, the Association, the Architectural Control Committee, or any Owner or Member for their neglect or refusal to exercise any right of enforcement.

#### 10.4 Construction.

- (a) **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Properties. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret this Declaration and the provisions and Restrictions herein. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant's construction or interpretation of the provisions and Restrictions in this Declaration shall be final, conclusive and binding upon all persons and the Properties.
- (b) **References to Restrictions.** Any and all instruments of conveyance or lease of any interest in any Lot or the Properties may contain reference to this Declaration and shall be subject to the Restrictions in this Declaration, the same as if they were therein set forth in full; provided that the Restrictions herein shall be binding upon all persons affected by the same, whether express reference is made to this Declaration or not.
- (c) **Rule Against Perpetuities.** In the event the provisions hereunder are declared void by a Court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event said periods of time shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Arizona.

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

**10.5 Exemption of Developer.** Nothing in this Declaration shall limit the right of Developer or Declarant to complete excavation, grading and construction of improvements to any of the Properties or to construct such additional improvements as Developer deems advisable in the course of development of the Properties so long as any Lot therein remains unsold. Further, nothing in this Article shall limit the right of a Developer or Declarant to use any structure as a sales model, sales office or construction office or parking area and to place any sign, banner, flag or similar method of advertisement to promote sales within the Properties or subdivisions of Declarant or Developer. Without limitation, the Declarant and Developer may maintain sales, administrative and construction offices on any Lot within the Properties and may maintain parking areas and parking lots on any Lot or Common Area within the Properties. The rights of Declarant or Developer hereunder or elsewhere in this Declaration may be assigned by Declarant or Developer.

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

**10.7 FHA/VA Approval.** If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA in regard to the Properties, then for so long as there is a Class B Member of the Association, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA or is not applicable: annexation of additional property, mortgaging or dedication of Common Areas (except where such dedication is required as of the date hereof by the City of Tucson, Arizona or Pima County, Arizona, and except for minor or insignificant transfers), and amendments of this Declaration which materially concern or effect the Lots. With respect to any action required by this Declaration to be approved by the FHA or the VA, the proposed action may be submitted to the FHA or the VA for approval, and if the agency whose approval is requested does not approve or disapprove the proposed action by written notice to the Association, Declarant or other Person requesting approval within fifteen (15) days after delivery to that agency of the request for approval, the proposed action in question will be deemed approved by that agency

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**10.8 High Power Transmission Lines.** Each Owner, by accepting a deed to a Lot, or by otherwise acquiring title to a Lot, acknowledges and agrees that: (a) the Properties include, or may include or be adjacent to or in the vicinity of, property which is subject to easements for high power transmission lines and related towers, systems and other equipment (some of which may be on or over Common Area and/or other open space or recreational areas); (b) some studies have suggested links between such high power transmission lines, or similar systems or equipment, and increased incidents of various illnesses in persons residing nearby (including, without limitation, some forms of cancer); (c) Declarant has made no representations, warranties or statements regarding such easements or such high power transmission lines or related towers, systems or equipment (except to note their existence), or any health or other risks related (or potentially related) thereto; and (d) such Owner (for such Owner and his or her family members, other residents, tenants, successors and assigns) hereby accepts and assumes any and all health and other risks as may now or hereafter be or become associated with such high power transmission lines, or similar systems or equipment, or any new or replacement equipment or systems, and agrees not to assert and hereby waives any and all claims against Declarant, its successors and assignees and the Association, and any director, officer, member, manager, employee, agent, beneficiary, representative or contractor of any of them or related thereto.

**10.9 Bulk Service Agreements.**

- (a) The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners, residents and tenants of Lots, cable television, community satellite television or other electronic entertainment, information or communication services: (a) which might not otherwise be generally available to such Owners, residents and tenants; (b) at rates or charges lower than might otherwise generally be charged to Owners, residents and tenants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners, residents and tenants generally; or (d) any combination of the foregoing.
- (b) If all Lots are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly). If not all Lots will be served by a particular Bulk Service Agreement, the Board shall have only the billing option described in clause (b) above.
- (c) Declarant, for each Lot, hereby covenants and agrees, and each Owner other than Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot)

by the Board pursuant to this Section 10.9, and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each person or entity who was an Owner of the Lot at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a person or entity controlling, controlled by or under common control with the Owner transferring title).

- (d) No Owner of a Lot covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot under this Section 10.9, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no Unit or other building has been completed.
- (e) "Bulk Provider" means a private, public or quasi-public utility or other entity which provides, or proposes to provide, cable television, community satellite television or other electronic entertainment, information or communication services to Lots pursuant to a "Bulk Service Agreement" (as defined below).
- (f) "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television or other electronic entertainment, information or communication services to Lots.
- (g) As long as there is a Class B Membership, the Board shall be entitled to enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant, unless it shall agree in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any such cable television, community satellite television or electronic entertainment, information or communication services. After there shall no longer be a Class B Membership, the Board shall not, without the approval of Members holding at least fifty-one percent (51%) of all Class A Membership votes represented in person or by absentee ballot at an annual or special meeting of the Members of the Association, enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant, unless it shall agree in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any such cable television, community satellite television or electronic entertainment, information or

communication services, but nothing in this Section 10.9(g) shall prevent the Board from entering into, or require approval by the Members of, any Bulk Service Agreement which imposes on the Association or its Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Tucson, Arizona, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

**10.10 Limitations on Actions.** Any action or arbitration brought by any Owner against the Declarant or the Developer, or any agent, beneficiary, employee, officer, director, member or contractor thereof, or any combination thereof, may be brought by the Owner individually only, and not as part of a group or class. The Declarant and the Developer, and all of such agents, beneficiaries, employees, officers, directors, members and contractors, are expressly made a third party beneficiary of this provision.

**10.11 Arbitration Disclosures and Agreements.** The following terms and conditions shall govern and control in the event of a conflict with any other terms, conditions or provisions of this Declaration.

ARBITRATION IS FINAL AND BINDING ON THE PARTIES AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.

IN ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.

DISCOVERY IN ARBITRATION IS MORE LIMITED THAN DISCOVERY IN COURT.

ARBITRATORS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING IN THEIR AWARDS. THE RIGHT TO APPEAL OR SEEK MODIFICATION OF ARBITRATORS' RULINGS IS VERY LIMITED.

A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE HOUSING OR CONSTRUCTION INDUSTRY.

ARBITRATION WILL APPLY TO ALL DISPUTES BETWEEN ANY OWNER OR THE ASSOCIATION, OR BOTH, AND THE DECLARANT OR THE DEVELOPER, OR ANY AGENT, BENEFICIARY, EMPLOYEE, OFFICER, DIRECTOR, MEMBER OR CONTRACTOR THEREOF, OR ANY COMBINATION THEREOF; AND NOT JUST THOSE CONCERNING THIS DECLARATION.

IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

- (a) Any claim or action ("Dispute") by any Owner or the Association against the Declarant or the Developer, or any agent, beneficiary, employee, officer, director, member or contractor thereof, or any combination thereof (all of whom are made a third party beneficiary hereof), including, but not limited to, Disputes arising out of or relating to this Declaration, any Dwelling Unit, any Lot, any Common Area, this arbitration provision ("arbitration clause"), or any related agreements or instruments relating hereto ("Related Agreements"), and including, but not limited to, a Dispute based on or arising from an alleged tort, shall at the request of any party be resolved by binding arbitration in accordance with the applicable arbitration rules of the American Arbitration Association (the "Administrator").
- (b) The arbitration proceedings shall be conducted in a city mutually agreed to by the parties. Absent such an agreement, arbitration will be conducted in Tucson, Arizona or such other place as may be determined by the Administrator. The Administrator and the arbitrator(s) shall have the authority to the extent practicable to take any action to require the arbitration proceeding to be completed and the arbitrator(s)' award issued within 150 days after the filing of the Dispute with the Administrator. The arbitrator(s) shall have the authority to impose sanctions on any party that fails to comply with time periods imposed by the Administrator or the arbitrator(s), including the sanction of summarily dismissing any Dispute or defense with prejudice. The arbitrator(s) shall have the authority to resolve any Dispute regarding the terms of this Declaration, any Dwelling Unit, any Lot, any Common Area, this arbitration clause, or Related Agreements, including any claim or controversy regarding the arbitrability of any Dispute. All limitations periods applicable to any Dispute or defense, whether by statute or agreement, shall apply to any arbitration proceeding hereunder and the arbitrator(s) shall have the authority to decide whether any Dispute or defense is barred by a limitations period and, if so, to summarily enter an award dismissing any Dispute or defense on that basis. The doctrines of compulsory counterclaim, res judicata, and collateral estoppel shall apply to any arbitration proceeding hereunder so that a party must state as a counterclaim in the arbitration proceeding any claim or controversy which arises out of the transaction or occurrence that is the subject matter of the Dispute. The arbitrator(s) may not consolidate or administer multiple arbitration claims or controversies as a class action.
- (c) The arbitrator(s) shall be selected in accordance with the rules of the Administrator from panels maintained by the Administrator. A single arbitrator shall have expertise in the subject matter of the Dispute. Where three arbitrators conduct an arbitration proceeding, the Dispute shall be decided by a majority vote of the three arbitrators, at least one of whom must have expertise in the subject matter of the Dispute and at least one of whom must be a practicing attorney. The arbitrator(s) shall award to the prevailing party recovery of all costs and fees (including attorneys' fees and costs, expert witness fees and costs, arbitration administration fees and costs, and arbitrator(s)' fees).
- (d) Judgment upon an arbitration award may be entered in any court having jurisdiction.



- (e) Any party may initiate arbitration with the Administrator. If any party desires to arbitrate a Dispute asserted against such party in a complaint, counterclaim, cross-claim, or third-party complaint thereto, or in an answer or other reply to any such pleading, such party must make an appropriate motion to the trial court seeking to compel arbitration, which motion must be filed with the court within 45 days of service of the pleading, or amendment thereto, setting forth such Dispute. If arbitration is compelled after commencement of litigation of a Dispute, the party obtaining an order compelling arbitration shall commence arbitration and pay the Administrator's filing fees and costs within 45 days of entry of such order. Failure to do so shall constitute an agreement to proceed with litigation and waiver of the right to arbitrate.
- (f) Notwithstanding the applicability of any other law to this Declaration, this arbitration clause, or Related Agreements between or among the parties, the Federal Arbitration Act, 9 U.S.C. Section 1 et seq., shall apply to the construction and interpretation of this arbitration clause if this Declaration falls within the scope of the coverage of said Act. If any provision of this arbitration clause should be determined to be unenforceable, all other provisions of this arbitration clause shall remain in full force and effect.

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

Fidelity National Title  
Under Trust No. 60,267, and not otherwise

By: MARSHA L. HILL

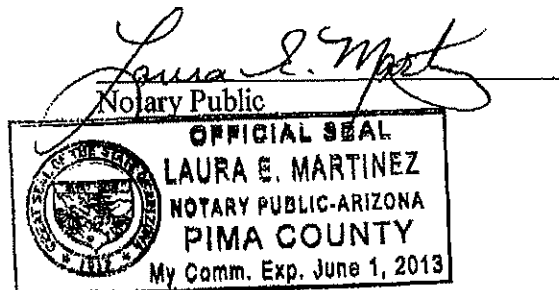
Its: TRUST OFFICER

State of Arizona       )  
                                  ) ss.  
County of Pima        )

Acknowledged before me this 14th day of AUGUST, 2009, by MARSHA L. HILL, the TRUST OFFICER of Fidelity National Title, under Trust No. 60,267 AS TRUSTEE only.

My Commission Expires:

June 1, 2013



OT Ironwood, L.L.C., an Arizona limited liability company, has consented to the execution, acknowledgement and recording of this instrument

By:

Jim Conboy, Manager

State of Arizona     )  
                                  ) ss.  
County of Pima     )

Acknowledged before me this 5 day of August, 2009, by Jim Conboy as the Manager of OT Ironwood, L.L.C., an Arizona limited liability company, on behalf of said limited liability company.

Carolea Shook  
Notary Public

My Commission Expires:

7/12/2010

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