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SCOTTSDALE AZ 85260

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Scottsdale, Arizona 85260
Attn: Regional Counsel

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SAGUAROS VIEJOS EAST

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SAGUAROS VIEJOS EAST

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SAGUAROS VIEJOS EAST ("Declaration") is made on the date hereinafter set forth by MERITAGE HOMES OF ARIZONA, INC., an Arizona corporation ("Declarant").

RECITALS:

A. Declarant is the owner of certain real property located in the Town of Oro Valley, Pima County, Arizona, described on Exhibit "A" attached hereto (the "Property").

B. Declarant desires to provide for the development on the Property of detached single family residences.

C. Declarant hereby declares that the Property shall be subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "Covenants and Restrictions") which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land, and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any portion of the Property. Any other real property hereafter designated by the Declarant (in a Recorded instrument) as property that may be annexed into the Property, together with any and all Improvements located thereon (collectively, the "Annexable Property"), shall be subjected to the terms and conditions of this Declaration if and when all or any portion of the Annexable Property is annexed as provided in this Declaration.

ARTICLE I
DEFINITIONS

Section 1.1. "Annexable Property" has the meaning set forth in Recital C above. No part of the Annexable Property shall be subject to this Declaration until such portion of the Annexable Property is annexed to the Property pursuant to the provisions of this Declaration.

Section 1.2. "Architectural Committee" means the committee established by the Board pursuant to Section 3.4 of this Declaration.

Section 1.3. "Architectural Committee Rules" means the rules adopted by the Architectural Committee as such rules may be amended from time to time.

Section 1.4. "Areas of Common Responsibility" means all Common Area, together with (a) all land, and the Improvements situated thereon, within or adjacent to the Project in which the Association has a leasehold interest, easement or license, or with respect to which the Association has maintenance obligations pursuant to any requirement imposed by Pima County, for as long as the Association holds such leasehold interest, easement or license, or has such maintenance obligations, (b) all land, and the Improvements situated thereon, within the Project which the Declarant indicates on a Recorded subdivision plat or other Recorded instrument is to be conveyed to the Association for the benefit and use of the Members, (c) all land, and the Improvements

situated thereon, which is situated within the boundaries of a Lot and which is designated on a Recorded subdivision plat Recorded by the Declarant or approved by the Declarant or the Association as land which is to be improved, maintained, repaired and replaced by the Association, (d) all land, and the Improvements situated thereon, within or adjacent to the Project which the Declarant indicates on a Recorded subdivision plat or other Recorded instrument is to be used for landscaping, drainage or water retention or flood control for the benefit of the Project or the general public, and (e) all real property, and the Improvements situated thereon, within or adjacent to the Project located within dedicated rights-of-way with respect to which the Town of Oro Valley and Pima County has not accepted responsibility for the maintenance thereof, but only until such time as Pima County has accepted all responsibility for the maintenance, repair and replacement of such areas, and only if the specific areas to be maintained, repaired and replaced by the Association pursuant to this clause have been expressly approved by either the Declarant or the Board.

Section 1.5. "Articles" means the Articles of Incorporation of the Association which were filed or will be filed with the Arizona Corporation Commission, as said Articles may be amended from time to time.

Section 1.6. "Assessment Lien" means the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable to the Association under the Project Documents.

Section 1.7. "Assessments" means the annual, special, and neighborhood assessments levied and assessed against each Lot pursuant to Article IV of this Declaration, including any transaction fee or Association contribution set forth therein.

Section 1.8. "Association" means Saguaros Viejos East Community Association, an Arizona non-profit corporation, organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

Section 1.9. "Association Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.10. "Board" means the Board of Directors of the Association.

Section 1.11. "Builder" means a person or entity in the business of, or a person or entity which has an affiliate in the business of, constructing and selling homes or in the business of acting as a land banker that sells Lots to persons or entities who construct and sell homes, which purchases a Lot or Lots without Residential Units constructed thereon for the purpose of constructing Residential Units thereon and selling such Lots and Residential Units.

Section 1.12. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.13. "Common Area" means all real property together with all Improvements situated thereon owned by the Association, but such definition shall not preclude the Association from operating, maintaining or repairing any other real property for the benefit of the Members of the Association (e.g., landscaping in public rights-of-way) or any other real property maintained

by the Association pursuant to a written agreement entered into by the Association for the benefit of the Members.

Section 1.14. "Commercial or Recreational Vehicles" means any of the following types of vehicles that are owned, leased or used by an Owner, Lessee or resident of a Lot or any of their family, guests, invitees and licensees: (i) commercial truck, government vehicle, tow truck, tractor, bulldozer, crane, bus, ambulance, tour jeep, trolley, commercial delivery van, commercial pickup truck with a manufacturer's capacity rating of more than one (1) ton, semi-truck, semi-trailer or similar commercial vehicles; and (ii) snowmobile, wagon, freight trailer, flatbed, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, jet ski, dune buggy, go cart, golf cart (whether licensed for street use or not), all-terrain vehicle, pickup truck with camper shell (whether or not equipped with sleeping quarters), pontoon, canoe, raft, house boat or similar recreational vehicles or equipment.

Section 1.15. "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

Section 1.16. "Declarant" means Meritage Homes of Arizona, Inc., an Arizona corporation and its successors and assigns, and any assignee of Declarant's rights. A Declarant may assign its rights by express Recorded instrument to a subsequent Owner of all or part of the Property. At any time when there is more than one Declarant, except as otherwise expressly provided in this Declaration, any approval or other action required or permitted by the Declarant under this Declaration shall require the written consent of the Declarants owning a majority of all Lots then owned by all Declarants. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successive Declarant, in which event the preceding Declarant shall be released from liability. If there is more than one Declarant, the obligations and liabilities of each Declarant under this Declaration shall be limited to the obligations that relate to the Lots within the Project then owned by such Declarant at the time liabilities or obligations arose, such liability shall not be joint or joint and several, and a Declarant shall not be liable for the actions or inactions of another Declarant.

Section 1.17. "Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

Section 1.18. "Declaration" means this Declaration of Covenants, Conditions and Restrictions and any amendments hereto.

Section 1.19. "Designated Builder" means any Builder that is designated by Declarant as a "Designated Builder" in a supplemental declaration or in a written notice given by Declarant to the Association and by such designation receives certain rights as expressly provided in this Declaration.

Section 1.20. "First Mortgage" means any mortgage, deed of trust, or contract for deed on a Lot which has priority over all other mortgages, deeds of trust and contracts for deed on the

same Lot. A contract for deed is a Recorded agreement whereby the purchaser of a Lot acquires possession of the Lot but does not acquire legal title to the Lot until a deferred portion of the purchase price for the Lot has been paid to the seller.

Section 1.21. "First Mortgagee" means the holder of any First Mortgage.

Section 1.22. "Improvement" means any (a) Residential Unit, building, fence or wall, (b) any swimming pool, water slide, tennis court, basketball court, road, driveway, parking area or satellite dish, (c) trees, plants, shrubs, grass or other landscaping improvements of every type and kind, and/or (d) any other structure of any kind or nature.

Section 1.23. "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot or Residential Unit thereon, including an assignee of the lessee's or tenant's interest under a lease.

Section 1.24. "Lot" means any Lot shown on a Plat. For purposes of voting on any issue required to receive the approval of Lot Owners, the Owner of a parcel not yet subject to this Declaration but zoned for residential use shall be deemed to be the Owner of the maximum number of Lots into which such parcel may be subdivided under then applicable zoning and other legal requirements.

Section 1.25. "Member" means any person, corporation, partnership, joint venture, limited liability company or other legal entity who is a member of the Association.

Section 1.26. "Occupant" means any Person other than an Owner who occupies or is in possession of a Lot, or any portion thereof or building or structure thereon, whether as a Lessee or otherwise, other than on a merely transient basis (and includes, without limitation, a resident).

Section 1.27. "Owner" shall mean the record owner, except as provided below, whether one or more persons or entities, of fee simple title to any Lot, including without limitation, one who is buying a Lot under a Recorded contract, but excluding others having an interest merely as security for the performance of an obligation. In the case of a Lot where fee simple title is vested of record in a trustee under a deed of trust, legal title shall be deemed to be in the trustor. In the case of a Lot where fee simple title is vested in a trustee pursuant to a trust agreement, the beneficiary entitled to possession shall be deemed to be the Owner. In the case of a Lot where fee simple title is vested in a party (a "Land Banker") which has entered into a lending option or sale agreement pursuant to which a Declarant or a Designated Builder has the option or other right to purchase the Lot from such Land Banker, the Declarant or Designated Builder holding the option or purchase right shall be deemed the Owner; provided, however, that with respect to any Land Banker executing a Consent attached to this Declaration, such Land Banker shall not have any duties or obligations (including, without limitation, with respect to the payment of any amounts) other than as set forth in such Consent and in any option agreements and related documents, and in the event of any conflict between this Declaration and such Consent, the terms and conditions of such Consent shall control.

Section 1.28. "Period of Declarant Control" means the period beginning on the date of the Recording of this Declaration and ending on the earlier to occur of (a) the date upon which Declarant and each Designated Builder have conveyed all Lots within the Project to Purchasers,

or (b) the date the Declarant has Recorded a written instrument terminating the Period of Declarant Control.

Section 1.29. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, limited liability partnership, government, governmental subdivision or agency, or other legal or commercial entity.

Section 1.30. "Plat" means any Recorded subdivision plat of any portion of the Property, together with all amendments, supplements and corrections thereto.

Section 1.31. "Project" means the Property together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

Section 1.32. "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules and Architectural Committee Rules.

Section 1.33. "Property" means that certain real property located in the Town of Oro Valley, Pima County, Arizona, described on Exhibit "A" attached hereto.

Section 1.34. "Purchaser" means a Person (or a group of Persons), other than a Declarant or a Designated Builder, who becomes the Owner of a Lot by means of a bona-fide arm's length voluntary transfer; provided, however, that Purchaser shall not mean (i) an Owner who purchases a Lot and then leases it to a Declarant for use as a model in connection with the sale of other Lots or (ii) a First Mortgagee that acquires a Lot through a judicial or non-judicial foreclosure or deed in lieu or similar transaction.

Section 1.35. "Record" or "Recordation" or Recording" means placing an instrument of public record in the Office of the Pima County Recorder, State of Arizona, and "Recorded" means having been so placed of public record.

Section 1.36. "Residential Unit" means any building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

Section 1.37. "Restricted Activities" means no illegal, noxious or offensive activity will be engaged in (or permitted to be engaged in) on any Lot. No act or use may be performed on any Lot that is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically or that interferes with the use and quiet enjoyment of any of the other Owners and of those Owner's Lots. Music and other sounds from outdoor speakers will be played at a level so as to not be a nuisance to neighboring Lot Owners. No Owner shall permit any condition or thing to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 1.38. "Screened From View" means that the object in question is appropriately screened when viewed from abutting Lots, Common Area and public and private streets by a gate, wall, shrubs or other approved landscaping or screening devices. The Architectural Committee will be the sole judge as to what constitutes an object being Screened From View and appropriately screened, subject only to the right to appeal the Architectural Committee's decision to the Board

under Section 5.22 below. An object may be Screened From View, in the opinion of the Architectural Committee, even though the object is Visible From Neighboring Property and may be seen through the approved Screening.

Section 1.39. "Single Family" shall mean an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 1.40. "Single Family Residence" shall mean a building, house or dwelling unit used as a residence for a Single Family, including any appurtenant garage or storage area.

Section 1.41. "Single Family Residential Use" shall mean the occupation or use of a Single Family Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 1.42. "Visible from Neighboring Property" shall mean that an object is or would be visible to a person six (6) feet tall standing on a neighboring Lot, neighboring Common Area, or street at an elevation not greater than the elevation at the base of the object being viewed.

Section 1.43. "Vote" or "Votes" means, with respect to votes of Members, a vote or votes cast by Members entitled to vote either: (a) in person; or (b) by absentee ballot; or (c) only if during the Period of Declarant Control, by a proxy duly appointed by a written instrument signed by a Member, dated not more than eleven (11) months prior to such meeting. Thus, by way of example and not limitation, a provision in this Declaration that requires that an action be approved by a "75% Vote" (or by "75% of the Votes") means that the action in question would have to receive the affirmative vote of Members holding at least seventy-five percent (75%) of votes of Members of the Association that are entitled to be cast and that are held by Members who are (i) present at a meeting duly called for such purpose, or (ii) cast by Members by absentee ballot, or (iii) during the Period of Declarant Control, cast by Members pursuant to a valid proxy. Proxies are not permitted and shall not be counted for any purpose after the expiration or termination of the Period of Declarant Control.

ARTICLE II
PLAN OF DEVELOPMENT

Section 2.1. Property Subject to this Declaration. This Declaration is being Recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the Property and any portion of the Annexable Property that is subsequently annexed under the terms of this Declaration shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his 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 plan for the development and use of the Project and hereby

evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the memberships in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and such shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

ARTICLE III
THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Rights, Powers and Duties. The Association shall be a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. A copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration will control.

Section 3.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws. Until the expiration or termination of the Period of Declarant Control, Declarant shall have the right to appoint and remove members of the Board. After expiration or termination of the Period of Declarant Control, the Members shall elect the Board as provided in the Bylaws.

Section 3.3. Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations, provided, however, that such Association Rules shall not be effective at any time that Declarant owns any Lot unless (i) such Association Rules have been approved by Declarant in writing or (ii) Declarant has terminated the Period of Declarant Control. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner except that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration; however, in the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration will prevail.

Section 3.4. Architectural Committee. The Board shall establish an Architectural Committee consisting of not less than three (3) members to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be

imposed upon it by this Declaration or the Board. So long as the Declarant owns any Lot, the Declarant shall have the right to appoint and remove members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the Board shall have the right to appoint and remove members of the Architectural Committee.

Section 3.5. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 3.6. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Declarant, Designated Builder or Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association. The Association shall have the right to charge a reasonable transfer fee to a Purchaser in connection with any transfer of a Lot.

Section 3.7. Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners and each Designated Builder, with the exception of each Declarant until the expiration or termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B members shall be each Declarant. Each Class B member shall be entitled to three (3) votes for each Lot owned or deemed owned by such member. The Class B membership shall cease and be converted to Class A membership on the earlier to occur of the following:

(i) When the last Lot has been conveyed to Purchasers; or

(ii) The date upon which each Declarant notifies the Association in writing that it relinquishes its Class B membership.

Section 3.8. Joint Ownership. When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 3.9. Corporate Ownership. In the event any Lot is owned by a corporation, partnership, limited liability company, or other association, the corporation, partnership, limited liability company or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner, manager, managing member, or chief executive officer of such corporation, partnership, limited liability company or association shall have the power to vote the membership.

Section 3.10. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended for a period not to exceed sixty (60) days for each infraction of the Project Documents, and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

Section 3.11. Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Project Documents by any Owner or such Owner's licensees and invitees. No fine shall be imposed without first providing a written warning to the Owner describing the violation and an opportunity to be heard. All fines shall constitute a lien on all Lots owned by the Owner and shall be paid within thirty (30) days following imposition. Except as otherwise limited by applicable law, failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any assessments under Article IV.

Section 3.12. Limitation on Claims. No claim arising against Declarant or any officer, director, member, manager, employee or other representative of Declarant, including without limitation any claims arising from Declarant's exercise of any right arising from Declarant's Class B membership or arising from any action or inaction by any person in such person's capacity as an officer, director, member or manager of the Association, shall be asserted by the Association more than six months following the later of termination of the Class B membership or the termination of such person's service as an officer or director of the Association. All claims that are not filed in a proper court within the foregoing time period shall be deemed forever waived and released. This section shall not be subject to amendment without the written approval of the Declarant.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual assessments, special assessments, and any applicable neighborhood assessments. The annual, special, and neighborhood assessments, together, with interest, costs and reasonable attorneys' fees and collection costs whether a lawsuit was filed or not, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal

obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 4.2. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for (i) the upkeep, maintenance and improvement of the Areas of Common Responsibility including all Improvements thereon, (ii) maintenance, repair, replacement, and operation of rights-of-way and easements within or immediately adjacent to the Project (e.g. landscaping and sidewalks within the right-of-way of adjoining streets) to the extent that such actions are required by government entities or deemed appropriate by the Board, (iii) promoting the recreation, health, safety and welfare of the Owners and other lawful Occupants of Lots within the Property, and (iv) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents. Notwithstanding the foregoing, neighborhood assessments shall be used only for the benefit of the neighborhood paying such assessments, shall not be used for any purpose that is covered by annual assessments or special assessments in other areas of the Property, and shall be accounted for separately from annual and special assessments.

Section 4.3. Annual Assessment.

(A) For each fiscal year of the Association commencing upon the first to occur of (i) transfer to and acceptance for maintenance by the Association of any of the Areas of Common Responsibility or (ii) conveyance of a Lot to a Purchaser, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes to be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of any of the Areas of Common Responsibility including all Improvements thereon and those parts of the Lots, if any, which the Association has the responsibility of maintaining, repairing or replacing under the Project Documents, (ii) the cost of wages, materials, insurance premiums, services, supplies and maintenance or repair of any of the Areas of Common Responsibility including all Improvements thereon and for the general operation and administration of the Association, (iii) the amount required to render to Owners all services required to be rendered by the Association under the Project Documents, and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacement.

(B) For each fiscal year of the Association commencing upon the first to occur of (i) transfer to and acceptance for maintenance by the Association of any Areas of Common Responsibility or (ii) conveyance of a Lot to a Purchaser, the total amount of the estimated Common Expenses shall be assessed by the Board. Except to the extent that this Declaration expressly provides for (a) neighborhood assessments only on Lots benefiting from such neighborhood assessments, (b) reduced assessments, or (c) exemptions from assessments, all assessments shall be equal on all Lots.

(C) A Designated Builder shall be obligated to pay only twenty-five percent (25%) of the annual assessment attributable to a Lot for each fiscal year of the Association commencing upon the conveyance of the first Lot to a Purchaser, and continuing until the earliest

to occur of (i) the date on which a certificate of occupancy or similar permit is issued by the appropriate governmental authority for the Residential Unit on the Lot, (ii) six (6) months from the date on which a building permit is issued by the appropriate governmental authority for construction of a Residential Unit on the Lot, or (iii) two (2) years after the Lot was conveyed to the Designated Builder by the Declarant. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual assessment is attributable, the annual assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for each rate.

(D) The Declarant shall be exempt from payment of annual assessments on Lots owned by the Declarant. If a Lot ceases to be owned by Declarant and therefore becomes subject to assessment during the period to which an annual assessment is attributable, the assessment shall be prorated based on the basis of the number of days in the assessment period that the Lot is not owned by Declarant.

(E) The Declarant and each Designated Builder paying reduced assessments pursuant to Section 4.3(C) shall pay to the Association any amounts (hereinafter "Subsidy Amounts") which, in addition to the annual assessments levied by the Association, may be required by the Association in order for the Association to fully perform its duties and obligations under the Project Documents, including the obligation to adequately fund the reserve account prior to the termination of the Period of Declarant Control. Notwithstanding the foregoing, neither Declarant nor any Designated Builder shall have any obligation to pay any combination of Subsidy Amounts and assessments during any calendar year in excess of the total amount that Declarant or such Designated Builder would have paid during such calendar year if such Person were paying full assessments. Any estimated payment by the Declarant or Designated Builder to fund Subsidy Amounts under this section in excess of such Person's actual obligation for Subsidy Amounts under this section shall, at Declarant's option, be credited toward payment of Declarant's and such Designated Builder's next due assessment payment(s) or refunded to the payors thereof; for example, if Declarant and such Designated Builders pay $25,000 to the Association in the middle of a calendar year to fund estimated Subsidy Amounts and the actual Subsidy Amounts required as of the end of the year would have been only $20,000 in the absence of such payment, Declarant and such Designated Builders shall be entitled to a $5,000 credit toward their next due assessment payment or a refund of $5,000. Any Subsidy Amounts payable by Declarant and Designated Builders under this section shall be paid solely by Declarant until such time as Declarant has paid assessments on Lots owned by Declarant at a rate of twenty-five percent (25%) of the annual assessment and thereafter allocated among Declarant and Designated Builders paying reduced assessments on the basis of the respective number of Lots owned by Declarant and such Designated Builders as of such date as the Board determines that payment is necessary under this Section 4.3(E). Payments under this section shall be made by Declarant and Designated Builders paying reduced assessments on such basis as the Association may determine from time to time, but in no event more often than monthly or less often than annually.

(F) The Board shall give notice of the annual assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment.

(G) The maximum annual assessment for each fiscal year of the Association shall be the maximum amount allowed by state statute, but in no event shall the annual assessment be more than twenty percent (20%) higher than the immediately preceding fiscal year. The increase in the maximum annual assessment pursuant to this section shall be calculated without considering the portion of the immediately preceding annual assessment attributable to the payment of utility charges or insurance premiums by the Association. In addition to the increase in the maximum annual assessment pursuant to this section, the maximum annual assessment shall include an increase for each fiscal year from and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser in an amount equal to the amount in the Association budget for the prior fiscal year applicable to utility charges and insurance premiums, multiplied by the percentage increase in utility charges or the percentage increase in insurance premiums during the prior fiscal year, whichever is greater.

(H) If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board except that no increase in the annual assessment for any fiscal year which would result in the annual assessment exceeding the maximum annual assessment for such fiscal year shall become effective until approved by Members casting at least two-thirds (2/3) of the votes cast by Members who are voting in person at a meeting duly called for such purpose.

Section 4.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures, Improvements and personal property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person at a meeting duly called for such purpose. Special assessments shall be levied at a uniform rate for all Lots.

Section 4.5. Notice and Quorum for Any Action Authorized Under Section 4.3 or Section 4.4. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under Section 4.3 and Section 4.4 shall be sent to all Members no less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies (assuming the Period of Declarant Control is still in effect) entitled to cast sixty percent (60%) of all the votes of each class of Members 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.

Section 4.6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments shall commence as to all Lots on the first day of the month following the conveyance

of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Association's designated agent setting forth whether the Assessments on a specified Lot have been paid.

Section 4.7. Effect of Non-payment of Assessments; Remedies of the Association.

(A) Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall have added to such Assessment or installment, the greater of (i) ten percent (10%) of the amount of the unpaid Assessment or (ii) a late charge in the maximum amount permitted under applicable Arizona law (which amount is as of the date of this Declaration) of fifteen dollars ($15.00). Any amounts paid by a Member shall be applied first to unpaid principal amount of the assessment and then to late charges or interest. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The Assessment Lien may be placed of Record by the Recordation of a "Notice of Claim of Lien" which shall set forth (i) the name of the delinquent Owner as shown on the records of the Association, (ii) the legal description and/or street address of the Lot against which the claim of lien is made, (iii) the amount claimed as of the date of the Recording of the notice including late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees, and (iv) the name and address of the Association.

(B) The Assessment Lien shall have priority over all liens or claims created subsequent to the Recordation of this Declaration except for (i) tax liens for real property taxes on the Lot, (ii) assessments on any Lot in favor of any municipal or other governmental body and (iii) the lien of any First Mortgage.

(C) Before Recording a Notice of Claim of Lien against any Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with late charges, interest, reasonable collection costs and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

(D) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with late charges, interest, lien recording fees, reasonable collection costs, reasonable attorneys' fees, credit bureau reporting and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the

Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 4.8. Subordination of the Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. The sale or transfer of any Lot shall not affect the Assessment Lien except that the sale or transfer of a Lot pursuant to judicial or non-judicial foreclosure of a First Mortgage or any bona fide, good faith proceeding in lieu thereof shall extinguish the Assessment Lien as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve the Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 4.9. Exemption of Owner. No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.

Section 4.10. Maintenance of Reserve Fund. Out of the annual assessments and other income, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements to the Common Area.

Section 4.11. Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser (other than Declarant or a Designated Builder) of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot an amount equal to one-sixth (1/6) of the then current Annual Assessment attributable to the Lot. Funds paid to the Association pursuant to this section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this section shall be nonrefundable and shall not be offset or credited against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Working Capital Contribution can be increased or decreased by the Board at their sole discretion.

Section 4.12. Reserve Fund. To ensure that the Association shall have funds reserved for repair and replacement of Improvements within the areas of Association responsibility, each Purchaser (other than Declarant and any Designated Builder) of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot the amount equal to one-sixth (1/6) of the then-current Annual Assessment attributable to the Lot. Payments made pursuant to this section shall be nonrefundable and shall not be offset or credited against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Reserve Fund Fee can be increased or decreased by the Board at their sole discretion.

Section 4.13. Neighborhood Assessments. The Board of Directors shall have the right to impose neighborhood assessments against Lots in any specific area of the Property in order to provide for the repair, replacement, operation and maintenance of Common Areas within such area that are different from or in addition to the types of Common Areas in the balance of the Property and that are designed to benefit less than all of the Property (e.g. private streets, separate entryways or gates, enhanced landscaping, community centers, swimming pools, sport courts) if any such

amenities exist. Any such determination by the Board shall be made in a writing specifying the purposes of the neighborhood assessment and the Lots subject thereto. Any such determination by the Board may also include an additional imposition on such Lots in order to fund a reserve account for the specific Improvements intended to be maintained by the neighborhood assessment.

Section 4.14. Sanitation and Refuse Collection. The Association shall have the right, at its discretion and from time to time, to negotiate and execute one or more contracts ("Trash Collection Agreement(s)") with a sanitation provider (or providers) of its choice, for the collection and removal of garbage, trash, recycling materials, and other refuse within the Property and Project. In addition to the annual assessments included within Article IV, the Association may include in the annual assessment or levy in any assessment year a special assessment applicable to that year (and the same shall be charged and collected on a monthly, quarterly or yearly basis as determined by the Board) for the purpose of paying the cost of providing collection and removal of garbage, trash, recycling materials, and other refuse within the Property and Project. Each Owner of a Lot shall be obligated to use the sanitation provider(s) selected by the Association for the collection and removal of garbage, trash, recycling materials, and refuse from such Owner's Lot and agrees to comply with the terms, provisions and requirements of the Trash Collection Agreement(s). Each Owner therefore acknowledges and agrees that each Lot shall be subject to an assessment, either as part of the annual assessment or in addition to and apart from the annual and any other special assessments, for the purpose of paying each Lot's pro rata share of trash collection service provided to the Project. If directed by the Association, each Owner shall contract directly with the selected sanitation provider(s) for its services and shall pay the cost of such services directly to the sanitation provider(s).

Section 4.15. Declarant Audit Right. If Declarant voluntarily terminates the Period of Declarant Control while it still owns any Lot, then so long as Declarant owns any Lot, it shall have the right to audit the books and records of the Association.

Section 4.16. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 4.17. Common Expenses Resulting from Misconduct. Notwithstanding any other provision of this Article IV, if any Common Area expense is caused by the misconduct of any Owner (or of any Occupant, Lessee, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law), the Association may assess that Common Area expense exclusively against such Owner and such Owner's Lot, which amount (together with any and all costs and expenses, including but not limited to attorneys' fees, incurred by the Association in recovering the same) shall be secured by the lien created pursuant to Section 4.1.

ARTICLE V
USE RESTRICTIONS

Section 5.1. Residential Use. Except as otherwise provided herein, all Lots shall be improved and used only for Single Family Residential Use. No gainful occupation, profession, trade or other commercial activity shall be conducted on any Lot; provided, however, the Declarant may use the Lots for such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale of Residential Units, including, without limitation, a business office, storage areas, construction yards, signs, a model site or sites, and a display and sales office. Notwithstanding the foregoing, home businesses are permitted on the Lots provided they are in accordance with applicable municipal ordinances for home business in residential districts.

Section 5.2. Building Type and Size. No building shall be constructed or permitted to remain on any Lot other than one (1) detached Single Family Residence not to exceed two (2) stories in height and a private one (1) to five (5) car garage. Unless otherwise approved in writing by the Architectural Committee, all buildings shall be of new construction and no prefabricated structure shall be placed upon any Lot if Visible from Neighboring Property; storage structures and/or a sales office may be maintained upon any Lot or Lots by the Declarant or a building contractor for the purpose of erecting and selling Residential Units on Lots or for the purpose of constructing Improvements on the Common Area, but such temporary structures shall be removed upon completion of construction or selling of a Residential Unit on a Lot or Improvements on the Common Area, whichever is later. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any Lot at any time as a residence, either temporarily or permanently; provided, however, that any Declarant or Designated Builder and the contractors hired by such Declarant or Designated Builder shall have the right to place temporary construction trailers and store materials on any Lot or the Common Areas for the purpose of constructing Residential Units on Lots or Improvements on the Common Areas.

Section 5.3. Signs. No sign of any kind which is Visible From Neighboring Property shall be installed or displayed on any Lot or Common Area without the prior written approval of the Association as to size, color, design, message content, number and location except (i) such signs as may be used by a Declarant or Designated Builder in connection with the development and sale of Lots and/or Residential Units or Common Area in the Project, (ii) such signs as may be required by legal proceedings, or which by law, may not be prohibited, (iii) one temporary sign per Lot no larger than 30" x 24" used exclusively to advertise the Lot for sale, (iv) a maximum of one political sign (as defined in A.R.S. §33-1808) with maximum dimensions of 24" x 24" (or such greater number and/or greater size of political signs permitted by ordinances if the governing body regulates the size and number of political signs on residential property) placed on a Lot by the Owner of that Lot; provided, however, that no political signs may be displayed pursuant to this Section 5.3 earlier than seventy-one (71) days before an election day or more than three (3) days after an election day, or (v) such signs as may be desired by a Declarant or a Designated Builder or required for traffic control, construction job identification, builder identification, and subdivision identification as are in conformance with governmental requirements. All other signs must be approved in advance in writing by the Architectural Committee as provided above. All signs must conform to applicable ordinances and other governmental requirements.

Section 5.4. Noxious and Offensive Activity. No noxious or offensive activity shall be allowed on the Lots nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners and Lessees of their respective Lots and Residential Units. Without limiting the generality of the foregoing, no speakers, horns, sirens or other sound devices, except security devices used exclusively for security purposes, shall be located or used on a Lot. The provisions of this section shall not apply to any activity of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property.

Section 5.5. Parking. Parking of Vehicles (as defined in Section 5.6) is prohibited on the front yard of Lots except on a driveway or in a garage. Parking of Vehicles on any street within the Property is prohibited except that Vehicles that are too large to fit on a driveway or Vehicles of guests, invitees or contractors of an Owner may park on the portion of the street directly adjacent to the Owner's Lot but must be put into the garage in order to remain overnight, or otherwise be removed from the Property for overnight parking. Parking of any inoperable Vehicle anywhere on a Lot or anywhere on a street within the Property is prohibited. No part of any Vehicle may be parked over any part of a sidewalk because such parking may impede use of the sidewalks, particularly for persons with disabilities using the sidewalks. The provisions of this Section 5.5 shall not apply to (a) Vehicles that are exempt from this subsection under applicable law, (b) Vehicles of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property, or (c) Vehicles used by the Association in repairing, maintaining and replacing the Common Areas and all Improvements thereon, and in performing all other rights, duties and obligations of the Association under this Declaration.

Section 5.6. Motor Vehicles.

(A) No automobile, truck, motorcycle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat trailer or other similar equipment or motor vehicle of any kind (collectively, "Vehicles" and individually a "Vehicle") shall be parked, kept or maintained on the Common Area. Vehicles that exceed 18.5 feet in length, 6.25 feet in height or 7 feet in width are prohibited on the Property unless (i) parked in the rear or side yard of a Lot in a manner that such Vehicles are not Visible from Neighboring Property or (ii) owned by any guest or invitee of any Owner or Lessee and parked on a Lot only during such time as the guest or invitee is visiting the Owner or Lessee, but in no event shall such a Vehicle be parked on a Lot for more than seven (7) days during any six (6) month period of time. Any Vehicle, regardless of size, that is parked in the rear or side yard of any Lot must be parked so as not to be Visible from Neighboring Property.

(B) Except for emergency Vehicle repairs on a Lot, no Vehicle of any kind shall be constructed, reconstructed or repaired on any Lot or the Common Area. No inoperable Vehicle or Vehicle which because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance is, in the sole opinion of the Architectural Committee, unsightly or detracts from the appearance of the Project shall be stored, parked or kept on any Lot.

(C) No Vehicle classed by manufacturer rating as exceeding one (1) ton and no Commercial Vehicle may be parked or stored on any area in the Project so as to be Visible From Neighboring Property; provided, however, this provision shall not apply to Vehicles that are pickup trucks of less than one (1) ton capacity with camper shells not exceeding 7 feet in height and 18.5 feet in length which are parked as provided in Section 5.5 and are used on a regular and recurring basis for transportation.

(D) The provisions of this Section 5.6 shall not apply to (a) Vehicles that are exempt from this subsection under applicable law, (b) Vehicles of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property, or (c) Vehicles used by the Association in repairing, maintaining and replacing the Common Areas and all Improvements thereon, and in performing all other rights, duties and obligations of the Association under this Declaration.

Section 5.7. Towing of Vehicles. The Association shall have the right to have any Vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the Vehicle or equipment. Any expense incurred by the Association in connection with the towing of any Vehicle shall be paid to the Association by the owner of the Vehicle by the Association. If the Vehicle towed is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and his Lot and be payable on demand, and such cost shall be secured by the Assessment Lien.

Section 5.8. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use or maintenance of Improvements constructed by the Declarant or approved by the Architectural Committee. The provisions of this section shall not apply to any activity of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property.

Section 5.9. Restrictions and Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner other than the Declarant, and no portion less than all or an undivided interest in all of any Lot shall be conveyed or transferred by any Owner other than the Declarant. Notwithstanding the foregoing and subject to compliance with any applicable ordinances, a vacant Lot may be split between the Owners of the Lots adjacent to such Lot so that each portion of such Lot would be held in common ownership with another Lot adjacent to that portion.

Section 5.10. Windows. Within thirty (30) days of closing of escrow of a Residential Unit each Owner shall install permanent suitable window treatments on all windows facing the street. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows.

Section 5.11. HVAC and Solar Panels. Except as initially installed by the Declarant or a Designated Builder, no heating, air conditioning, evaporative cooling or solar energy collecting

unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee. Each Owner is responsible to ensure that all foliage (whether originally planted by Declarant, Owner or otherwise) or other structures (which were constructed or installed after conveyance of the Lot from Declarant or any Designated Builder to Owner) located on their Lot(s), are maintained and/or constructed in such a manner so as to not materially impair direct and continuous sunlight to any solar panels which were installed by Declarant or any Designated Builder on all other Lots within the Property. If any Owner fails to comply with the provisions of this Section 5.11, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot(s) to trim or remove any foliage or structure which in the Association's reasonable discretion is materially shading solar panels of any other Owner, and the cost of any such actions shall be paid to the Association by the Owner of the non-conforming Lot upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this section shall be secured by the Assessment Lien and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

Section 5.12. Garages and Driveways. The interior of all garages situated on any Lot shall be maintained in a neat and clean condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and materials and shall not be used for or converted to living quarters or recreational activities alter the initial construction thereof without the prior written approval of the Architectural Committee. Garage doors shall be left open only as needed for ingress and egress.

Section 5.13. Installation of Landscaping.

(A) Landscaping and irrigation Improvements shall be installed in compliance with the Architectural Committee Rules and other applicable requirements set forth in the applicable zoning ordinances on that portion of each Lot which is between the street(s) adjacent to the Lot and the exterior wall of the Residential Unit or any wall separating the side or back yard of the Lot from the front yard of the Lot. The landscaping and irrigation Improvements shall be installed in accordance with plans approved in writing by the Architectural Committee. Any changes to the landscaping that deviate from an approved landscape plan must be reviewed by the Town of Oro Valley for conformance with zoning code requirements. Prior to installation of such landscaping, the Owner or Occupant shall maintain the portions of such Lot required to be landscaped in a weed-free condition. After installation of such landscaping, the Owner or Occupant shall be responsible for all maintenance necessary to keep such Lot in compliance with the Association Rules and Architectural Control Guidelines.

(B) If any Owner fails to landscape any portion of his Lot in accordance with the time provided for in the Architectural Committee Rules, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping Improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this section shall be secured by the Assessment Lien and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of assessments.

(C) This Section 5.13 shall not apply to Declarant or any Builder with respect to any Lot or any other property that has not been conveyed to an Owner with a residence already constructed thereon, except that this Section 5.13 shall apply upon commencement of residential occupancy of any Lot containing a residence.

Section 5.14. Declarant's and Designated Builder Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by a Declarant (or its designated agents and contractors) or a Designated Builder (subject to approval by Declarant) during the period of development, construction, performance of warranty work, sales and marketing on the Property, or any production homes, model homes and sales offices and parking incidental thereto, construction trailers, landscaping or signs deemed necessary or convenient by a Declarant or a Designated Builder (subject to the approval of Declarant), in their sole discretion, to the development, construction, sale and marketing of property within the Property. Any actions taken by a Designated Builder pursuant to this section shall require the prior approval of Declarant, which shall not be unreasonably withheld. The Association shall take no action that would interfere with access to or use of model homes; without limitation of the foregoing, the Association shall have no right to close private streets to access by members of the public desiring access to model homes.

Section 5.15. Leasing Restrictions. All Lessees shall be subject to the terms and conditions of this Declaration and the Project Documents. Each Owner shall cause his, her or its Lessees or other Occupants to comply with this Declaration and the Project Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such Lessees or Occupants, notwithstanding the fact that such Lessees or Occupants are also fully liable for any violation of each and all of those documents. No Lot may be leased for a period of less than six (6) months. The provisions of this Section 5.15 shall not apply to any Declarant's or any Designated Builder's use of Lots owned by (or leased to) a Declarant or a Designated Builder, as applicable, as a model home or for marketing purposes.

Section 5.16. Animals. No animals, insects, livestock, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure thereon except that dogs, cats or other common household pets (types and breeds limited to those determined to be acceptable by the Board) may be kept on or within the Lots, provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers as determined by the Architectural Committee. Notwithstanding the foregoing, no animals or fowl may be kept on any Lot which results in a nuisance to, which is an annoyance to, or which are obnoxious to other Owners or Lessees in the vicinity. All pets, required by any law, must be kept within a fenced yard or on a leash under the control of the Owner at all times. No structure for the car; housing or confinement of any animal or fowl shall be maintained so as to be Visible from Neighboring Property.

Section 5.17. Drilling and Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for or removing water, oil, natural gas or other minerals shall be erected, maintained or permitted upon any Lot.

Section 5.18. Refuse. All refuse, including without limitation all animal wastes, shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Until removal from the Lots, refuse shall be placed in closed refuse containers with operable lids so that such containers are not open to the air. Refuse containers shall be kept clean, sanitary and free of noxious odors. Refuse containers shall be maintained so as to not be Visible from Neighboring Property, except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection.

Section 5.19. Antennas and Satellite Dishes.

(A) This section applies to antennas, satellite television dishes, and other devices ("Receivers"), including any poles or masts ("Masts") for such Receivers, for the transmission or reception of television or radio signals or any other form of electromagnetic radiation.

(B) As of the date of Recordation of this instrument, Receivers one meter or less in diameter are subject to the provisions of Title 47, Section 1.4000 of the Code of Federal Regulations ("Federal Regulations"). "Regulated Receivers" shall mean Receivers subject to Federal Regulations as such regulations may be amended or modified in the future or subject to any other applicable federal, state or local law, ordinance or regulation ("Other Laws") that would render the restrictions in this section on Unregulated Receivers (hereinafter defined) invalid or unenforceable as to a particular Receiver. "Unregulated Receiver" shall mean all Receivers that are not Regulated Receivers. Notwithstanding the foregoing, a Regulated Receiver having a Mast in excess of the size permitted under Federal Regulations or Other Laws for Regulated Receivers shall be treated as an Unregulated Receiver under this section.

(C) Unless approved in writing by the Architectural Committee, no Unregulated Receivers shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening and fencing as such Committee may require. Unregulated Receivers must be ground mounted and not Visible from Neighboring Property.

(D) Regulated Receivers shall be subject to the following requirements:

(i) If permitted by applicable Federal Regulations or Other Laws, no Regulated Receiver shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening and fencing as such Committee may require. If such restriction is not so permitted, the provisions of subsections (ii) and (iii) below shall apply.

(ii) A Regulated Receiver and any required Mast shall be placed so as not to be Visible from Neighboring Property if such placement will not (a) unreasonably delay or prevent installation, maintenance or use of the

Regulated Receiver, (b) unreasonably increase the cost of installation, maintenance or use of the Regulated Receiver, or (c) preclude the reception of an acceptable quality signal.

(iii) Regulated Receivers and any required Masts shall be placed on Lots only in accordance with the following descending order of locations, with Owners required to use the first available location that does not violate the requirements of parts (a) through (c) in subsection (ii) above: (a) a location in the back yard of the Lot where the Receiver will be screened from view by landscaping or other Improvements; (b) an unscreened location in the backyard of the Lot; (c) on the roof, but completely below the highest point on the roofline; (d) a location in the side yard of the Lot where the Receiver and any pole or mast will be screened from view by landscaping or other Improvements; (e) on the roof above the roofline; (f) an unscreened location in the side yard; and (g) a location in the front yard of the Lot where the Receiver will be screened from view by landscaping or other Improvements.

Notwithstanding the foregoing order of locations, if a location stated in the above list allows a Receiver to be placed so as not to be Visible from Neighboring Property, such location shall be used for the Receiver rather than any higher-listed location at which a Receiver will be Visible from Neighboring Property, provided that placement in such non-visible location will not violate the requirements of parts (a) through (c) in subsection (ii) above.

(iv) Owners shall install and maintain landscaping or other Improvements ("Screening") around Receivers and Masts to screen items that would otherwise be Visible from Neighboring Property unless such requirement would violate the requirements of parts (a) through (c) in subsection (ii) above, if an Owner is not required to install and maintain Screening due to an unreasonable delay in installation of the Receiver that such Screening would cause, the Owner shall install such screening within thirty (30) days following installation of the Receiver and shall thereafter maintain such Screening, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (ii) above. If an Owner is not required to install Screening due to an unreasonable increase in the cost of installing the Receiver caused by the cost of such Screening, the Association shall have the right, at the option of the Association, to enter onto the Lot and install such Screening and, in such event, the Owner shall maintain the Screening following installation, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (ii) above.

The provisions of this section are severable from each other; the invalidity or unenforceability of any provision or portion of this section shall not invalidate or render unenforceable any other provisions or portions of this section, and all such other provisions or portions shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portions of this section to a particular type of Receiver or Mast or to a particular Receiver or Mast on a particular Lot

shall not invalidate or render unenforceable such provisions or portions regarding other Receivers or Masts on other Lots

Section 5.20. Utility Services. All lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee. Temporary power or telephone structures incident to construction activities approved by the Architectural Committee are permitted.

Section 5.21. Diseases and Insects. No Owner or resident shall permit any thing or condition to exist upon a Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 5.22. Architectural Control. The following Architectural Control guidelines shall apply to each Lot, which guidelines may be amended from time to time by the Board:

(A) No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee. Each Owner altering any grading or drainage on a Lot shall ensure that such alterations comply with all requirements of any grading or drainage plan approved by any governmental entity having jurisdiction over the Property and that such alterations do not alter or impede the flow of storm water from the manner existing prior to such alterations; approval of plans or proposed Improvements by the Architectural Committee shall not constitute a waiver of this requirement or a warranty that such plans or Improvements are consistent with this requirement or any other requirement of this Declaration, the Association Rules or architectural guidelines, any governmental requirement or construction industry standard.

(B) No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

(C) No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, shall be made or done without the prior written approval of the Architectural Committee.

(D) Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of the Improvement, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or replacement of any Improvement which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required

and this section will be deemed to have been complied with by the Owner who had requested approval of such plans. Any Owner seeking to appeal a ruling of the Architectural Committee may do so by filing a written appeal to the Board within thirty (30) days of such ruling. Any Owner seeking to appeal a ruling of the Architectural Committee may do so by filing a written appeal to the Board within thirty (30) days of such ruling.

(E) The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

(F) Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed by the Architectural Committee.

(G) The approval of the Architectural Committee required by this section shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Project.

(H) The provisions of this section shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

(I) In no event shall the Association, the Architectural Committee or any member of the Architectural Committee have any liability for any action or inaction by the Architectural Committee or its members, including without limitation any approval or disapproval of plans by the Architectural Committee. The sole remedy for an Owner asserting that the Architectural Committee has improperly withheld approval or has improperly granted approval shall be an action to compel the Architectural Committee to take appropriate action. In no event shall any damages of any nature be awarded against the Association, the Architectural Committee or any member of the Architectural Committee of any nature arising from any action or inaction described in this Section 5.22.

(J) Each Owner is strongly advised to consult with independent architects and engineers to ensure that all Improvements or alterations made by such Owner are safe and in compliance with applicable governmental requirements. No approval by the Architectural Committee shall constitute a guaranty or warranty by the Association, the Architectural Committee or any member of the Architectural Committee that the matters approved will comply with this Declaration, any Association Rules or architectural guidelines, or any applicable governmental requirements or that any plans or Improvements are safe or properly designed. The Owner constructing or altering any Improvements shall indemnify, defend and hold the

Association harmless from (i) any claims or damages of any nature arising from such Improvements or alterations or any approval thereof by the Architectural Committee and (ii) any claim that the Association, the Architectural Committee or any member of the Architectural Committee breached any duty to other Owners in issuing approval of such Owner's Improvements or alterations.

Section 5.23. Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property.

Section 5.24. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Architectural Committee.

Section 5.25. Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the municipality or other governing body in which the Project is located. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans. No Owner or other Person shall cause the Property in which they reside to be irrigated excessively or in any way which causes damages to any portion of the Project. Any Owner or other Person who violates this Section 5.25 shall be liable for any and all damages any other Owner or other Person may suffer or incur as a result of such violation.

Section 5.26. Basketball Goals and Backboards. No basketball backboard, hoop or similar structure or device shall be permitted except in accordance with the Architectural Committee Rules.

Section 5.27. Playground Equipment. No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Architectural Committee.

Section 5.28. Lights. Except as initially installed by the Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Architectural Committee.

Section 5.29. Flags. The official flags of (i) the United States, (ii) the State of Arizona, (iii) the Armed Forces (such as U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard), (iv) POW/MIA flags, (v) an Arizona Indian Nation flag, and (vi) Gadsden (Don't Tread on Me) flag, may be displayed on any Lot provided (A) such flag is displayed in the manner required under the federal flag code from a pole attached to a Residential Unit on the Lot, (B) the pole is no higher than the top of the Residential Unit, (C) the pole is no longer than ten feet in length and does not extend more than ten feet from the edge of the Residential Unit, (D) the flag

is no more than twenty four square feet in size, (E) any flag lighting does not violate Section 5.28 of this Declaration, and (F) the flag is maintained in good condition. The flag of another nation may be displayed in lieu of the United States Flag on national holidays of such nation provided such display complies with the requirements for displaying the United States Flag.

Section 5.30. Yard Sales. Owners may hold "yard sales" to sell personal property of such Owners only in compliance with the following requirements which may be amended from time to time by the Board: (i) yard sales shall be limited to two weekends per year on any Lot, (ii) no yard sale shall commence prior to 6:00 a.m. MST or continue after 5:00 p.m. MST, (iii) no Owner shall post any signs advertising any yard sale anywhere on the Property except that a temporary sign may be posted on such Owner's Lot on the day that a yard sale is being held, and (iv) if the Association ever adopts standard yard sale dates for the Property, yard sales shall be held only on such dates. The Association shall give reasonable notice to all Owners if it adopts standard yard sale dates for yard sales on the Property.

Section 5.31. Holiday Displays. Owners may display holiday decorations which are Visible from Neighboring Property only if the decorations are of the kinds normally displayed in single family residential neighborhoods, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed between November 1 and January 31 of each year and, during other times of year, from one week before to one week after any nationally recognized holiday.

Section 5.32. Firearms. The carrying, use or discharge of firearms or other weapons within the Property is prohibited. The term "firearms or other weapons" includes, but is not limited to, "B-B" guns, pellet guns, knives, swords, cross-bows and other firearms or other weapons of all types, regardless of size. This section shall not be deemed to prohibit the possession or carrying of a weapon (a) by a police officer, sheriff or other law enforcement official, or (b) by an individual who holds a currently, validly issued permit or license to carry such weapon duly issued by a government agency having appropriate jurisdiction therefor.

ARTICLE VI
RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT

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

ARTICLE VII
PARTY WALLS

Section 7.1. General Rules of Law to Apply. Each wall or fence, any part of which is placed on a dividing line between separate Lots shall constitute a "Party Wall". Each adjoining Owner's obligation with respect to party walls shall be determined by the provisions of this Declaration and, if not inconsistent, by Arizona law.

Section 7.2. Sharing Repair and Maintenance. Each Owner shall maintain the exterior surface of a party wall facing his Lot. Except as provided in this Article, the cost of reasonable repair shall be shared equally by adjoining Lot Owners.

Section 7.3. Damage by One Owner. If a party wall is damaged or destroyed by the act of one adjoining Owner, or his guests, Lessees, licensees, agents or family members (whether or not such act is negligent or otherwise culpable), then that Owner shall immediately rebuild or repair the party wall to its prior condition without cost to the adjoining Owner and shall indemnify the adjoining Owner from any consequential damages, loss or liabilities. No Owner shall violate any of the following restrictions and any damage (whether cosmetic or structural) resulting from violation of any of the following restrictions shall be considered caused by the Owner causing such action or allowing such action to occur on such Owner's Lot:

Section 7.4. Other Damage. If a party wall is damaged or destroyed by any cause other than the act of one of the adjoining Owners, his agents, Lessees, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), then the adjoining owners shall rebuild or repair the party wall to its prior condition, equally sharing the expense; provided, however, that if a party wall is damaged or destroyed as a result of an accident or circumstances that originate or occur on a particular Lot, (whether or not such accident or circumstance is caused by the action or inaction of the Owner of that Lot, or his agents, Lessees, licensees, guests or family members) then in such event, the Owner of that particular Lot shall be solely responsible for the cost of rebuilding or repairing the party wall and shall immediately repair the party wall to its prior condition.

Section 7.5. Right of Entry. Each Owner shall permit the Owners of adjoining Lots, or their representatives, to enter his Lot for the purpose of installations, alteration, or repairs to a party wall on the property of such adjoining Owners, provided that other than for emergencies, requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner of the adjoining Lot. An adjoining Owner making entry pursuant to this section shall not be deemed guilty of trespassing by reason of such entry. Such entering Owner shall indemnify the adjoining Owner from any consequential damages sustained by reason of such entry.

Section 7.6. Right of Contribution. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7.7. Consent of Adjoining Owner. In addition to meeting the requirements of this Declaration and of any applicable building code and similar regulations or ordinances, any Owner proposing to modify, alter, make additions to or rebuild (other than rebuilding in a manner materially consistent with the previously existing wall) the party wall, shall first obtain the written consent of the adjoining Owner, which shall not be unreasonably withheld or conditioned.

Section 7.8. Walls Adjacent to Streets or Common Area. A wall that is adjacent to streets or Common Area shall be treated as though the wall is a party wall with the street or Common Area constituting a Lot owned by the Association, except that any portion of such wall consisting of decorative metal-work that was originally on such wall (or any replacement thereof) shall be the sole responsibility of the Association (subject to an Owner's liability for repairs that

would be such Owner's sole responsibility under Section 7.3 or Section 7.4). Notwithstanding the foregoing, (a) the provisions in Section 7.3 and Section 7.4 regarding an Owner's sole liability for repair of damage caused by such Owner's guests or licensees shall not apply to damage resulting from guests or licensees of the Association and such damage shall be considered caused by unrelated third parties and (b) the rule in Section 7.4 regarding damage arising from events occurring on a particular Owner's Lot shall not apply to damage arising from events occurring on streets or Common Areas. Notwithstanding the foregoing, any damage to a wall that is covered by the Association's casualty insurance shall, to the extent of proceeds actually received from such insurance, be paid for by the Association.

Section 7.9. Walls Forming Part of Residence. If a Lot contains a wall that is (i) an exterior wall of a residence (including any garage associated with a residence) and (ii) located on or immediately adjacent to the Lot boundary line, the provisions of this Article shall apply subject to the following:

(A) The wall shall have a perpetual easement for encroachments onto any adjoining Lot or Common Area of up to one (1) foot, provided, however, that such easement shall only apply to initial construction of the wall and any replacements of the wall that do not encroach further than the original wall.

(B) Any roof Improvements (including gutters and similar related Improvements) above such wall shall have a perpetual easement for encroachments onto any adjoining Lot or Common Area of up to four (4) feet, provided, however, that such easement shall only apply to initial construction of the roof Improvements and any replacements of the roof Improvements that do not encroach further than the original roof Improvements.

(C) The Owner of the Lot adjacent to such wall shall not, without the written approval of the Owner of the Lot on which the residence is located, do any of the following:

(i) use the wall for recreational purposes (e.g. bouncing balls);

(ii) use the wall as part of an enclosure for pets; or

(iii) otherwise take any action regarding the wall that a reasonable person would conclude has a substantial likelihood of disturbing the peaceful and undisturbed use of the interior of the residence of which the wall forms a part.

(D) Notwithstanding Section 7.7, the Owner of the residence shall not be required to obtain permission from the adjoining Lot Owner to rebuild the wall in the same manner as originally constructed.

ARTICLE VIII
MAINTENANCE BY OWNER

Section 8.1. Maintenance Generally. Each Owner shall maintain his residence and Lot in good repair. The yards and landscaping on all improved Lots shall be neatly and attractively maintained, and shall be cultivated and planted to the extent required to maintain an appearance in harmony with other improved Lots in the Property. Debris build-up and obstructive objects shall

be cleaned up after each storm event. If any sidewalk is partially or completely located on an Owner's Lot and third parties have an easement to use such sidewalk, then the Association (and not the Owner) shall be responsible for the maintenance and repair of such sidewalk. During prolonged absence, an Owner shall arrange for the continued care and upkeep of his Lot. Except for areas owned by the Association or that the Association has elected in writing to maintain, which election may be terminated by the Association at any time, each Owner shall also maintain in good condition and repair any landscaping and sidewalk Improvements that are within the portion of any adjacent right of way that is located between such Owner's Lot and the curb of the adjacent street. An Owner shall not allow a condition to exist on his Lot which will adversely affect any other Lots and residences or other Owners. Any repainting or redecorating of the exterior surfaces of a residence which alters the original appearance of the residence will require the prior approval of the Architectural Committee.

Section 8.2. Failure to Maintain. In the event a Lot Owner fails to fulfill his maintenance and repair obligations under this Article or in the event an Owner fails to landscape his Lot as required by Section 5.13 of Article V, the Architectural Committee may have said Lot and residence landscaped, cleaned and repaired and may charge the Lot Owner for said work in accordance with the provisions of said section.

ARTICLE IX
EASEMENTS

Section 9.1. Owner's Easements of Enjoyment.

(A) Every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Area, including, but not limited to, any recreational vehicle storage area located upon the Common Area. The Association shall also have the right to restrict the use of such recreational vehicle storage area to only those Owners or lawful Occupants of a Residential Unit who do not have such a recreational vehicle storage area available to them through a neighborhood association. The Association may permit the use of any recreational vehicle storage area situated upon the Common Area by persons who are not Members of the Association provided the Association charges such persons a reasonable admission fee or use fee for the use of such recreational vehicle storage area.

(ii) The right of the Association to suspend the voting rights and right to the use of the recreational facilities, if any, located upon Common Area by any Member (a) for any period during which any Assessment against his Lot or parcel remains delinquent, (b) for a period not to exceed sixty (60) days for any other infraction of the Project Documents and (c) for successive sixty-day (60) periods if any such infraction is not corrected during any prior sixty-day (60) suspension period.

(iii) The right of the Association to dedicate, transfer or encumber all or any part of the Common Area to any public agency, authority, or utility for such purposes and

subject to such conditions as may be agreed to by the Board, provided, however, that any such action taken at any time that Declarant owns any Lot shall be subject to the approval of Declarant. If ingress or egress to any Lot is through the Common Area, any dedication, transfer, or encumbrance of the Common Area shall be subject to the Lot Owner's easement of ingress and egress.

(iv) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit or limit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners or other lawful Occupants of a Residential Unit.

(B) If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee pursuant to the lease shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

(C) The guest and invitees of any Member or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by a Member or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

Section 9.2. Drainage Easements. There is hereby created a blanket easement for drainage of ground water on, over and across each Lot in such locations as drainage channels or structures are located. An Owner shall not at any time hereafter fill, block or obstruct any drainage easements, channels or structures on his Lot and each Owner shall repair and maintain all drainage channels and drainage structures located on his Lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within the drainage easements which may impede the flow of water under, over or through the easements or which may materially increase the flow of water onto another Lot. All drainage areas shall be maintained by the Owner of the Lots on which the easement area is located.

Section 9.3. Utility Easements. Except as installed by the Declarant or approved by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, cable and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure, landscaping or other Improvements shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities. Such public utility easement areas, and all Improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless the utility company or a county, municipality or other public authority maintains said easement area. There is hereby created a blanket easement upon, across, over and under the Property for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems including, but not limited to, water, sewer,

gas, telephone, electricity, cable or communication lines and systems, such as utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Areas and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings thereon. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utility or sewer lines may be installed or relocated within the Property except as initially created or approved by Declarant without the prior written approval of, in the case of a Common Area, the Association and the Architectural Committee or, in the case of a Lot, the Owner of such Lot and the Architectural Committee. Nothing contained herein shall entitle Declarant or any utility in exercising the rights granted herein to disturb any Residential Unit constructed in accordance with the requirements hereof. Declarant further reserves temporary construction easements for utility lines, maintenance of storage tanks and facilities and access to and from such facilities.

Section 9.4. Encroachments. The Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots as constructed by the original builder or as reconstructed or repaired in accordance with the original plans and specifications or as a result of the reasonable repair, shifting, settlement or movement of any such structure.

Section 9.5. Declarant's Easement. Easements over the Lots for the installation and maintenance of electric, telephone cable, communications, water, gas, drainage and sanitary sewer or similar or other lines, pipes or facilities (i) as shown on the Recorded Plat or (ii) as may be hereafter required or needed to service any Lot (provided, however, no utility other than a connection line to a Residential Unit served by the utility shall be installed in any area upon which a Residential Unit has been or may legally be constructed on the Lot) are hereby reserved by the Declarant, together with the right to grant and transfer the same.

Section 9.6. Easements to Facilitate Development. Declarant hereby reserves to itself, all Designated Builders, and their successors and assigns the right to (a) use any Lots owned or leased by such party, or any other Lot with written consent of the Owner thereof or, with the approval of a majority of Declarant and the Designated Builders (based on the number of Lots owned by each such party), any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction, construction offices, customer service offices or sales office parking areas and (b) with the approval of a majority of Declarant and the Designated Builders (based on the number of Lots owned by each such party), install and maintain on the Common Area, any Lot owned or leased by such party, or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant or a Designated Builder deem necessary for the development, sale or lease of the Property.

Section 9.7. Dedications and Easements Required by Governmental Authority. Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

Section 9.8. Duration of Development Rights; Assignment. The rights and easements reserved by or granted to the Declarant pursuant to this Article IX shall continue so long as any

Declarant owns one or more Lots or holds an option to purchase one or more Lots. Declarant may make limited temporary assignments of its easement rights under this Declaration to any person or entity performing construction, installation or maintenance on any portion of the Property.

Section 9.9. Easement for Maintenance and Enforcement. The Association and its directors, officers, agents, contractors and employees, the Architectural Review Committee and any other persons and entities authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residential Unit), for (i) the exercise and discharge of their respective powers and responsibilities under the Project Documents, (ii) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Architectural Committee and that all Improvements are being properly maintained as required by the Project Documents, (iii) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area, (iv) performing installations or maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for maintenance, (v) performing installations or maintenance of landscaping or other Improvements located on a Lot to the extent the Owner of such Lot fails to maintain such landscaping or other Improvements as required in this Declaration, or (vi) correcting any condition which violates the Project Documents (including, without limitation, removing any Improvements constructed or installed in violation of this Declaration).

Section 9.10. Rights of Declarant and Designated Builders. Notwithstanding any other provision of this Declaration to the contrary, the Declarant and each Designated Builder has the right to maintain construction trailers, model homes and sales offices on Lots owned or leased by such party and to construct and maintain parking areas for the purpose of accommodating persons visiting such construction trailers, model homes and sales offices and employees and contractors of such party. Any Residential Unit constructed as a model home or a sales office shall cease to be used as a model home and sales office at any time the Declarant or such Designated Builder is not actually engaged in the sale of Lots.

ARTICLE X
MAINTENANCE

Section 10.1. Maintenance by the Association of Common Areas, Areas of Common Responsibility and Public Right of Way. Subject to Section 10.2, the Association, or its duly delegated representatives, shall be responsible for the maintenance, repair and replacement of the Common Area and Improvements thereon (and all other Areas of Common Responsibility and Improvements thereon for which the Association is responsible, including, but not limited to any maintenance requirements, such as landscaping or drainage, for any property located within publicly dedicated rights-of-way within or adjacent to any portion of the Property) and may, without any approval of the Owners being required, do any of the following:

(A) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

(B) Construct, reconstruct, repair, replace or refinish any portion of any Areas of Common Responsibility used as a road, street, walk, driveway and parking area or designated on the Plat as a public right-of-way to be maintained by the Association;

(C) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(D) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(E) Construct, maintain, repair and replace landscaped areas on any portion of the Common Area;

(F) Maintain any portion of the Common Area used for drainage and retention;

(G) Maintain all multiple residence mailboxes used for delivery of personal mail within the Property; provided, however, that each Owner shall be responsible for repair or replacement of locks and/or keys for each Owner's mailbox; and

(H) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.

Neither Declarant nor any Designated Builder shall be responsible for maintenance, repair or replacement of any of the Areas of Common Responsibility or Improvements thereon previously transferred to the Association, except that (i) the installer of any landscaping on any of the Areas of Common Responsibility shall provide a ninety (90) day warranty period for such landscaping and (ii) any express or implied warranties provided by any provider of labor or materials in connection with Improvements shall be deemed assigned to the Association concurrently with such transfer. This paragraph shall not be subject to amendment without the written approval of the Declarant.

If any Plat, this Declaration or any other Recorded instrument permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Area, other Areas of Common Responsibility or public right-of-way areas, the Board will have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract to provide maintenance service to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 10.2. Damage or Destruction of any Areas of Common Responsibility by Owners. No Owner shall in any way damage or destroy any of the Areas of Common Responsibility or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an owner shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefore under

Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

Section 10.3. Payment of Utility Charges. Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Areas of Common Responsibility shall be a Common Expense of the Association and shall be included in the budget of the Association.

Section 10.4. Maintenance by Governmental Entities. No municipality or other governmental entity is responsible for or will accept maintenance for any private facilities, landscaped areas, or any Areas of Common Responsibility within the Project.

Section 10.5. Landscaping Replacement. Landscaping originally planted on any of the Areas of Common Responsibility may exceed the landscaping that is ultimately planned for Common Areas due to over-planting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead or damaged landscaping if, in the reasonable discretion of the Board, (a) the remaining landscaping is acceptable to the Board and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with governmental entities in connection with Property, even if the location of specific plants is different than the locations shown on such approved landscaping plans. Declarant reserves the right to substitute plants and trees planted on the Property or shown on approved landscaping plans with equivalent or better landscaping materials. Neither Declarant nor any other installer of landscaping in any of the Areas of Common Responsibility shall be responsible for replacement of landscaping that dies more than ninety days following installation or that requires replacement due to vandalism, lack of proper watering or maintenance by Association, or damage due to negligence; the Association shall be solely responsible for such replacement (subject to potential recovery by the Association from any vandal or negligent person).

Section 10.6. Alteration of Maintenance Procedures. Following the termination of the Class B membership and so long as Declarant owns any Lot, the Association shall not, without the written approval of Declarant, alter or fail to follow the maintenance and repair procedures recommended by the Association's management company as of the termination of the Class B membership unless such alteration will provide for a higher level of maintenance and repair. Declarant shall have the right, but not the obligation, to perform any required maintenance or repair not performed by the Association within ten (10) business days following notice from Declarant that such maintenance or repair is required under this section. If Declarant performs such maintenance or repair, the costs incurred by Declarant shall be reimbursed by the Association within thirty (30) days following written demand for reimbursement accompanied by copies of invoices for such costs. This section shall not be subject to amendment without the written approval of the Declarant so long as Declarant owns any Lot.

ARTICLE XI
INSURANCE

Section 11.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant or a Designated Builder, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

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

(B) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than $1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

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

(D) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

Section 11.2. Policy Provisions. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(A) There shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household.

(B) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy.

(C) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust.

(D) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.

(E) The Association shall be named as the Insured.

(F) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

(G) If the Common Area is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the Improvements and other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.

(H) "Agreed Amount" and "Inflation Guard" endorsements.

Section 11.3. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner or First Mortgagee. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each First Mortgagee to whom certificates of insurance have been issued.

Section 11.4. Fidelity Bonds.

(A) The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of fidelity bond maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the amount equal to one hundred percent (100%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond or (iii) the sum equal to three (3) months assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

(i) The fidelity bonds shall name the Association as an obligee.

(ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

(iii) The bonds shall provide that they may not be canceled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

(B) The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity

bond to be maintained by the Association pursuant to subsection (A) of this section. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

Section 11.5. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

Section 11.6. Insurance Obtained by Owners. Each Owner shall be responsible for obtaining property insurance for his own benefit and at his own expense covering his Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.

Section 11.7. Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any First Mortgagee. Subject to the provisions of Section 11.8 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

Section 11.8. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance or (ii) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be added to the Association's reserve fund.

ARTICLE XII
TERM AND ENFORCEMENT

Section 12.1. Enforcement. Subject to the provisions of Section 12.4 and of Article XIII, the Association, the Architectural Committee or any Owner shall have the right (but not the obligation) to enforce the provisions of this Declaration and any amendment thereto. Failure by the Association, the Architectural Committee or any Owner to enforce the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Deeds of conveyance of the Property may contain a reference to this Declaration, but whether or not such reference is made in such deeds, each and all such provisions of this Declaration shall be valid and binding upon the respective grantees. Violators of any one or more of the provisions of this Declaration may be restrained by any court of competent jurisdiction and damages awarded against such violators; provided, however, that a violation of any provision of this Declaration shall not affect the lien of any First Mortgagee. If the Architectural Committee enforces any provision of the Project Documents, the cost of the enforcement shall be paid by the Association. In addition to any enforcement rights otherwise available to the Association, the Association shall have the

right to enforce any provision of this Declaration by directly taking action necessary to cure or remove a breach of this Declaration, including without limitation, removal, repair or replacement of any Improvement, sign or landscaping on any portion of the Property. In such event, the Association shall be entitled to recover the costs incurred by the Association in connection with such cure. Pursuant to such cure and/or removal right of the Association, the Association or its authorized agents may, upon reasonable written notice (or immediately, for willful and recurrent violations, when written notice has previously been given), enter any Lot in which a violation of any provision of this Declaration exists and may correct such violation at the expense of the Owner of such Lot, and the Association and its agents are hereby granted an easement for such purpose. Such expenses, and such fines as may be imposed pursuant to this Declaration, the Bylaws, or Association Rules, shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of this Declaration. All remedies available at law or equity shall be available in the event of any breach of any provision of this Section 12.1 by any Owner, Lessee or other person.

Section 12.2. Term. The covenants, conditions and restrictions in this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years for so long as the Lots shall continue to be used for residential purposes.

Section 12.3. Amendment. This Declaration may be amended at any time by (i) majority vote of the Members of the Association or (ii) a certification by the President of the Association that the Members of at least a majority of the votes entitled to be cast by the Members have been cast in favor of the amendment at a duly called meeting. Any such amendment shall be signed by the President or Vice President of the Association, shall certify that the amendment has been approved as required by this Section 12.3, and shall be Recorded with the Pima County Recorder and take effect immediately upon Recordation regardless of the status of the then current term of this Declaration under Section 12.2 above. A properly executed and Recorded amendment may alter the provisions of this Declaration in whole or in part and need not be uniform in application to all or any portion of the Property. Notwithstanding the foregoing:

(A) Any amendment made at a time when Declarant owns any Lots shall require the written approval of the Declarant.

(B) So long as Declarant owns any Lots, any provision of this Declaration that reserves to the Declarant rights or privileges or exempts the Declarant from duties, obligations or responsibilities may not be amended.

(C) This Declaration may only be terminated by the written approval or the affirmative vote, or any combination thereof, of Owners entitled to cast not less than seventy-five percent (75%) of the votes of each class of membership in the Association.

(D) Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and to

further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall specify the federal, state or local governmental agency or the federally or state charted lending institution requesting the amendment and setting forth the amendatory language requested or required by such agency or institution

(E) Declarant shall, for so long as it holds Class B Membership, be entitled to unilaterally, without the consent or approval of any other Member or Person, amend this Declaration so long as such amendment does not have a material adverse effect on any Owner.

Section 12.4. Approval of Litigation. Except for any legal proceedings initiated by the Association to (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules, (iii) enforce the Architectural Committee Rules, (iv) collect any unpaid Assessments levied pursuant to this Declaration or (v) enforce a contract entered into by the Association with vendors providing services to the Association, the Association shall not incur litigation expenses, including without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of a majority of the Members of the Association entitled to cast a vote who are voting in person at a meeting duly called for such purpose, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by special assessment and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations. Each Owner shall notify prospective Purchasers of such legal proceedings initiated by the Board and not included in the above exceptions and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with Section 13.3 of this Declaration. Nothing in this section shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (i) enforce the Project Documents, (ii) comply with the statutes or regulations related to the operation of the Association, (iii) amend the Project Documents as provided in this Declaration, (iv) grant easements or convey Common Area as provided in this Declaration or (v) perform the obligations of the Association as provided in this Declaration. Subject to the exceptions in the first sentence of this section, with respect to matters involving Property or Improvements to Property, the Association (or Board of Directors) additionally shall not initiate legal proceedings or join as a plaintiff in legal proceedings unless (1) such Property or Improvement is owned either by the Association or jointly by all Members of the Association, (2) the Association has the maintenance responsibility for such Property or Improvement pursuant to this Declaration or (3) the Owner who owns such Property or Improvement consents in writing to the Association initiating or joining such legal proceeding.

Section 12.5. Annexation of Annexable Property. Until the expiration or earlier termination of the Class B Membership, Declarant (or a majority of the Designated Builders, in the case where Declarant no longer owns any Lots) shall have the sole right to annex all or any portion of the Annexable Property. Annexation shall be effective upon Recordation of a

declaration of annexation with the County Recorder of Pima County, Arizona stating that such Annexable Property has been annexed to this Declaration. The declaration of annexation shall be signed by the Declarant (or a majority of the Designated Builders, if applicable), and no consent or approval by the Board of Directors or Members of the Association shall be necessary for such annexation. Upon annexation, the annexed Annexable Property shall be deemed to be part of the Property and shall have the same rights, privileges and obligations as the Property originally subjected to the terms of this Declaration, including membership in the Association; provided, however, that such rights, privileges and obligations shall not include matters arising or accruing prior to Recordation of the declaration of annexation.

Lots in each parcel of the annexed property shall not be subject to assessment until the first Lot in a parcel is conveyed to a Purchaser. Any area within the annexed property, including the Property, designated by a Plat as Common Area shall be conveyed to the Association, and the Association shall accept such conveyance, upon the completion of the Improvements to such Common Area in accordance with the approved plans. Such Common Area shall be conveyed to the Association, free of all monetary encumbrances (including mechanics' and materialmen's liens), except current real and personal property taxes and other easements, conditions, reservations and restrictions then of record, including without limitation, this Declaration.

Section 12.6. De-Annexation of Property. Declarant shall have the right from time to time, in its sole and absolute discretion, and without the need to obtain the consent of any person (other than consent of the owner of the property being de-annexed), to remove one or more portions of the Property from the effect of this Declaration; provided, however, that a portion of the Property may not be deleted from this Declaration unless at the time of such deletion and removal no Residential Units have been constructed thereon (unless the de-annexation is for the purpose of accomplishing minor adjustments to the boundaries of Lots or the Property). No deletion of Property shall occur if such deletion would act to terminate access to any right-of-way or utility line unless reasonable alternative provisions are made for such access. No deletion of Property shall affect the Assessment Lien on the deleted Property for Assessments accruing prior to deletion. Any de-annexation of Property hereunder shall be made by the Recording of a notice of de-annexation signed by the Declarant (and the Owner of the portion of the Property being de-annexed, if any).

ARTICLE XIII
CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

It is intended that the Common Area, each Lot, and all Improvements constructed on the Property by Declarant, a Designated Builder or other Persons (collectively the "Developers") in the business of constructing improvements will be constructed in compliance with all applicable building codes and ordinances and that all Improvements will be of a quality that is consistent with the good construction and development practices in the area where the Project is located for production housing similar to that constructed within the Project. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding alleged defects ("Alleged Defects") in any Improvements on any Lot or Common Area will be resolved amicably, without the necessity of time-consuming and costly litigation.

Accordingly, all Developers (including Declarant), the Association, the Board, and all Owners shall be bound by the following claim resolution procedures.

Section 13.1. Right to Cure Alleged Defect. If a person or entity ("Claimant") claims, contends, or alleges an Alleged Defect, each Developer shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

Section 13.1.1. Notice of Alleged Defect. If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, Claimant shall give written notice of the Alleged Defect ("Notice of Alleged Defect") to the Developer constructing the Improvement with respect to which the Alleged Defect relates.

Section 13.1.2. Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by a Developer of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, areas of Association responsibility, any Lot or Residential Unit, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Developer at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Section 13.2. No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which such Developer is not otherwise obligated under applicable law or any warranty provided by such Developer in connection with the sale of the Lots and Residential Units and/or the Improvements constructed thereon. The right reserved to Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to a Developer except by a written document executed by such Developer and Recorded in the records of Pima County, Arizona.

Section 13.3. Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to Section 12.4 and Section 13.4 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging (1) damages for costs of repairing Alleged Defect ("Alleged Defect Costs"), (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from a Developer (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid in to the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer(s) which notice shall include at a minimum (1) a description of the Alleged Defect, (2) a description of the attempts of the Developer(s) to correct such Alleged Defect and the opportunities provided to the Developer(s) to correct such

Alleged Defect, (3) a certification from an architect or engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer, (4) the estimated Alleged Defect Costs, (5) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer(s) and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer(s) and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against the Developer(s) and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members. Each Owner must notify any potential Purchaser of their Lot of any pending legal action brought against the Association pursuant to this Section XIII.

Section 13.4. Alternative Dispute Resolution. Any dispute or claim between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner(s) or the Association on the other hand, (b) any Owner and another Owner or (c) the Association and any Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration, (ii) the design or construction of any portion of the Project or (iii) an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 13.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

Section 13.4.1. Negotiation. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the Project. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such negotiation.

Section 13.4.2. Mediation. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 13.4.1 above within such time period as may be agreed upon by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have thirty (30) days after the Termination of Negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty (30) days after the Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from

any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to persons or entities not a party to the foregoing proceedings.

Section 13.4.2.1. Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in the County where the Property is located or such other place as is mutually acceptable by the parties to the Dispute.

Section 13.4.2.2. Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Subsection 13.4.2.5 below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

Section 13.4.2.3. Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

Section 13.4.2.4. Parties Permitted at Sessions. Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic record of the mediation process.

Section 13.4.2.5. Expenses of Mediation. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such mediation.

Section 13.4.3. Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 13.4.2 above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 13.4 and the Arizona Revised Uniform Arbitration Act, A.R.S. § 12-3001 *et seq*.

(the "Arbitration Act"). If the Disputing Party does not submit the Dispute to arbitration within thirty (30) days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to a person or entity not a party to the foregoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Developer shall be required to participate in the arbitration proceeding if all parties against whom a Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 13.4, the arbitrator shall have the authority to try all issues, whether of fact or law.

Section 13.4.3.1. Place. The arbitration proceedings shall be heard in the County where the Property is located.

Section 13.4.3.2. Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the American Arbitration Association with experience in relevant matters which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

Section 13.4.3.3. Commencement and Timing of Proceeding. The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

Section 13.4.3.4. Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

Section 13.4.3.5. Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The Developer shall also be entitled to conduct further tests and inspections as provided in Section 13.1 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

Section 13.4.3.6. Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the

Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

Section 13.4.3.7. Motions. The arbitrator shall have the power to hear and dispose or motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

Section 13.4.3.8. Expenses of Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

Section 13.5. Statute of Limitations. Nothing in this Article shall be considered to toll, stay, or extend any applicable statute of limitations.

Section 13.6. Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Subsection 13.4.1 or Subsection 13.4.2 above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Subsection 13.4.3 and any party to the Dispute thereafter fails to comply with such resolution or award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys' fees and court costs.

ARTICLE XIV
SPECIAL BUILDER PROVISIONS

Section 14.1. Construction and Installation of a Common Wall.

(A) Right to Construct. Each Builder hereby agrees and acknowledges that certain portions of each Builder's Lots may share a common wall with the Lots of another Builder (a "Common Wall"). Any Builder (the "Constructing Builder") that first commences construction on a portion of the Builder's Lots requiring the construction and installation of a Common Wall (commencement of construction being the commencement of grading) shall be responsible for causing the construction and installation of the Common Wall. The Constructing Builder shall cooperate and coordinate with any adjacent property owner(s) (the "Non-Constructing Builder") in order to avoid any interference with any of the Non-Constructing Builder's construction and installation of Improvements upon its Lots. The Constructing Builder shall complete the construction and installation of any Common Wall in a timely manner. If the Constructing Builder fails to timely construct and install the Common Wall in accordance with the terms of this subsection (A), including, but not limited to, receipt of the lien waivers required by subsection

(C) below, then the Non-Constructing Builder shall have the right to complete such construction and pay any outstanding costs to release any liens. The Non-Constructing Builder hereby grants to the Constructing Builder a temporary nonexclusive easement over, across, in, under and through those portions of the Non-Constructing Builder's Lots that are not planned or utilized for the construction of buildings, structures, or other Improvements for the purpose of constructing the Common Wall. The easement may not be exercised or used in any fashion that would unreasonably interfere with or impact the Non-Constructing Builder's development of its Lots. The easement with respect to any Lot shall automatically expire upon the sale of such Lot, together with a Residential Unit thereon, to a Purchaser.

(B) Payments. The cost of any Common Wall shall be divided equally between the Builder(s) sharing the Common Wall. Subject to receipt of the lien releases described in subsection (C) below, within ten (10) days after the Constructing Builder submits an invoice to the Non-Constructing Builder in connection with the cost of the construction and installation of a Common Wall (the "Wall Payment Due Date"), the Non-Constructing Builder shall pay to the Constructing Builder, in cash, by cashier's check or by wire transfer of immediately available funds, the Non-Constructing Builder's share of the cost.

(C) Lien Waivers. The Constructing Builder shall not permit any contractors, subcontractors or material suppliers to file any liens or claims including, but not limited to, stop notices, bonded stop notices, mechanics', materialmen's, professional service, contractors' or subcontractors' liens or claim for damage arising from the services performed by the Constructing Builder and its agents, employees, contractors and subcontractors, against any other Builder's Lots. It shall be a condition precedent to the Constructing Builder receiving payment that all mechanics and materialmen deliver statutory unconditional lien releases for the work constructed to date.

(D) Non-Payment. If a Non-Constructing Builder fails to pay the amounts incurred by the Constructing Builder for the construction and installation of the Common Wall on the Non-Constructing Builder's Lots on or before the Wall Payment Due Date, the amounts unpaid shall bear interest at the rate of eighteen percent (18%) per annum until paid in full, and shall be secured by a lien against the Lots of the Non-Constructing Builder, which lien may be foreclosed in the manner provided for in Arizona Law for the foreclosure of realty mortgages.

ARTICLE XV
GENERAL PROVISIONS

Section 15.1. Severability. Judicial invalidation of any part of this Declaration shall not affect the validity of any other provisions.

Section 15.2. Construction. The Article and section headings have been inserted for convenience only and shall not be considered in resolving questions of interpretation or construction. All terms and words used in this Declaration regardless of the number and gender in which they are used shall be deemed and construed to include any other number, and any other gender, as the context or sense requires. In the event of any conflict or inconsistency between this Declaration, the Articles, and/or the Bylaws, the provisions of this Declaration shall control over

the provision of the Articles and the Bylaws and the provisions of the Articles shall prevail over the provisions of the Bylaws.

Section 15.3. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail, postage prepaid; if to an Owner, addressed to that Owner at the address of the Owner's Lot or if to the Architectural Committee, addressed to that Committee at the normal business address. If notice is sent by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage pre-paid. If personally delivered, notice shall be effective on receipt. Notwithstanding the foregoing, if application for approval, plans, specifications and any other communication or documents shall not be deemed to have been submitted to the Architectural Committee, unless actually received by said Committee. Any vote, election, consent or approval of any nature by the Owners or the Board of Directors, whether hereunder or for any other purpose, may, in the discretion of the Board of Directors and in lieu of a meeting of members, be held by a mail-in ballot process pursuant to such reasonable rules as the Board may specify.

Section 15.4. Tract Declaration. Any Owner of more than one Lot shall have the right to Record against any portion of the Property owned by such Owner a Tract Declaration ("Tract Declaration") in such form as may be approved in writing by Declarant. A Tract Declaration may not modify the provisions of Section 12.4 or Article XIII of this Declaration and, to the extent that any Tract Declaration is inconsistent with such provisions of this Declaration, the provisions of such Tract Declaration shall take priority over and control over such provisions of this Declaration. A Tract Declaration may also impose other covenants, conditions, restrictions, easements or other matters to the extent not inconsistent with the provisions of this Declaration.

Section 15.5. Restriction of Traffic. Declarant reserves the right, until the close of escrow of the last Lot and Residential Unit in the Property, to unilaterally restrict and/or re-route pedestrian and vehicular traffic within any portion of the Property, in Declarant's sole discretion, to accommodate Declarant's or any Designated Builder's construction activities, and sales and marketing activities; provided that no Lot or Residential Unit shall be deprived of access to a dedicated street adjacent to the Property.

Section 15.6. Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by Applicable Arizona law, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under applicable Arizona law.

Section 15.7. Disclaimers and Releases. By acceptance of a deed to a Lot and Residential Unit, each Purchaser or Owner, for itself and all persons claiming under such Purchaser or Owner, shall conclusively be deemed to have acknowledged and agreed (a) that Declarant specifically disclaims any and all representations and warranties, express and implied, with regard to any of the disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures) and (b) to fully and unconditionally release Declarant and the Association, and their respective officers, managers, agents, employees, suppliers and contractors, and their successors and assigns, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience,

injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, occurrences described herein.

ARTICLE XVI
SPECIAL PROVISIONS

Section 16.1. View Impairment. Neither Declarant nor the Association guarantees or represents that any view from a Residential Unit or any other portion of the Property over and across the open space, the Project or any adjacent property will be maintained for any period of time. Without limiting the foregoing, neither Declarant nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in Article V above. Any express or implied easements for view purposes and/or for the passage of light and air are hereby expressly disclaimed.

Section 16.2. Public Recreational Uses. The Property is or may be located adjacent to, in the general vicinity of, or nearby public access trail easements, trails, trailheads and other public recreational uses which are open to the public.

Section 16.3. Freeway/Roadways. The Property is or may be located adjacent to or nearby expressways and/or arterial or major roadways, and subject to levels of traffic thereon and noise, dust, and other nuisance from such roadways and vehicles. Also, each Residential Unit is located in proximity to streets and other Residential Units within the Property, and subject to substantial levels of sound and noise.

Section 16.4. Security. The security gate for the community is intended to limit access to the community but is not intended to constitute any assurance that the community is secure from entry or intrusion by non-owners and occupants and their respective family and invitees. The Association may, but shall not be obligated to, maintain or support certain activities within the property designed to make the property safer than it otherwise might be. However, neither the Association, the Board, the Management Company of the Association, any neighborhood association, Declarant nor any land entity shall in any way be considered insurers or guarantors of security within the property, nor shall any of the above-mentioned parties be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the property, cannot be compromised or circumvented, or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Each Owner acknowledges, understands, and covenants to inform all occupants of its unit, and their respective families and invitees, that neither the Association, the Board, committees, neighborhood associations, nor all other persons involved with the governance, maintenance, and management of the Property, including Declarant and any land entity, are insurers of safety or security within the Property. All Owners and occupants, and their respective families and invitees, assume all risks of personal injury and loss or damage to persons, units, and the contents of units, and further acknowledge that neither the Association, its Board and committees, the management company of the Association, any neighborhood association, Declarant nor any land entity have made representations or warranties regarding any attended or unattended entry gate, patrolling of

the property, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the property. All Owners and occupants, and their respective families and invitees, further acknowledge that they have not relied upon any such representations or warranties, expressed or implied.

Section 16.5. Disclosure of Proximity of Desert Wash. Each Owner, by accepting a deed to a Lot, (i) acknowledges that the Project is located in the vicinity of a desert wash and that wildlife may from time to time enter the Property from such wash and that neither Declarant nor the Association shall have any obligation to prevent the entry of or to eradicate, relocate or otherwise address issues relating to the entry of wildlife onto the Property of each Owner, and (ii) agrees to fully and unconditionally release Declarant, the Association and their respective officers, managers, agents, employees, suppliers and contractors, and their successors and assigns for any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to wildlife entering the Property.

Section 16.6. Easement to Inspect and Right to Correct.

(A) Easement. Declarant reserves, for itself and such other persons as it may designate, perpetual, non-exclusive easements throughout the Project, to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, correcting, or improving any portion of the Project, including Residential Units and the Common Areas. Declarant shall have the right to redesign, correct, or improve any part of the Project, including Residential Units and the Common Areas.

(B) Right of Entry. In addition to the above easement, Declarant reserves a right of entry onto a Residential Unit upon reasonable notice to the Owner; provided, in an emergency, no such notice need be given. Entry into a Residential Unit shall be only after Declarant notifies the Owner (or Occupant) and agrees with the Owner regarding a reasonable time to enter the Residential Unit to perform such activities. Each Owner agrees to cooperate in a reasonable manner with Declarant in Declarant's exercise of the rights provided to it by this section.

Entry onto the Common Areas and into any Improvements and structures thereon may be made by Declarant at any time, provided advance notice is given to the Association; provided, in an emergency, no notice need be given.

(C) Damage. Any damage to a Residential Unit or the Common Areas resulting from the exercise of the easement and right of entry described in subsections (A) and (B) of this section shall promptly be repaired by, and at the expense of, Declarant. The exercise of these easements shall not unreasonably interfere with the use of any Residential Unit and entry onto any Residential Unit shall be made only after reasonable notice to the Owner or Occupant.

Section 16.7. Mailbox Easements. Mailbox structures shall be installed at such locations within the Property as Declarant and the U.S. Postal Service determine to be appropriate. If mailbox structures benefiting more than a single Residential Unit are constructed or installed on Lots, an easement shall be deemed to exist over such portion of the Lot(s) on which such structures

are constructed or installed so as to facilitate the use of such mailbox structure by the U.S. Postal Service, the Owners of the Residential Units to be served by such structures, and the Association. All such common mailbox structures shall be Common Areas.

Section 16.8. Supplemental Declarations. Supplemental declaration(s) may, but need not necessarily, be recorded from time to time by Declarant (or with the express prior written consent of Declarant, in its sole discretion). A supplemental declaration shall be supplemental to this Declaration, and may create a sub-association and/or impose supplemental obligations, covenants, conditions, or restrictions, or reservations of easements, with respect to a particular portion of the Property or other land described in such instrument. This Declaration and any supplemental declaration shall be construed to be consistent with each other to the greatest extent reasonably possible; however, in the event of any irreconcilable conflict, the provisions of this Declaration shall prevail. Any purported supplemental declaration Recorded by a person other than Declarant, without the express prior written consent of Declarant, shall be null and void.

Section 16.9. Sub-Associations. Sub-associations may be created from time to time, to administer to particular portions of the Property; provided that no sub-association may be validly organized except pursuant to the authority and jurisdiction of a supplemental declaration as set forth in Section 16.8 above. A duly created sub-association shall be a supplemental homeowners association, organized pursuant to the authority and jurisdiction of a supplemental declaration, with concurrent and supplemental jurisdiction (subject to this Declaration and the other Project Documents) with the Association with respect to a particular portion of the Property.

A sub-association shall have the power to establish standards and conduct activities for the portion of the Property under its responsibility, subject to the Property Documents and any documents created in connection with the creation and ongoing operations of the sub-association. Notwithstanding the foregoing, the Association shall have the power and authority to veto any action taken or contemplated to be taken by any sub-association which the Board reasonably determines to be in violation of the Project Documents, or adverse or detrimental to the best interests of the Association, or its Members. The Association also shall have the power to reasonably require specific action to be taken by any sub-association in connection with the sub-association' s obligations and responsibilities (for example, without limitation, requiring specific maintenance or repairs, or requiring that a proposed sub-association budget include certain items and that expenditures be made therefor). A sub-association shall take appropriate action required by the Association by written notice, within the reasonable time frame set forth in such notice. If the sub-association fails to so comply, the Association shall have the power and authority to effectuate such action on behalf of the sub-association and to levy special assessments, pursuant to Article IV of this Declaration, to cover the reasonable costs thereof.

Section 16.10. Future Development. Declarant presently plans to develop only the Lots within the Property which have already been released for construction and sale, and Declarant has no obligation with respect to the future planning, zoning or development of the Annexable Property or of any other real property contiguous to or in the vicinity of the Property. The Owner of a Residential Unit may have seen proposed or contemplated residential and other developments which may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by

sales personnel or otherwise, Declarant is under no obligation to construct such future or planned developments or units, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same. An Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the foregoing provisions.

Section 16.11. Construction Nuisances. Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, traffic, and other construction related "nuisances." Each Owner acknowledges and agrees that it is purchasing a Residential Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial level of construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out

Section 16.12. Model Homes. Model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant or a Designated Builder to deliver the Residential Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded carpet, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to a Purchaser unless an authorized officer of Declarant or a Designated Builder has specifically agreed in a written addendum to the purchase agreement to make specific items a part of the purchase agreement.

Section 16.13. Interpretation. Except for judicial construction, the Association has the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof will be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

Section 16.14. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable will not affect the validity or enforceability of any of the other provisions hereof.

Section 16.15. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration are determined by a court of competent jurisdiction (upheld on appeal) to be unlawful, void or voidable for violation of the rule against perpetuities, then the covenants, conditions, restrictions or other provisions so determined to be unlawful, void or voidable will continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

Section 16.16. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances will operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 16.17. Laws, Ordinances and Regulations.

Section 16.17.1. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration will not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

Section 16.17.2. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be in violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

Section 16.18. References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration, but whether or not any such reference is made in any deed or instrument, each and all of the provisions of this Declaration are and will be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

Section 16.19. Gender and Number. Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders includes each of the other genders, words in the singular include the plural, and words in the plural include the singular.

Section 16.20. Captions and Title; Section References; Exhibits. All captions, titles or headings of the Articles and sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered Articles, sections or subsections, or to lettered Exhibits, will be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

Section 16.21. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, the Project Documents or resolution of the Board to be given to any Owner, Lessee or resident then, unless otherwise specified in the Project Documents or in the resolution of the Board, or unless otherwise required by law, such notice requirement will be deemed satisfied if notice of such action, proposed action or meeting is published once in any newspaper in general circulation within Pima County. This section will not be construed to require that any notice be given if not otherwise required and will not prohibit satisfaction of any notice requirement in any other manner.

Section 16.22. Indemnification. The Association will indemnify each and every officer and director of the Association, each and every member of the Architectural Committee, and each and every member of any committee appointed by the Board (including, for purposes of this section, former officers and directors of the Association, former members of the Architectural

Committee, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, except for his or her own individual willful misfeasance, malfeasance, misconduct or bad faith. No Association Official will have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association will indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein is not exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this section or otherwise under the Articles, Bylaws or applicable law, such Association Official must promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

Section 16.23. No Partition. No Person acquiring any interest in the Property or any part thereof will have a right to, nor may any person seek, any judicial partition of the Common Area, nor will any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only appurtenant thereto), or except as otherwise expressly permitted herein. This section must not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area) which may or may not be subject to this Declaration.

Section 16.24. Property Held in Trust. Except as otherwise expressly provided in this Declaration, any and all portions of the Property which are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is the Declarant or a Declarant Affiliate, will be deemed for all purposes under this Declaration to be owned by the Declarant or such Declarant Affiliate, as applicable, and will be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by the Declarant or such Declarant Affiliate, as applicable. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by the Declarant or any such Declarant Affiliate to any such trust (or the trustee thereof) or to the Declarant or any such Declarant Affiliate by any such trust (or the trustee thereof) will be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

Section 16.25. Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days will be counted including Saturdays, Sundays and holidays, but if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

Section 16.26. Notice of Violation. The Association has the right to Record a written notice of a violation by any Owner, Lessee or Occupant of any restriction or provision of the Project Documents. The notice must be executed and acknowledged by an officer of the Association and must contain substantially the following information: (a) the name of the Owner, Lessee or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; (e) a statement of the specific steps which must be taken by the Owner, Lessee or Occupant to cure the violation; and (f) any other information required by applicable law. Recordation of a notice of violation will serve as a notice to the Owner, Lessee and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association will Record a notice of compliance which will state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and will state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation will not constitute a waiver of any existing violation or evidence that no violation exists.

Section 16.27. Disclaimer of Representations. Notwithstanding anything to the contrary herein, neither the Declarant nor any Declarant Affiliate makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that any real property now owned or hereafter acquired by the Declarant or by any Declarant Affiliate is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While neither the Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants assumes all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold the Declarant and all Declarant Affiliates harmless therefrom.

Section 16.28. Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) may be modified, amended or revoked in any way, so long as the Declarant, any Declarant Affiliate or a

trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Declarant.

(Signature on following page.)

Date: June 17, 2019

MERITAGE HOMES OF ARIZONA, INC.,
an Arizona corporation

By: _____

Its: Division President - TUCSON

STATE OF ARIZONA)
)ss.
County of Pima)

This instrument was acknowledged before me this 17th day of June, 2019, by Jeffrey R. Gobskin the Division President of Meritage Homes of Arizona, Inc., for and on behalf of the entity.

BECKY A. CALLAHAN
Notary Public - Arizona
Pima County
Expires 09/30/2021

_____
Notary Public

My commission expires: 9/30/2021

CONSENT OF FEE TITLE HOLDER:

BY EXECUTION BELOW, THE UNDERSIGNED FEE TITLE HOLDER OF THE PROPERTY CONSENTS TO THE CREATION AND RECORDATION OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SAGUAROS VIEJOS EAST.

TITLE SECURITY AGENCY, LLC,
a Delaware limited liability company, as
Trustee under Trust No. 201921-T, only and
not otherwise

By: Rachel Turnipseed

Its: Trust Officer

STATE OF ARIZONA)
)ss.
County of Pima)

This instrument was acknowledged before me this 20 day of JUNE, 2019, by Rachel Turnipseed the Trust Officer of Title Security Agency, LLC, a Delaware limited liability company, for and on behalf of the entity.

Notary Public

My commission expires: 7/24/22

NOTARY PUBLIC
STATE OF ARIZONA
Pima County
DIANE L SLOANE
COMMISSION # 548569
My Commission Expires July 26, 2022

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

LOTS 1 THROUGH 97, TRACTS 1 & 2 AND COMMON AREAS 'A' (PRIVATE STREETS) & 'B' (LANDSCAPED AND NATURAL OPEN SPACE, DRAINAGE & RECREATION AREA), FINAL PLAT FOR SAGUAROS VIEJOS EAST, PHASE 1, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED AT SEQUENCE 2019 20360010.