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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
HARDY PRESERVE  
Lots 1-55  
Common Area "A" (Drainage, Landscape and Public Utilities)  
Common Area "B" (N.O.S. and Riparian Habitat)**

Sequence # 20173240094

**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
HARDY PRESERVE**

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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
HARDY PRESERVE  
Lots 1-55  
Common Area "A" (Drainage, Landscape and Public Utilities)  
Common Area "B" (N.O.S. and Riparian Habitat)  
Sequence # 20173240094**

This Declaration of Covenants, Conditions, Restrictions and Easements for Hardy Preserve (this "**Declaration**") is made this 9<sup>th</sup> day of October, 2017, by KB HOME TUCSON INC., an Arizona corporation (the "**Declarant**").

**RECITALS**

A. Declarant is the holder of the beneficial interest under a subdivision trust in that certain real property located in Pima County, Arizona (the "**County**"), which is more particularly described on **Exhibit A** attached hereto (the "**Property**"). Declarant intends to develop the Property as HARDY PRESERVE, Lots 1-55, Common Area "A" (Drainage and Landscape) and Common Area "B" (N.O.S. and Riparian Habitat), Sequence # 20173240094 is the holder of fee title to the Property.

B. It is Declarant's intent to establish certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges upon the Property, all for the purpose of enhancing and protecting the value, desirability and attractiveness thereof and enhancing the quality of life therein. All lots, parcels and other property within the Property shall be held and conveyed subject to the covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth in this Declaration.

C. In furtherance of its desire for the efficient management and preservation of the values and amenities within the Property, Declarant has deemed it desirable to create a nonprofit corporation to which shall be delegated and assigned the powers of (i) owning, maintaining and administering the Common Areas (as hereinafter defined) for the private use of its Members (as hereinafter defined) and authorized guests, (ii) administering and enforcing the covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, (iii) collecting and disbursing the assessments and charges hereafter created, and (iv) performing such other acts as shall generally benefit the Property. Hardy Preserve Community Association, an Arizona nonprofit corporation (the "**Association**") has been or will be incorporated under the laws of the State of Arizona for the purpose of exercising the powers and functions stated above. The Members of the Association shall be the Owners (as hereinafter defined) of Lots within the Property.

**AGREEMENT**

NOW, THEREFORE, DECLARANT hereby declares as follows:

**ARTICLE 1  
DEFINITIONS**

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

**1.1 “Additional Property”** means any real property that is contiguous (or which would be contiguous except for streets and rights of way) to the Property (together with the Improvements located thereon), and any other property which Declarant may elect to annex from time to time (together with the Improvements located thereon).

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

**1.3 “Annual Assessment”** means the assessments levied against each Lot pursuant to Section 6.2 of this Declaration.

**1.4 “Architectural Review Committee”** means the committee of the Association to be created pursuant to Section 5.11 of this Declaration.

**1.5 “Areas of Association Responsibility”** means (i) all Common Areas (including all water and utility lines located within the Common Areas unless same are being maintained by the applicable utility companies); (ii) all entry monuments and related Improvements; (iii) all landscaping within public rights-of-ways abutting the Property’s external boundaries to the extent maintenance thereof by the Association is required by the County; and (iv) all other land (Including a Lot or a portion thereof), and the Improvements thereon, which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded instrument executed by Declarant or the Association.

**1.6 “Articles”** means the Articles of Incorporation of the Association, as amended from time to time.

**1.7 “Assessable Property”** means all Lots within the Property, except such Lots or parts thereof that may from time to time constitute Exempt Property hereunder.

**1.8 “Assessment”** means an Annual Assessment or a Special Assessment.

**1.9 “Assessment Lien”** means the lien created and imposed by Article 6 of this Declaration.



1.10 **“Assessment Period”** means the period set forth in Section 6.6 of this Declaration.

1.11 **“Association”** means Hardy Preserve Community Association, an Arizona nonprofit corporation, or such other Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

1.12 **“Association Rules”** means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.

1.13 **“Board”** means the Board of Directors of the Association.

1.14 **“Builder”** means any Person, other than Declarant, that is regularly engaged in the business of building single-family detached residences, has purchased one or more Lots for the purpose of constructing Residential Units thereon for later sale (by itself or through its Affiliates) to Owners and has been designated as a “Builder” in a Recorded instrument signed by Declarant.

1.15 **“Bylaws”** means the Bylaws of the Association, as amended from time to time.

1.16 **“Common Area”** means all real property, together with all Improvements situated thereon, that the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot that the Association may acquire through foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

1.17 **“Common Expenses”** means the actual or estimated expenses incurred, or anticipated to be incurred, by the Association, together with any allocations to reserves.

1.18 **“County”** means Pima County, Arizona.

1.19 **“Declarant”** means KB HOME TUCSON INC., an Arizona corporation, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.20 **“Declarant Party” or “Declarant Parties”** means collectively Declarant, the shareholders of Declarant, the parent, Affiliates and subsidiaries of Declarant, the officers, directors and employees of all of the foregoing, and as to Section 9.15, to the extent such Persons agree to be bound by Section 9.15, any contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing any labor, work, materials or services in connection with the construction of any Improvement upon or benefiting the Project.

1.21 **“Declaration”** means this Declaration of Covenants, Conditions, Restrictions and Easements for Hardy Preserve, as amended or supplemented from time to time.

1.22 **“Design Guidelines”** shall have the meaning set forth in Section 5.11.2 hereof.

**1.23 “Exempt Property”** means (i) all real property and improvements owned by, or dedicated to and accepted by the United States, the State of Arizona, the County or any political subdivision of any of the foregoing, so long as such governmental entity or political subdivision is the owner thereof or for so long as said dedication remains effective; (ii) all Common Area; and (iii) until the Transition Date, unless otherwise elected by Declarant pursuant to Subsection 6.4.2 of this Declaration, all Lots or other real property within the Project owned by Declarant, an Affiliate of Declarant or a Builder, except for property owned by Declarant, an Affiliate of Declarant or a Builder that is subject to a contract for the conveyance of real property subject to the provisions of A.R.S. §33-741 et seq.

**1.24 “First Mortgage”** means any mortgage, deed of trust or contract for sale pursuant to the provisions of A.R.S. §33-741 et seq. encumbering a Lot that has priority over all other mortgages, deeds of trust and contracts for sale encumbering the same Lot.

**1.25 “First Mortgagee”** means the holder or beneficiary of any First Mortgage.

**1.26 “Improvement”** means any temporary or permanent improvement, building, structure, fixture or facility of any type or kind now or hereafter constructed, placed, erected, installed or existing on any land included within the Property, Including all Residential Units and related improvements, fences, walls, monuments, sheds, basketball poles/hoops, play structures, patio covers, balconies, light fixtures, light poles, swimming pools, spas, “Jacuzzis,” roadways, driveways, parking areas (paved or unpaved), sidewalks, trails, utility lines and facilities, irrigation facilities, landscape features, and all trees, plants, shrubs, grass and other landscaping improvements of every type and kind.

**1.27 “Improvement Subject to Architectural Control”** shall collectively mean (i) any Improvement that will be Visible From Neighboring Property at the time it is constructed or installed, excluding, however, any such Improvement that, pursuant to the terms of this Declaration or any other applicable Project Document, is expressly exempt from Architectural Review Committee’s review and approval, and (ii) any other Improvement that is subject to the review and approval of the Architectural Review Committee pursuant to the express terms of this Declaration or any Design Guidelines.

**1.28 “Include” or “Including”** means include or including, without limitation.

**1.29 “Lessee”** means the lessee or tenant under a lease, oral or written, of any Lot, Including any assignee of or sublessee of the lessee or tenant under a lease.

**1.30 “Limited Common Area”** means any portion of the Common Areas designated on a Plat or in this Declaration for the exclusive use of the Owners of one or more, but fewer than all, of the Lots.

**1.31 “Lot”** means a portion of the Project intended for independent ownership and use for residential purposes and designated as a lot on the Plat and, where the context indicates or requires, shall Include any building, structure or other Improvements situated on the Lot.

**1.32 “Maintenance Standard”** means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the

Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

**1.33** **“Member”** means any Person that is a member of the Association and that holds a “Membership” created pursuant to Article 5.

**1.34** **“Owner”** means the Record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or any Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. §33-741 et seq. Owner shall not include a purchaser under a purchase contract, option agreement, escrow instructions or any other similar executory contract that is intended to control the rights and obligations of the parties to such executory contract pending the closing of a sale or purchase transaction. In the case of Lots subject to a deed of trust Recorded pursuant to A.R.S. §33-801, et seq., the trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

**1.35** **“Party Wall”** shall collectively mean any fence or wall constructed on or near the property line of any two (2) adjoining Lots.

**1.36** **“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.

**1.37** **“Plat”** means the Final Plat for HARDY PRESERVE, according to the plat thereof Recorded as Sequence # 20173240094, and all re-plats, amendments, supplements and/or corrections thereto, and any plat that is or may be Recorded over any part of the Additional Property that is annexed by the Declarant pursuant to Section 2.2 of this Declaration, and any re-plats, amendments, supplements and/or corrections thereto.

**1.38** **“Property” or “Project”** means the real property described on Exhibit A attached to this Declaration, together with all Improvements located thereon, and any portion of the Additional Property, together with all Improvements located thereon, that is annexed and subjected to this Declaration, by the Declarant pursuant to Section 2.2 of this Declaration.

**1.39** **“Project Documents”** means this Declaration, the Articles, the Bylaws, the Design Guidelines and the Association Rules.

**1.40** **“Purchaser”** means any Person who by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) Declarant, (ii) an Affiliate of Declarant, (iii) a Builder, or (iv) a Person who purchases a Lot and then leases it back to Declarant or a Builder for use as a model in connection with the sale or lease of other Lots.

1.41 **“Recording”** means placing an instrument of public record in the Official Records of Pima County, Arizona, and **“Recorded”** means having been so placed of public record.

1.42 **“Resident”** means each natural person occupying or residing in a Residential Unit, including any Owner or Lessee and their family members residing in a Residential Unit.

1.43 **“Residential Unit”** means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.44 **“Special Assessment”** means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.45 **“Transition Date”** means the first to occur of:

(i) The day on which title to the last Lot in the Project owned by Declarant or an Affiliate of Declarant is conveyed to a Purchaser, for value, other than as security for the performance of an obligation, or

(ii) The date twenty (20) years after the date this Declaration is Recorded, or

(iii) Such earlier date as Declarant declares to be the Transition Date in a Recorded instrument.

1.46 **“Visible From Neighboring Property”** means, with respect to any given object, that such object is or would be visible to a natural person six (6) feet tall, standing at ground level on any part of an adjoining Lot, Common Area or street in the Project.

## ARTICLE 2 PLAN OF DEVELOPMENT; CERTAIN PROJECT DISCLOSURES

2.1 **Property Subject to the Declaration.** Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of development and desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property. Declarant further declares that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, their successors, successors-in-title and assigns and shall inure to the benefit of each Owner thereof. By the acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for himself, 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 scheme for the development, sale, lease and use of the Property 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, Lessees, grantees, purchasers, assignees and transferees of any interest therein. 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, covenant and agree that the Lots and the Membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each 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.

## **2.2 Annexation of Additional Property.**

**2.2.1** At any time on or before the date that is twenty (20) years after the date of the Recording of this Declaration, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person except for the owner of such Additional Property if such owner is not the Declarant. The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording an amendment to this Declaration setting forth the legal description of the Additional Property being annexed, stating that such portion of the Additional Property is annexed and subjected to the Declaration and describing any portion of the Additional Property being annexed that will be Common Area. Unless a later effective date is set forth in the amendment annexing Additional Property, the annexation shall become effective upon the Recording of the amendment. An amendment Recorded pursuant to this Section may divide the portion of the Additional Property being annexed into separate phases and provide for a separate effective date with respect to each phase. The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date the amendment annexing such property is Recorded or such later date set forth in the amendment. The Lot Owner's obligation to pay Assessments shall commence as provided in Section 6.7 of this Declaration. If an amendment annexing a portion of the Additional Property divides the annexed portion of the Additional Property into phases, the Declarant shall have the right to amend any such amendment to change the description of the phases within the annexed property, except that the Declarant may not change any phase in which a Lot has been conveyed to a Purchaser.

**2.2.2** Declarant makes no assurances as to the exact number of Lots that may be added to the Project by annexation or if all or any portion of the Additional Property will be annexed.

**2.2.3** The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The property annexed by the Declarant pursuant to this Section 2.2 need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property.



**2.2.4** The Additional Property, when and if subjected to this Declaration and added to the Project, shall be subject to the use restrictions contained in this Declaration and shall be subject in all respects to the Project Documents.

**2.3 Withdrawal of Property.** At any time on or before the date that is twenty (20) years after the date this Declaration is Recorded, Declarant shall have the right to withdraw Property owned by Declarant or its Affiliates from the Project without the consent of any other Owner or Person. The withdrawal of all or any portion of the Project shall be effected by the Declarant Recording a Declaration of Withdrawal setting forth the legal description of the Property being withdrawn. Upon the withdrawal of any portion of the Property from the Project pursuant to this Section, such Property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

**2.4 Views Not Guaranteed.** Although certain Lots in the Project at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot or Residential Unit. Neither the Declarant Parties nor the Association makes any representation or warranty whatsoever, express or implied, concerning the view that any Lot or Residential Unit will have whether as of the date this Declaration is Recorded or thereafter. Any view that exists at any point in time for a Lot or a Residential Unit may be impaired or obstructed by further construction within or outside the Project, including by construction of Improvements (including landscaping) by Declarant, construction by third parties (including Builders, other Owners and Residents) and by the natural growth of landscaping. No third party, including any broker or salesperson, has any right to bind the Declarant Parties, a Builder or the Association with respect to the preservation of any view from any Lot or Residential Unit constructed thereon or any view of a Lot or Residential Unit constructed thereon from any other property.

**2.5 Disclaimer of Implied Covenants.** Nothing contained in this Declaration and nothing that may be represented to a purchaser by real estate brokers or salespersons shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any Property subject to this Declaration.

**2.6 Disclaimer of Representations.** Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the use of any Property subject to this Declaration will not be changed in the future; or (iv) the use of any property within the vicinity of the Project will not change so as to impact the use, enjoyment and value of any of the Property.

### ARTICLE 3 USE RESTRICTIONS

#### **3.1 Architectural Control.**

**3.1.1** No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Review Committee, unless such work does not

alter or impair the direction or flow of water in accordance with the drainage plans for the Project or otherwise violate Section 3.20 herein.

**3.1.2** No Improvement Subject to Architectural Control shall be constructed or installed on any Lot without the prior written approval of the Architectural Review Committee. No addition, alteration, repair, replacement, change or other work to any Improvement Subject to Architectural Control originally constructed by Declarant or a Builder or originally approved in writing by the Architectural Review Committee (as applicable), Including any changes to the design, size, location, physical structure and/or appearance, materials or exterior color scheme thereof shall be made or done without the prior written approval of the Architectural Review Committee. The proposed construction or installation of any new Improvement that constitutes an Improvement Subject to Architectural Control and/or any proposed addition, alteration, repair, change or other work to any such Improvement Subject to Architectural Control are hereinafter referred to as a “**Change.**” Any Owner desiring approval of the Architectural Review Committee for a Change shall submit to the Architectural Review Committee a written request for approval specifying in detail the nature and extent of the Change that the Owner desires to perform, Including the distance of the Change from neighboring properties and Residential Units, if applicable, and the approximate dates upon which the Owner intends to commence and complete the Change. Any Owner requesting the approval of the Architectural Review Committee shall also submit to the Architectural Review Committee any additional information, plans and specifications that the Architectural Review Committee may request. In the event that the Architectural Review Committee fails to approve or disapprove an application for approval within forty-five (45) days after the application, together with any fee payable pursuant to Subsection 3.1.6 of this Declaration and all supporting information, plans and specifications requested by the Architectural Review Committee have been received by the Architectural Review Committee, the application shall be deemed disapproved. In connection with any request for approval to the Architectural Review Committee, it is each Owner’s responsibility to make sure that the request and all additional information required by the Architectural Review Committee is received by the Association.

**3.1.3** In reviewing plans and specifications for any Change that must be approved by the Architectural Review Committee, the Architectural Review Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural Review Committee may disapprove plans and specifications for any Change that must be approved by the Architectural Review Committee pursuant to this Section 3.1 if the Architectural Review Committee determines, in its sole and absolute discretion, that: (i) the proposed Change would violate any provision of this Declaration; (ii) the proposed Change does not comply with any provision of the Design Guidelines; (iii) the proposed Change is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Review Committee but not yet constructed; (iv) the proposed Change is not aesthetically acceptable; (v) the proposed Change would be detrimental to or adversely affect another Owner or the appearance of the Project; or (vi) the proposed Change is otherwise not in accord with the general plan of development for the Project.

**3.1.4** Upon receipt of approval from the Architectural Review Committee for any Change, the Owner who had requested such approval shall proceed to perform, construct or make the Change approved by the Architectural Review Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Review Committee. Completion of the work shall include any clean up and/or removal of equipment, building materials, dirt, debris and similar materials, and repair/replacement of any damage to Improvements sustained in connection with the work.

**3.1.5** Any modification, deletion or addition to the plans and specifications approved by the Architectural Review Committee must be approved in writing by the Architectural Review Committee.

**3.1.6** The Architectural Review Committee shall have the right to charge a fee for reviewing requests for approval of any Change pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Architectural Review Committee or as otherwise provided in the Design Guidelines. The Board shall establish the amount of such fee from time to time.

**3.1.7** All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

**3.1.8** The approval required of the Architectural Review Committee pursuant to this Section 3.1 shall be in addition to, and not in lieu of, any approvals or permits that may be required under any federal, state or local law, statute, ordinance, rule or regulation. The approval by the Architectural Review Committee of any Change pursuant to this Section 3.1 shall not be deemed a waiver of the Architectural Review Committee's right to withhold approval of any similar Change subsequently submitted for approval.

**3.1.9** The approval by the Architectural Review Committee of any Change pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Architectural Review Committee as to the quality of such Change or that such Change conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

**3.1.10** The Architectural Review Committee shall have the right, on a case-by-case basis and in its sole discretion, to condition its approval of plans and specifications submitted by an Owner upon receipt by the Architectural Review Committee of a deposit (the "**Compliance Deposit**") to assure completion of the proposed Change and to secure the performance of the Owner's obligations under this Section 3.1 to clean up and/or remove equipment, building materials, dirt, debris and similar materials, and to repair damage to existing Improvements sustained in connection with construction activities by or for the benefit of the Owner. The Compliance Deposit shall be in such amount as may reasonably be determined by the Architectural Review Committee. The Architectural Review Committee may apply the Compliance Deposit toward payment of (i) any costs incurred by the Architectural Review Committee or the Association with respect to any construction cleanup or removal required and/or the repair or replacement of any damaged or destroyed Improvements, the cost for which



the Owner is responsible under Section 7.3 hereof; (ii) any costs incurred by the Association or the Architectural Review Committee in connection with the inspection of the Change to ascertain whether the Change is being made in accordance with the approved plans; and (iii) any attorneys' fees, court costs and other costs incurred by the Association in connection with any violation of the Project Documents related directly or indirectly to the Change (Including costs incurred to correct the violation). Following receipt by the Architectural Review Committee of a written request from an Owner delivered subsequent to the completion of the Change, and following confirmation by the Architectural Review Committee that any necessary cleanup work or damages attributable to the Owner or Owner's contractor has been properly performed, repaired or replaced, as applicable, that all costs attributable to the Owner in connection therewith have been paid in full and that the Change was made in accordance with the plans and specifications approved by the Architectural Review Committee, the Architectural Review Committee shall return to such Owner the unapplied portion of the Owner's Compliance Deposit. The liability of an Owner to promptly clean up such Owner's Lot and any surrounding area of the Project and to repair or replace any Improvements damaged or destroyed by an Owner or the Owner's contractor shall not be limited to the amount of such Owner's Compliance Deposit, and in no event shall the delivery of a Compliance Deposit limit or prejudice the right of the Architectural Review Committee or the Association to pursue any available legal remedies against the Owner or any of Owner's contractors causing the need for cleanup or causing the damage or destruction.

**3.1.11** If the plans and specifications pertain to a Change that is within an Area of Association Responsibility, and the Association is responsible for the maintenance, repair and replacement of such Change, the Architectural Review Committee may condition any approval of the plans and specifications for the proposed Change on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Change.

**3.1.12** The provisions of this Section 3.1 do not apply to, and approval of the Architectural Review Committee shall not be required for, the construction, erection, installation, addition, alteration, repair or replacement of any Improvements made by, or on behalf of, Declarant, an Affiliate of Declarant or a Builder, provided that all construction, erection, installation, addition, alteration, repair and replacement of any Improvements by a Builder shall require the prior written consent of Declarant so long as Declarant or an Affiliate of Declarant owns any portion of the Property or Additional Property. When Declarant and its Affiliates no longer own any portion of the Property or Additional Property, the construction, erection, installation, addition, alteration, repair and replacement of all Improvements by a Builder shall be subject to the prior written consent of the Architectural Review Committee, provided that the Architectural Review Committee shall have no authority to rescind or modify an approval validly given by Declarant.

**3.2 Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable laws, ordinances and

regulations (Including all zoning ordinances and other requirements for the Project) and does not violate any provisions of this Declaration or the other Project Documents; (iii) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Owners or other Residents in the Project and does not generate drive-up traffic or customer or client parking; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms “business” and “trade” as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to persons other than the Residents of a provider’s Residential Unit and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof in accordance with the terms of this Declaration and the other Project Documents shall not be considered a trade or business within the meaning of this Section.

**3.3 Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except a maximum of three (3) generally recognized house or yard pets (as determined by the Board and/or set forth in the Association Rules (“Permitted Pets”)) may be kept on a Lot if they are kept or raised thereon solely as domestic pets and not for commercial purposes. All Permitted Pets shall be confined to an Owner’s Lot except that a dog may be permitted to leave the Owner’s Lot if such dog is at all times kept on a leash not to exceed six feet (6’) in length and is not permitted to enter upon any other Lot. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Board shall determine, in its sole and absolute discretion, whether, for the purposes of this Section (i) a particular Permitted Pet is a nuisance or making an unreasonable amount of noise, or (ii) a particular pet is a Permitted Pet. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Owner, Resident or other Person who brings or permits a pet to be on any Common Area, Lot or street shall be responsible for immediately removing any feces left by such pet.

**3.4 Garbage.** No garbage, trash, or debris shall be allowed, stored, or placed on a Lot except in sanitary, covered containers approved by the Architectural Review Committee. In no event shall such containers be Visible From Neighboring Property, except on days of collection only. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. No incinerator shall be maintained on any Lot and no trash, garbage or debris shall be burned thereon by open fire or otherwise. The Board shall have the right to require all Owners and Residents to place trash and garbage in containers located in areas designated from time to time by the Board.

**3.5 Clothes Drying Facilities.** No outside clothes lines 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.

**3.6 Window Coverings.** Within sixty (60) days of the initial conveyance of a Lot with a Residential Unit constructed thereon to an Owner from the Declarant, an Affiliate of Declarant or a Builder, the Owner or Resident shall install permanent window coverings. Where windows are Visible From Neighboring Property, window coverings that can be seen from the exterior of the home (temporary or permanent) shall be white, cream, natural wood stain or a solid earth tone color. In no event (either temporary or permanent) shall the interior or exterior of any windows be covered with any reflective material (Including aluminum foil) or with paper, bed sheets or any other similar coverings.

**3.7 Garages.** Garages situated on Lots shall only be used for parking vehicles and limited storage (provided that in no event shall such limited storage interfere with or prevent the parking of the number of vehicles for which the garage was designed to accommodate), and shall not be used or converted for living or recreational activities. Detached garages shall not be permitted.

**3.8 Mechanical Equipment.** No heating, air conditioning, or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Property, Including upon the roof or exterior walls of any structure on any part of the Property unless: (i) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall that conforms architecturally with such structure; or (ii) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in the case of either (i) or (ii) above) be subject to the regulations and approval of the Architectural Review Committee.

**3.9 Solar Collection Panels and Devices.** Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior written approval of the plans therefor by the Architectural Review Committee, solar collecting panels and devices may be placed, constructed and/or maintained upon any Lot within the Property (Including upon the roof of any structure upon any Lot), so long as either: (i) such solar collecting panels and devices are placed, constructed and maintained so as not to be Visible From Neighboring Property; or (ii) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Architectural Review Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when Visible From Neighboring Property. The right of the Architectural Review Committee to review and approve the restrictions in this Section shall be subject to any limitations imposed by law.

**3.10 Antennas; Flags.**

**3.10.1** No antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation (a "Device") proposed to be erected, used or maintained outdoors on any portion of the

Project, whether attached to a Residential Unit or structure or otherwise, shall be erected or installed without the prior written consent of the Architectural Review Committee unless (i) applicable law prohibits the requirement for review and approval by the Architectural Review Committee, or (ii) the Design Guidelines permit installation of the Device without such review and approval. Even though an Owner may not be required to obtain written approval from the Architectural Review Committee for a Device, an Owner is required to comply with the Design Guidelines to the extent that the Design Guidelines set forth guidelines, standards and procedures applicable to such Device. Failure by an Owner to comply with the Design Guidelines with respect to a Device shall be deemed a violation of this Declaration in the same manner as if an Owner had not obtained the prior written approval from the Architectural Review Committee for a Device that does require prior written approval.

**3.10.2** Subject to the applicable provisions of the Design Guidelines, no flag shall be displayed on any Lot without the prior written consent of the Architectural Review Committee, provided that the Association may not prohibit the outdoor display of the American flag, an official or a replica of a flag of the United States army, navy, air force, marine corps or coast guard, the Gadsden flag, the POW/MIA flag, the Arizona state flag, an Arizona Indian nations flag or any other flag that by law cannot be prohibited on a Lot (a "**Permitted Flag**"). Even though the Association may not prohibit a Permitted Flag, an Owner is required to comply with the Design Guidelines to the extent that the Design Guidelines set forth guidelines, standards and procedures applicable to Permitted Flags, including the requirement to obtain the prior written consent of the Architectural Review Committee as to placement and size of the Permitted Flag and flagpole (if any) and manner of display of the Permitted Flag. Failure by an Owner to comply with the Design Guidelines with respect to a Permitted Flag or any other flag shall be deemed a violation of this Declaration.

**3.11 Basketball Goals and Backboards.** Except to the extent such may be permitted by the Association Rules and/or Design Guidelines, no basketball goal or similar structure or device shall be placed, constructed or attached on any Lot unless approved in writing by the Architectural Review Committee prior to installation.

**3.12 Vehicles and Parking.** Private, non-commercial, passenger automobiles or pickup trucks may be parked on the Property within a garage or on a driveway appurtenant to a Residential Unit but, except as provided in the next sentence, may not be parked elsewhere on the Property or streets adjoining the Property. The preceding sentence shall not preclude occasional overflow parking for guests on streets provided that no inconvenience is imposed on the Owners or Residents of other Lots. No other vehicle (including mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, tents or similar vehicles or equipment shall be kept, placed or maintained upon the Property or any roadway adjacent thereto, except: (i) within a fully-enclosed garage appurtenant to a Residential Unit; or (ii) in such areas and subject to such rules and regulations as the Board may designate and adopt in its sole discretion (and the Board in its sole discretion may prohibit such other vehicles and equipment completely). No vehicle of any kind shall be constructed, reconstructed or repaired on the Property or any roadway therein or adjacent thereto except within a fully enclosed garage. No vehicle of any kind that is not in operating condition shall be parked in any unenclosed parking areas (including private driveways appurtenant to a Residential Unit). The provisions of this Section 3.12 shall not apply to (a) vehicles of Declarant, an Affiliate of Declarant or a Builder or their employees,



agents, contractors or subcontractors during the course of construction activities or sales activities upon or about the Property, (b) 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, and (c) motor vehicles that by applicable law cannot be prohibited from parking on a driveway or a street. No vehicle, regardless of where parked, shall park across, upon or over a sidewalk, or interfere with the safe usage of sidewalks. Notwithstanding anything to the contrary contained herein or elsewhere in this Declaration, neither the provisions of this Section 3.12 nor any other provision of this Declaration shall be deemed to preclude or regulate overflow parking on any public streets or rights of way within or adjacent to the Property; rather, all public street parking is subject to and shall be regulated and governed by the applicable laws, statutes, codes, ordinances, rules and regulations of the County and/or any other applicable governmental authorities (including, all applicable parking restrictions, markings and signage posted along such public streets and rights of way).

**3.13 Towing of Vehicles.** The Board shall have the right to have any vehicle or equipment that is parked, kept, maintained, constructed, reconstructed, or repaired in violation of Section 3.12 above towed away at the sole cost and expense of the owner thereof. Any expense incurred by the Association in connection with the towing of any vehicle or equipment as provided in this Section 3.13 shall be paid by the owner of the vehicle or equipment to the Association upon demand. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments or as otherwise permitted by law.

**3.14 Sight Visibility Restrictions.** No sign, fence, wall, utility box, structure, shrub, hedge or other plant shall be permitted within view easements or sight distance triangles at street intersections as shown on the Plat or as otherwise required by the governmental agency having jurisdiction over the streets.

**3.15 Leasing of Residential Units.** All Lessees shall be subject to the terms and conditions of this Declaration and the other Project Documents. Each Owner shall cause the Lessees and other Residents of the Owner's Lot to comply with this Declaration and the other 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 Residents, notwithstanding the fact that such Lessees or Residents are also fully liable for any violation of each and all of those documents. No Owner may lease less than an entire Lot. No Lot may be leased for a period of less than ninety (90) days. The provisions of this Section shall not apply to Declarant's or a Builder's use of Lots owned by (or leased to) Declarant, an Affiliate of Declarant, a Builder or an Affiliate of a Builder as a model home or for marketing purposes.

**3.16 Landscaping and Maintenance.** Each Owner shall maintain the landscaping on such Owner's Lot (including any landscaping between a sidewalk and an adjacent street) and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street (except to the extent the Association has expressly undertaken the obligation to maintain any such landscaping pursuant to this Declaration and/or to the extent that this Declaration expressly assigns the responsibility for such maintenance to another Person), and shall keep the

land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Unless otherwise exempt pursuant to the express terms of this Declaration or any other applicable Project Documents (Including the Design Guidelines), all landscaping to be installed by an Owner or such Owner's contractors on a Lot, which will be Visible From Neighboring Property at the time of installation, must be approved by the Architectural Review Committee prior to the installation thereof on the Lot. Each Owner shall maintain the exterior of such Owner's Residential Unit in a neat, clean and attractive condition consistent in appearance with other properly maintained, improved Lots within the Property.

**3.17 Signs.** No signs whatsoever (Including commercial and similar signs) that are Visible From Neighboring Property shall be erected or maintained on any Lot without the prior written approval of the Architectural Review Committee except:

(i) Signs constructed or installed by Declarant, its Affiliates and/or a Builder pursuant to Section 4.3 hereof;

(ii) Signs required by legal proceedings;

(iii) Political signs; however, the Architectural Review Committee reserves the right to disallow and/or regulate the size and number of political signs to the extent permitted by law;

(iv) One (1) residence identification sign provided the size, color, content and location of such signs have been approved in writing by the Architectural Review Committee;

(v) One (1) security system sign placed by a professional residential security alarm company that has installed a security alarm system in a Residential Unit, provided that such sign is consistent with provisions set forth in the Design Guidelines;

(vi) One (1) "For Sale" sign and sign rider, both of which do not exceed the industry standard size as prescribed by applicable law and otherwise comply with the Design Guidelines;

(vii) One (1) "For Rent" or "For Lease" sign that does not exceed the industry standard size as prescribed by applicable law and otherwise comply with the Design Guidelines;

(viii) Signs that may be permitted in accordance with the Design Guidelines; and

(ix) Signs that, under applicable law, may not be prohibited.

**3.18 Nuisances; Construction Activities.** No waste (Including animal waste), rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property for any unreasonable time, and no odors, fumes, dust, smoke, glare, heat, radiation or pollution shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other portion of the Property in the vicinity

thereof or to its Owners or Residents. No activity that is hazardous by reason of risk of fire or explosion shall be permitted on any Lot. No loud, noxious, or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to persons or property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners and Residents. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Architectural Review Committee, which may also require screening of the storage areas. The Board shall have the right, but not the obligation, to determine, in its sole discretion, whether the provisions of this Section 3.18 have been violated. Any decision rendered by the Board shall be conclusive and shall be enforceable in the same manner as other restrictions in this Declaration. The provisions of this Section 3.18 shall not apply to any activity of Declarant or Builders, or their employees, agents, Affiliates, contractors, or subcontractors during the course of construction activities or sales activities upon or about the Property.

**3.19 Dust Control.** After acquiring a Lot from Declarant, an Affiliate of Declarant or a Builder, each Lot Owner shall maintain in a neat and attractive condition, free of weeds and debris, the areas on the Lots that are not improved with buildings (the “Clear Area”). The Lot Owner shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain its Lot in a manner that minimizes the possibility of dust being transmitted into the air and over adjacent properties. Nothing in this Section shall be interpreted to require Declarant, an Affiliate of Declarant or a Builder to landscape a Lot before title to the Lot is conveyed to a Person other than Declarant, an Affiliate of Declarant or a Builder.

**3.20 Drainage.** No structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the County. No Person shall alter the grading of a Lot or the drainage plan for a Lot as established by the grading and drainage plans approved by the applicable governmental authority without the prior written approval of the Architectural Review Committee. Any Person that fails to comply with this Section shall be liable for the cost to remedy any and all damage caused by such failure, including damage to neighboring Lots and Common Areas. In the event the Association elects to exercise its rights to remedy such damage pursuant to Section 7.4 of this Declaration, the Association may charge the owner an administrative fee of ten percent (10%) of the amount incurred by the Association to remedy the damage plus interest at the rate of twelve percent (12%) per annum on all amounts due the Association from the date incurred by the Association until paid, which cost shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner’s Lot is subject, with such costs to be secured by the Assessment Lien to the extent permitted by law.

**3.21 Temporary Occupancy and Temporary Buildings.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. No temporary construction buildings or trailers may be installed or kept on any Lot without the prior written approval of the Architectural Review Committee. Any such temporary buildings or trailers approved by the Architectural Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any portion of the Property for a period in excess of twelve (12) months without the express prior written approval of the Architectural Review Committee. The provisions of this Section shall not apply to construction or sales activities of Declarant, any Affiliate of Declarant or Builders.

**3.22 Diseases and Insects.** No Person shall permit any condition or thing to exist upon any Lot or other property that shall induce, breed or harbor infectious plant diseases or noxious insects.

**3.23 Mineral Exploration.** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

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

**3.25 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 or other pedestrian way from ground level to a height of twelve (12) feet.

**3.26 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, maintenance or construction (during the period of construction) of a building, appurtenant structures or other Improvements and such machinery or equipment that Declarant or the Association may require for the development, operation and maintenance of the Project. Lawn and garden equipment may be kept on a Lot, provided such equipment is stored so as not to be Visible From Neighboring Property.

**3.27 Restriction on Further Subdivision, Property Restrictions and Rezoning.** Without the prior written approval of the Architectural Review Committee and the Board, no Owner other than the Declarant, its Affiliates or a Builder shall do any of the following: (i) further subdivide a Lot or separate the Lot into smaller lots or parcels; (ii) convey or transfer less than all of a Lot; or (iii) re-plat a Lot or combine a Lot with other Lots. No further covenants, conditions, restrictions, or easements shall be Recorded by any Owner, Resident or other Person



other than the Declarant, its Affiliates or a Builder against any Lot without the provisions thereof having been first approved in writing by the Architectural Review Committee and the Board. No application for rezoning, variances, or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant, its Affiliates or a Builder unless the application has been approved by the Architectural Review Committee and the Board and the proposed use otherwise complies with this Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly, or any other type of revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants. Notwithstanding anything to the contrary contained herein, so long as Declarant or an Affiliate of Declarant owns any portion of the Property, any actions taken by a Builder pursuant to this Section must have the prior written approval of Declarant.

**3.28 Violation of Law or Insurance.** No Owner shall permit anything to be done or kept in or upon a Lot that will result in the cancellation or increase in premium, or reduction in coverage, of insurance maintained by any Owner or the Association or that would be in violation of any law.

**3.29 Lights.** Except for lights installed by Declarant or a Builder as part of the original construction on a Lot, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot that in any manner will allow light to be directed or reflected unreasonably upon any other Lot or Common Area.

**3.30 Fire/Building Repair.** As provided in Section 8.6 hereof, each Owner and/or Resident is responsible for obtaining, for such Person's benefit, property and casualty insurance insuring such Person's real and/or personal property interests on or within the Property. However, regardless of whether an Owner or Resident has maintained insurance on his real or personal property interests on or within the Property, in the event any Residential Unit or other structure is totally or partially damaged or destroyed by fire, act of God or any other cause, the Owner shall fully repair the damage and complete reconstruction of the Residential Unit or other structure within twelve (12) months after occurrence of the damage or destruction. Notwithstanding the foregoing, if a dangerous condition shall exist because of such damage, it shall immediately be corrected so as to not cause harm to another Person. The provisions of this Section shall not apply to any Lot or other property owned by Declarant or an Affiliate of Declarant.

**3.31 Restrictions on Tanks.** Except for small refillable propane tanks (maximum size of 20lbs) used in connection with a backyard barbeque grill, no tanks of any kind (Including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot unless (a) the prior written approval of the Architectural Review Committee has been obtained, and (b) all such tanks are at all times (i) properly screened so as to not be Visible From Neighboring Property, (ii) located at least twelve (12) inches from any Residential Unit or any wall or fence (Including any wall or fence constructed in whole or in part as a view fence and any wall or fence that constitutes a Party Wall), and (iii) used, operated, maintained and stored in full compliance with all applicable laws, ordinances, regulations and fire and safety codes and all applicable manufactures' recommendations and guidelines.

**3.32 Exemption of Declarant and Builders.** Nothing contained in this Declaration or any other Project Document shall be construed to prevent the construction, installation, operation or maintenance by Declarant, its Affiliates (or their designated agents and contractors) and each Builder (subject to approval by Declarant) during the period of development, construction, sales and marketing on the Property of any model homes and sales offices and parking incidental thereto, construction trailers, landscaping or signs deemed necessary or convenient by Declarant, its Affiliates and each Builder (subject to the approval of Declarant) in their sole discretion, to the development, construction, sale, and marketing of Lots within the Property. Any actions taken by a Builder pursuant to this Section shall require the prior approval of Declarant.

**3.33 Variances.** The Architectural Review Committee or the Board, as applicable, may (but shall not be obligated) in extenuating circumstances grant variances from the restrictions set forth in this Article 3 if the Architectural Review Committee or the Board, as applicable, determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete, and (ii) the activity permitted under the variance will not have any substantial adverse effect on the other Owners and Residents of the Project and is consistent with the high quality of life intended for Residents of the Project. If any restriction set forth in this Article 3 is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable. If after the Transition Date Declarant or any Affiliate of Declarant still owns any portion of the Project, any variance granted by the Architectural Review Committee or the Board shall be subject to the review and approval of Declarant so long as Declarant or any Affiliate of Declarant owns any property in the Project.

## ARTICLE 4 EASEMENTS AND DEVELOPMENT RIGHTS

### 4.1 Easement for Use of Common Area.

**4.1.1** Every Owner, Lessee and Resident shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area (Including the right to use any streets which are part of the Common Area for ingress and egress to and from an Owner's Lot), which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.12 of this Declaration; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.

(ii) The right of the Association to change the use of the Common Area as provided in Section 5.13 of this Declaration.

(iii) The rights and easements granted to the Declarant, its Affiliates and Builders in this Declaration, including the rights and easements granted to the Declarant, its Affiliates and Builders in Sections 4.3 and 4.4 of this Declaration.

(iv) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners or Residents.

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

(vi) The right of the Association to suspend the right of an Owner or Resident to use the Common Area (other than the right of an Owner or Resident (or any of their family members, guests and invitees) to cross over a portion of the Common Area used as access to the Lot and to use any streets which are part of the Common Area for ingress or egress to and from the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or a Lessee has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation. Any suspension of an Owner's right to use the Common Area shall also extend to the Lessees and Residents of the Owner's Lot and their guests and invitees.

**4.1.2** If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee 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 (except the right to cross over any portion of the Common Area used as access to the Lot and to use any streets which are part of the Common Area for ingress and egress to and from the Owner's Lot) until the termination or expiration of such lease.

**4.2 Utility Easements.** All utility installations, including electrical installations, must be placed underground unless the prior written consent is given by the Declarant for so long as Declarant or any Affiliate of Declarant owns any portion of the Property, and thereafter by the Board. All easements located in, on or under any Common Area and/or other Areas of Association Responsibility must be specifically agreed to by the Declarant for so long as Declarant or any Affiliate of Declarant owns any portion of the Property, and thereafter by the Board. For so long as Declarant or any Affiliate of Declarant owns any portion of the Property, Declarant may cause the Association to grant easements and licenses over, under and across the Common Area, as Declarant deems reasonably necessary or appropriate for the development of the Project.

**4.3 Declarant's and Builders' Use for Sales and Leasing Purposes.** Declarant, Declarant's Affiliates and Builders shall have the right and an easement to maintain throughout the Project sales, leasing, construction and/or management offices (which may be housed in portable buildings or trailers), a design center, model homes and parking areas (collectively, the "**Sales and Construction Facilities**") for the purpose of selling Lots and constructing Improvements within the Project, and to maintain one or more advertising, identification and/or

directional signs and/or flags on the Common Area or on the Lots owned or leased respectively by Declarant, Declarant's Affiliates and Builders while Declarant, its Affiliates and Builders are selling Lots and/or constructing Improvements. Declarant reserves the right for itself, its Affiliates and Builders to (i) place Sales and Construction Facilities and advertising, identification and/or directional signs or flags on any Lots owned or leased respectively by Declarant, its Affiliates and Builders and on any portion of the Common Area in such number, of such size and in such locations as Declarant, its Affiliates and Builders deem appropriate, and (ii) use any recreational facility within the Project for management and sales activities, including permitting the temporary use of such facilities by prospective purchasers. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control. Notwithstanding anything contained to the contrary in this Section, the rights of any Builder pursuant to this Section shall be subject to review and approval by the Declarant.

#### **4.4 Declarant's and Builders' Easements.**

**4.4.1** Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements that Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other Property within the Project owned respectively by Declarant and its Affiliates for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project, and also including the use of any such areas for temporary construction roadways. Declarant shall have the right and an easement upon, over, across and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by Declarant in this Declaration. Builders shall have the right and an easement on and over Lots owned by the respective Builders for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, as long as such activities have the prior written consent of Declarant. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

**4.5 Easement in Favor of Association.** The Lots (except for the interior of a Residential Unit or other buildings) are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

**4.5.1** For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

**4.5.2** For inspection, maintenance, repair and replacement of the Areas of Association Responsibility located on or accessible only from such Lots;

**4.5.3** For correction of emergency conditions in one or more Lots;

**4.5.4** For the purpose of enabling the Association, the Board, the Architectural Review Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

**4.5.5** For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, Lessees and Residents, and their family members, guests, invitees and licensees; and

**4.5.6** For maintenance, repair and/or replacement of any Limited Common Areas designated on a Plat or this Declaration for maintenance by the Association.

**4.6** **Easement for Unintended Encroachments.** To the extent that any Improvement upon a Lot or Common Area, including any wall or fence, encroaches on any other Lot or Common Area as a result of the original construction shifting or settling, or alteration or restoration authorized by this Declaration or any other reason other than the intentional encroachment on a Lot or Common Area by an Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

**4.7** **Access Easements.** For so long as Declarant or any Affiliate of Declarant owns any portion of the Property, Declarant may cause the Association, and the Association hereby reserves the right, to grant one or more non-vehicular, pedestrian access easements and/or licenses in favor of third parties over and across the Common Area (or portions thereof), as Declarant or the Association, as applicable, deems reasonably necessary or appropriate in their sole and absolute discretion.

**ARTICLE 5  
THE ASSOCIATION;  
ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS;  
COMMON AREA**

**5.1** **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, this Declaration and the other Project Documents.

**5.2** **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Until the Transition Date, the directors and officers of the Association shall be appointed by and may be removed by the Declarant. After the Transition Date, directors shall be elected by the Members and officers shall be elected by the Board in accordance with the Articles and Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner, any Resident of the Owner's Lot or by any guests or invitees of the Owner, Lessee or Resident, and to impose late charges for payment of such fines if such fines remain unpaid fifteen (15) or more days after the due date, provided that the late charge shall not exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid fine, or such greater amount as permitted under applicable law. Notwithstanding the foregoing, to the extent applicable law from time to time (i) provides for any shorter period of time after which



finer may or shall become delinquent, such shorter period of time may be established by the Board to apply in lieu of the time period set forth in this Section, and (ii) provides for an increased amount to be charged as a late charge for fines, such amount may be modified by the Board to apply in lieu of the late charge set forth in this Section.

**5.3 The Association Rules.** The Board may, from time to time, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility, Including any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for any maintenance of Lots; (iii) the health, safety or welfare of the Owners, Lessees and Residents, or (iv) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration. If after the Transition Date Declarant or any Affiliate of Declarant still owns any portion of the Project, the adoption, amendment and repeal of any rules and regulations by the Board shall be subject to review and approval of Declarant so long as Declarant or its Affiliates own any portion of the Property.

**5.4 Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person, Including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**5.5 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

**5.6 Identity of Members.** Membership in the Association shall be limited to Owners of Lots (Including the Declarant, its Affiliates and Builders). An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Lot and may not be separately assigned, transferred or conveyed.

**5.7 Classes of Members and Voting Rights.**

**5.7.1** Each Member shall have one (1) Membership for each Lot owned by the Member. The Association shall also have two (2) classes of voting Memberships, i.e., Class A Members and Class B Members.

**5.7.2** Class A Members are all Owners of Lots with the exception of the Declarant, its Affiliates and Builders. Each Class A Member shall be entitled to one (1) vote for each Lot owned, provided that no more than one (1) vote shall be applicable to any Lot.

**5.7.3** Class B Members shall be the Declarant, its Affiliates and Builders. Each Class B Member shall be entitled to three (3) votes for each Lot owned by such Class B Member. The Class B Memberships shall cease and be converted to Class A Memberships on the Transition Date.

**5.8 Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. 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 a Lot is owned by more than one person or entity and such 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 Member casts a vote or votes 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 unless objection thereto is made at the time the vote is cast.

**5.9 Suspension of Voting Rights.** If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

**5.10 Transfer of Membership.** The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a Recorded mortgage, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each purchaser of a Lot shall notify the Association of such purchase within ten (10) days after becoming the Owner of a Lot.

**5.11 Architectural Review Committee; Design Guidelines.**

**5.11.1** The Association shall have an Architectural Review Committee to perform the functions of the Architectural Review Committee set forth in this Declaration. The Architectural Review Committee shall consist of such number of regular members and alternate members as may be determined and designated from time to time by the Board. The members of the Architectural Review Committee shall be appointed by the Board, provided that, as required by A.R.S. § 33-1817(1), the Architectural Review Committee shall at all times include at least

one (1) member of the Board who shall serve as the chairperson of the Architectural Review Committee.

**5.11.2** The Board may adopt, amend and repeal architectural guidelines, standards and procedures to be used by the Architectural Review Committee in rendering its decisions (as adopted and in effect from time to time, together with all amendments and supplements thereto and all replacements thereof, collectively, the “**Design Guidelines**”). The Design Guidelines may Include provisions regarding: (i) the size of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and appearance.

**5.11.3** The Design Guidelines may Include provisions regarding: (i) the size of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and appearance.

**5.11.4** The Design Guidelines may contain general provisions that are applicable to all of the Property as well as provisions that vary from one portion of the Property to another depending upon the location, unique characteristics and intended use thereof. The Board may establish one or more subcommittees consisting of one or more members of the Architectural Review Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Review Committee to approve or disapprove the construction, installation or alteration of Improvements in accordance herewith within a specified portion of the Property.

**5.11.5** All Improvements (Including landscaping) installed or constructed on a Lot by or on behalf of an Owner shall be subject to and conform to the terms, provisions, restrictions and requirements of this Declaration and the Design Guidelines, regardless of whether such Improvement constitutes an Improvement Subject to Architectural Control.

**5.11.6** Any Owner aggrieved by a decision of the Architectural Review Committee may appeal the decision to the Board in accordance with procedures to be established by the Board. If the Board after appeal again rules in a manner aggrieving the appellant, the decision of the Board is final. In the event the decision of the Architectural Review Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Review Committee shall be deemed modified to the extent specified by the Board, and for the purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Architectural Review Committee. In this regard, the Board shall have the authority to modify or overrule the decision of the Architectural Review Committee on any matter presented to it.

**5.12** **Conveyance or Encumbrance of Common Area.** Except as permitted in this Section 5.12, the Common Area shall not be mortgaged, transferred, dedicated or encumbered



without the prior written consent or affirmative vote of Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Members of the Association. The Board shall have the right to change the size, shape or location of the Common Area upon (i) adoption of a resolution by the Board stating that in the Board’s opinion the change proposed shall not substantially adversely affect the Residents and Owners, and (ii) the approval of such resolution by Declarant as long as the Declarant or its Affiliates own any property within the Project. The Declarant, so long as the Declarant or its Affiliates own any property within the Project, and thereafter the Board, without obtaining the approval or consent of any other Owner, may grant easements over or convey portions of the Common Area:

- (i) to the County, the State of Arizona or any other governmental or quasi-governmental authority;
- (ii) to a trust or private entity for the purpose of nature conservancy;
- (iii) to any Person for the purpose of correcting areas of unintentional encroachment;
- (iv) to any Owner for the purpose of permitting walls or fences to be placed in locations on Common Area that will enhance visibility or avoid monotony of design, provided that any such Owner shall be obligated to maintain any portion of such Common Area made available for use by the Owner as a result of such conveyance or easement; and
- (v) to any Person so long as such conveyance or easement shall not have a material adverse effect on the Members and Residents.

Any such conveyances or granting of easements may reserve to the Association and its Members any rights, privileges and duties determined by the Declarant or the Board, whichever is applicable, to be appropriate for the enjoyment and use of the Property.

**5.13 Procedure for Change of Use of Common Area.** Upon (i) adoption of a resolution by the Board stating that in the Board’s opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Members and Residents, and (ii) the approval of such resolution by Declarant as long as the Declarant or its Affiliates own any property within the Project, the Board shall have the power and right to change the use of such property (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (a) shall be for the benefit of the Members and Residents, as determined by the Board, and (b) shall be consistent with any deed restrictions, zoning and other governmental regulations restricting or limiting the use of the land.

**5.14 Contracts with Others for Performance of Association’s Duties.** Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its Affiliates, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its Affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the

transaction or contract is fair and reasonable. Any such director, officer or committee member employed by or otherwise connected with Declarant or any of its Affiliates may be counted in determining the existence of a quorum at any meeting of the Board or committee of which such person is a member that shall authorize any contract or transaction described above or grant or deny any approval sought by Declarant, its Affiliates or any competitor thereof and may vote at the meeting to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

## ARTICLE 6 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

**6.1 Creation of Lien and Personal Obligation of Assessments.** Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided for in this Declaration. The Assessments, together with interest, late charges and all costs, Including reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, Including reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them, unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title. However, such exemption does not apply to the obligation of the successor in title of the Owner to correct any violation of this Declaration or any other Project Document by the Owner pursuant to Section 9.10 of this Declaration; and further provided that the transfer of title shall not extinguish any Assessment Lien except a transfer pursuant to foreclosure of a superior lien in which the Assessment Lien has been extinguished by such foreclosure proceeding.

### **6.2 Annual Assessments.**

**6.2.1** In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, Including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess against each Lot that is Assessable Property an Annual Assessment, which shall be allocated to each Lot in accordance with Section 6.3 below. The total amount to be assessed against the Lots as an Annual Assessment shall be the amount that is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses taking into account other sources of funds available to the Association.

**6.2.2** The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor

relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board. Notwithstanding anything contained in this Section 6.2 to the contrary, the Board shall not impose an Annual Assessment in any Assessment Period in excess of that amount permitted by law; however, to the extent that the law shall permit any increase in the Annual Assessment that requires the approval of the majority of Members, such increase shall be implemented only upon approval of the majority of Members. Notwithstanding the provisions of Section 5.7 of this Declaration, for purposes of this Subsection 6.2.2 only, each Member shall be entitled to one (1) vote for each Class A Membership or Class B Membership, as applicable, held by such Member (provided there shall be only one (1) vote for each Lot) in the event any increase in the Annual Assessment requires the approval of the majority of Members.

**6.3 Rate of Assessment.** The Annual Assessment shall be levied equally against all Lots that are Assessable Property. In determining the amount of the Annual Assessment, the Board, in its discretion, may consider sources of funds available to the Association other than the Annual Assessments. In addition, the Board may take into account, among other factors (i) the number of Lots subject to Annual Assessments on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to Annual Assessments during the fiscal year; (ii) the projected budget for the Association at such time as all Property is owned by Class A Members; and (iii) projected budgets for the Association at other future times in the development of the Project, based on the number of Lots projected to be subject to Annual Assessments at such time.

**6.4 Obligation of Declarant and Builders for Deficiencies.**

**6.4.1** Until the Transition Date, Declarant and Builders shall pay and contribute to the Association, within thirty (30) days after written request by the Board, such funds as may be necessary, when added to the Annual Assessments then collected by the Association, to pay all Common Expenses of the Association as they become due. The payment of any deficiency shall be divided between Declarant and each Builder on a pro-rata basis according to the number of Lots owned by Declarant and its Affiliates and each Builder as of the date the request for such deficiency payment is made by the Board, provided that neither Declarant nor Builders shall be obligated to make a deficiency payment in any Assessment Period that would exceed the amount that would otherwise be payable if such Lots were subject to the same Annual Assessment applicable to the other Lots constituting Assessable Property.

**6.4.2** With respect to any fiscal year prior to the Transition Date, the Declarant may elect to pay Assessments on Lots owned by Declarant and its Affiliates in lieu of the deficiency payment described in Subsection 6.4.1 above. Such election and payment of Assessments shall be made within thirty (30) days after the beginning of any fiscal year by written notice to the Association by Declarant. The payment of deficiencies in any fiscal year shall not obligate the Declarant to continue payment of the deficiencies in future years, provided that, in lieu of the deficiency payment Declarant pays Assessments on the Lots owned by Declarant and its Affiliates the same as all other Owners of Assessable Property. Declarant's

election to pay Assessments instead of deficiencies shall also terminate the obligation by Builders to pay deficiencies, and thereafter Builders also shall pay Assessments on their Lots the same as all other Owners of Assessable Property. A Builder's obligation to pay its pro rata share of the deficiencies for applicable Lots shall be a personal obligation and shall be secured by the Assessment Lien.

**6.5 Special Assessments.** The Association may levy against each Lot that is Assessable Property a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon an Area of Association Responsibility, Including fixtures and personal property related thereto, provided that any Special Assessment is approved by Members having more than two-thirds (2/3) of the votes in each Class of Membership entitled to be cast by Members present in person or by proxy or by absentee ballot (as applicable) at a meeting duly called for such purpose. Special Assessments shall be levied against Assessable Property in the same manner as the Annual Assessment. Special Assessments shall require the prior written approval of Declarant so long as Declarant or any Affiliate of Declarant owns any portion of the Property or Additional Property.

**6.6 Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Assessments, shall commence upon the conveyance of the first Lot to a Purchaser (as defined in Section 1.40) and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

**6.7 Commencement Date of Assessment Obligation.** Subject to the provisions of Section 6.6 above, each Lot shall be subject to the levy of Assessments upon the conveyance of such Lot to a Person other than Declarant, an Affiliate of Declarant or a Builder; provided that after the Transition Date, all Lots shall be subject to assessment.

**6.8 Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a monthly or quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty or obligation to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

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

**6.9.1** Any Assessment or any installment of an Assessment not paid within fifteen (15) days after the Assessment or the installment of the Assessment first became due (or



such longer period of time as required by applicable law) shall be deemed delinquent and will, unless expressly waived by the Association, bear interest from the date on which such Assessment or installment of the Assessment became due at the rate of twelve percent (12%) per annum. In addition, the Board may establish a late fee, not to exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid Assessment or installment thereof (but in no event an amount greater than permitted under applicable law), to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due. Notwithstanding the foregoing, to the extent applicable law from time to time provides for any shorter period of time after which Assessments or any other amounts payable hereunder may or shall become delinquent, such shorter period of time may be established by the Board to apply in lieu of the time period set forth in this Section, and to the extent applicable law from time to time provides for any greater amount of late fee or other amount to be charged to any Owner deemed delinquent in the payment of any Assessment, or any installment of an Assessment, such greater amount may be established by the Board to apply in lieu of the late fee set forth in this Section.

**6.9.2** The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot with respect to Assessments; and (iii) all reasonable attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot with respect to the Assessments. Notwithstanding anything contained herein to the contrary, no lien shall apply to any interest, lien fee, late charge or other fees, charges and costs if and to the extent such lien thereon is prohibited by law. The Recording of this Declaration constitutes Record notice and perfection of the Assessment Lien. The Association may, at its option, Record a notice of lien ("**Notice of Lien**") setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien Recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments and all other amounts due to the Association by such Owner. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot. If the Association Records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount to be set from time to time by the Board.

**6.9.3** The Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recording of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; (iv) the lien of any First Mortgage on the Lot; and/or (v) as otherwise provided from time to time under applicable law. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings with respect to a First Mortgage, such as,

but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot that became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot that accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

**6.9.4** The Association shall not be obligated to release the Assessment Lien as to any portion of Assessments past due until all such delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot with respect to Assessments have been paid in full. In no event shall such release of past due Assessments release the lien of this Declaration as to all other Assessments to become due hereunder.

**6.9.5** The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association with respect to Assessments in any manner allowed by law, Including: (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments, and (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 at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

**6.9.6** In addition to the Assessment Lien described in Subsection 6.9.2 above, the Association shall have a lien on each Lot for all monetary penalties and reasonable fees, attorneys' fees, court costs, charges, late charges and interest charged with respect to such monetary penalties (the "**Additional Charges**"), after the entry of a judgment in a civil suit for such Additional Charges from a court of competent jurisdiction and the Recording of such judgment as otherwise provided by law (the "**Additional Charges Lien**"). Except as otherwise may be permitted by law, the Additional Charges Lien may not be foreclosed and is effective only upon conveyance of any interest in the Lot.

**6.10 Evidence of Payment of Assessments.** Upon receipt of a written request from a lienholder, Member or Person designated by a Member, to the extent required by law, the Association shall issue, or cause to be issued, within the time period required by applicable law, a statement setting forth the amount of any unpaid Assessment or other fee or charge against the Lot. The Association may impose a reasonable charge for the issuance of such statements, which charge shall be payable at the time the request for any such statement is made. Any such statement, when duly issued as herein provided, shall be conclusive and binding on the Association with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

**6.11 Purposes for Which Association's Funds May Be Used.** The Association shall use all funds and property collected and received by it (Including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing the Association's duties and obligations under the Project Documents; (ii) exercising the rights and powers granted to the Association by the

Project Documents, and (iii) the common good and benefit of the Project and the Owners and Residents, by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, that may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and Residents. Notwithstanding any other provision of this Declaration to the contrary, funds of the Association may not be used for the initial construction of Improvements on the Common Area until after the Transition Date.

**6.12 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.

**6.13 Working Capital Fund.** Except for Declarant, Affiliates of Declarant and Builders, each Person acquiring a Lot from the Declarant, an Affiliate of Declarant or a Builder shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-fourth (1/4th) of the then current Annual Assessment payable by Owners of Lots that are Assessable Property. 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 the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**6.14 Reserve Contribution.** Except for Declarant, Affiliates of Declarant and Builders, each Person acquiring a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-fourth (1/4th) of the then current Annual Assessment payable by Owners of Lots that are Assessable Property (the “**Reserve Contribution**”). The Reserve Contribution shall be deposited in the Reserve Account established pursuant to Section 6.15 below, shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. No Reserve Contribution shall be payable with respect to (i) the transfer or conveyance of a Lot by devise or intestate succession; (ii) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (iii) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution; or (iv) the transfer or conveyance of a Lot as a result of a trustee’s sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser’s interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741 et seq.

**6.15 Reserves.** Each budget adopted by the Board shall include reasonable amounts, as determined by the Board, to be collected as reserves for the future periodic maintenance,

repair or replacement of all or a portion of the Areas of Association Responsibility. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account (the “**Reserve Account**”) to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. Withdrawal of funds from the Association’s reserve account shall require the signatures of either (i) two (2) members of the Board, or (ii) one (1) member of the Board and an officer of the Association who is not also a member of the Board. The Board shall obtain an initial reserve study and then provide updates thereto at such frequencies and times as deemed appropriate by the Board. The reserve study shall at a minimum include (a) identification of the major components of the Areas of Association Responsibility that the Association is obligated to repair, replace, restore or maintain, which, as of the date of the study, have a remaining useful life of less than thirty (30) years, (b) identification of the probable remaining useful life of the identified major components as of the date of the study, (c) an estimate of the cost of repair, replacement, restoration or maintenance of the identified major components during and at the end of their useful life, and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. Provided that the Board acts in good faith in determining the amount to be collected as reserves, the Declarant Parties shall not be liable to the Association or any Member if the amount collected as reserves proves to be inadequate to pay for all required periodic maintenance, repair and replacement that was intended to be funded from reserves.

**6.16 Transfer Fee.** Each Person (other than Declarant, an Affiliate of Declarant or a Builder) shall pay to the Association, or to its managing agent, if directed to do so by the Board, immediately upon becoming the Owner of a Lot, a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement that the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1806(A) and, therefore, the transfer fee shall be in addition to the fee that the Association is entitled to charge pursuant to A.R.S. § 33-1806(C).

## ARTICLE 7 MAINTENANCE

**7.1 Areas of Association Responsibility.** The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility and all Improvements located thereon. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility, but all Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times and in compliance with all deed restrictions, zoning and other governmental regulations restricting or limiting the use of the land. No Owner, Resident or other Person shall construct or install any Improvements on an Area of Association Responsibility or alter, modify or remove any Improvements situated on an Area of Association



Responsibility without the prior written approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility and the Improvements located thereon. The Association shall be responsible for the control, maintenance and payment of ad valorem taxes and liability insurance on the Common Area.

## **7.2 Owner's Maintenance Responsibilities.**

**7.2.1** Each Owner of a Lot shall be responsible for maintaining, repairing and replacing his Lot and the Residential Unit and all landscaping or other Improvements situated thereon, Including any landscaping installed between the boundary of such Lot and the pavement of a street, except for any portion of the Lot that is an Area of Association Responsibility and/or any other portion of the Lot that is required to be maintained by another Person pursuant to any Project Document. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair in accordance with the Maintenance Standard. All grass, hedges, shrubs, vines and plants of any type shall be irrigated (to the extent necessary to produce healthy plant material), mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass that die shall be promptly removed and replaced with living foliage of like kind, or of a kind permitted by the Design Guidelines; provided that if the original foliage was subject to the Architectural Review Committee review and approval, then any different foliage that is proposed must also be approved by the Architectural Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property.

**7.2.2** Each Owner shall be responsible for sewer blockage, repair, maintenance, replacement and all other matters relating to sewer connection and service with respect to (i) the plumbing within such Owner's Residential Unit, and (ii) the house connection line from such Owner's Residential Unit to the connection point in the main collection sewer line in the street.

**7.3 Assessment of Certain Costs of Maintenance and Repair.** If the need for maintenance or repair of an Area of Association Responsibility, or any Improvement situated thereon, is caused through the willful or negligent act of any Owner or Resident (or their guests or invitees), the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and shall be secured by the Assessment Lien, to the extent permitted by applicable law. The decision of the Board shall be final and binding as to whether any need for repair is caused by any willful or negligent act of any Owner or Resident (or any of their guests or invitees).

**7.4 Improper Maintenance and Use of Lots.** If any portion of any Lot is not maintained in accordance with the Maintenance Standard, or if any portion of a Lot is being used in a manner that violates this Declaration or any other Project Document; or if the Owner of any Lot is failing to perform any of his obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions that exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen-day period of time the requisite corrective action has not been

taken, the Board shall be authorized and empowered to cause such action to be taken (and the Board and its agents shall have the right and license to enter upon the Lot in connection therewith), including the hiring of an attorney to take action on behalf of the Board, whether by informal action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein shall be paid by such Owner to the Association upon demand and shall be secured by the Assessment Lien, to the extent permitted by applicable law.

**7.5 Party Walls.** The rights and duties of Owners who share a Party Wall shall be as follows:

**7.5.1** Each Owner shall have an equal right to use the Party Walls to the extent such use does not interfere with the other Owner's use and enjoyment thereof.

**7.5.2** If a Party Wall is damaged or destroyed through the act or omission of an Owner or Resident of a Lot or any of their agents, contractors, guests or invitees (whether or not such act is negligent or otherwise culpable), the Owner of such Lot shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense (provided that this shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any insurer, Lessee, Resident, agent, guest or other Person who otherwise may be liable to such Owner).

**7.5.3** If any portion of a Party Wall is damaged or destroyed (other than by the act of an adjoining Owner or Resident or any of their agents, contractors, guests or invitees) or otherwise deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin such portion of the Party Wall to immediately rebuild and repair it, and the expense shall be ratably divided among such Owners based on the amount of linear footage of their respective Lots located along such portion of the Party Wall.

**7.5.4** If a dispute occurs between Owners regarding a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Architectural Review Committee, whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. Notwithstanding any such decision, no Owner shall be prohibited from seeking indemnity from the party causing the damage.

**7.5.5** The Association shall have the right, but not the obligation, to perform any work which an Owner or Owner(s) fails to do in a timely manner. The Owner(s) responsible for such work shall upon demand pay all costs incurred by the Association together with interest at twelve percent (12%) per annum and an administrative fee at ten percent (10%) of the costs incurred by the Association.

**7.6 Maintenance of Walls Other Than Party Walls.**

**7.6.1** Unless otherwise provided in this Section 7.6 or elsewhere in this Declaration or any other Project Document, walls located on the Lot (other than Party Walls) shall be maintained, repaired and replaced by the Owner of the Lot.

**7.6.2** Walls (other than walls described in Subsection 7.6.3 below) located on Common Area shall be maintained, repaired and replaced by the Association.

**7.6.3** Any wall that is placed on the boundary line between a Lot and a Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the surface of the wall that faces the Common Area. The Association shall have no responsibility for any structural repair and maintenance that would require rebuilding all or a portion of any such wall, including any portion of the wall constructed with wrought iron or some other type of view fence material (a “**View Fence**”). Notwithstanding the foregoing, if any such wall or portion thereof constitutes a View Fence, the Association shall maintain the surface of the entire View Fence portion of the wall (including the portion that faces the Lot), and the Owner shall pay to the Association, upon demand, one-half (1/2) the cost of any such maintenance performed on the View Fence portion thereof. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments. A perpetual, nonexclusive easement in favor of the applicable Owner and the Association is hereby created on, over, under, through and across any such Lot and Common Area, to the extent reasonably necessary, for the purpose of the applicable Owner and/or the Association maintaining, repairing and replacing any fences and walls subject to this Subsection 7.6.3. Any damage to a Lot or Common Area resulting from the exercise of any easement right granted to an Owner or the Association in this Subsection shall be promptly restored or repaired by, and at the expense of, the party exercising the easement right. In the event any such wall or fence encroaches upon any Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

**7.6.4** If the Association deems it necessary to trim, cut or remove vines, plants, trees, bushes, shrubs or other landscaping planted on a Lot in order for the Association to be able to perform its maintenance responsibilities under this Section, or if an Owner fails to perform any structural repair and maintenance as required by this Section in accordance with the Maintenance Standard, the Association shall give notice to the Owner of the applicable Lot identifying the work that must be done by the Owner in order for the Association to be able to perform its maintenance responsibilities and the date by which such work must be completed. If the Owner does not perform the work identified in the notice within the time period set forth in the notice, then the Association shall have the right and an easement pursuant to Subsection 4.5.4 and Section 7.4 of this Declaration to perform the necessary work and charge the Owner for all costs incurred by the Association in the performance of the work. Any such amounts that become payable by an Owner to the Association pursuant to this Subsection shall be paid by the Owner within fifteen (15) days after receipt of a billing, invoice or other demand from the Association for payment of such amount. Any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of Assessments to the extent permitted by applicable law. The Association shall not be liable to the Owner of a Lot or to any other Person for any loss or damage to the landscaping or for any change in appearance of a Lot as a result of any work performed by the Association on a Lot pursuant to this Subsection. The Association shall be liable to the Owner of a Lot for any damage to a wall caused by the Association in the exercise of the Association’s rights under this Subsection 7.6.4.

**7.7 Installation of Landscaping.** Unless previously installed by Declarant or a Builder, each Owner of a Lot shall install trees, plants or other landscaping Improvements (together with any sprinkler system or drip irrigation system sufficient to adequately water the

trees, grass, plants or other landscaping Improvements) on the Lot within sixty (60) days after acquiring title to such Lot from the Declarant, an Affiliate of Declarant or a Builder. Unless otherwise exempt pursuant to the express terms of this Declaration or any other applicable Project Documents (Including the Design Guidelines), all landscaping to be installed by an Owner or such Owner's contractors on a Lot, which will be Visible From Neighboring Property at the time of installation, must be approved by the Architectural Review Committee prior to the installation thereof on a Lot.

**7.8 Landscaping Replacement.** Landscaping originally planted in the Areas of Association Responsibility may exceed the landscaping that is ultimately planned for Areas of Association Responsibility 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, (i) the remaining landscaping is acceptable to the Board, and (ii) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on the 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. Neither Declarant, its Affiliates nor any other installer of landscaping in Areas of Association Responsibility shall be responsible for the replacement of any landscaping that dies more than ninety (90) days following installation or that requires replacement due to weather conditions, vandalism, lack of proper watering or maintenance by Association or the intentional or negligent acts of any other Person, and the Association shall be solely responsible for such replacement (subject to the potential recovery by the Association from any vandal or other Person causing such damage).

**7.9 Detention/Retention and Drainage Facility Inspection and Maintenance.** The Association shall be solely responsible and liable for the maintenance of the retention basins and drainage structures within Common Area A.

**7.9.1** The Association shall have an Arizona registered professional civil engineer prepare a certified inspection report for the retention facilities at least once each year, and these regular inspection reports will be on file with the Association for review by Pima County upon request. The certified annual inspection report shall contain either a statement that no maintenance work is needed at that time, or a list of repairs and work to be done to correct deficiencies or potential problems and/or to restore the aesthetics and water harvesting area and depth, followed by a letter of certification from an Arizona registered professional civil engineer stating that the recommended work has been satisfactorily completed.

**7.9.2** All private drainage improvements shall be maintained to the design specifications shown on the As-built Plans as necessary to ensure the integrity of said drainage improvements and maintenance of the flood carrying capacity of the design discharge and to assure that upstream flows will be conveyed across the subject property as shown on the referenced Final Plat for Hardy Preserve without creating any adverse impacts to adjacent properties and the onsite developments. The private drainage improvements shall be inspected annually and after each large flow event for excessive sediment deposits, debris, vegetation and obstructions as well as the integrity of private drainage improvements by all present and future property Owners. If an inspection identifies any condition requiring maintenance or repair, maintenance and repair shall restore the improvements to design conditions. These private



drainage improvements include and are not limited to rain water harvesting/ retention basins, swales, drainage ditches, roadside channels, at-grade crossings, and culverts. Alterations to the private drainage improvements, other than ordinary, routine maintenance, shall be reviewed by the Regional Flood Control District.

**7.9.3** The natural drainage on and in the vicinity of the regulatory floodplain within the property shall not be altered, disturbed, obstructed or restricted, or any structure constructed or fence placed without the express written approval of the Pima County Flood Control District.

**7.10 Front Yard Water Harvesting Inspection and Maintenance.** Lots 11 through 33 and Lots 46 through 55 of the Project are designed with front-yard, on-lot water harvesting (collectively, the “**Water Harvesting Lots**”) and include an on-lot detention/retention basin in the front-yard area of the Lot (the “**Water Harvesting Basin**”). The Water Harvesting Basin located on each Water Harvesting Lot is also located within a 14-foot drainage easement, as granted pursuant to and as shown on the Plat. Each Owner of a Water Harvesting Lot shall be responsible for the maintenance of the Water Harvesting Basin located on such Lot in accordance with the Maintenance Standard hereunder and in compliance with the as-built water volume requirements and specifications of the Water Harvesting Basin.

**7.10.1** The Association will be responsible for the inspection of each of the Water Harvesting Basins as part of the Association’s overall yearly drainage inspection. If the Association determines that any Water Harvest Basin has not been properly maintained in accordance with this Section 7.10 and/or is not in compliance with the applicable as-built water volume requirements and specifications therefor, the Association shall issue a deficiency letter to the Owner of the applicable Water Harvesting Lot.

**7.10.2** An Owner who receives a deficiency letter from the Association pursuant to Subsection 7.10.1 above, shall have thirty (30) days to correct the deficiencies set forth in the deficiency letter. If the deficiencies are not corrected in accordance with the Association’s deficiency letter within such 30-day period, the Association can, at its discretion, correct the deficiency and bill the Owner for the costs incurred by the Association in correcting the deficiency. The costs of any action taken by the Association pursuant to immediately preceding sentence shall be paid by such Owner to the Association upon demand and shall be secured by the Assessment Lien, to the extent permitted by applicable law.

## **ARTICLE 8 INSURANCE**

**8.1 Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

**8.1.1** Commercial general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$2,000,000 per occurrence with a \$3,000,000 aggregate. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or relating to the use,



ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project that the Association is obligated to maintain under this Declaration and shall also include cross-liability endorsements to cover liabilities of the Owners as a group to an Owner.

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

**8.1.3** Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

**8.1.4** Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering the directors and officers of the Association against claims arising out of or relating to the administration of the Association.

**8.1.5** Such other insurance (Including employment practices liability insurance and fidelity insurance) as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board, the officers and the members of any committee of the Board and the Owners.

**8.1.6** The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) 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; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance that may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) 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; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify 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.

**8.2 Certificates of Insurance.** An insurer that has issued an insurance policy pursuant to Section 8.1 hereof shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association.

**8.3 Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association as a Common Expense.

**8.4 Payment of Insurance Proceeds.** With respect to any loss to any Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 below, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

**8.5 Repair and Replacement of Damaged or Destroyed Property.** Any portion of an Area of Association Responsibility that is 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 representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all such Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to such damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition that is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (a) be retained by the Association as an additional capital reserve, or (b) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

**8.6 Insurance Responsibility of Owners.** It shall be the responsibility of each Owner to provide property and liability insurance with respect to all of such Owner's real and personal property. No Person shall maintain any insurance that would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvements on the Areas of Association Responsibility. Neither the Association, Board, Architectural Review Committee nor Declarant (Including any officer, employee or member of any of the foregoing) shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

## ARTICLE 9 GENERAL PROVISIONS

### **9.1 Enforcement.**

**9.1.1** The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Project Documents, Including an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents, provided that an Owner shall not take any enforcement action until the Association has failed or refused to take such enforcement action for an unreasonable period of time after written notice to do so. Failure by the Association or an Owner to enforce any covenant or restriction contained in the Project Documents shall in no event be deemed a waiver of the right to do so thereafter.

**9.1.2** In the event the Association employs an attorney to (i) enforce any lien or other right granted to it under the terms of this Declaration, or (ii) collect any Assessments or other amounts due from an Owner, or (iii) enforce compliance with or recover damages for any violation of or noncompliance with the Project Documents, or (iv) assist the Association in performing its rights and obligations in any other manner arising out of or relating to the Project Documents or the operations of the Association, the offending Owner or other Person shall pay to the Association, upon demand, all attorney's fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the Assessment Lien to the extent permitted by applicable law.

**9.1.3** The Association shall be obligated to investigate allegations of violations of any covenant, restriction or rule set forth in any of the Project Documents; provided that the Association may, but shall not be obligated to, investigate anonymous allegations. Following such investigation, the decision to take or not take enforcement action shall, in each case, be in the discretion of the Board in the exercise of its business judgment. Without limiting the generality of the Board's discretion, if the Board reasonably determines that a covenant, restriction or rule is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action, the Board shall not be obligated to take such action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision at a later time or under other circumstances, or estop the Association from enforcing any other covenant, restriction or rule. Notwithstanding the above, if, in the discretion of the Declarant as long as Declarant or an Affiliate of Declarant owns any portion of the Property, the Association fails to take appropriate action to enforce any provision of the Project Documents in accordance with its rights and responsibilities, Declarant may take such enforcement action on behalf of the Association. Declarant shall not take such action without first providing the Association with written notice and a reasonable opportunity to take such action on its own.

**9.2 Termination.** This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing ninety percent (90%) or more of the total number votes in the Association (Including the votes allocated to each class of Membership), and the holders of First Mortgages, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If termination is proposed after the Transition Date, such termination shall require the written consent of Declarant so long as Declarant or its Affiliates own any property in the Project. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

**9.3 Amendments.**

**9.3.1** Except for amendments made pursuant to Section 2.2, or amendments made pursuant to Subsections 9.3.2 or 9.3.4 of this Declaration, and subject to the provisions of Subsections 9.3.5 and 9.15.9 of this Declaration, the Declaration may only be amended by the

written approval or the affirmative vote, or any combination thereof, of Owners representing not less than sixty-seven percent (67%) of the votes in the Association.

**9.3.2** The Declarant, so long as the Declarant or its Affiliates own any portion of the Property, and thereafter, the Board, may amend this Declaration, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by Declarant or the Board.

**9.3.3** So long as Declarant or its Affiliates own any portion of the Property, any amendment to this Declaration must be approved in writing by Declarant.

**9.3.4** Declarant, so long as Declarant or its Affiliates own any portion of the Property, and thereafter, the Board, may amend this Declaration without the consent of any other Owner or First Mortgagee to correct any error or inconsistency in the Declaration.

**9.3.5** So long as Declarant, its Affiliates and Builders collectively hold at least sixty-seven percent (67%) of the total number of votes in the Association (Including the votes allocated to each class of Membership), any amendment to this Declaration shall be signed by Declarant, its Affiliates and Builders and shall be Recorded. At any time the Declarant, its Affiliates and Builders do not collectively own at least sixty-seven percent (67%) of the total number of votes in the Association, any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsections 9.3.2 or 9.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by Declarant pursuant to Section 2.2 of this Declaration shall be signed by Declarant and shall be Recorded. Any amendment made by Declarant pursuant to Subsections 9.3.2 or 9.3.4 of this Declaration shall be signed by Declarant and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

**9.4** **Rights of First Mortgagees.** Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

**9.5** **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and Property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration

shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or Design Guidelines, the Bylaws shall control.

**9.6 Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof, and the remainder of the Declaration shall remain in full force and effect. If any provision herein is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Association, as applicable, may interpret, construe, rewrite or revise such provision to the fullest extent allowed by law, so as to make such provision valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

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

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

**9.9 Notice of Violation.** The Association shall have the right to Record against a Lot a written notice of a violation with respect to any violation of the Project Documents by the Owner, Lessee or Resident of the Lot. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps that must be taken by the Owner, Lessee or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner, Lessee and Resident, and 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 shall Record a notice of compliance that shall state the legal description of the Lot against which the notice of violation was Recorded, and the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.



**9.10 Responsibility of Successors in Interest to Owner's Violations.** Successors in title of an Owner to a Lot are obligated to correct any violation of the Project Documents by any preceding Owner of the Lot.

**9.11 Laws, Ordinances and Regulations.**

**9.11.1** 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 Review Committee with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, ordinances and regulations.

**9.11.2** Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**9.11.3** In the event any provision of this Declaration is consistent with, but more restrictive than, applicable laws, ordinances and regulations, such provisions of this Declaration shall apply to the Property.

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

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

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

**9.15 Dispute Notification and Resolution Procedure.** Subject to the provisions of Section 9.16 below, all actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Owner(s) against any one or more of the Declarant Parties, or (iii) by both the Association and any Owner(s) against any one or more of the Declarant Parties, arising out of or relating to the Project, including the Declaration or any other Project Documents, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Residential Units) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of

implied or express warranties as to the condition of the Project or any Improvements or any other legal theories whatsoever (collectively, “**Dispute(s)**”) shall be subject to the provisions of this Section 9.15. Declarant and each Owner acknowledge that the provisions set forth in this Section 9.15 shall be binding upon current and future Owners of the Project and upon the Association, whether acting for itself or on behalf of any Owner(s).

**9.15.1 Claim Notice.** Any Person (Including the Association) with a Dispute claim shall notify the applicable Declarant Party (the “**Notified Declarant Party**”) in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the “**Claim Notice**”).

**9.15.2 Right to Inspect and Right to Corrective Action.** Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Notified Declarant Party and the claimant shall meet at a mutually acceptable place within the Project to discuss the claim. At such meeting or at such other mutually agreeable time, the Notified Declarant Party and the Notified Declarant Party’s representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by the Notified Declarant Party (provided the Notified Declarant Party shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Subsection 9.15.2. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Notified Declarant Party elects to take any corrective action, the Notified Declarant Party and the Notified Declarant Party’s representatives and agents shall be provided full access to the Project and the property that is the subject of the claim to take and complete corrective action.

**9.15.3 No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in Subsection 9.15.2 above shall be construed to impose any obligation on the Notified Declarant Party to inspect, test, repair or replace any item of the Project for which the Notified Declarant Party is not otherwise obligated under applicable law or the Limited Warranty (as defined in Section 9.16 below), if applicable. The right of the Notified Declarant Party to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing executed and Recorded by the Notified Declarant Party.

**9.15.4 Mediation.** If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in Subsection 9.15.2 above within ninety (90) days after delivery of the Claim Notice, the matter shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (except as such procedures are modified by the provisions of this Subsection 9.15.4) or such other mediation service selected by the Notified Declarant Party. The Person who delivered the Claim Notice shall have until one hundred twenty (120) days after the date of delivery of the Claim Notice to submit the Dispute to mediation. If the Person who delivered the Claim Notice fails to timely submit the Dispute to mediation, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. 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. No litigation or other action shall be commenced against the Notified Declarant Party or any Declarant Party without complying with the procedures described in this Subsection 9.15.4.

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

(ii) 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, consistent with the Construction Industry Mediation Rules of the American Arbitration Association. The mediator is authorized to conduct joint and separate meetings with the parties 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 agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

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

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Notwithstanding the foregoing, applicable contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Project designated by a Notified Declarant Party may attend mediation sessions and may be made parties to the mediation. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

**9.15.5 Arbitration**. Should mediation pursuant to Subsection 9.15.4 above not be successful in resolving any Dispute, then the Person who delivered the Claim Notice shall have

ninety (90) days after the date of termination of the mediation to submit the Dispute to binding arbitration. If timely submitted, such claim or dispute shall be resolved by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Subsection 9.15.5. If the Person who delivered the Claim Notice fails to timely submit the claim to arbitration within the ninety (90) day period, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. A Person with any Dispute may only submit such Dispute in arbitration on such Person's own behalf. No Person may submit a Dispute in arbitration as a representative or member of a class, and no Dispute may be arbitrated as a class action. All Declarant Parties and any Person(s) submitting a Claim Notice, together with any additional Persons who agree to be bound by this Section 9.15, such as contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Project (collectively, the "**Bound Parties**"), agree that all Disputes that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Subsection 9.15.5, and waive the right to have the Dispute resolved by a court, including the right to file a legal action as the representative or member of a class or in any other representative capacity. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this Subsection 9.15.5, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Project is located.

(ii) Arbitrator. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. 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 demand for arbitration on all respondents named therein.

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

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

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only 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 destructive or invasive testing; and (vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Subsection 9.15.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator

shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

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

(vii) Arbitration Award. Unless otherwise agreed by the parties, the arbitrator shall render a written arbitration award within thirty (30) days after conclusion of the arbitration hearing. The arbitrator's award may be enforced as provided for in the Revised Uniform Arbitration Act, A.R.S. § 12-3001, 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, or, as applicable, pursuant to the Federal Arbitration Act (Title 9 of the United States Code).

(viii) Arbitration Expenses. The arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The arbitrator shall not award any punitive damages. The arbitrator shall not award indirect, consequential or special damages, regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by, the party against whom the claim is made. The arbitrator shall assess the costs of the proceedings (including the fees of the arbitrator) against the non-prevailing party.

(ix) Governing Law. Except as otherwise expressly set forth herein, the provisions of this Subsubsection 9.15.5 and the enforceability thereof shall be governed by the Federal Arbitration Act (Title 9 of the United States Code) and applicable Arizona state law, to the extent such state law is consistent therewith.

#### **9.15.6 WAIVERS**

**NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 9.15 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 9.15. SPECIFICALLY, AND WITHOUT LIMITATION, EACH SUCH PERSON WAIVES THE RIGHT TO SUBMIT A DISPUTE IN ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS AND TO HAVE SUCH DISPUTE ARBITRATED AS A CLASS ACTION AND ALSO WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A COURT, INCLUDING THE RIGHT TO FILE A LEGAL ACTION AS THE REPRESENTATIVE OR MEMBER OF A CLASS OR IN ANY OTHER REPRESENTATIVE CAPACITY. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 9.15, THEY ARE GIVING UP THEIR**



**RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF ALL PUNITIVE, INDIRECT, CONSEQUENTIAL AND SPECIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO AN AWARD OF ALL PUNITIVE, INDIRECT, CONSEQUENTIAL AND SPECIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.**

**9.15.7 Time Limit on Disputes Against Declarant.** No Dispute(s) arising out of or relating to any Improvement within the Property may be instituted or maintained by any Owner(s), future Owner(s) or the Association (or the Association for or on behalf of the Owners) against one or more Declarant Parties more than eight (8) years after the substantial completion (as defined below) of such Improvement. The provisions of this Subsection 9.15.7 shall apply to all Disputes (whether based in negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements or any other legal theory whatsoever).

(i) Notwithstanding the provisions of Subsection 9.15.7 above, in the case of injury to any real property or any Improvement to real property, if the injury occurred during the eighth (8th) year, or, in the case of a latent defect, was not discovered until the eighth (8th) year, the Dispute arising from such injury or latent defect (as applicable) may be commenced in accordance with the provisions of this Section 9.15 within one (1) year after the date on which such injury occurred or such latent defect was discovered (as applicable), but in no event may the Dispute be commenced more than nine (9) years after the substantial completion of the Improvement.

(ii) Notwithstanding the provisions of Subsection 9.15.7 above, such provisions shall not operate to shorten the period of any warranty contained in the Limited Warranty or any other express warranty covering the Improvements.

(iii) For purposes of this Subsection 9.15.7, an Improvement shall be deemed “**substantially complete**” when:

(a) In the case of any Improvement located on a Lot (Including any Improvement to the Residential Unit located on such Lot), upon the conveyance of the Lot and Residential Unit constructed thereon to a Person other than Declarant, Declarant’s Affiliates or a Builder.

(b) In the case of any Improvement to the Common Areas or other portions of the Project located outside of the boundaries of a Lot, upon the earlier occur of: (i) the dedication or conveyance of the applicable Common Area or other portion of the Project (and the Improvements located thereon) to the Association; (ii) the acceptance of the applicable Improvement by the Association or other owner or occupant thereof; (iii) the date on which such Improvement is first available for use by the Association or other owner or occupant thereof for

its intended purpose; or (iv) the final inspection of such Improvement, if required, by the governmental body which issued the building permit therefor.

**9.15.8 No Extension or Tolling of Statutes of Limitation and Repose.** Nothing in this Section 9.15 (Including Subsection 9.15.7) shall be considered to extend, toll or stay any applicable statute of limitation or repose.

**9.15.9 Required Consent of Declarant to Modify.** Neither this Section 9.15 nor Sections 9.16, 9.17 or 9.18 below may be amended except in accordance with Subsection 9.3.1 of this Declaration and with the express written consent of the Declarant (regardless of whether Declarant still owns any property within the Project).

**9.16 Limited Warranty and Purchase Agreement Dispute Resolution.** Nothing in this Declaration (Including Section 9.15 above) is intended to limit, expand or otherwise modify the express terms and provisions of (i) any limited warranty provided by Declarant or any of its Affiliates to a Purchaser in connection with the sale of a Lot and/or Residential Unit (the "**Limited Warranty**"), or (ii) the underlying purchase agreement between Declarant or any of its Affiliates and a Purchaser in connection with the sale of a Lot and/or Residential Unit (a "**Purchase Agreement**"). Notwithstanding anything to the contrary contained in this Declaration (Including Section 9.15 above), any and all Disputes, claims and controversies against Declarant and/or any of its Affiliates arising out of or relating to a Limited Warranty or a Purchase Agreement (Including any claim of breach of contract, negligent or intentional misrepresentation, nondisclosure in the inducement, execution or performance of a Purchase Agreement and breach of any alleged duty of good faith and fair dealing) shall be resolved pursuant to any applicable mediation, arbitration and/or other dispute resolution provisions contained in such Limited Warranty or Purchase Agreement (as applicable). To the extent that any (or any portion of any) claim, dispute or controversy is not covered by the dispute resolution provisions contained in any Limited Warranty or Purchase Agreement (as applicable), the dispute resolution provisions of Section 9.15 above shall apply.

**9.17 Required Consent of Owners for Legal Action.** Any action or claim instituted by the Association (which action or claim shall be subject to the terms of Section 9.15) against any one or more of the Declarant Parties, arising out of or relating to the Project, Including the Declaration or any other Project Documents, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, Including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (Including Residential Units) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements, shall have first been approved by Owners representing at least seventy-five percent (75%) of the votes in the Association.

**9.17.1 Notice of Owners.**

(i) Prior to obtaining the consent of the Owners in accordance with this Section 9.17, the Association must provide written notice to all Owners, which notice shall (at a minimum) include (a) a description of the nature of any action or claim (the "**Claim**"), (b) a description of the attempts of the Notified Declarant Party to correct such Claim and the

opportunities provided to such Notified Declarant Party to correct such Claim, (c) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (d) the estimated cost to repair such Claim, (e) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against the applicable Notified Declarant Party and a description of the relationship between such attorney and member(s) of the Board (if any), (f) a description of the fee arrangement between such attorney and the Association, (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against the Notified Declarant Party and the source of the funds that will be used to pay such fees and expenses, (h) the estimated time necessary to conclude the action against the Notified Declarant Party, and (i) an affirmative statement from the Board that the action is in the best interest of the Association and its Members.

(ii) In the event the Association recovers any funds from a Notified Declarant Party (or any other Person) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

**9.17.2 Notification to Prospective Purchasers.** In the event that the Association commences any action or claim, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Subsection 9.17.1.

**9.18 Limitation on Declarant's and Builders' Liability.** Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting any interest in any portion of the Property and becoming an Owner, acknowledges and agrees that neither Declarant (Including any assignee of the interest of Declarant hereunder), nor any Affiliate, partner, officer, director or shareholder of Declarant (or any partner of shareholder in any such assignee), nor any Builder shall have any personal liability to the Association, or any Owner, Member or any other Person, arising out of or relating to (Including resulting from action or failure to act with respect to) this Declaration or the Association except, in the case of Declarant (or its assignee) or a Builder, to the extent of its respective interest in the Property and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets or be a lien upon such other assets of the judgment debtor.

## ARTICLE 10 ADDITIONAL DISCLOSURES, DISCLAIMERS AND RELEASES

**10.1 Trail Easement.** As part of its responsibility and obligation for maintenance of the Common Area, the Association shall also be responsible for all maintenance or replacement costs of any landscaping or other Improvements installed by the Declarant along or within the public trail easement path in Common Area B, Including all grass, hedges, shrubs, vines, trees, bushes and plants ("**Plant Materials**"). Any Plant Materials that die shall be promptly replaced with living foliage of like kind, unless different foliage is approved by the Association.

**10.2 Natural Open Space.** Subject to the trail easement to be maintained by the Association pursuant to Section 10.3 above with respect to Common Area B, the Association shall be responsible for all maintenance and preservation of Common Area B, which is to be

preserved as and permanently protected as natural open space. The Association shall be responsible for removal of all invasive non-native species from Common Area B.

**10.3 One-Story Height Limitation.** Pursuant to that certain Ordinance 2016-66 of the Board of Supervisors of Pima County, Arizona, passed and adopted on December 13, 2016, the Lots set forth on **Exhibit B** attached hereto and made a part hereof are subject to a one-story height limitation (collectively, the “**One-Story Lots**”).

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Declaration has been executed as of the date first set forth above.

**DECLARANT:**

**KB HOME TUCSON INC.**, an Arizona corporation

By: *Amy S. McReynolds*

Printed Name: AMY S. McREYNOLDS

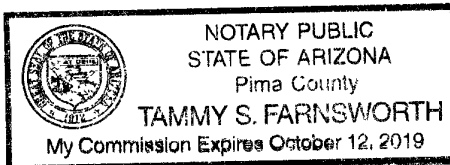
Title: PRESIDENT

STATE OF ARIZONA       )  
  ) ss.  
County of Pima            )

Acknowledged before me this 9<sup>th</sup> day of October, 2017, by Amy S. McReynolds, the President of KB HOME TUCSON INC., an Arizona corporation, on behalf of the corporation.

*Tammy S. Farnsworth*  
Notary Public

My Commission Expires:  
10/12/19



[CONSENT OF FEE TITLE HOLDER ON NEXT PAGE]



**CONSENT OF FEE TITLE HOLDER**

Title Security Agency, LLC, a Delaware limited liability company, as Trustee under Trust No. 201655-T only and not personally, as the holder of fee title to the Property described on **Exhibit A** hereto, hereby approves, ratifies and confirms the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Hardy Preserve and consents to the recording thereof in the Official Records of the Pima County Recorder, Pima County, Arizona.  
DATED this 9th day of October, 2017.

Title Security Agency, LLC, a Delaware limited liability company, as Trustee under Trust No. 201655-T, only and not otherwise

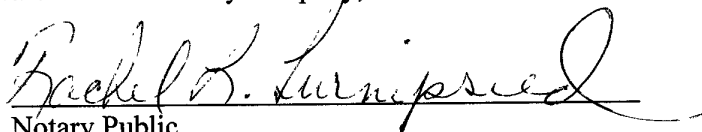
By: 

Name: Diane L. Sloane

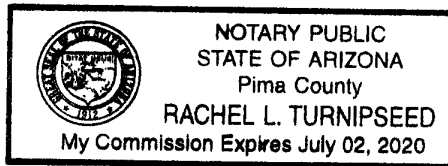
Title: Trust Officer

STATE OF ARIZONA       )  
  ) ss.  
County of Pima            )

Acknowledged before me this 9<sup>th</sup> day of October, 2017, by Diane L. Sloane as Trust Officer for Title Security Agency, LLC, a Delaware limited liability company, as Trustee under Trust No. 201655-S, only.

  
Notary Public

My Commission Expires:  
7-2-2020



**EXHIBIT A**

**PROPERTY**

HARDY PRESERVE, Lots 1-55 & Common Area "A" (Drainage, Landscape and Public Utilities) & Common Area "B" (N.O.S. and Riparian Habitat), Sequence # 20173240094, Official Records of Pima County Recorder, Pima County, Arizona.

**EXHIBIT B**

**ONE-STORY LOTS**

Lots 4 through 11 and Lots 19 through 23 of the Final Plat for Hardy Preserve, Sequence # 20173240094, Official Records of Pima County Recorder, Pima County, Arizona.