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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

FOR

**Arcadia Lots 1 through 40
a subdivision of Pima County, Arizona
a.k.a. High Mesa**

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR
HIGH MESA
(ARCADIA LOTS 1 THROUGH 40)**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for High Mesa (Arcadia Lots 1 through 40) (“**Declaration**”) is executed this ___ day of August, 2020, by Richmond American Homes of Arizona, Inc., a Delaware corporation (“**Declarant**”), and amends, supersedes and replaces in its entirety that Declaration of Covenants, Conditions and Restrictions for Arcadia Lots 1 through 40, a subdivision of Pima County, Arizona a.k.a. High Mesa recorded on March 11, 2009, in the Office of the Pima County Recorder, Arizona, at Docket 13512, Page 143, Sequence 20090470050.

RECITALS:

A. Declarant is the owner of the real property located in the Pima County, Arizona, described on Exhibit A attached hereto.

B. The Property shall generally be known as “**High Mesa**”. Declarant desires to develop the Property into a planned community of single-family residential homes.

C. For the purpose of protecting the value, desirability, attractiveness and character of the Property, Declarant intends that the Property shall be held, sold, and conveyed subject to the provisions hereof, which shall run with all of the Property. This Declaration shall be binding on all parties having any right, title or interest in the Property, or any part thereof, and shall inure to the benefit of such parties and their successors and assigns.

D. Declarant also has formed the “**High Mesa II Homeowners Association**”, a nonprofit corporation for the purpose of benefiting the Property, the Owners, and the Residents, which nonprofit corporation will (i) acquire, operate, manage and maintain any Common Areas in the Property, (ii) establish, levy, collect and disburse the Assessments and other charges imposed hereunder, and (iii) as the agent and representative of the Members of the Association and of the Owners, and the Residents of the Property, administer and enforce this Declaration and enforce the use and other restrictions imposed on various parts of the Property.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees 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 “Annual Assessment” means the assessments levied against each Lot pursuant to Section 6.2 of this Declaration.

1.2 “Annexable Property” means: (i) High Mesa and/or (ii) the real property within three miles of the Property. No part of the Annexable Property shall be subject to this Declaration until such portion of the Annexable Property is annexed to the Property pursuant to the provisions of Article 9 provided that Declarant shall be entitled to its rights hereunder prior to the annexation of High Mesa.

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

1.4 “Areas of Association Responsibility” means (i) all Common Area; (ii) all real property, and the Improvements situated thereon, located within the boundaries of a Lot that the Association is specifically obligated to maintain, repair and replace pursuant to the terms of this Declaration, the Plat or the terms of another Recorded document executed by Declarant or the Association; and (iii) all real property, and the Improvements situated thereon, within or adjacent to the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

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

1.6 “Assessable Property” means any Lot, except such Lots or parts thereof that may from time to time be Exempt Property.

1.7 “Assessment” means an Annual Assessment, Special Assessment or Benefited Assessment.

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

1.9 “Assessment Period” means the period set forth in Section 6.7 of this Declaration.

1.10 “Association” means the High Mesa II Homeowners 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.

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

1.12 **“Benefited Assessment”** means an assessment levied against a particular Lot pursuant to Section 6.6 of this Declaration.

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

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

1.15 **“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.

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

1.17 **“Declarant”** means Richmond American Homes of Arizona, Inc., a Delaware 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.

1.18 **“Declarant Control Period”** means the period commencing upon the Recording of this Declaration and ending on the date the Class B Membership in the Association terminates pursuant to Section 5.7.

1.19 **“Declarant Party” or “Declarant Parties”** means collectively Declarant, the shareholders of Declarant, the parent, affiliates and subsidiaries of Declarant and the officers, directors and employees of all of the foregoing, and as to Section 10.15, to the extent such Persons agree to be bound by Section 10.15, any 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.

1.20 **“Declaration”** means this Declaration of Covenants, Conditions and Restrictions for Arcadia Lots 1 through 40 a.k.a. High Mesa, as amended from time to time.

1.21 **“Declaration of Annexation”** means a declaration Recorded pursuant to the provisions of Article 9 for the purpose of annexing any portion of the Annexable Property to the Property.

1.22 **“Declaration of De-Annexation”** means a declaration Recorded pursuant to the provisions of Article 9 for the purpose of de-annexing any portion of the Property.

1.23 **“Design Guidelines”** means the rules and guidelines adopted by the Architectural Review Committee pursuant to Section 5.11 of this Declaration, as amended or supplemented from time to time.

1.24 **“Development Plan”** means the plan or plans maintained in the offices of the Declarant depicting the plan for future development of portions of the Property and Annexable Property. The Development Plan, or any portion thereof, may from time to time be amended at the sole and absolute discretion of Declarant.

1.25 **“Exempt Property”** means (i) all real property and improvements owned by, or dedicated to and accepted by the United States, State of Arizona, the County of Pima or any political subdivision thereof, so long as such 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 expiration of the Declarant Control Period, 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, or any affiliate or wholly-owned subsidiary of Declarant, except for property owned by Declarant or such affiliate or subsidiary that is subject to a contract for the conveyance of real property subject to the provisions of A.R.S. §33-741 *et seq.*

1.26 **“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.

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

1.28 **“Front Boundary Line of the Lot”** means the lot line creating the boundary between the front yard and the street.

1.29 **“Improvement”** means any Residential Unit, any other permanent or temporary building, fence, wall or other structure (Including any sheds, basketball poles/hoops, play structures, patio covers, balconies, light fixtures and light poles), and any swimming pool, road, driveway, parking area (paved or unpaved), irrigation facilities, trees, plants, shrubs, grass and other landscaping improvements of every type and kind.

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

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

1.32 **“Lot”** means any 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.

1.33 **“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.

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

1.35 **“Owner”** means the Record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. 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 and receipt, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots subject to a deed of trust 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.

1.36 **“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 subdivision plat for the Property Recorded on March 11, 2009, at Book 64, Page 47, Sequence 20090470047, and all amendments, supplements and 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. “Property” or “Project”, and all portions of the Annexable Property to the extent annexed pursuant to the provisions of Article 9. The Property shall not be deemed to include any portion of the Annexable Property until such time as the Annexable Property or any portion thereof is annexed to the Property pursuant to the applicable provisions hereof.

1.40 **“Project Documents”** means this Declaration, any Declaration of Annexation, the Articles, the Bylaws, the Association Rules and the Design Guidelines.

1.41 **“Purchaser”** means any Person that by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) Declarant or its affiliates, or (ii) a Person that purchases a Lot and then leases it to Declarant for use as a model in connection with the sale or lease of other Lots; or (iii) a Person that, in addition to purchasing a Lot, is assigned any or all of the Declarant’s rights under this Declaration.

1.42 **“Record”** or **“Recording”** means placing an instrument of public record, **“Recorded”** or **“Recordation”** means having been so placed of public record, and **“Record Owner”** and **“Record Notice”** mean that such Owner and/or such notice is evidenced by such public records, all in the office of the County Recorder of Pima County, Arizona.

1.43 **“Resident”** means each natural person occupying or residing in a Residential Unit.

1.44 “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 by a Single Family.

1.45 “Service Fees” means all costs incurred pursuant to any fire department service contract, refuse removal contract, or other service agreement entered into by either Declarant or the Association for the benefit of some or all of the Lots in accordance with the terms of Section 5.15 below.

1.47 “Single Family” means a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

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

1.49 “USPS” means the United States Postal Service or its successors and assigns having general authority and responsibility for providing delivery service of the United States mail and the branch office thereof that provides United States mail service to the Property.

1.50 “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 or Common Area, which includes objects within rear and side yards enclosed by a wall or fence partially or wholly constructed of wrought iron or some other type of view fence material.

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 improvement and desire 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 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 acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general 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, grantees, purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, 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 Horses and Other Livestock; Wildlife; No Liability of Association and Declarant Parties for Certain Matters.

2.2.1 Intentionally omitted.

2.2.2 The Project is located in close proximity to properties where horses, poultry and other livestock are allowed under applicable laws. Livestock may create noise, odors and dust, and may attract insects. Persons riding horses in the vicinity of the Project may create dangerous situations for pedestrians. Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, assumes the risk that livestock may create nuisances and dangerous situations. Neither the Declarant Parties, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Owner, Resident, Lessee or its family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the presence of livestock in the vicinity of the Project.

2.2.3 The Project is located in a desert area where native wildlife exists. Javelinas, coyotes, mountain lions, bobcats, various types of rodents, lizards, scorpions, snakes and other native wildlife may enter upon residential properties and cause nuisance, inconvenience, disturbance and possible injury, death or damage to persons, pets and property. Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, assumes any and all risks as may now or hereafter be or become associated with native wildlife entering the Project. Neither the Declarant Parties, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Owner, Resident, Lessee or its family, invitees or licensees for any claims or damages to persons, pets or property resulting, directly or indirectly, from native wildlife entering the Project.

2.2.4 Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (Including strict liability) arising out of or relating to any nuisance, inconvenience, disturbance, injury to persons (Including death) or damage to property resulting from activities or occurrences described in this Section 2.2.

2.3 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 Declarant Parties nor 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 other Owners and Residents) and by the natural growth of landscaping. No third party, Including any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or Residential Unit constructed thereon or any view of a Lot or Residential Unit constructed thereon from any other property.

2.4 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 or any part of the Annexable Property.

2.5 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. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, with any applicable approval required by Pima County, but without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the zoning and Development Plan with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the property owned by such Declarant or changing the nature or extent of the uses to which the property may be devoted. Declarant encourages all Owners (and prospective Owners) to review the Plat and all covenants, restrictions, easements and other matters thereon. Declarant hereby discloses, and by accepting title to all or any portion of the Property in the future, all future Owners acknowledge, agree to and accept all covenants, restrictions, easements and other matters set forth on the Plat. The Plat may from time to time be amended at the sole and absolute discretion of Declarant.

2.6 Declarant Withdrawal of Property. At any time on or before the date that is twenty years after the date this Declaration is Recorded, Declarant shall have the right to withdraw any real property owned by Declarant from the Property and application of this Declaration without the consent of any other Owner or Person. The withdrawal of all or any portion of the Property shall be effected by Declarant Recording a Declaration of Withdrawal setting forth the legal description of the portion of the Property being withdrawn. Upon the withdrawal of any portion of the Property pursuant to this Section 2.6, such portion of the Property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

**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.

3.1.2 No Improvement that would be Visible From Neighboring Property at the time it is constructed or will be Visible From Neighboring Property with the passage of time (such as trees or large bushes and shrubs) shall be constructed or installed on any Lot without the prior written approval of the Architectural Review Committee. No addition, alteration, repair, change or other work that in any way alters the exterior appearance, Including the exterior color scheme, of any part of a Lot or any Improvement located thereon that is Visible From Neighboring Property from its appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Review Committee. Any Owner desiring approval of the Architectural Review Committee for the construction, installation addition, alteration, repair, change or replacement of any Improvement that is or would be with the passage of time Visible From Neighboring Property shall submit to the Architectural Review Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work that the Owner desires to perform, including the distance of such work from neighboring properties, if applicable. Any Owner requesting the approval of the Architectural Review Committee also shall submit to the Architectural Review Committee any additional information, plans and specifications that the Architectural Review Committee may request. If 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 Section 3.1.6 of this Declaration and all supporting information, plans and specifications requested by the Architectural Review Committee have been submitted to the Architectural Review Committee, the Architectural Review Committee shall be deemed to have disapproved the application. The Association shall have no liability with respect to a claim by an Owner that a request was mailed or delivered to the Association without such Owner providing proof of receipt by the Association.

3.1.3 In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work that must be approved by the Architectural Review Committee, the Architectural Review Committee, among other things, may consider the quality of workmanship and design, compliance with any Association rules and design guidelines as may be adopted by the Association, 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 construction, installation, addition, alteration, repair, change or other work 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 construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration or any Association rules and design guidelines as may be adopted by the Association; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline; (iii) the proposed construction,

installation, addition, alteration, repair, change or other work 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 construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect another Owner or the appearance of the Project; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accordance with the general plan of development for the Project.

3.1.4 Upon receipt of approval from the Architectural Review Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work 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 or as set forth in the Design Guidelines but in all events within one (1) year from the date of Owner's receipt of approval from 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 change, 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 construction, installation, alteration, addition, repair, change or other work 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.

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 onto any Lot.

3.1.8 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, change or replacement of any Improvements made by, or on behalf of, the Declarant, any member of Declarant or any Person affiliated with or controlled by Declarant.

3.1.9 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, including any such approvals and permits as set forth on the Plat. The approval by the Architectural Review Committee of any construction, installation, addition, alteration, change or other work 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 construction, installation, addition, alteration, change or other work subsequently submitted for approval.

3.1.10 The approval by the Architectural Review Committee of any construction, installation, addition, alteration, repair, change or other work 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 construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.1.11 The Architectural Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications (other than Declarant who shall not be subject to the provisions of this Subsection) to furnish to the Association a bond or other security acceptable to the Architectural Review Committee (the "**Compliance Deposit**") in an amount determined by the Architectural Review Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, (ii) remove any construction debris from a Lot that is permitted to accumulate in violation of Section 3.3 of this Declaration, and (iii) to repair any damage that might be caused to any Area of Association Responsibility as a result of such work. The Architectural Review Committee may apply the Compliance Deposit toward payment of any of the following: (1) the costs of completion of the proposed Improvements in the event the Improvements have not been completed within the applicable time frame set forth in Section 3.1.4 and the costs incurred by the Architectural Review Committee to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement; (2) any costs incurred by the Architectural Review Committee with respect to any construction cleanup or removal required and/or the repair or replacement of any damaged or destroyed Improvements, the cost for which the Owner is responsible under this Declaration; (3) any costs incurred by the Architectural Review Committee in connection with the inspection of the construction of the Improvements to ascertain whether the construction is being made in accordance with the approved plans; and (4) any attorneys' fees, court costs and other costs (including but not limited to costs incurred to correct the violation) incurred by the Architectural Review Committee or the Association in connection with any violation of the Project Documents related directly or indirectly to the construction of the Improvements. Any such Compliance Deposit shall be released or security shall be fully refundable to the Owner upon: (a) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Review Committee; and (b) the Owner's written request to the Architectural Review Committee, provided that the Owner has satisfactorily corrected any condition described in (i), (ii) and (iii) above that may have existed during construction.

3.1.12 If the plans and specifications pertain to an Improvement that is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Architectural Review Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

3.1.13 In all events and notwithstanding anything in this Declaration to the contrary, this Section 3.1 and the procedures contemplated hereunder shall be subject to all terms of A.R.S. § 33-1817, as amended from time to time, and all procedures described therein shall be followed.

3.2 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 part of the Property for a period in excess of twelve months without the prior written approval of the Architectural Review Committee. The provisions of this Section 3.2 shall not apply to construction or sales activities of Declarant.

3.3 Nuisances; Construction Activities. No animal waste, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Common Area, and no odors, fumes, dust, smoke, glare, heat, vibration, electromechanical disturbances, electromagnetic disturbances, radiation, danger of fire or explosion or loud noises shall be permitted to exist, arise or emit from any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. 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, in its sole discretion, shall have the right to determine the existence of any such nuisance. The provisions of this Section 3.3 shall not apply to construction activities of Declarant.

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

3.5 Antennas; Flags.

3.5.1 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, (ii) the Design Guidelines permit installation of the Device without such review and approval; or (iii) a Device is covered by 47 C.F.R. § 1.4000 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified. Any such Device shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property or the street. As of the date of this Declaration, the devices governed by 47 C.F.R. § 1.4000 (Over-the-Air Reception Devices Rule) include, without limitation, the following: (1) Direct Broadcast Satellite (“**DBS**”) antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite; (2) Multi-point Distribution Service (“**MDS**”) antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (3) Antennas designed to receive local television broadcast signals (“**TVBS**”); and (4) Antennas designed to receive and/or transmit data services, including Internet access. If the FCC expands the types of antennas that fall under the rules adopted by the FCC pursuant to 47 C.F.R. § 1.4000 *et seq.*, this Section 3.5.1 shall encompass those antennas as well. Subject to any limitations imposed by law, any transmission cable for a receiver to the house must be underground. The Board is hereby vested with the broadest discretion to enact rules and regulations to implement this Article to conform to the law. The Board may enact rules and regulations that are more restrictive than this Section 3.5.1, if permissible by federal and state law. 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.

3.5.2 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, but not limited to, 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 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. Nothing in this Section 3.5.2 shall be deemed to prohibit Declarant from displaying any of the flags described in Section 4.3 below.

3.6 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.

3.7 Trash Containers and Collection. With the exception of any construction debris and materials that are permitted to be stored on a Lot pursuant to Section 3.3 above, no garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style that are permitted by the Design Guidelines. In no event shall such containers be maintained so as to be within ___ feet of the Front Boundary Line of the Lot except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. The Board shall have the right to adopt rules and regulations regarding garbage, trash, trash containers and collection. No outdoor incinerators shall be kept or maintained on any Lot or other portion of the Property. The Board shall have the right to contract with or designate one or more third parties (Including a municipality) to collect garbage, trash and recyclable materials for the benefit of the Owners and Residents, with any costs to be a Common Expense or billed separately to the Owners at the sole discretion of the Board.

3.8 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.

3.9 Utility Service. Except as required to be permitted by law, 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 by Declarant or approved by the Architectural Review Committee.

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

3.11 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use, provided, however, that Declarant, and its agents, successors, or assigns, may use the Property, including any Lots owned or leased by Declarant, for any use as may be required, convenient, or incidental to the construction and sale of Residential Units thereon (including, without limitation, the rights of the Declarant set forth in Section 4.3 below). Except as set forth in the preceding sentence with respect to the Declarant and its agents, successors, or assigns, no trade or business may be conducted on any Lot or in or from any Residential Unit, provided 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 zoning ordinances or requirements for the Project and does not violate any provisions of this Declaration, the Design Guidelines or the Association Rules; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; 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 3.11 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 shall not be considered a trade or business within the meaning of this Section 3.11.

3.12 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot temporarily or permanently, except that a reasonable number of generally recognized house or yard pets (“**Permitted Pets**” or singularly a “**Permitted Pet**”) may be kept on a Lot if they are kept, bred 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 Permitted Pet may be permitted to leave the Owner’s Lot if such Permitted Pet 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 within ___ from the Front Boundary Line of a Lot without the prior written consent of the Architectural Review Committee. 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 3.12 (i) a particular Permitted Pet is a nuisance or making an unreasonable amount of noise, (ii) a particular pet is a Permitted Pet, and (iii) the number of Permitted Pets kept on a Lot is reasonable. 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 the Common Area or any Lot or street shall be responsible for immediately removing any feces left by such pet. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Project.

3.13 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.

3.14 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 pursuant to Section 4.3;
- (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) “For Sale” or “For Rent” sign and sign rider, both of which do not exceed the industry standard size as prescribed by applicable law;
- (v) Signs that may be permitted in accordance with the Design Guidelines;
- (vi) Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Review Committee or are consistent with provisions set forth in the Design Guidelines; and
- (vii) Signs that, under applicable law, may not be prohibited.

3.15 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than Declarant and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than Declarant. Two or more Lots shall not be combined into fewer Lots than originally shown on the Plat without the prior written approval of the Architectural Review Committee. If two or more Lots are combined into fewer Lots than originally shown on the Plat pursuant to the prior written approval of the Architectural Review Committee and the approval of any other governmental authority, the provisions of Article 5 and Article 6 of this Declaration shall apply to such Lots as originally shown on the Plat, and no diminution of voting rights or decrease in Assessments shall be applicable to the Lots so combined. No further covenants, conditions, restrictions or easements (Including a timeshare plan, arrangement or similar device established within the Project pursuant to Chapter 20, Title 33 of the Arizona Revised Statutes, as amended from time to time) shall be Recorded by any Owner, Lessee, or other Person other than Declarant against any part of the Property without the provisions thereof having been first approved in writing by 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 Declarant unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

3.16 Motor Vehicles, Trucks, Commercial Vehicles, Campers and Boats.

3.16.1 No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, commercial vehicle or other similar

equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area so as to be within 10 feet from the Front Boundary Line of the Lot.

3.16.2 No unlicensed vehicle, and no dirt bike, motor scooter, all-terrain, off-road or other similar loud mechanized vehicle shall be parked, maintained or operated on any portion of the Project, except such vehicles may be parked in garages. This restriction shall not prohibit any type of licensed motor scooter or similar vehicle from being operated in the Project if it is electrically powered or is equipped with a muffler that minimizes noise.

3.16.3 The Board shall have the right and power to adopt additional rules and regulations governing the parking of motor vehicles within the Project and implementing the provisions of this Section 3.16. The provisions of this Section 3.16 shall not apply to vehicles of a Declarant Party or its respective employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property.

3.17 Repair of Motor Vehicles. Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project so as to be within 10 feet from the Front Boundary Line of the Lot, and no inoperable vehicle may be stored or parked on any such Lot or other property so as to be within 10 feet from the Front Boundary Line of the Lot.

3.18 Towing and Immobilization of Vehicles. The Board shall have the right to have any mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, truck, motorcycle, motorbike, or other motor vehicle that is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents immobilized or towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing or immobilization of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be a Benefited Assessment and 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 or as permitted by law.

3.19 Garages and Driveways. Garages situated on Lots shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Review Committee. Garages may be used for the storage of material so long as the storage of material does not result in the motor vehicles of the Residents of a Lot being parked in violation of this Declaration. A carport may not be built in addition to or as a replacement for a garage, unless initially constructed by the Declarant.

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 or municipality in which the Project is located. No Person shall alter the grading of a Lot or alter

the natural flow of water over and across a Lot without the prior written approval of the Architectural Review Committee.

3.21 Height Restriction. At no time shall Residential Units constructed upon Lots exceed a height of thirty-two (32) feet above ground level.

3.22 Mechanical Equipment. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building on a Lot so as to be Visible From Neighboring Property, and any such equipment installed on the ground shall be screened from adjacent Lots, Common Areas and streets.

3.23 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.

3.24 Lights. Except for lights installed by Declarant 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.

3.25 Window Coverings. Within sixty (60) days after an Owner acquires title to a Lot, the Owner shall install interior draperies or suitable window treatments on all windows that are Visible From Neighboring Property except for windows that are designed specifically to permit light to enter the Residential Unit and do not expose interior areas of the Residential Unit to neighboring properties. No window that is Visible From Neighboring Property shall at any time be covered with aluminum foil, bed sheets, newspapers or any other like materials. No reflective materials shall be installed or used on any Improvement without the prior written consent of the Architectural Review Committee.

3.26 Outdoor Fires. Outdoor cooking and outdoor fires in devices that will be Visible From Neighboring Property will require approval of the Architectural Review Committee prior to installation or construction unless the Design Guidelines permit installation or construction thereof without such approval. However, all such devices, whether or not Visible From Neighboring Property, shall be required to be constructed or installed at least five (5) feet from any adjoining Lot or Common Area or the distance required by law, whichever is greater.

3.27 Fire/Building Repair. If any Improvement is destroyed or partially destroyed by fire, act of God or as the result of any other act or thing, the damage must be repaired and the Improvement reconstructed or razed immediately upon receipt of insurance proceeds but in no event later than twelve months after such damage. 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.

3.28 Leasing of Residential Units.

3.28.1 Subject to the terms of this Section 3.29.1, an entire Lot may be leased to a Lessee from time to time by an Owner provided that each of the following conditions is satisfied:

- (i) The lease or rental agreement must be in writing;
- (ii) The lease or rental agreement must be for a term not less than six (6) consecutive months or one hundred and eighty (180) days;
- (iii) The lease or rental agreement must contain provisions that the lease or rental agreement is subject to this Declaration and other Project Documents, that any violation of any of the foregoing shall be a default under the lease or rental agreement, and that Lessee has received and agrees to be bound by the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Project Documents; and
- (iv) Before commencement of the lease term or rental agreement, the Owner shall provide the Association with a copy of the lease or rental agreement.

3.28.2 Any Owner that leases or rents such Owner's Lot shall keep the Association informed at all times of the Owner's address and telephone number. Any lease or rental agreement shall be subject to the Project Documents, and any breach of the Project Documents shall constitute a default under the lease or rental agreement, regardless of whether it so provides in the lease or rental agreement. If any Lessee breaches any provision contained in the Project Documents, (i) the Owner, upon demand by the Association, immediately shall take such actions as may be necessary to correct the breach, including, if necessary, eviction of the Lessee; (ii) the Association shall be third-party beneficiary of any such lease solely for the purpose of enforcing this Declaration, and shall have the right to establish and charge fines against any Owner failing to enforce the provisions of the Project Documents; and (iv) the Association shall have the right to suspend the right of the breaching Lessee and any Resident of such Lessee's Unit to use the Common Area (other than the right of a Lessee and any Resident to use the streets that are part of the Common Area for ingress and egress to the Lessee's Lot) for any period during which the Lessee is in violation of any provision of the Project Documents. Notwithstanding the foregoing, the Association shall have all rights and remedies provided for under this Declaration and under the Project Documents against Lessees and Owners for violations of the Project Documents. The Association shall have the right to charge a reasonable fee as permitted by applicable law for monitoring lease and rental agreements.

3.28.3 Each Owner who rents his or her Lot or Residential Unit thereon is required to advise the Board within fifteen (15) days of the effective date of the lease therefor. The Board may request the Owner to furnish the Board with the form of lease to be used. Written leases are required and shall comply with the requirements of A.R.S. § 33-1806.1 *et seq.* All leases must restrict occupancy to a Single Family. The Owner of a leased Lot or Residential Unit must furnish the Board with a tenant information form requiring only such information as is allowed to be requested under Arizona law (provided by the Board) certifying that the tenant has agreed to be bound by this Declaration, the Articles, the Bylaws and the rules

and regulations of the Association, and that the Owner accepts responsibility for the tenant's violation of such documents. All leases must include a crime-free lease addendum on a form provided by or approved by the Board.

3.28.4 Owners acknowledge that rental of a Residential Unit for less than the term allowed (six (6) consecutive months) shall be strictly prohibited and any attempts to circumvent the requirement, or to lease on a shorter term, or any actual leasing that results in multiple lease agreements within any six (6) consecutive month period shall be considered a violation hereunder, subjecting Owner to all enforcement rights allowed and fines as may be assessed. Owner specifically agrees that if a lease is terminated prior to the end of the required six (6) consecutive month term or a tenant fails to stay for the entire six (6) consecutive month term, Owner shall forfeit the right to further lease the Residential Unit to another tenant until the end of each six (6) consecutive month term, even if same shall limit Owner's remedies or obligations as against such tenant.

3.28.5 The provisions of this Section 3.29 shall not apply to the use of Lots or Residential Units owned by (or leased to) Declarant as a model home or for marketing purposes.

3.29 Variances. The Architectural Review Committee or the Board, as applicable, may (but shall not be obligated to) 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, Lessee 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 Owners, Lessees 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. After the expiration of the Declarant Control Period, any variance granted by the Architectural Review Committee or the Board shall be subject to review and approval by Declarant so long as Declarant owns any Property.

3.30 Environmental Protections No Lot, nor any facilities on any Lot, shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this Section 3.31, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601 *et seq.*, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et seq.*, the Arizona Environmental Quality Act, Laws 1986, Chap 368, and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

3.32 Solar Collection Panels or 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 the restrictions of applicable law and prior written approval of the plans therefor by the Architectural Review Committee, solar collecting panels and devices may be placed, constructed, or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot). The Architectural Review Committee may adopt rules and regulations regarding the placement of solar energy devices in order to limit, to the extent possible, the visual impact of such solar collecting panels and devices. The restrictions in this Section 3.32 shall be subject to any limitations imposed by law.

3.33 Repair of Building; Reconstruction. No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. 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 commence the repair or reconstruction of the Residential Unit or other structure, subject to the approvals required by Article 5, within six (6) months after occurrence of the damage or destruction, and shall complete such repair or reconstruction within twelve (12) months, unless the Owner is prevented from doing so by an Act of God or other event beyond the Owner's control, in which case the applicable time period shall be extended by the amount of time necessitated by such event. The provisions of this Section 3.33 shall not apply to any portion of the Property owned by Declarant.

3.34 Crime and Drug Free Community. The Association shall have the right and power to enact rules prohibiting criminal and drug activity on the Property, including the right to assess fines and evict tenants who engage in such activity. The Association shall have the right and power to require Residents and Owners to sign reasonable contracts and forms that assure there is no criminal and drug related activity on the Property.

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 that may be part of the Common Area for ingress and egress to the 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.

(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 in this Declaration, including the rights and easements granted to the Declarant 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, Lessees or Residents.

(v) The right of the Association to suspend the right of an Owner to use the Common Area (other than the right of an Owner and such Owner's family, Lessees and guests to use any streets that are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner 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 use any streets that may be part of the Common Area for ingress and egress to the Owner's Lot) until the termination or expiration of such lease,

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area except as initially designed, approved and constructed by the Declarant or as approved by the Board.

4.3 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to construct and maintain throughout the Property such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Residential Units and Lots. Such permitted facilities and things (collectively, the "Sales and Construction Facilities") and activities shall include, without limitation, business offices, design centers, signs, flags (whether hung from flag poles or attached to a structure), model Lots, model homes, parking lots, sales offices, sales trailers, construction offices, construction trailers, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant may park vehicles in areas other than garages or driveways, including on streets. Declarant shall have easements for access to and use of such facilities at no charge. Declarant shall have the right to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned or leased by Declarant while the Declarant is selling Residential Units and Lots and/or constructing

Improvements. Declarant reserves the right to place Sales and Construction Facilities on any Lots owned or leased by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate. In the event of any conflict or inconsistency between this Section 4.3 and any other provision of this Declaration, this Section 4.3 shall control.

4.4 Declarant's Easements. Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots owned by Declarant 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. The Declarant shall have the right and an easement upon, over, 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 the Declarant by this Declaration. In the event of any conflict or inconsistency between this Section 4.4 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 accessible only from such Lots;

4.5.3 For correction of emergency conditions in, under, upon or over 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; and

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 of a Lot and their guests and invitees.

4.6 Plat Easements. The Plat sets forth certain easements created by the Plat, some of which are for the benefit of the Association, and others for the benefit of owners of certain property or for the benefit of third parties ("**Plat Easement Areas**"). An Owner (i) shall not alter, remove, replace or disturb the Improvements within the Plat Easement Areas, (ii) shall not construct or install any Improvements within the Plat Easement Areas, and (iii) shall cooperate with the Board in any way required by the Board in order for the Association to fulfill its obligations under this Section 4.6. The Association shall have the right to adopt reasonable rules and regulations governing the use of the Plat Easement Areas.

4.7 Road Easement Disclosures. The Owners of Lots 18 - 25, inclusive acknowledge the existence of a permanent, perpetual and non-exclusive easement over the westernmost thirty (30) feet of each impacted Lot, for the benefit of certain adjoining real property (and other real property in the proximity of the Property, but not a part of the Property) (the “**Road Easement**”). The Road Easement shall specifically burden Lots 18 - 25, inclusive, in the location designated on the Plat as “Private Ingress/Egress Easement Granted to Parcel Owners within the SW ¼ of NE ¼ of SW ¼ of Sec. 3, T11S, R14E, G&SRM per DKT 2736, Pg 175”. Each Owner, Lessee and Resident of Lots 18 - 25, on behalf of its family members, invitees and licensees, hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (Including strict liability) arising out of or relating to use of the Road Easement by Owner, its Lessees and Residents or by any third party.

4.8 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.

**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, and this Declaration.

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 expiration of the Declarant Control Period, the directors and officers of the Association shall be appointed by and may be removed by the Declarant. After the expiration of the Declarant Control Period, 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 fines 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 5.2, 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 5.2.

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. After the expiration of the Declarant Control Period, 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 owns any 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 (i) the Declarant and (ii) the Owners of Lots that are Assessable Property. An Owner of a Lot that is Assessable Property 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 owned by the Declarant and each Lot that is Assessable Property (with one (1) Membership allocated to each such Lot) and may not be separately assigned, transferred or conveyed.

5.7 Classes of Memberships and Voting Rights. The Association shall have two classes of voting Memberships:

(i) Class A. Class A Memberships shall be all Memberships except for the Class B Memberships held by the Declarant. Owners having Class A Memberships 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.

(ii) Class B. Class B Memberships shall be all Memberships held by the Declarant. The Declarant shall be entitled to three (3) votes for each Membership held by the Declarant. The Class B Memberships shall automatically cease and be converted to Class A Memberships upon the happening of the first to occur of the following:

(a) The date upon which Declarant no longer owns any portion of the Property or Annexable Property, or

(b) The date that is twenty (20) years after the date this Declaration is Recorded.

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 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 provided for in the Bylaws. So long as the Declarant owns one or more Lots, the Declarant shall have the sole right to appoint and remove the members of the

Architectural Review Committee. At such time as no Lots are owned by the Declarant, the members of the Architectural Review Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Review Committee, and in that event the Declarant may require, for so long as the Declarant owns one or more Lots, that specified actions of the Architectural Review Committee, as described in a Recorded instrument executed by the be approved by the Declarant before they become effective.

5.11.2 The Architectural Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions (the “**Design Guidelines**”). The Design Guidelines may include provisions regarding: (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) placement of Residential Units and other buildings; (iii) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (iv) requirements concerning exterior color schemes, exterior finishes and materials; (v) signage; and (vi) perimeter and screen wall design and appearance; provided that all such provisions are consistent with the requirements set forth in Subsection 3.1.3 of this Declaration. The decision of the Architectural Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

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 (a) 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 (b) the approval of such resolution by Declarant as long as the Declarant owns any Property. The Board, without obtaining the approval or consent of any other Owner except Declarant, so long as Declarant owns any Property, may grant easements over or convey portions of the Common Area:

- (i) to Pima County, 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 Person so long as such conveyance or easement shall not have a material adverse effect on the Members and Residents; or
- (v) to any Person for the purpose of installing, maintaining, repairing and replacing public and/or private utility facilities.

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

5.13 Procedure for Change of Use of Common Area. Upon (a) 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 (b) the approval of such resolution by Declarant as long as the Declarant owns any Property, 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 (i) shall be for the benefit of the Members and Residents, as determined by the Board, and (ii) 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 affiliated companies, 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 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 affiliated companies 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.

5.15 Service Contracts. The Association shall be authorized to enter into bulk contracts or other similar agreements with other entities, including a Declarant, to provide services to the Lots. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, refuse removal and similar services and facilities. The Board shall be permitted to modify or cancel existing services contracts or to provide additional services. The Board shall have the sole discretion to specify the amount of and method of determining the Service Fee with respect to any such services. Non-use of services provided to all Owners in the Project shall not exempt any Owner from the obligation to pay Service Fees for such services. In any contracts or agreements with third parties for the provision of services within the Project, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal and equitable remedies otherwise available to the Association in the collection of such bills. Nothing contained herein shall be relied upon as a representation as to what services will be provided by the Association. If all Lots are to be served by a particular bulk service agreement, the Board shall have the option either to (a) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include such costs in the Assessments for each such applicable year, or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly). If not all Lots will be served by a particular bulk service agreement, the Board shall include the Association's costs under such bulk service agreement in a Service

Fee assessed solely against the Lots served for each applicable fiscal year or separately bill to each Owner of such a Lot his, her or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly). Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Lot, may result in termination of services provided to such Lot.

5.16 CBU's and Mailboxes. If required or requested by the USPS, or if either Declarant or the Association deems it necessary or appropriate, either Declarant or the Association may install one or more CBUs within or adjacent to the Property for purposes of providing mail delivery service to Owners and occupants of Lots within the Property. Unless required by the USPS, either Declarant or the Association may elect not to install CBUs at all or, if CBUs are installed, those installed CBUs may serve fewer than all Lots within the Property (and the Owners and occupants thereof); any Owner or occupant not served by a CBU shall be responsible for installing (if not already installed) and maintaining an individual mailbox on his, her or its Lot or on a single post shared by two adjacent Lots and the Owners and occupants thereof, in accordance with the rules and regulations of the USPS and in accordance with this Declaration and the Association Rules. Any CBU shall be deemed an Improvement and, except as otherwise provided in this Declaration, shall be maintained by the Association. The Association shall be responsible for managing, maintaining, repairing and replacing any CBU, with the costs thereof to be an Association expense, except as otherwise provided in this Declaration. The Association may retain the services of a mailbox contractor or other agent or independent contractor for purposes of performing some or all of such duties. For safety and security reasons, no management, maintenance, repair or replacement of any CBU shall be performed by any person or entity other than the Association or its designated mailbox contractor, agent or independent contractor. In no event shall more than one mailbox in a CBU be assigned or allocated to a single Lot, regardless of the number of occupants thereof. Likewise, any mailbox not contained within a CBU shall be deemed an Improvement and shall be maintained, repaired and otherwise kept in good condition and repair in accordance with rules and regulations of the USPS and with the provisions of this Declaration and the Association Rules; in the case of an individual mailbox situated entirely on and serving any Owner or occupant of a single Lot, the Owner or such Lot shall be responsible therefor, and in the case of an individual mailbox situated as a pair of mailboxes on a single post shared between the adjacent Lots, the Owner of the Lot to which the individual mailbox is assigned shall be responsible therefor, and the Owners of the two adjacent Lots served by the mailboxes on such single post shall be jointly responsible for such post and related supports and the like, provided, however, that if either such Owner (or any of such Owner's occupants or any other Persons for whom such Owner is legally responsible) causes any damage to such post or related supports and the like, or to the other mailbox on such post assigned to the adjacent Lot, such Owner shall be responsible, at such Owner's costs and expense, for making all necessary repairs and replacements. Generally, the key(s) to a mailbox (whether or not contained in a CBU) will be delivered either by the USPS or by the Association, or its duly delegated representative, to the first retail Purchaser of a Lot from a Declarant. Subject to any rules or regulations adopted from time to time by the USPS, and subject to any Association Rules, upon subsequent transfers of ownership or occupancy rights with respect to any Lot, the parties to such transfer shall be

responsible for arranging for the transfer of any and all keys to the mailbox assigned to such Lot. Neither Declarant nor the Association shall have any responsibility for any such subsequent transfers of keys, failure to transfer keys, or misdelivery or theft of mail resulting from subsequent transfers of keys or failure to transfer keys. Each Owner shall be responsible for reporting to the Association any lost or damaged keys to the CBU mailbox assigned to such Owner's Lot. Owner shall bear any and all costs of obtaining a replacement key, rekeying of the Owner's CBU mailbox, and any necessary related repairs to the CBU. No locksmith or other person (including, without limitation, the Owner of the Lot to which the CBU mailbox at issue assigned), other than the Association or its designated mailbox contractor, agent or other independent contractor shall do any work on or with respect to the CBU or any mailbox therein, including, without limitation, rekeying any CBU mailbox, making replacement or additional keys for any CBU mailbox, or repairing or servicing the CBU or any mailbox therein. For the security of all Owners and occupants, each Owner shall report promptly to the Association and to the USPS any and all mail theft discovered by such Owner and any vandalism or other damage to the Owner's CBU mailbox or the CBU to the USPS and to the Association. Unless resulting from the gross negligence or willful misconduct of the Association, the Association shall have no responsibility for any mail theft or misdelivery of mail, nor shall the Association have any responsibility with respect to vandalism or other damage to an Owner's CBU mailbox or to the CBU unless such vandalism or other damage has been reported to the Association, and then the Association's responsibility shall be limited to repair or replacement as necessary, in the Association's sole discretion (subject to applicable USPS rules and regulations), to restore the CBU and any applicable CBU mailbox to its condition immediately prior to the vandalism or other damage. To the extent that the need for any repair, replacement, maintenance or other work is attributable to the actions of any particular Owner or occupant, the Association may, in its sole discretion, seek to recover from such Owner (or the Owner of such occupant's Lot) all costs suffered or incurred by the Association in performing such repair, replacement, maintenance or other work, which costs shall bear interest at the rate of twelve percent (12%) per annum from the date incurred by the Association until such costs and interest have been full repair by the applicable Owner (or occupant), and which costs and interest shall be secured by the Assessment Lien against the applicable Owner's Lot.

ARTICLE 6 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. Declarant and each Owner, by becoming the Owner of a Lot, are 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 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.

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. 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. 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 the Annual Assessment 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 Assessment 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 Assessment at such time.

6.4 Obligation of Declarant for Deficiencies.

6.4.1 Until the expiration of the Declarant Control Period, Declarant shall not be obligated to pay Assessments on any Lots or other real property within the Project owned by

Declarant. Instead, Declarant shall be obligated to pay the deficiency (i.e., operating deficit) for each fiscal year until expiration of the Declarant Control Period. Prior to the first Assessment Period, Declarant shall pay all Common Expenses. Upon commencement of the first Assessment Period and thereafter, Declarant shall be required to pay to the Association the difference between the Common Expenses and the income from Assessments paid by Owners to the Association (the “**Annual Deficiency Payment**”). The Annual Deficiency Payment shall be payable within thirty (30) days after Declarant receives written notice from the Association of the amount of the Annual Deficiency Payment for the applicable Assessment Period. However, if Declarant elects to make interim deficiency payments during the fiscal year, Declarant shall make such interim payments within thirty (30) days’ notice and such payments shall be credited against Declarant’s Annual Deficiency Payment. Notwithstanding anything contained herein to the contrary, (i) Declarant shall not be obligated to pay an Annual Deficiency Payment in an amount greater than the amount that would be payable by Declarant for the Lots owned by Declarant during the applicable Assessment Period if such Lots were subject to the same Annual Assessment as Class A Members, and (ii) Declarant shall not be obligated to pay to the Association pursuant to this Section 6.4 any funds for the establishment of replacement and maintenance reserves.

6.4.2 With respect to any fiscal year prior to the expiration of the Declarant Control Period, Declarant may elect to pay Assessments on Lots owned by Declarant in lieu of the Annual Deficiency Payment. 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 an Annual Deficiency Payment in any fiscal year shall not obligate Declarant to continue payment of the Annual Deficiency Payment in future years, provided that, in lieu of the Annual Deficiency Payment, Declarant pays Assessments on its Lots the same as all other Class A Members.

6.4.3 Unless earlier terminated as set forth above, the Annual Deficiency Payment obligation set forth in this Section 6.4 shall terminate as to all Lots owned by Declarant upon expiration of the Declarant Control Period, and all such Lots shall be subject to Assessment in the same manner as all other Lots owned by Class A Members.

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.

6.6 Benefited Assessments. Benefited Assessments shall be levied by the Association against an Owner and the Owner’s Lot to reimburse the Association for:

(i) Costs incurred in bringing an Owner and/or such Owner’s Lot into compliance with or enforcing compliance with the provisions of the Project Documents,

Including attorneys' fees incurred by the Association in the compliance matter, regardless of whether suit is filed;

(ii) Costs incurred in recovering damages related to violations of the Project Documents, including attorneys' fees incurred by the Association, regardless of whether suit is filed;

(iii) Costs incurred in performing its rights and obligations in any other manner arising out of the Project Documents or the operations of the Association;

(iv) Any other charge designated as a Benefited Assessment in this Declaration; and

(v) Attorneys' fees, interest and other costs or charges incurred in connection with collection of a Benefited Assessment or other amounts due from an Owner.

6.7 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 ARTICLE 1 above) and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.8 Commencement Date of Assessment Obligation. Subject to the provisions of Section 6.7 above, each Lot shall be subject to assessment upon the conveyance thereof to a Person other than Declarant; provided that after expiration of the Declarant Control Period, all Lots shall be subject to assessment.

6.9 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 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.

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

6.10.1 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 shall 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 6.10, 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 6.10.

6.10.2 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 not permitted 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 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.

6.10.3 The Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any First Mortgage on the Lot, or 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.

6.10.4 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.

6.10.5 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.

6.10.6 In addition to the Assessment Lien described in Subsection 6.10.2, 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**"). The Additional Charges Lien may not be foreclosed and is effective only on conveyance of any interest in the Lot except as otherwise may be permitted by law.

6.11 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.

6.12 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, Lessees 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, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners, Lessees 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 expiration of the Declarant Control Period.

6.13 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.

6.14 Working Capital Fund. Each Person acquiring a Lot (except Declarant) shall pay to the Association immediately upon becoming the Owner of the Lot a working capital fund payment in an amount reasonably determined by the Board from time to time (the “**Working Capital Payment**”). Funds paid to the Association pursuant to this Section 6.14 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 6.14 shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.15 Reserve Contribution. Each Person (except Declarant) acquiring a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a reserve contribution payment in an amount reasonably determined by the Board from time to time (the “**Reserve Contribution**”). The Reserve Contribution shall be deposited in the Reserve Account established pursuant to Section 6.16, 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.*

6.16 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 6.16 or otherwise, shall be deposited by the Board in a separate bank account (the “**Reserve Account**”) 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 least once every five years. 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.

6.17 Transfer Fee. Each Person (other than Declarant) acquiring a Lot 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.

7.1.1 The Association or its duly delegated representative shall be responsible for the following:

- (i) Maintaining, repairing and replacing all Common Area;
- (ii) Maintaining, repairing and replacing all landscaping and drainage Improvements located within the Landscape Easement Area and Drainage Easement Area described in Section 4.7, provided that the cost of repairing any damage to such landscaping and drainage Improvements reasonably determined by the Association to be caused by an Owner, Lessee or Resident or any agent or contractor of an Owner, Lessee or Resident shall be paid by such Owner, Lessee or Resident to the Association upon demand and shall be secured by the Assessment Lien. 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; and

(iii) Maintaining, repairing and replacing Improvements within any other Area of Association Responsibility not specifically provided for in this Declaration.

7.1.2 Except for those items of repair and maintenance for which the Association may require reimbursement from an Owner, the cost of the performance by the Association of its duties under this Section 7.1 shall be a Common Expense and shall be paid for by the Association. The Board shall be the sole judge as to the appropriate maintenance of all items for which the Association is responsible under this Section 7.1, but all Areas of Association Responsibility shall be maintained in good condition and repair at all times. All Owners shall cooperate with the Board in any way required by the Board in order for the Board to fulfill its obligations under this Section 7.1. No Owner, Resident, Lessee or other Person shall construct or install any Improvements within an Area of Association Responsibility or alter, modify or remove any Improvements situated within an Area of Association Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's 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 **Lots.** 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 situated 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. 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, unless different foliage is approved in writing by the Architectural Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property.

7.3 **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, Resident, Lessee or their guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand. Any amounts payable to the Association shall be a Benefited Assessment and 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 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, Resident, Lessee or 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 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 cost of such action shall be paid by such Owner to the Association upon demand. Any amounts payable to the Association shall be a Benefited Assessment and 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.

7.5 Boundary Walls.

7.5.1 Each wall or fence (hereinafter, a "**wall**") that is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary walls shall apply.

7.5.2 The Owners of contiguous Lots who have a boundary wall shall both equally have the right to use the wall provided that the use by one Owner does not interfere with the use and enjoyment of the wall by the other Owner.

7.5.3 The adjoining Owners shall each have the right to perform any necessary maintenance, repair or replacement of the wall and the cost of such maintenance, repair or replacement shall be shared equally by the adjoining Owners except as otherwise provided in this Section 7.5; provided, however, that if an Owner elects to paint and/or stucco the side of the wall that faces his Lot, such Owner shall be solely responsible for the cost thereof and any required approvals or permits for the work.

7.5.4 If a boundary wall is damaged or destroyed through the act of an Owner, its agents, Lessees, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners.

7.5.5 If a boundary wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, Lessees, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then all adjoining Owners shall rebuild or repair the wall at their joint and equal expense.

7.5.6 The right of any Owner to contribution from any other Owner under this Section 7.5 shall be appurtenant to the land and shall pass to such Owner's successors in title.

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

7.5.8 If a boundary wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots who share the boundary wall.

7.6 Maintenance of Walls Other Than Boundary Walls.

7.6.1 Walls (other than boundary walls described in Section 7.5) located on a Lot 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 Areas of Association Responsibility 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 an Area of Association Responsibility, or any wall that separates a portion of a Lot from an Area of Association Responsibility, 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 Area of Association Responsibility. 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 Area of Association Responsibility, 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 Area of Association Responsibility resulting from the exercise of any easement right granted to an Owner or the Association in this Section 7.6 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 the Area of Association Responsibility 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 Any wall that is placed on the boundary line between an Area of Association Responsibility and public right-of-way or any other property dedicated to the public shall be maintained, repaired and replaced by the Association.

7.6.5 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 7.6, or if an Owner fails to perform any structural repair and maintenance as required by this Section 7.6 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 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 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.

7.7 Installation of Landscaping. Any Lot that is not completely enclosed by a solid wall or fence that is at least six feet (6') high or any Lot that has non-solid fencing (i.e., wrought iron rather than a solid wall) on any boundary of its rear yard shall be landscaped by the Owner of such Lot. Such landscaping improvements shall be installed in compliance with plans approved in writing by the Architectural Review Committee and all applicable approving authorities within one hundred eighty (180) days of becoming the Owner of the Lot. Prior to installation of such landscaping, the Owner shall maintain the portions of such Lot required to be landscaped in a weed-free condition.

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 \$1,000,000 per occurrence with a \$2,000,000 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 against 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 ten (10) 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 of this Declaration 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 of this Declaration, 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.

ARTICLE 9 ANNEXATION AND DE-ANNEXATION

9.1 Annexation of Annexable Property. So long as Declarant owns, or has the contractual right to purchase, any portion of the Property or the Annexable Property, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Annexable Property. The annexation of all or any portion of the Annexable Property shall be effected by the Declarant Recording a Declaration of Annexation setting forth the legal description of the Annexable Property being annexed and stating that such portion of the Annexable Property is annexed and subjected to this Declaration. If the portion of the Annexable Property being annexed is not owned by the Declarant, the Declaration of Annexation must be signed by the owner of fee title to the portion of the Annexable Property being annexed.

The Annexable 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 need not be contiguous with other property already subject to this Declaration, and the exercise of the right of annexation as to any portion of the Annexable Property shall not bar further exercise of the right of annexation as to any other portion of the Annexable Property. The Declarant makes no assurances as to which, if any, part of the Annexable Property will be annexed.

After Declarant no longer owns, or has the contractual right to purchase, any portion of the Property or Annexable Property, the Association may annex and subject all or any portion of the Annexable Property to this Declaration by executing and Recording a Declaration of Annexation containing the information required for a Declaration of Annexation Recorded by the Declarant pursuant to this Section, provided the annexation is approved at a meeting of the Association where a quorum is present, by the approval of Members holding at least two-thirds (2/3) of votes in the Association who are voting on the matter.

The Declaration of Annexations contemplated above may contain such complementary additions and modifications of the covenants as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Declaration of Annexation, revoke, modify or add to the Covenants established by this Declaration within the existing Property.

9.2 Annexation of Other Real Property. Real property other than the Annexable Property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association at a meeting of the Association where a quorum is present, by the approval of Members holding at least two-thirds (2/3) of the votes in the Association who are voting on the matter. In the event that any additional real property is annexed to the Property, such annexation shall be effected by the Recordation of a Declaration of Annexation covering

the real property sought to be annexed and executed and Recorded by the Board and by the fee title holders of the real property sought to be annexed.

9.3 De-Annexation. The Declarant shall have the right to de-annex property from the Property and this Declaration without the consent of any other Owner or Person. The de-annexation of all or any portion of the Property shall be effected by the Declarant Recording a Declaration of De-Annexation setting forth the legal description of the property being de-annexed. If the Declarant does not own the property to be de-annexed, then the Declaration of De-annexation must be signed by the Owners of fee title to the property to be de-annexed. Upon the de-annexation of any property from the Property pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in the Project Documents.

ARTICLE 10 GENERAL PROVISIONS

10.1 Enforcement.

10.1.1 The Association, the Declarant 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, the Declarant 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.

10.1.2 In addition to any other remedies set forth in this Declaration, in the event the Association employs an attorney or otherwise acts to enforce the provisions of the Project Documents, regardless of whether suit is filed, the Association shall be entitled to recover reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith, including the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall be a Benefited Assessment secured by the Assessment Lien against said Owner's Lot. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorneys' fees, court costs, costs of investigation and other related expenses incurred therewith. If any lawsuit is filed by Declarant or any Owner to enforce the provisions of the Project Documents, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action. In the event the Association incurs legal expenses and costs, including attorneys' fees, in bringing claims against Owners or defending claims brought by Owners in an administrative action or proceeding, including proceedings before an Administrative Law Judge, and any appeal thereof, the Association shall be entitled to recover its attorneys' fees and costs from the Owner involved in the administrative proceeding if the Association is the prevailing party.

10.1.3 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 Declarant as long as Declarant owns any 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 written notice and a reasonable opportunity to take such action on its own.

10.2 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 votes in each class of Membership. 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.

10.3 Amendments.

10.3.1 By the Declarant.

(i) In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may amend this Declaration for any purpose, and without the consent or approval of any Owners or any other Person.

(ii) After termination of the Declarant Control Period, and for so long as Declarant is a Member of the Association, Declarant may of its own volition, and without the consent or approval of any Owners or any other Person, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with applicable law; (b) to satisfy the requirements of any governmental agency pertaining to lending criteria, or established as conditions for acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors, including 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 or the Project Documents is required by law or requested by the Declarant or the Board; (c) to correct any error, inconsistency or ambiguity,

or to further the intent or purposes hereof by expanding upon the existing provisions hereof; (d) to clarify the application of the provisions hereof to any land which may be annexed, or for any other reasonable purpose in connection with any land which may be annexed; or (e) for any other reason, provided, however, in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby.

10.3.2 By the Association. Except as otherwise specifically provided above or elsewhere in the Declaration, this Declaration may be amended at a meeting where a quorum is present, by the approval of at least two-thirds (2/3) of the votes entitled to be cast by the Members of the Association; provided, however, that in order to be effective, any amendment during such time as Declarant owns any portion of the Property shall require the written approval of Declarant. Notwithstanding the foregoing, the Board may, with the prior written consent of Declarant so long as Declarant owns any portion of the Property, amend this Declaration, without obtaining the approval or consent of any Owner, solely to conform this Declaration to the law. A certificate of amendment, setting forth the full amendment adopted, duly signed and acknowledged by the President or Vice-President of the Association shall be Recorded.

10.3.3 Challenge to Amendment. Any challenge to an amendment to this Declaration for reason that the amendment was not adopted by the required number of Members or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment or it shall be forever waived.

10.4 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.

10.5 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.

10.6 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.

10.7 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.

10.8 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.

10.9 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 (or a managing agent engaged by 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.

10.10 Laws, Ordinances and Regulations.

10.10.1The 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.

10.10.2 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.

10.10.3 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.

10.11 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.

10.12 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.

10.13 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.

10.14 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area. Owners shall only be responsible for damage to the Common Area caused by the Owners' negligence or intentional acts.

10.15 Dispute Notification and Resolution Procedure. All actions or claims (other than claims under the limited warranty provided by Declarant to a purchaser (the "**Limited Warranty**")) (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 (collectively, "**Dispute(s)**") shall be subject to the provisions of this Section 10.15. Declarant and each Owner acknowledge that the provisions set forth in this Section 10.15 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). Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of the Limited Warranty, and claims under the Limited Warranty will, subject to the terms of the Limited Warranty, be arbitrated in accordance with the binding arbitration provisions set forth in the Limited Warranty. Notwithstanding any contrary provision of this Section 10.15, the following shall not be Disputes and shall not be subject to the provisions of this Section 10.15: (a) any legal action by the Association against any Person to enforce the provisions of Article 6 (Covenant for Assessments and Creation of Lien); (b) any legal action by the Association or Declarant to obtain a temporary or permanent restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of Article 3 (Use Restrictions); and (c) any legal action to enforce an arbitration award provided in this Section 10.15.

10.15.1Notice. Any Person (Including the Association) with a Dispute claim shall notify the applicable Declarant Party (the “**Notified Declarant Party**”) in writing, by certified mail, return receipt requested of the claim, which writing shall describe the nature of the claim and any proposed remedy (the “**Claim Notice**”). Compliance with Subsection 10.15.1 tolls all applicable statutes of limitation and repose for one hundred eighty-five (185) days. Tolling of all applicable statutes of limitation and repose immediately cease if a claimant abandons, waives or dismisses its claim.

10.15.2Right 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 subject to 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 10.15.2. 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.

10.15.3No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Subsection 10.15.2 above shall be construed to impose any obligation on the Notified Declarant Party to inspect, test, repair or replace any item within the Project or property for which the Notified Declarant Party is not otherwise obligated under applicable law or the Limited Warranty (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.

10.15.4Mediation. If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in Subsection 10.15.2 above, within ninety (90) days after delivery of the Claim Notice, the Person who delivered such Claim Notice shall send the

Notified Declarant Party in writing, by certified mail, return receipt requested, notice of their intent to mediate the Dispute claim. If the Person who sent the Claim Notice fails to send notice to the Notified Declarant Party in writing by certified mail, return receipt requested of their intent to mediate the Dispute claim within ninety (90) days after delivery of the Claim Notice, 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.

(i) Mediator. Mediation shall be completed by a private mediator mutually agreed to by the Person who delivered such Claim Notice and Notified Declarant Party. If the Person who delivered such Claim Notice and Notified Declarant Party are unable to agree on a mediator, the Person who delivered such Claim Notice and Notified Declarant Party shall each select one mediator. The mediator selected by the Person who delivered such Claim Notice and the mediator selected by the Notified Declarant Party shall confer and mutually select a mediator. Any mediator (either mutually agreed to by the Person who delivered such Claim Notice and Notified Declarant Party or selected in the process described above) shall be an attorney in good standing in the State of Arizona and shall have experience in mediating residential construction defect matters.

(ii) Conduct of Mediation. Mediation shall be conducted in Pima County. Mediation shall be commenced within one hundred fifty (150) days after the delivery of the Claim Notice. If the case does not resolve in its entirety, the mediator shall, within two business days thereafter, issue a memorandum of non-settlement and immediately send the notice to all interested parties.

(iii) Parties Permitted at Mediation. The Person who delivered such Claim Notice and Notified Declarant Party expressly agree that any and all material providers, construction subcontractors, construction sub-subcontractors, or any other Person involved in the development of the Residential Unit or any other Property that is subject to the Dispute claim, supply of materials or construction of the Residential Unit or any other Property that is subject to the Dispute claim, shall be permitted to participate in the mediation between the Person who delivered such Claim Notice and Notified Declarant Party.

(iv) Expenses. The Person who delivered such Claim Notice and Notified Declarant Party expressly agree to split evenly the cost of mediation. Specifically, the Person who delivered such Claim Notice and Notified Declarant Party agree that the mediator's fee and cost shall be borne equally.

(v) Exclusion Agreement. Any admission, offers of compromise or settlement negotiations or communications at the mediation or involved in the mediation process, shall be excluded in any subsequent dispute resolution form.

(vi) Compliance with Procedures. No litigation or other action (Including arbitration) shall be commenced against the Notified Declarant Party or any Declarant Party without complying with the procedures described in Subsection 10.15.4.

10.15.5 Arbitration. If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in Subsection 10.15.4 above within thirty (30) days after the mediator issues a memorandum of non-settlement, the Person who delivered such Claim Notice shall send the Notified Declarant Party in writing, by certified mail, return receipt requested, notice of their intent to arbitrate the Dispute claim. If the Person who sent the Claim Notice fails to send notice to the Notified Declarant Party in writing by certified mail, return receipt requested of their intent to arbitrate the Dispute claim within thirty (30) days after the mediator issues a memorandum of non-settlement, 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.

(i) Arbitrator. Arbitration shall be completed by a single private arbitrator mutually agreed to by the Person who delivered such Claim Notice and Notified Declarant Party. If the Person who delivered such Claim Notice and Notified Declarant Party are unable to agree on an arbitrator, the Person who delivered such Claim Notice and Notified Declarant Party shall each select one arbitrator. The arbitrator selected by the Person who delivered such Claim Notice and the arbitrator selected by the Notified Declarant Party shall confer and mutually select an arbitrator. Any arbitrator (either mutually agreed to by the Person who delivered such Claim Notice and Notified Declarant Party or selected in the process described above) shall be an attorney in good standing in the State of Arizona and shall have experience in arbitrating residential construction defect matters.

(ii) Place. The proceeding shall be conducted in Pima County.

(iii) Rules. The arbitration proceeding shall be conducted in accordance with the Arizona Rules of Civil Procedure and Arizona Rules of Evidence.

(iv) Authority. The arbitrator has the same power and authority as the Superior Court to sign and issue subpoenas pursuant to Arizona Rules of Civil Procedure, Rule 45. The arbitrator shall have the authority to try all issues, whether of fact or law. The arbitrator shall have the same authority and power as the trial court judge on all issues (fact or law), including motions to dismiss, motions for summary judgment, scheduling orders, discovery disputes, default applications and default judgments.

(v) Commencement of Proceeding. Arbitration shall be commenced within one hundred eighty (180) days after the notice of intent to arbitrate the Dispute claim is sent by certified mail, return receipt requested to the Notified Declarant Party. This deadline may only be extended by the mutual agreement of the parties.

(vi) Parties Permitted at Arbitration. The Person who delivered such Claim Notice and Notified Declarant Party expressly agree that any and all material providers, construction subcontractors, construction sub-subcontractors, or any other Person involved in the development of the Residential Unit or any other Property that is subject to the Dispute claim, supply of materials or construction of the Residential Unit or any other Property that is subject to the Dispute claim, shall be permitted to participate in the arbitration between the Person who delivered such Claim Notice and Notified Declarant Party. The parties further agree that no Dispute may be arbitrated as a class action.

(vii) Arbitration Expenses. Except to the extent any involved party properly utilizes the provisions contained in A.R.S. § 12-341.01, A.R.S § 12-341 or Rule 68 of the Arizona Rules of Civil Procedure, each party shall bear its own attorneys' fees, experts' fees and costs associated in any way with the claims. In any case, no party may rely on any part of A.R.S. § 12-1361 *et seq.*, ("**the Purchaser Dwelling Act**") to establish the prevailing party standard or otherwise, as the alternative dispute resolution process set forth herein is specifically designed to supersede the Purchaser Dwelling Act statute.

(viii) Arbitration Award. The Person who delivered such Claim Notice and Notified Declarant Party agree that the arbitration shall be final and binding. Unless otherwise agreed by the parties, the arbitrator shall render a written arbitration award within thirty (30) days after the conclusion of the arbitration hearing. The arbitrator's award shall be enforced as provided in the Uniform Arbitration Act, A.R.S. 12-1501 *et seq.*, or such similar law governing enforcement of awards in the Pima County Superior Court.

10.15.6 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 10.15 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 10.15. 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 10.15, 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 PUNITIVE AND CONSEQUENTIAL 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 PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

10.15.7 Required Consent of Declarant to Modify. Neither this Section 10.15 nor Section 10.16 below may be amended except in accordance with Subsection 10.3.1 of this Declaration and with the express written consent of the Declarant.

10.15.8 Limited Warranty Dispute Resolution. Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of a Limited Warranty provided by

Declarant to an Owner pursuant to a purchase agreement. Any and all claims, disputes and controversies arising out of or relating to the Limited Warranty, including any claim of breach of contract, negligent or intentional misrepresentation or 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 any such Limited Warranty. To the extent that any (or any portion of any) claim, dispute or controversy is not covered by the Limited Warranty, the provisions of this Section 10.15 shall apply.

10.16 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 10.15) 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.

10.16.1Notice to Owners.

(i) Prior to obtaining the consent of the Owners in accordance with Section 10.16, 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 Notified Declarant Party to correct such Claim and the opportunities provided to the 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 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 the 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.

10.16.2Notification 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 10.16.1.

10.17 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.

10.18 Limitation on Declarant's 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) shall have any personal liability to the Association, or any Owner, Member or any other Person, arising out of or relating to (Including an action or failure to act with respect to) this Declaration or the Association except, in the case of Declarant (or its assignee), to the extent of its 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.

10.19 Notices. Except as otherwise set forth hereinabove in this Article 10 with respect to the timing and method of delivery of notices, any other written notice or other documents relating to or required by this Declaration may be delivered personally, by first class mail, certified mail, facsimile, e-mail, overnight delivery service or by any other reasonably reliable method. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: if to the Association or the Design Review Committee, at the address of record for the Association on file with the Pima County Recorder's office; if to an Owner, to the address of any Lot within the Property owned, in whole or in part, by the Owner or to any other address last furnished by the Owner to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

[SIGNATURE APPEARS ON NEXT PAGE]

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

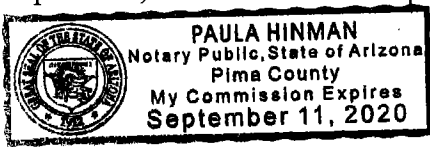
DECLARANT:

RICHMOND AMERICAN HOMES OF ARIZONA, INC., a Delaware corporation

By: Michael Del Castillo
Its: Division President

STATE OF ARIZONA)
) ss.
County of Pima)

Acknowledged before me this 9th day of September, 2020, by Michael Del Castillo, the Division President of Richmond American Homes of Arizona, Inc., a Delaware corporation, on behalf of the corporation.



[Signature]

Notary Public

My Commission Expires: 9.11.20

Exhibit "A"

Lots 1 through 40, inclusive, of ARCADIA, a subdivision of Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona recorded at Book 64 of Maps, Page 47.