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CERTIFICATE OF THIRD AMENDMENT TO AMENDED  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS  
AND EASEMENTS FOR

THE ESTATES AT OLD SPANISH TRAILS LOTS 68-115

**CERTIFICATE OF THIRD AMENDMENT TO  
AMENDED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND  
EASEMENTS FOR**

**THE ESTATES AT OLD SPANISH TRAIL LOTS 68-115**

This Certificate of Third Amendment (this "**Third Amendment**") to Amended Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for The Estates at Old Spanish Trail Lots 68-115, recorded in the official records of the Pima County Recorder at Docket 13012 at Page 5439, as amended by (a) the Certificate of Amendment and Ratification of Amendments to Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for The Estates at Old Spanish Trail recorded in Docket 13065 at Page 1447, and (b) the Certificate of Second Amendment to Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for The Estates at Old Spanish Trail, Lots 68-115 recorded in Docket 13130 at Page 199, official records of Pima County, Arizona (collectively, the "**Original Declaration**") is made this \_\_\_\_ day of May, 2020, by Title Security of Arizona, LLC, a Delaware limited liability company, dba Title Security Agency, LLC, as Trustee under Trust No. 201827-T ("**Trust 201827-T**"), its sole beneficiary, Forestar (USA) Real Estate Group Inc., a Delaware corporation ("**Forestar**"), and D.R. Horton, Inc., a Delaware corporation ("**Horton**"), (Trust 201827-T, Forestar and Horton are collectively and individually referred to as "**Declarant**"). The Original Declaration, as amended by this Third Amendment, shall be the "**Declaration**."

**INTRODUCTION**

A. Declarant is the owner of fee interest in that certain real property in the County of Arizona, described as follows: Lots 72 through 84, inclusive, Lots 86 through 115, inclusive, Common Area "A" - Natural Open Space 6, Common Area "A" - National Open Space 8, and Common Area "B" - Open Space 7, of the Estates at Old Spanish Trails, as recorded in the official records of the Pima County Recorder in Book 59 of Maps and Plats at Page 42 thereof.

B. Declarant hereby certifies that Declarant holds seventy-five percent (75%) of all Member votes and this Third Amendment shall constitute a Certificate of Amendment pursuant to Article XIV, Section 2 of the Original Declaration.

C. Declarant has formed Estates at Old Spanish Trail Community Association, an Arizona nonprofit corporation, for the maintenance, social and recreational purposes of benefiting the Property and the Owners thereof (as said terms are defined herein below), which nonprofit corporation will (a) as the agent of the Owners, monitor compliance with and maintain the Conservation Easement; (b) establish, levy, collect and disburse any Assessments and other charges imposed hereunder; and (c) as the agent and representative of the Members of the Association, administer and enforce all provisions hereof and enforce use and other restrictions imposed on the Property.

## ARTICLE 1

### DEFINITIONS.

Unless otherwise defined, the following words and phrases when used in the Declaration shall have the meanings set forth in this Article. All other initially capitalized terms used in the Declaration shall have the meanings set forth in the Original Declaration.

**1.1 Areas of Association Responsibility.** All Common Area; and all land, and the Improvements situated thereon, located within the boundaries of a Lot or a public right-of-way that the Association is obligated to maintain, repair and replace pursuant to the terms of the Declaration or other Recorded document executed by Declarant or the Association.

**1.2 Association.** Estates at Old Spanish Trail Community Association, an Arizona nonprofit corporation, and its successors and assigns.

**1.3 Builder.** An Owner (i) regularly engaged in the business of building single-family detached residences, (ii) who owns Lots and constructs or intends to construct Dwelling Units on the Lots it owns, and (iii) who has been specifically designated as a Builder hereunder by Declarant in a written Recorded instrument.

**1.4 Common Expenses.** The actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

**1.5 Community Documents.** Collectively, the Declaration, the Articles, the Bylaws, the Association Rules, Architectural Guidelines, and Design Guidelines.

**1.6 Construction.** Any devegetation, excavation or grading work or the construction, erection or installation of an Improvement on a Lot.

**1.7 Declarant.** Collectively, Trust 201827-T, Forestar and Horton, and any Person to whom any of the foregoing may expressly assign any or all of its rights under the Declaration by an instrument recorded with the County Recorder of Pima County, Arizona. Notwithstanding any provision contained in the Declaration to the contrary: (i) any reference which is dependent upon Declarant owning any Lot, or similar references, shall be satisfied if either Declarant, Declarant's beneficiary, an entity owned or controlled by the beneficiary, an entity which the beneficiary owns or controls, or an entity under common control with the beneficiary, owns at least one Lot, (ii) all rights of Declarant may be exercised by the beneficiary of Declarant, except that any documents required to be recorded in the official records of Pima County, Arizona which must be signed by Declarant may not be signed by the beneficiary instead, and (iii) no Declarant shall have any liability for any act or omission of any other Declarant, past or present.

**1.8 Grandfathered Lot.** Each of Lots 68, 69, 70, 71 and 85, as shown on the Plat.

**1.9 Improvement.** (a) any Dwelling Unit, building, fence, shed or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (c) any road, driveway or parking area; (d) any trees, plants, shrubs, grass or other landscaping

improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind. (f) any patio covers, balconies, light fixtures and light poles, and (g) any other structure or change to the physical appearance of the Lot of any type, kind or nature.

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

**1.11 Maintenance.** Care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

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

**1.13 Person.** Any individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

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

**1.15 Resident.** Each individual occupying or residing in any Dwelling Unit.

## ARTICLE 2

### **EFFECT; PROPERTY AND PERSONS BOUND.**

#### **2.1 Effect of Amendment.**

In the event of any inconsistencies between this Third Amendment and the Original Declaration, the terms of this Third Amendment shall govern and control. Except as provided for herein, all other terms and conditions of the Original Declaration shall remain unchanged. In no event shall the terms and provisions of this Third Amendment be interpreted or construed so as to violate the Conservation Easement as set forth in the Original Declaration.

#### **2.2 Grandfathered Lots; Opt-In Election.**

As of the date of Recording of this Third Amendment, the Grandfathered Lots are owned by Owners other than a Declarant. The Owner of a Grandfathered Lot may make an election ("**Opt-In Election**"), as provided below, to be subject to all the provisions in this Third Amendment from which the Grandfathered Lot is otherwise exempt. The Owner of a Grandfathered Lot may make an Opt-In Election by executing and Recording the form attached to this Declaration as Exhibit A, with Owner's signature(s) properly notarized.

**2.3 Deannexation of Property.**

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

**2.4 Disclaimer of Representations and Implied Covenants.**

Declarant makes no representation or warranty that (i) the Project will be developed in accordance with the zoning and development plan for the Project, or (ii) 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. Each Owner, Lessee, Resident and other Person acquiring any Lot or other real property in the Project acknowledges that the zoning and development plan may be amended from time to time by governmental authorities having jurisdiction. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to the Project. Nothing that may be represented to a purchaser by real estate brokers or sales agents shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any of the Property.

**2.5 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. No representation or warranty whatsoever, express or implied, is made by Declarant or the Association concerning the view that any Lot 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 may be impaired or obstructed by further construction within or outside the Project, including, without limitation, by construction of Improvements (including, without limitation, landscaping) by Declarant, construction by third parties (including, without limitation, other Owners, Residents and Builders) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind either Declarant, a Builder or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

## ARTICLE 3

### ARCHITECTURAL CONTROL.

#### **3.1 Subcommittees.**

The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove any Construction or Modification within a specified portion of the Project.

#### **3.2 Approval Required.**

The provisions of this Article and of Article IV, Section 2 of the Original Declaration do not apply to, and approval of the Architectural Committee shall not be required for, any Construction or Modification or any other work made by, or on behalf of, Declarant or a Builder: provided that any Construction or Modification by a Builder shall have the prior written consent of a Declarant. When Declarant no longer owns any Lots, nor holds an option to purchase any Lot, the Construction or Modification of any Improvement by a Builder shall be subject to the prior written consent of the Architectural Committee, provided that the Architectural Committee shall have no authority to rescind or modify an approval validly given by a Declarant.

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

The Architectural Committee shall make its decision on a complete application for approval within forty-five days after the submission of such application. If the Committee fails to respond to an application, the application shall be deemed disapproved. The approval by the Architectural Committee of any Construction or Modification shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

#### **3.3 Review of Plans.**

In reviewing plans and specifications for any Construction or Modification, the Architectural Committee may consider any and all factors that the Architectural Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (c) the exterior design, finish materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with the

Declaration and the Design Guidelines. The Architectural Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with the Declaration and the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.

Decisions of the Architectural Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Architectural Committee shall be final on all matters submitted to it pursuant to the Declaration.

The approval required of the Architectural Committee pursuant to Article IV, Section 2, and Article XII of the Original Declaration and this ARTICLE 3 shall be in addition to, and not in lieu of, any approvals or permits that may be required under any federal, state or local law, statute, ordinance, rule or regulation.

The Architectural Committee, by resolution, may exempt certain Construction or Modifications from the application and approval requirements of Article IV, Section 2, and Article XII of the Original Declaration and this ARTICLE 3, provided such Construction or Modifications are undertaken in compliance with the requirements of such resolution. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a Dwelling Unit without approval so long as such activity does not affect the exterior appearance of the Dwelling Unit.

### **3.4 Variances.**

The Architectural Committee may authorize variances from compliance with any provision of the Design Guidelines in circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require, and the Architectural Committee determines, in its sole discretion, that the objective of the particular requirement can still be achieved. No variance shall be effective unless in writing and signed by an authorized representative of the Architectural Committee. No variance may be contrary to the Declaration or estop the Architectural Committee from denying a variance in other circumstances including, without limitation, circumstances similar or identical to circumstances under which the Architectural Committee previously granted a variance. For purpose of this Section, the inability to obtain approval of any governmental agency, issuance of any permit, or the terms of any financing shall not constitute hardships.

### **3.5 Construction of Improvements.**

Upon receipt of approval from the Architectural Committee for any Construction or Modification, the Owner who had requested such approval shall proceed with the Construction or Modification approved by the Architectural Committee as soon as practicable and shall diligently

pursue such Construction or Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

**3.6 Review Fee.**

The fee charged by the Architectural Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Architectural Committee in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Association may retain architects, engineers or other Persons as deemed necessary to review applications or otherwise assist the Architectural Committee.

**3.7 New Construction.**

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

**3.8 No Warranty.**

The approval by the Architectural Committee of any Construction or Modification shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

**3.9 Conditional Approval.**

The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Architectural Committee in an amount determined by the Architectural Committee to be reasonably sufficient to: (a) 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, and (b) repair any damage that might be caused to any Area of Association Responsibility as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond shall be released or security shall be fully refundable to the Owner upon the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee and the Owner's written request to the Architectural Committee.

**3.10 Improvements to Areas of Association Responsibility.**

If plans and specifications submitted to the Architectural Committee 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 Committee may condition its approval of the plans and specifications for the proposed Construction or Modification 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.



### **3.11 Grandfathered Lots.**

Unless the Owner of a Grandfathered Lot makes an Opt-In Election pursuant to Section 2.2 of this Third Amendment, such Owner shall not be subject to review and approval by the Architectural Review Committee with respect to matters that would not have been subject to review and approval by the Architectural Committee under the Original Declaration.

## **ARTICLE 4**

### **USE RESTRICTION.**

#### **4.1 Residential Use.**

All Dwelling Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Dwelling Unit, except that the Owner, Lessee or other Resident of a Dwelling Unit may conduct a business activity within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (c) the business activity does not involve individuals coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Lessees or Residents in the Project; (d) the use of the Dwelling Unit for trade or business in no way destroys or is incompatible with the residential character of the Dwelling Unit or the surrounding neighborhood; (e) the trade or business is conducted only inside the Dwelling Unit, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Dwelling Unit; (f) the trade or business is conducted by a Resident or Residents of the Dwelling Unit with no employee working in or from such Dwelling Unit who is not a Resident thereof; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) the use of the Dwelling Unit for a trade or business does not violate any other provision of the Community Documents.

The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended to, or does, generate a profit; or (c) a license is required for such activity. The leasing of a Dwelling Unit by the Owner thereof for the personal use of the tenant shall not be considered a trade or business within the meaning of this Section. For the avoidance of doubt, this Section 4.1 replaces and supersedes Article IV, Section 26 of the Original Declaration in its entirety.

**4.2 Temporary Buildings; Construction Activities.**

In no event shall any temporary buildings, trailers or other structures be maintained or kept on any property for a period in excess of 12 months without the prior written approval of the Architectural Committee. The provisions of this Section and Article IV, Sections 4 and 6 of the Original Declaration shall not apply to construction or sales activities of Declarant or any Builders.

**4.3 Mineral Exploration.**

Neither Article IV, Section 10 of the Original Declaration nor any other provision in the Declaration shall prohibit or restrict, expressly or by implication, the excavation of soil incident to construction of permitted structures or the extraction of any minerals or other substances from any portion of the Property or a Lot pursuant to rights conveyed to or reserved by any Person including, without limitation Declarant or its affiliates, or their successors or assigns, pursuant to an instrument or instruments Recorded prior to the date on which the first Lot other than a Grandfathered Lot is conveyed to a Purchaser. Any Persons exercising such rights shall be responsible to repair or restore any portion of the Property or Lot affected by the exercise of the rights. This Section 4.3 may not be amended without the consent of all Persons holding any such rights.

**4.4 Antennas; Flags.**

To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be subject to the prior written approval of the Architectural Committee. No flag shall be displayed on any Lot without the prior written consent of the Architectural 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 Committee as to placement and size of the Permitted Flag and flagpole (if any) and manner of display of the Permitted Flag.

**4.5 Trash Containers and Collection.**

The Board shall have the right to adopt rules and regulations regarding garbage, trash, trash containers and collection.

**4.6 Animals.**

All dogs, cats and other pets permitted under Article IV, Section 3 of the Original Declaration shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet in length and is not permitted to enter upon any other Lot. Any individual bringing a dog onto the Common Area shall

immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

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

#### **4.7 Signs.**

To the extent permitted by law, no signs shall be displayed on any Lot except for the following:

- (a) Signs used by Declarant to advertise the Lot and Dwelling Unit thereon for sale or lease;
- (b) One temporary "For Sale" or "For Rent" sign which shall not exceed 18 inches by 24 inches, and one temporary sign rider which shall not exceed 6 inches by 24 inches (and otherwise meeting such standards as the Architectural Committee may reasonably impose);
- (c) Political signs; however, the Architectural Committee reserves the right to disallow and/or regulate the size and number of political signs and the duration for which the political signs may be placed, to the extent permitted by law;
- (d) Such signs as may be required by law or the prohibition of which is unlawful;
- (e) One residential identification sign not exceeding 9 inches by 30 inches; and
- (f) Signs approved by the Architectural Committee.

All signs must conform to applicable governmental requirements. The restrictions of this Section shall not apply to signs used by (or at the direction of) the Association in the furtherance of its functions. For the avoidance of doubt, this Section 4.7 replaces and supersedes Article IV, Section 14 of the Original Declaration in their entirety.

#### **4.8 Rezoning and Timeshares.**

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 Architectural Committee and the Board and the proposed use otherwise complies with the Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly or any other type of revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

#### 4.9 Vehicles and Parking.

As used in this Section: (a) “**Motor Vehicle**” means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) “**Street**” means each public or private street shown on the Plat. The restrictions set forth or allowed in this Section shall at all times be subject to the requirements and limitations of applicable law including, but not limited to, A.R.S. § 33-1809, as amended from time to time.

No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area.

No Motor Vehicle with a manufacturer’s rating in excess of 1 ton, or that exceeds eight feet in height (including, without limitation racks and shells) or that exceeds twenty-four feet in length shall be parked on a Street or on a driveway or any other part of a Lot so as to be Visible From Neighboring Property, except for: (a) the temporary parking in the driveway on a Lot of recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident for the purpose of loading or unloading, subject to such limitations as may be established by the Board, or (b) within walled side yard or backyard areas. No Motor Vehicle shall be parked on any part of the Common Area other than a Street or designated parking spaces.

Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot or their guests must be parked in the garage situated on the Lot to the extent space is available in the garage for the parking of such Motor Vehicles. If space is not available in the garage, then such Motor Vehicles may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot by Declarant. Parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot or their guests may only be parked on a driveway expansion constructed with the approval of the Architectural Committee if space for the parking of such Motor Vehicles is not available either in the garage or in the driveway constructed as part of the initial construction or Improvements on the Lot by Declarant. No Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot or their guests may be parked on a Street if space for the parking of the Motor Vehicle is available in any of the following areas: (a) the garage situated on the Lot of the Owner, Lessee or Resident; (b) the driveway on the Lot constructed as part of the initial construction of Improvements on the Lot by Declarant; or (c) a driveway expansion constructed on the Lot with the approval of the Architectural Committee; provided, however, that limited, short-term parking on Streets may be permitted (subject to such Association Rules as the Association may adopt) solely for the following purposes: (i) loading and unloading of non-commercial items for use on the Lot; (ii) temporary visits by guests or invitees of an Owner that do not include overnight parking; and (iii) temporary parking of the Owner’s vehicles for special events that do not involve overnight parking and do not occur on a frequent or repetitive basis.

No Motor Vehicle of any kind may be stored on a Lot except in a garage or within walled side yard or backyard areas, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Area.

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

Notwithstanding any other provision of this Section to the contrary, no Motor Vehicle may be parked on a driveway if the length of the Motor Vehicle exceeds the length of the driveway or if the Motor Vehicle encroaches upon or obstructs access across the sidewalk or curb adjacent to the driveway.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board of Directors, the provisions of this Section shall control. For the avoidance of doubt, this Section 4.9 replaces and supersedes Article IV, Sections 19, 20 and 21 of the Original Declaration in their entirety.

#### **4.10 Drainage.**

No Dwelling Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the municipality in which the Project is located. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans.

If an Owner or Resident interferes with such drainage, (i) such Owner (including the Owner of the applicable Lot in the case of interference by a Resident) shall be liable for any and all damage caused by the interference as well as the cost to remedy the drainage problems created by the Owner and/or Resident; and (ii) the Association may enter the affected Lot(s) to remedy the drainage problem, at the Owner's sole expense, including an administrative charge of 10% of the amount incurred by the Association may, plus interest at 10% per year on all amounts from the date incurred by the Association until the date paid to the Association by the Owner, which cost shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, with such costs to be secured by the Assessment Lien.

#### **4.11 Garages.**

No garage shall be converted to living space or altered or used for storage of material or other purposes that would prevent the use of the garage for the parking of the number of vehicles for which it was designed, except that Declarant or a Builder may use a garage in one or more model homes for a sales office and/or a construction office. The interior of all garages shall be maintained and kept in a neat, clean and presentable condition, free of debris or unsightly objects.

Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

**4.12 Rooftop HVAC and Solar Equipment.**

Except as initially installed by a Declarant or a Builder, no heating, ventilating, air conditioning or evaporative cooling units, solar energy collecting units or panels, or equipment related thereto may be mounted, installed or maintained on the roof of any Dwelling Unit or other building so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee (to the extent permitted by law).

**4.13 Basketball Goals and Backboards.**

Basketball goals or backboards may be installed or maintained on a Lot provided they are installed, maintained and used in accordance with the Association Rules, which may govern their size, design, color, material, location and hours of use.

**4.14 Playground Equipment.**

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

**4.15 Rental of Lots.**

All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of the Community Documents and that any violation of the Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease. There shall be no subleasing of Dwelling Units or assignments of leases.

At least ten days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and each other individual who will reside in the Dwelling Unit during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of an individual other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot and the Dwelling Unit situated thereon must provide the Lessee with copies of the Declaration, the Design Guidelines and the Association Rules.

Any lease of a Lot or Dwelling Unit situated thereon must be for an initial term of at least one month. The Owner shall be liable for any violation of the Declaration, the Design Guidelines or the Association Rules by the Lessees or other individuals residing in the Dwelling Unit and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

**4.16 Exterior Lights.**

Except as initially installed by Declarant or a Builder, no spotlights, floodlights or other lights shall be installed on the exterior of a Dwelling Unit or on the ground or on any wall situated on any Lot without the prior written approval of the Architectural Committee.

**4.17 Window Cover Materials.**

Within sixty (60) days after becoming the Owner of a Lot, the Owner (excluding Declarant and any Builder) shall install permanent draperies or suitable window coverings on all windows facing the street and those Visible From Neighboring Property. All window coverings shall be white, beige, cream, natural wood stain or a solid earth tone color, unless otherwise approved in writing by the Architectural Committee. No paper, bed sheets or reflective materials including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Dwelling Unit without the prior written approval of the Architectural Committee. No enclosures, drapes, blinds, shade screens or other items affecting the exterior appearance of a Dwelling Unit shall be constructed or installed without the prior written consent of the Architectural Committee.

**4.18 Variances.**

The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in the Declaration if the Board determines in its discretion that (a) either (i) a restriction will create an unreasonable hardship or burden on an Owner or other permitted user of the Property, or (ii) that a change of circumstances since the Recordation of the Declaration has rendered such restriction obsolete, and (b) that the activity or use permitted under the variance will not have any substantial adverse effect on the Residents and is consistent with the high quality of life intended for Residents of the Property.

**4.19 Grandfathered Lots.**

Unless the Owner of a Grandfathered Lot makes an Opt-In Election pursuant to Section 2.2 of this Third Amendment, such Owner shall not be subject to the use restrictions set forth in this ARTICLE 4.

**ARTICLE 5**

**EASEMENTS.**

**5.1 Easements for Use of Common Area.**

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

- (a) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.5; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease

or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.

- (b) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area (such as landscaped areas) not intended for use by the Owners, Lessees or Residents.
- (c) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets that are part of the Common Area for ingress or egress to the Owner's Lot) (a) for any period during which any Assessment against the Owner's Lot remains delinquent; (b) for a period not to exceed sixty (60) days for any other infraction of the Community Documents; and (c) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period.
- (d) The rights and easements reserved by or granted to Declarant and Builders by the Declaration.
- (e) The rights and easements, if any, reserved or granted to Declarant or any other Person in the deed conveying the Common Area to the Association.
- (f) The right of the Association to rent or lease any portion of the Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees.
- (g) The right of the Board to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area.
- (h) The right of the Board to permit the use of any recreational facility or amenity situated on the Common Area by individuals other than Owners or Residents, and their guests, upon payment of such fees as may be established by the Board.
- (i) The right of Declarant or the Association to convey certain portions of the Common Areas to Owners of adjoining Lots in connection with the correction or adjustment of the boundary between the Common Area and adjoining Lots.

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 recreational facilities situated on the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use such recreational facilities until the termination or expiration of such lease.



The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot to which such right is appurtenant. For the avoidance of doubt, this Section 5.1 replaces and supersedes Article III of the Original Declaration in its entirety.

### **5.2 Utility and Development Easements.**

A non-exclusive, perpetual blanket easement is hereby granted over and through the Common Area for the purpose of: (a) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property or adjacent land any utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; and (b) ingress and egress to install, construct, operate, maintain, repair and replace such equipment, and (c) storm water management and storm water drainage, as necessary or desirable for the orderly development of the Property. Such easement is hereby granted to any Person providing the aforesaid utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by Declarant, where contemplated on any site plan approved by Declarant, or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above-ground during periods of construction, if approved by Declarant. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the surrounding vegetation and Improvements to their original condition as soon as possible.

Declarant hereby reserve the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in this Section or for any other purpose necessary or desirable for the orderly development of the Property. If the Person installing the utility or providing a service requests a specific easement by separate Recordable documents, then Declarant or the Association shall have the power to Record a document locating such easements.

### **5.3 Easements to Facilitate Development.**

Declarant hereby reserves to itself and any Builder(s), and their respective successors and assigns and to their respective contractors, subcontractors, suppliers, engineers, architects and agents a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property including, without limitation: (a) the construction of all Improvements on the Common Area that Declarant or Builder deems necessary; (b) the construction of Dwelling Units and other Improvements on Lots; and (c) the storage of supplies of building materials and equipment necessary to construct Improvements on the Common Area and the Lots.

Notwithstanding anything to the contrary in Article IV, Section 25 of the Original Declaration, Declarant hereby reserves to itself and any Builder(s), and their respective successors and assigns the right to: (a) use any Lots owned or leased by Declarant or Builder, any other Lot with written consent of the Owner thereof, and any portion of the Common Area as models,

management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas for the development, sale or lease of the Lots in the Project or for the development, sale or lease of the lots in any subdivision owned or marketed by Declarant, Builder or any Person who controls, is controlled by or is under common ownership with Declarant or Builder; and (b) install and maintain on the Common Area, any Lot owned or leased by Declarant or Builder or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs as Declarant or Builder deems necessary for development, sale or lease of the Lots in the Project or for the development, sale or lease of the lots in any subdivision owned or marketed by Declarant, Builder or any Person who controls, is controlled by or is under common ownership with Declarant or Builder. So long as Declarant or Builder is marketing lots, Declarant or Builder, respectively, shall have the right to restrict the use of parking spaces situated on the Common Area and to reserve such parking spaces for use by prospective purchasers of Lots, Declarant's or Builder's contractors, subcontractors, suppliers, agents or employees or other Persons engaged in sales, marketing or construction activities for or on behalf of Declarant or Builder, respectively.

In the event of any conflict or inconsistency between this Section 5.3 and any other provision of the Community Documents, this Section 5.3 shall control and prevail over such other provisions. The rights of Declarant and any Builders set forth in this Section 5.3 shall be enforceable by injunction, by any other remedy available at law or in equity (including, but not limited to, the right to sue for damages) and/or by any means provided in the Declaration. Notwithstanding any other provision of the Declaration to the contrary, the rights of any Builder pursuant to this Section 5.3 shall be subject to review and approval by Declarant, and no amendment of this Section 5.3 shall be effective unless approved in writing by Declarant.

#### **5.4 Dedications and Easements Required by Governmental Authority.**

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

#### **5.5 Further Assurances.**

The easements granted and reservations made to Declarant in the Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by Declarant. Upon written request of Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to Declarant such documents or instruments deemed necessary by Declarant to evidence or confirm the reservation or grant of rights and easements to Declarant under the Declaration.

#### **5.6 Assignment of Development Rights.**

Declarant may make limited temporary assignments of its easement rights under the Declaration to any Person performing construction, installation or Maintenance on any portion of the Property.

**5.7 Easement for Maintenance and Enforcement.**

The Association and its directors, officers, agents, contractors and employees, the Architectural Committee, and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Dwelling Unit), for: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Architectural Committee and that all Improvements are being properly maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance; or (e) correcting any condition that violates the Community Documents.

**5.8 Easements for Encroachments.**

If any Improvements on any Lot or portion of the Common Area now or hereafter encroach on any other portion of the Property by reason of: (a) the original construction thereof; (b) deviations within normal construction tolerances in the Maintenance of any Improvement; or (c) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

**5.9 Easements for Drainage.**

There is hereby created a blanket easement for drainage of ground water on, over and across the Common Area and on, over and across each Lot in such locations as drainage channels or structures are located. An Owner shall not at any time hereafter fill, block or obstruct any drainage easements, channels or structures on the Owner's Lot and each Owner shall repair and maintain all drainage channels and drainage structures located on the Owner's Lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within the drainage easements that may impede the flow of water under, over or through the easements. Any drainage area on a Lot shall be maintained by the Owner of the Lot.

**ARTICLE 6**

**THE ASSOCIATION; ORGANIZATION; MEMBERSHIP  
AND VOTING RIGHTS.**

**6.1 Association.**

The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under the Declaration with respect to the operation and maintenance of the Areas of Association Responsibility.

**6.2 Board of Directors.**

Notwithstanding Article VI, Section 2 of the Original Declaration, so long as Declarant owns any Lot, or until such earlier date as determined by Declarant in its sole discretion in a written notice delivered to the Association, the Board shall consist of three (3) individuals designated by Declarant. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

**6.3 Implied Rights.**

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

**6.4 Transfer of Membership.**

Each Purchaser of a Lot shall notify the Association of his purchase within ten days after he becomes the Owner of a Lot.

**6.5 Conveyance, Lease or Encumbrance of Common Area.**

The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property. In addition, the Association may convey portions of the Common Areas to make adjustments in the boundary lines between the Common Areas and adjoining Lots or public rights-of-way. Except as expressly permitted by this Section, the Common Area shall not be mortgaged or conveyed without the prior written consent or affirmative vote of Declarant and the total affirmative vote or written consent of the Owners holding at least 2/3 of the votes in the Association.

**6.6 Suspension of Voting Rights.**

If any Owner fails to pay any Assessments or other amounts due to the Association under the Community Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Community Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board, in accordance with the procedures set forth in the Bylaws, 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 Community Documents are corrected.

## ARTICLE 7

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN.

#### 7.1 Annual Assessments.

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

The 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 fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and an Annual Assessment is levied by the Board for such Assessment Period, the amount of the Annual Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Annual Assessment for any Assessment Period is required by law, neither the budget nor the Annual Assessment shall be required to be ratified or approved by the Members.

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, without limitation, nonpayment of Assessment by Members, the Board may amend the budget and increase the Annual Assessment for that Assessment Period, subject to the Maximum Annual Assessment, and the revised Annual Assessment shall commence on the date designated by the Board.

#### 7.2 Declarant Assessments.

Declarant may satisfy its obligation for Assessments on Lots owned by Declarant either by paying Assessments in the same manner as any other Owner or by paying, on an annual basis, the difference between the amount of Assessments levied on all other Lots and the amount of actual Common Expenses paid by the Association during the preceding fiscal year (the "**Budget Deficit**"), provided that in no event shall Declarant be responsible for payments in excess of Assessments otherwise payable on Lots owned by Declarant if Declarant had elected to pay Assessments in the same manner as any other Owner. If there is more than one Declarant, the Budget Deficit shall be allocated based upon the number of Lots owned by such Declarant as a percentage of the number of Lots owned by all Declarants. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. For the avoidance of doubt, this Section 7.2 replaces and supersedes Article VIII, Section 1(b) of the Original Declaration.

**7.3 Special Assessments.**

So long as Declarant owns any Lot, any Special Assessment must be approved in writing by Declarant.

**7.4 Remedies of the Association.**

Subject to any limitations imposed by Arizona law from time to time, the Association shall have a lien on each Lot for: (a) all Assessments levied against the Lot; (b) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) all fines levied against the Owner of the Lot; (d) all 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 whether or not suit is filed by the Association; (e) any amounts payable to the Association pursuant to Section 8.3, and (f) any other amounts payable to the Association pursuant to the Community Documents.

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, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ten 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 established from time to time by the Board.

The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

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

**7.5 Initial Capital Contribution.**

Each Purchaser of a Lot from Declarant or a Builder shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to 1/6th of the then current annualized Annual Assessment attributed to Assessable Property owned by Owners other than Declarant or Builders ("**Initial Capital Contribution**"). Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Community Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to the Declaration. Payments made pursuant to this Section shall be deemed a contribution to the capital of the Association.

**7.6 Transfer Fee.**

Each Purchaser shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot ("**Transfer Fee**"). 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 to deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the Transfer Fee shall be in addition to the fee that the Association is entitled to charge pursuant to A.R.S. § 33-1806C.

**7.7 Reserves.**

The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of the Association Responsibility. The reserves may be funded from Annual Assessments, the Initial Capital Contributions paid pursuant to Section 7.5 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "**Reserve Account**") to be held for the purposes for which they are collected and are to be segregated from, and not commingled with, any other funds of the Association. Unless the Association is exempt from Federal or State taxes, all reserves shall be accounted for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Reserve Account may only be used to pay costs and expenses related to the periodic maintenance, repair and replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the funds in the Reserve Account for other purposes is approved by the vote of Owners holding at least 2/3 of the votes in the Association.

**7.8 Reserve Contribution.**

Except as otherwise provided in this Section, each Purchaser shall pay to the Association, immediately upon becoming the Owner of a Lot, a contribution to the reserves of the Association for the periodic maintenance, repair and replacement of the major components of the Areas of Association Responsibility (the "**Reserve Contribution**"). The amount of the initial Reserve Contribution shall be set by the Board of Directors prior to the conveyance of the first Lot to a

Purchaser. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution. The amount of the Reserve Contribution may not be increased by the Board of Directors by more than 20% during any year without the approval of Members holding more than 50% of the votes of the Association.

No Reserve Contributions shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of 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 in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of 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.

All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.7. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

#### **7.9 Grandfathered Lots.**

Unless the Owner of a Grandfathered Lot makes an Opt-In Election pursuant to Section 2.2 of this Third Amendment, such Owner shall not be required to pay the Initial Capital Contribution, Transfer Fee, or Reserve Contribution.

### **ARTICLE 8**

#### **MAINTENANCE**

##### **8.1 Areas of Association Responsibility.**

No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board; provided, however, that the foregoing limitation shall not in any manner impede or interfere with Declarant's rights and powers under the Declaration with respect to development and sale of the Property. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon. Landscaping originally planted on the Areas of Association Responsibility may exceed the landscaping that is ultimately planned for Areas of Association Responsibility due to over-planting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead or damaged landscaping if, in the reasonable discretion of the Board, (a) the remaining landscaping is acceptable to the Board and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with governmental entities in connection with the Property.



even if the location of specific plants is different than the locations shown on such approved landscaping plans.

**8.2 Lot Owner's Responsibility.**

Each Owner of a Lot shall be responsible for the Maintenance of his Lot, and all buildings, Dwelling Units, landscaping and other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, that is an Area of Association Responsibility. All buildings, Dwelling Units, landscaping and other Improvements shall at all times be kept in good condition and repair in accordance with the standard of Maintenance established from time to time by the Board or, in the absence of any standard established by the Board, the standard of Maintenance generally prevailing throughout the Project. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass that die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. Lots upon which no Dwelling Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

**8.3 Installation of Landscaping.**

All landscaping and irrigation Improvements shall maintain the grade and drainage established on the Lot by Declarant or a Builder and shall not block drainage from the back and side yards. All plant materials and irrigation Improvements shall be placed a minimum of 24 inches away from the Dwelling Unit. Owners shall not install any type of plastic ground cover within 36 inches of a Dwelling Unit. If an Owner (other than Declarant or a Builder) does not timely install and complete approved landscaping as set forth in the Community Documents, the Association, after giving the Owner thirty (30) days written notice to cure any such default, shall have the right to cause the necessary landscaping to be installed and, in such event, the Owner shall pay the Association, upon demand, all costs incurred by the Association in connection with the installation of the landscaping, together with interest thereon at the rate of 15% per annum, and payment of such amounts shall be secured by the Assessment Lien.

**ARTICLE 9**

**INSURANCE.**

**9.1 Scope of Coverage.**

The Association shall maintain, to the extent reasonably available, the following insurance coverage:

- (a) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of

Association Responsibility and all other portions of the Project that the Association is obligated to maintain under the Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner:

- (b) Property insurance on all Common Areas (and the Association's interest in any Improvements to other Areas of Association Responsibility) insuring against all risk of direct physical loss, insured against in an amount equal to the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy, as determined by the Board;
- (c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;
- (d) Directors' and officers' liability insurance in such amount as the Board of Directors may determine from time to time
- (e) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;
- (f) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance that may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement that shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) the name of the insured shall be 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 days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

## **9.2 Certificates of Insurance.**

An insurer that has issued an insurance policy under this Article shall be required by the Association to 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 cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

**9.3 Payment of Insurance Proceeds.**

With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, 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 9.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**9.4 Repair and Replacement of Damaged or Destroyed Property.**

Any portion of the Common Areas (or any Improvement in the Areas of Association Responsibility belonging to the Association) that is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or Owners representing at least 80% of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition that is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be retained by the Association as an additional capital reserve.

**ARTICLE 10**

**DISPUTE RESOLUTION.**

**10.1 Defined Terms.** As used in this ARTICLE 10, the following terms shall the meaning set forth below:

- (a) **“Alleged Defect”** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot, or the buildings, Dwelling Units and other structures or Improvements located thereon, by a Bound Party including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.
- (b) **“Bound Party”** means: (i) Declarant and its members, managers, directors, officers and employees; (ii) any Builder and its members, managers, directors, officers and employees; (iii) the entity that platted the Project or any portions of the Project, if different from but affiliated with Declarant or any Builder; (iii) the general contractor for the Project; (iv) the

subcontractors, material suppliers, labor suppliers, architects, engineers and consultants of any of the said contractors including, but not limited to, their respective members, managers, directors, officers, partners, employees, agents and independent contractors; or (v) any employee or other representative of Declarant who serves as a director or officer of the Association.

- (c) **“Claim”** means: (i) any claim or cause of action by a Claimant against a Bound Party arising out of or related in any way to an Alleged Defect including, without limitation, any claim or cause of action for breach of express or implied warranties or that a Bound Party was negligent in the planning, design, engineering, grading, construction or development of the Project; or (ii) any claim or cause of action against a Bound Party arising out of or in any way related to the development of the Project or the management or operation of the Association including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

#### **10.2 Agreement to Resolve Certain Disputes Without Litigation.**

The Association, all Owners and all Bound Parties agree that it is in the best interests of the Association, the Owners and Bound Parties to encourage the amicable resolution of Claims and to resolve Claims without the emotional and financial costs of litigation. Therefore, the Association, all Owners and all Bound Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this ARTICLE 10.

#### **10.3 Notice of Alleged Defect.**

The Association or any Owner who becomes aware of any Alleged Defect that could be the basis for a Claim against any Bound Party shall give written notice (the **“Notice of Alleged Defect”**) promptly to each Bound Party who could be responsible for the Alleged Defect. The Notice of Alleged Defect shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Owner giving the Notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any individuals or property. Following the receipt by a Bound Party of a Notice of Alleged Defect, the Bound Party and any of its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Association or Owner giving the Notice of Alleged Defect to enter onto or into, as applicable, the Common Area or any Lot for the purposes of inspecting and/or conducting testing to determine the existence, nature and extent of the Alleged Defect and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, a Bound Party shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Nothing set forth in this Section 10.3 shall be construed to impose any obligation on any Bound Party to inspect, test, repair or replace any item or Alleged Defect for which Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace under this Section shall be irrevocable and

may not be waived or otherwise terminated, except by written document, in recordable form, executed and Recorded by the Bound Party. In no event shall any statute of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of the Alleged Defect. If the Alleged Defect is not repaired or replaced to the satisfaction of the Association or Owner giving the Notice of Alleged Defect within sixty (60) days after the Notice of Alleged Defect is given to a Bound Party, then the Association or Owner may proceed with the preparation of the delivery of a Notice of Claim as provided in Section 10.4.

#### **10.4 Notice of Claim.**

The Association or any Owner who contends or alleges to have a Claim (a "**Claimant**") against any Bound Party (a "**Respondent**") shall notify each Respondent in writing of the Claim (the "**Claim Notice**"), stating plainly and concisely: (a) the nature of Claim including the date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what the Claimant wants the Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party, which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (c) a report from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name of any attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (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 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; (i) a good faith estimate of any fees and expenses the Association may be obligated to pay the other party if the Association's Claim is unsuccessful, and (j) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a Person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "**Licensed Professional**"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

#### **10.5 Mediation.**

A Claimant and a Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("**Termination of Negotiations**"), the Claimant shall declare in writing the Termination of Negotiations and submit the Claim to mediation by the American Arbitration Association

("AAA") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation Notice**"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including without limitation the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the Parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

#### **10.6 Binding Arbitration.**

In the event a Claim is not resolved by mediation, the Claimant shall promptly after the date of the Termination of Mediation Notice submit the Claim to binding arbitration in accordance with this Section 10.6. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. The Association, the Owners and all Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 10.6. The Association, the Owners and all Bound Parties waive their right to have a Claim resolved by a court including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and the Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or the Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 10.6, the arbitration shall be conducted in accordance with the following rules:

- (a) Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Construction Industry Arbitration Rules (the "**AAA Rules**"); however, the arbitration need not be conducted by or through the AAA.
- (b) Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 10.6, the provisions of this Section 10.6 shall govern.
- (c) Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the Presiding Civil Judge of the Maricopa County Superior Court shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Section 10.6(c) is referred to in this Section 10.6 as the "**Arbitrator**".

- (d) Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.
- (e) Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such individual has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Section 10.6(c).
- (f) Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.
- (g) Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters that may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters that may promote the efficient, expeditious, and cost-effective conduct of the proceeding.
- (h) Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.
- (i) Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such

information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

- (j) Hearings. Hearings may be held at any place within Maricopa County, Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.
- (k) Final Award. The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made.
- (l) Expenses of Arbitration. Each Party to the dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such Party. Each Party to the dispute shall share equally all charges rendered by the Arbitrator unless otherwise agreed to by the Parties.

**10.7 Right to Enter, Inspect, Repair and/or Replace.**

Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area and any Lot for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 10.7 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects. For the avoidance of doubt, this Section 10.7 replaces and supersedes Article IV, Section 22 of the Original Declaration.



**10.8 Use of Funds.**

Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Claimant receiving the judgment, award or settlement is the Association, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

**10.9 Approval of Arbitration or Litigation.**

The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than 75% of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of their Lot of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.4.

**10.10 Statute of Limitations.**

All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 10.6. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

**10.11 Federal Arbitration Act.**

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

**10.12 Conflicts.**

In the event of any conflict between this ARTICLE 10 and any other provision of the Community Documents, this ARTICLE 10 shall control. In the event of any conflict between the provisions of this ARTICLE 10 and the terms of any express warranty provided to a Purchaser by Declarant or a Builder or any third party home warranty company in connection with the purchase of a Lot from Declarant or a Builder, the provisions of the express warranty shall control; provided, however, that if the Claim is being asserted by the Association, the approval of the members of the Association required by Section 10.9 must be obtained prior to the Association demanding arbitration of the Claim or filing any legal action with respect to the Claim.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND THE PROVISIONS OF THIS ARTICLE 10 AND WAIVES THE RIGHT TO PURSUE ANY BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 10. THE ASSOCIATION, EACH LOT OWNER AND BUILDER, AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 10, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH LOT OWNER AND BUILDER, AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH LOT OWNER AND BUILDER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF AN OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY BOUND PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 10 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE MARICOPA COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE 10 ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF DISPUTES INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, ANY BUILDER, THE ASSOCIATION OR THE RESPECTIVE SUCCESSORS AND ASSIGNS.

**10.13 Grandfathered Lots.**

Unless the Owner of a Grandfathered Lot makes an Opt-In Election pursuant to Section 2.2 of this Third Amendment, such Owner shall not be subject to the dispute resolution provisions of this ARTICLE 10.

**ARTICLE 11**

**GENERAL PROVISIONS.**

**11.1 Enforcement.**

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

- (a) imposing reasonable monetary fines after notice and an opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;
- (d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owed to the Association;
- (e) exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;
- (f) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of the Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (g) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration or the Design Guidelines from continuing or performing any further activities in the Project;

- (h) towing vehicles that are parked in violation of the Declaration or the Association Rules:
- (i) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled; and
- (j) Recording a written notice of violation by any Owner, Lessee or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to the Declaration; and (e) a statement of the specific steps that must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

The Board shall have the exclusive right to enforce the Community Documents and any other documents applicable to the Property that indicate their terms are intended to be enforced by or to benefit the Association. If the Board fails or refuses to enforce any such document for an unreasonable period of time after receiving written request from an Owner to do so, then the Owner (at the Owner's expense) may enforce them on behalf of the Association by any appropriate legal action, whether at law or in equity. Notwithstanding any other provision of the Declaration or any of the other Community Documents, Declarant shall have no obligation to undertake any such enforcement actions and shall not be deemed a guarantor of enforcement. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. If the enforcement of the Community Documents by the Association or a Lot Owner involves a Claim (as defined in Section 10.1), then the provisions of ARTICLE 10 shall apply, and in the event of any conflict or inconsistency between ARTICLE 10 and this Section, ARTICLE 10 shall prevail.

**11.2 Termination.**

So long as Declarant owns one or more Lots, no termination of the Declaration shall be effective unless approved in writing by Declarant.

**11.3 Amendments.**

So long as Declarant owns one or more Lots or holds an option to purchase any Lot, any amendment to the Declaration must be approved in writing by Declarant. In addition, the provisions of ARTICLE 10 shall not be amended without the prior written consent of Declarant even if Declarant no longer owns any Lot or holds an option to purchase any Lot at the time the amendment is adopted by the Owner.

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

**11.4 Condemnation of Common Area.**

If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners holding at least 80% of the votes in the Association instruct the Board not to build replacement Improvements.

If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners holding more than 80% of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds shall be retained by the Association and used for such purposes as may be determined by the Board.

**11.5 Interpretation.**

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

**11.6 Change of Circumstances.**

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

**11.7 Laws, Ordinances and Regulations.**

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

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**







