

F. ANN RODRIGUEZ, RECORDER  
Recorded By: JSH  
DEPUTY RECORDER  
497



SEQUENCE: 20191720867  
NO. PAGES: 59  
06/21/2019  
14:49:16

W  
CITY OF TUCSON-CITY CLERK  
PICKUP

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS**  
**AND EASEMENTS**

**FOR**

**518-018**

**TRES PUEBLOS ESTE, BLOCK 1, LOTS THROUGH 103, AN FLD**  
**SUBDIVISION, LOTS 104 THOUGH 156, AN R-1 SUBDIVISION, AND**  
**COMMON AREAS A-1 THROUGH A-4 AND B-1 THROUGH B-2**

**TABLE OF CONTENTS**

**ARTICLE 1 - DEFINITIONS** ..... 1

    1.1 “Annual Assessment” ..... 1

    1.2 “Annexable Property” ..... 1

    1.3 “Architectural Committee” (AC)..... 1

    1.4 “Architectural Committee Rules” ..... 1

    1.5 “Areas of Association Responsibility” ..... 2

    1.6 “Articles” ..... 2

    1.7 “Assessment” ..... 2

    1.8 “Assessment Lien” ..... 2

    1.9 “Assessment Period” ..... 2

    1.10 “Association” ..... 2

    1.11 “Association Rules” ..... 2

    1.12 “Board” ..... 2

    1.13 “Bylaws” ..... 3

    1.14 “Common Area” ..... 3

    1.15 “Common Expenses” ..... 3

    1.16 “Declarant(s)” ..... 3

    1.17 “Declaration” ..... 3

    1.18 “Developer(s)” ..... 3

    1.17 ”Eligible Insurer or Guarantor” ..... 4

    1.20 “Eligible Mortgage Holder” ..... 4

    1.21 “First Mortgage” ..... 4

    1.22 “First Mortgagee” ..... 4

    1.23 “Improvement” ..... 4

    1.24 “Lessee” ..... 4

    1.25 “Lot” ..... 4

    1.26 “Maintenance Standard” ..... 4

    1.27 “Member” ..... 4

    1.28 “Owner” ..... 5

    1.29 “Person” ..... 5

    1.30 “Plat” ..... 5

    1.31 “Property” or “Project” ..... 5

    1.32 ”Project Documents” ..... 6

    1.33 ”Purchaser” ..... 6

    1.34 “Recording” ..... 6

    1.35 “Resident” ..... 6

    1.36 “Residential Unit” ..... 6

1.37	“Single Family” .....	6
1.38	“Special Assessment” .....	6
1.39	“Special Builder” .....	6
1.40	“Visible From Neighboring Property” .....	6
 <b>ARTICLE 2 - PLAN OF DEVELOPMENT .....</b>		<b>7</b>
2.1	Property Initially Subject to this Declaration .....	7
2.2	Disclaimer of Representations.....	7
 <b>ARTICLE 3 - USE RESTRICTIONS .....</b>		<b>8</b>
3.1	Architectural Control .....	8
3.2	Temporary Occupancy and Temporary Buildings .....	10
3.3	Nuisances; Construction Activities.....	10
3.4	Diseases and Insects .....	11
3.5	Antennas .....	11
3.6	Mineral Exploration .....	11
3.7	Trash Containers and Collection .....	11
3.8	Clothes Drying Facilities .....	12
3.9	Utility Service .....	12
3.10	Overhead Encroachments .....	12
3.11	Residential Use .....	12
3.12	Animals .....	13
3.13	Machinery and Equipment.....	14
3.14	Signs.....	14
3.15	Restriction on Further Subdivision, Property Restrictions and Rezoning.....	15
3.16	Trucks, Trailers, Campers, and Boats .....	15
3.17	Motor Vehicles .....	15
3.18	Towing of Vehicles.....	16
3.19	Variances.....	16
3.20	Drainage .....	17
3.21	Garages and Driveways .....	17
3.22	Rooftop Air Conditioners Prohibited .....	17
3.23	Basketball Goals and Backboards.....	17
3.24	Reflective Materials .....	17
3.25	Lighting .....	18
 <b>ARTICLE 4 - EASEMENTS.....</b>		<b>18</b>
4.1	Owners' Easements of Enjoyment.....	18

4.2 Utility/Access Easement ..... 19  
 4.3 Declarant(s)'s and Special Builders Use for Sales  
 and Leasing Purposes ..... 19  
 4.4 Declarant(s)'s Easements ..... 19  
 4.5 Easement in Favor of Association ..... 20

ARTICLE 5 - THE ASSOCIATION; ORGANIZATION;  
 MEMBERSHIP ..... 20  
 5.1 Formation of Association ..... 20  
 5.2 Board of Directors and Officers ..... 21  
 5.3 The Association Rules ..... 21  
 5.4 Personal Liability ..... 21  
 5.5 Implied Rights ..... 22  
 5.6 Identity of Members ..... 22  
 5.7 Classes of Members and Voting Rights ..... 22  
 5.8 Voting Procedures ..... 23  
 5.9 Transfer of Membership ..... 23  
 5.10 Member Approval of Association Actions ..... 23  
 5.11 Architectural Committee (AC) ..... 24  
 5.12 Conveyance or Encumbrance of Common Area ..... 25  
 5.13 Suspension of Voting Rights ..... 25

ARTICLE 6 - COVENANT FOR ASSESSMENTS AND  
 CREATION OF LIEN ..... 25  
 6.1 Creation of Lien and Personal Obligation of  
 Assessment ..... 25  
 6.2 Annual Assessments ..... 26  
 6.3 Rate of Assessment ..... 27  
 6.4 Obligation of Declarant(s) for Deficiencies ..... 27  
 6.5 Special Assessments ..... 28  
 6.6 Assessment Period ..... 28  
 6.7 Commencement Date of Assessment Obligation ..... 28  
 6.8 Rules Regarding Billing and Collection Procedures ..... 28  
 6.9 Effect of Nonpayment of Assessments; Remedies of  
 the Association ..... 29  
 6.10 Evidence of Payment of Assessments ..... 31  
 6.11 Purposes for which Association's Funds May Be  
 Used ..... 31  
 6.12 Surplus Funds ..... 31

6.13	Working Capital Funds .....	32
6.14	Transfer Fee .....	32
<b>ARTICLE 7 - MAINTENANCE.....</b>		<b>32</b>
7.1	Areas of Association Responsibility.....	32
7.2	Lots .....	33
7.3	Assessments of Certain Cost of Maintenance and Repair .....	33
7.4	Improper Maintenance and Use of Lots .....	34
7.5	Boundary Walls .....	34
7.6	Maintenance of Walls other than Boundary Walls.....	35
<b>ARTICLE 8 - INSURANCE.....</b>		<b>36</b>
8.1	Scope of Coverage.....	36
8.2	Certificates of Insurance.....	37
8.3	Payment of Premiums .....	37
8.4	Payment of Insurance Proceeds .....	38
8.5	Repair and Replacement of Damaged or Destroyed Property.....	38
<b>ARTICLE 9 - RIGHTS OF THE FIRST MORTGAGEES.....</b>		<b>38</b>
9.1	Notification to First Mortgagees.....	38
9.2	Approval Required to Terminate Project.....	39
9.3	Approval Required for Amendment to Declaration, Articles or Bylaws .....	39
9.4	First Mortgagee's Right of Inspection of Records.....	41
9.5	Limitation on Partition and Subdivision.....	41
9.6	Prior Written Approval of First Mortgagees.....	41
9.7	No Priority over First Mortgagees .....	42
9.8	Failure of First Mortgagees to Respond .....	42
9.9	Conflicting Provisions .....	42
<b>ARTICLE 10 - GENERAL PROVISIONS .....</b>		<b>43</b>
10.1	Enforcement .....	43
10.2	Term; Method of Termination .....	43
10.3	Amendments .....	44
10.4	Interpretation .....	45
10.5	Severability .....	45

10.6 Rule Against Perpetuities ..... 45  
10.7 Change of Circumstances ..... 45  
10.8 Notice of Violation..... 45  
10.9 Laws, Ordinances and Regulations ..... 46  
10.10 References to this Declaration in Deeds ..... 46  
10.11 Gender and Number ..... 47  
10.12 Captions and Titles ..... 47  
10.13 Notices..... 47  
10.14 FHA/VA Approval..... 47  
10.15 No Absolute Liability ..... 47  
10.16References to VA and FHA ..... 48  
10.17Annexations, De-Annexations and Supplementary  
Declarations..... 48  
10.18Attorneys' Fees..... 49

EXHIBIT A ..... 52

EXHIBIT B ..... 53

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS**

518-098

**FOR TRES PUEBLOS ESTE, BLOCK 1, LOTS THROUGH 103, AN  
FLD SUBDIVISION, LOTS 104 THROUGH 156, AN R-1 SUBDIVISION,  
AND COMMON AREAS A-1 THROUGH A-4 AND B-1 THROUGH B-2**

This Declaration of Covenants, Conditions, Restrictions and Easements for Tres Pueblos Este (the "Declaration") is made this 24<sup>th</sup> day of April, 2019, by Title Security Agency, LLC, a Delaware limited liability company (fka Title Security Agency of Arizona, LLC, a Delaware limited liability company), as Trustee under Trust No. 201827-T.

**ARTICLE 1**

**DEFINITIONS**

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

1.1 "**Annual Assessment**" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.2 "**Annexable Property**" means the property described in Exhibit B of this Declaration, if any.

1.3 "**Architectural Committee**" (**AC**) means the committee of the Association to be created pursuant to Section 5.11 of this Declaration.

1.4 "**Architectural Committee Rules**" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.11 of this Declaration, as amended or supplemented from time to time.

**1.5**            **“Areas of Association Responsibility”** means (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association; (iii) all drainage easements benefiting the Property which, by the terms of the granting document, the Association is required to maintain; and (iv) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way, for which the Association has accepted responsibility in writing and with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

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

**1.7**            **“Assessment”** means an Annual Assessment or Special Assessment.

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

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

**1.10**          **“Association”** means the Tres Pueblos Este Homeowners Association, an Arizona nonprofit corporation, and its successors and assigns.

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

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



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

**1.14**            **“Common Area”** means (if any) (i) Tracts of land, designated as Common Areas according to the Plat recorded in Sequence No. 20191720866, records of Pima County, Arizona; and (ii) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest. Notwithstanding the foregoing, property shall not be considered “Common Area” until such time as title to such property has been conveyed to the Association pursuant to an instrument recorded in the office of Pima County, Arizona Recorder.

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

**1.16**            **“Declarant(s)”** means Title Security Agency, LLC, a Delaware limited liability company (fka Title Security Agency of Arizona, LLC, a Delaware limited liability company), as Trustee under Trust No. 201827-T, and any person or entity to whom it may expressly assign any or all of its rights under this Declaration by an instrument recorded with the County Recorder of Pima County, Arizona. Notwithstanding any provision contained in this 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, and (ii) all rights of Declarant hereunder 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 the Declarant may not be signed by the beneficiary instead.

**1.17**            **“Declaration”** means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

**1.18**            **“Developer(s)”** means D.R. Horton, Inc., a Delaware corporation, and their respective successors or assigns together

assigns together with Special Builders and other developers and builders assigned such designation in writing by the Declarant.

**1.19**        **“Eligible Insurer or Guarantor”** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

**1.20**        **“Eligible Mortgage Holder”** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

**1.21**        **“First Mortgage”** means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

**1.22**        **“First Mortgagee”** means a First Mortgage holder or beneficiary.

**1.23**        **“Improvement”** means any building, fence, wall or other structure or any swimming pool, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

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

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

**1.26**        **“Maintenance Standard”** means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

**1.27**        **“Member”** means any Person who is a Member of the Association.

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

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

**1.30**        **“Plat”** means the plat of Tres Pueblos Este, Block 1, Lots 1 through 103, an FLD Subdivision, Lots 104 through 156, an R-1 Subdivision, and Common Areas A-1 through A-4 and B-1 through B-2, recorded in Sequence No. ~~20191720867~~, records of Pima County, Arizona, and all amendments, supplements and corrections thereto.

**1.31**        **“Property” or “Project”** means the real property described on Exhibit A and those properties annexed into the Association from the Annexable Property, except those properties deannexed pursuant to Section 10.17, together with all Improvements located thereon. Annexations and de-annexations shall become effective upon the recordation, (in the office of the Pima County Recorder, Pima County, Arizona) of a Supplementary Declaration per Article 10, Section 10.17 of this Declaration.

**1.32**        **“Project Documents”** means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

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

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

**1.35**        **“Resident”** means each individual occupying any Residential Unit.

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

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

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

**1.39**        **“Special Builder”** shall mean a homebuilder that purchases twenty (20) or more Lots from Declarant(s) (or the beneficiaries of Declarant if Declarant is a Trust) for the purpose of constructing and selling homes on such Lots.

**1.40**        **“Visible From Neighboring Property”** means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property, including without limitation, Lots, Common Area and streets.

## ARTICLE 2

### PLAN OF DEVELOPMENT

**2.1 Property Initially Subject to this Declaration.** This Declaration is being recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant(s) declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant(s), its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

**2.2 Disclaimer of Representations.** Declarant(s) makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the use of any Property subject to this Declaration will not be changed in the future.

## ARTICLE 3

### USE RESTRICTIONS

#### 3.1 Architectural Control.

3.1.1 No excavation or grading work shall be performed on any Lot without prior written approval of the Architectural Committee.

3.1.2 No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without prior written approval of the Architectural Committee. Notwithstanding the foregoing provisions of this Section 3.1.2, plant materials may be installed in the enclosed rear yards of Residential Units provided that they do not overhang the yard walls and are not visible from the street. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his Lot, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with any fee payable pursuant to Section 3.1.5 of this Declaration and all supporting information, plans and specifications requested by the Architectural Committee, the submittal would have been considered denied. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction,

installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.1.3 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner (other than a special Builder) who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee; a Special Builder's obligation to diligently pursue and complete any work shall apply with respect to a Lot or other area once construction is started on such Lot or other area.

3.1.4 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.1.5 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee. The Architectural Committee shall perform one (1) review of up to eight house plans with not more than three elevations each, without charge to a Special Builder.

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

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

3.1.8 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of,



any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.9 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

**3.2 Temporary Occupancy and Temporary Buildings.**

No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Architectural Committee.

**3.3 Nuisances; Construction Activities.**

No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and other property shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by Architectural Committee. In addition, any construction



equipment and building materials stored or kept on any Lot or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. Notwithstanding the foregoing, the Architectural Committee shall not have the authority to require a Special Builder to: (i) store brick, block, lumber and other building materials in a specific location on a Lot, or (ii) screen storage areas. Further, none of the provisions of this Section shall apply to construction activities of the Declarant(s).

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

**3.5 Antennas.** No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee. The Association reserves the right of placement approval and to establish screening requirements regarding the placement of all reception devices protected through the Federal Telecommunications Act of 1996, together with any amendments to the Act.

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

**3.7 Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property. In the

event the municipality does not provide trash service to the members through a municipal contract, the Association Board shall have the authority to identify a single source refuse service provider for the community, with the individual Owners utilizing the service paying for the services directly to the service provider.

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

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

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

**3.11 Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of a business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; (iv) the business activity is consistent with the

residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security of safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board; and (v) the business activity results in no modification to the exterior of the Residential Unit or the Lot. Provided the foregoing requirements are met, having one associate, assistant or secretary work part- or full-time (or from time-to-time) in the Residential Unit shall not by itself prevent an Owner or Resident from conducting a business activity within a Residential Unit. The term "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 which 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: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within this Section.

**3.12 Animals.** No animals, bird, fowl, poultry, reptile or livestock may be on a Lot temporarily or permanently, except for a reasonable number of dogs, cats, common domestic birds such as parakeets, cockatiels and parrots, or similar household pets kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats, or other household pets permitted to be kept on a Lot under this Section shall be confined to an Owner's Lot, except that a dog, cat or other pet capable of being walked on a leash may be permitted to leave an Owner's Lot without being confined if such animal is kept at all times on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. It shall be the responsibility of the Owner or Resident to immediately remove any droppings from pets. No household pet permitted on a Lot under this Section shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any permitted household pet shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole discretion, whether for the purposes of this Section, a particular animal constitutes a household pet pursuant to this Section or whether such animal is a nuisance or making an unreasonable amount of noise. Any decision

rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. The right of the Residents to maintain a reasonable number of house pets pursuant to this Section is expressly subject to the right of the Board to prospectively restrict the number of dogs or other pets which may be maintained or kept on the Lots.

**3.13 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Declarant(s) or the Association may require for the operation and maintenance of the Project.

**3.14 Signs.** No signs whatsoever (including, but not limited to, commercial, political, "for sale," "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

3.14.1 Signs required by legal proceedings.

3.14.2 Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.

3.14.3 One (1) "For Sale" sign provided the size, color, design, message content, location and type has been approved in writing by the Architectural Committee.

3.14.4 Other signs as approved by the ARC.

Notwithstanding any provision contained in the Declaration to the contrary, Declarants and builders designated by a Declarant shall have the right to place signage in the Common Areas subject to ordinances and other laws relating to such signage.

**3.15 Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

**3.16 Trucks, Trailers, Campers, and Boats.** Except as provided in Section 3.17.2, no truck, mobile home, bus, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle (collectively "Vehicles or Equipment") may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee, except for: (i) temporary construction trailers or facilities maintained during and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; or (ii) parking in the driveway of motor vehicles not exceeding seven (7) feet in height and eighteen (18) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind. Notwithstanding the foregoing exceptions, there shall be no parking of Vehicles or Equipment in the front, rear or side yard of any Lot so as to be Visible From Neighboring Property.

**3.17 Motor Vehicles.**

3.17.1 Except for emergency vehicle repairs, no automobile or other Vehicles or Equipment shall be constructed, reconstructed or repaired upon a Lot or other property in the Project, and no inoperable Vehicles or Equipment may be stored or parked on any such Lot or other property so as to be Visible From Neighboring Property.

3.17.2 No automobile or other motor vehicle shall be parked on any road or street in the Project, except for automobiles or motor vehicles of guests of Owners which may be parked on a road or street in the Project for a period of not more than forty-eight (48) hours during any seven day period. Notwithstanding the foregoing provisions of this Section 3.17.2, an Owner or Resident may park operable motor vehicles (not including trailers, campers, recreational vehicles, boats or similar equipment or vehicles) (collectively "Qualified Operable Motor Vehicles") on the street in front of such Owner's or Resident's Residential Unit, if and only if solely Qualified Operable Motor Vehicles are parked in each space in the garage or carport and each space in the driveway of such Residential Unit. For example, if a space in the garage or carport is used for storage, a shop or other purpose other than the parking of Qualified Operable Motor Vehicles, or if a space in the garage, carport or driveway is not used, then such Owner or Resident shall not park any motor vehicles of any kind on any road or street in the Project.

**3.18 Towing of Vehicles.** The Board shall have the right to have any truck, mobile home, bus, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessment.

**3.19 Variations.** The Architectural Committee may, at its option and in extenuating circumstances, grant variations from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under



the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

**3.20 Drainage.** No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction of flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans of file with the county or municipality in which the Project is located.

**3.21 Garages and Driveways.** Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. Such conversion shall not be permitted if the conversion results in a street parking, or lot parking situation.

**3.22 Rooftop Air Conditioners Prohibited.** No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be Visible From Neighboring Property. No window air conditioners or portable air conditioning units of any kind may be installed in any Residential Unit or other building situated on a Lot so as to be Visible From Neighboring Property. Notwithstanding the foregoing provisions of this Section 3.22, the Developer, or with the approval of the Declarant, a Special Builder, may use rooftop heating and/or air conditioning units. Such units may be maintained and/or replaced without violating the provisions of this Section 3.22.

**3.23 Basketball Goals and Backboards.** No basketball goal or backboards shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

**3.24 Reflective Materials.** No reflective materials including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed on the outside or inside of any windows which are Visible from Neighboring Property without the prior approval of the Architectural Committee.

**3.25 Lighting.** Except as initially installed by Declarant(s), no spotlights, floodlights, or other high intensity lighting shall be placed or utilized on any Lot which will allow light to be directed or reflected on any other Lot or any public street.

## **ARTICLE 4**

### **EASEMENTS**

#### **4.1 Owners' Easements of Enjoyment.**

4.1.1 Subject to the rights and easements granted to the Declarant(s) in Section 4.3 and 4.4 of this Declaration, every Member, and any person residing with such Member, 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 the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.12 of this Declaration.

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

(iii) 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 if such Owner is more than thirty (30) days delinquent in the payment of assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within thirty (30) days after the Association Notifies the Owner of the violation.

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



**4.2 Utility/Access Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed by the Declarant(s) or as approved by the Board.

**4.3 Declarant(s)'s and Special Builders Use for Sales and Leasing Purposes.** Declarant(s) and Special Builders shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned by Declarant(s) or Special Builders (as applicable) in such number, of such size and in such locations as Declarant(s) and Special Builders deem appropriate. No provision of this Declaration shall be construed or deemed to limit or prohibit any act of the Declarant(s), Special Builders or any of their employees, agents or subcontractors with respect to the construction, marketing, sale or leasing of Lots, except for the approval of the Architectural Committee which approval shall be uniformly applied to Declarant(s) and Special Builders. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

**4.4 Declarant(s)'s Easements.**

4.4.1 Declarant(s) shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements or Declarant(s) may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant(s) for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

4.4.2 The Declarant(s) shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant(s) by this Declaration.

**4.5 Easement in Favor of Association.** The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

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

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

4.5.3 For correction of emergency conditions in/on Lots;

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

4.5.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guest, tenants, invites and the other occupants of the Lot.

## **ARTICLE 5**

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

**5.1 Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this

Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control. Notwithstanding any provision contained in this Declaration or the Project Documents to the contrary, the provisions of the immediately preceding sentence may not be amended without the written approval of the Declarant(s), whether or not Declarant(s) then owns any Lots within the Project.

**5.2 Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by the Resident of the Owner's Lot. Notwithstanding any provisions contained in this Declaration or the Project Documents to the contrary, the Board shall be appointed by Declarant so long as the Declarant(s) (or 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) own any Lot within the Project.

**5.3 The Association Rules.** The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association of Association Responsibility; (ii) minimum standards for any maintenance of Lots; (iii) the Use Restrictions contained in Article 3; or (iv) the health, safety or welfare of the Owners and Residents. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

**5.4 Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee,

committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

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

**5.7 Classes of Members and Voting Rights.** The Association shall have the following two classes of voting membership:

(i) **Class A.** Class A members are all Owners, with the exception of the Declarant(s) until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant(s) shall be a Class A member so long as the Declarant(s) (or 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 any Lot.

(ii) **Class B.** The Class B member shall be the Declarant(s). The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (i) the date on which the votes entitled to be cast by the Class A members equals or exceeds the votes entitled to be cast by the Class B member; (ii) the date which is ten (10) years after the recording of this Declaration; or (iii) when the Declarant(s) notifies the Association in writing that it relinquishes its Class B membership.

**5.8 Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all the votes shall be deemed void.

**5.9 Transfer of Membership.** The rights and obligations of any Member other than the Declarant(s) shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

**5.10 Member Approval of Association Actions.** Notwithstanding anything contained herein to the contrary and in addition to any requirements prescribed by law, the Association may not file any action against Declarant(s), Developer(s) or any affiliate of Declarant(s) or Developer(s) arising out of, or related to, the design, construction, condition or sale of any part of the Property or any improvements thereon, or in any manner relating to, or arising from, the Property, until the following have occurred:

(i) In advance of the meeting described in Subsection 5.10(ii) below, the Board has provided full disclosure in writing to all of the Members of all material information relating to the action. The material information shall include, without limitation, a statement that describes the manner in which the action will be funded and a statement describing any demands, notices, offers to settle or responses to offers to

settle made either by the Association or the Declarant(s), Developer(s), or their affiliates, if any.

(ii) The Association has held a duly called meeting of its Members and the Board, at which a majority of all Class A Members (not merely a majority of those Class A Members voting in person or in proxy), voting in person or by proxy, authorize the filing of the action.

(iii) The Board has authorized the filing if the action, as applicable.

**5.11 Architectural Committee (AC).** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as Declarant(s) (or 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) own any Lot, the Declarant(s) shall have the sole right to appoint and remove the members of the Architectural Committee. The Declarant(s) may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant(s) may require, for so long as the Declarant(s) (or 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 any Lot, that specified actions of the Architectural Committee, as described in a recorded instrument executed by the Declarant(s), be approved by the Declarant(s) before they become effective. The Architectural Committee may promulgate architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding; (i) the size of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and



appearance. The decision of committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee as set forth in Section 3.1.5.

**5.12 Conveyance or Encumbrance of Common Area.**

The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B member of the Association and the affirmative vote or written consent of the Owner representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Association. Notwithstanding the foregoing, Declarant(s) may convey, in fee or as an easement, portions of the Common Area to allow the Owner of a particular Lot or Lots to have the exclusive use of such portions of the Common Area provided that such conveyance(s) are to resolve encroachments caused by the original construction of a residence or patio or perimeter wall, or such conveyance(s) are approved by the governmental entity having jurisdiction. Notwithstanding any provision contained in this Declaration or in a deed or other instrument conveying Common Area, if any Owner's primary ingress or egress to his residence is through the Common Area, any conveyance of Common Area shall be subject to such Owner's right of ingress and egress and an easement therefor is hereby created for the benefit of such Owner, his guests and invitees.

**5.13 Suspension of Voting Rights.**

If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within thirty (30) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within thirty (30) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorney's fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

**ARTICLE 6**

**COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

**6.1 Creation of Lien and Personal Obligation of Assessment.** The Declarant(s), for each Lot owned by it, hereby covenants

and agrees, and each Owner, other than the Declarant(s), by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

## **6.2 Annual Assessments.**

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess against each Lot an Annual Assessment.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.



6.2.3 The Board may, without a vote of the Members, increase the Annual Assessment during each fiscal year of the Association by up to 20% (or such other maximum percentage required by law) of the maximum Annual Assessment for the immediately preceding fiscal year. The maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

**6.3 Rate of Assessment.** The amount of the Annual Assessment for each Lot shall be the amount obtained by dividing the total budget of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots subject to the Assessment at the time the Annual Assessment is levied. Except for Lots owned by Declarant(s) or Developer(s), the Owner of each Lot shall bear an equal share of each Annual or Special Assessment. Notwithstanding any other provision in this Declaration to the contrary, Lots that are not yet "Finished Lots" shall not be subject to Annual Assessments, Special Assessments, or any other Assessments. "Finished Lots" shall mean Lots containing building pads with streets and utilities to the Lot property line and with the Subdivision Assurance Agreement released so that a Unit may be constructed on the Lot and sold to a homebuyer.

**6.4 Obligation of Declarant(s) for Deficiencies.** So long as there is a Class B membership in the Association, Declarant(s) (and the beneficiaries of Declarant if Declarant is a Trust, an entity owned or controlled by the beneficiary, an entity which the beneficiary owns or controls and an entity under common control with the beneficiary) shall pay no assessments of any type, but shall contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary (the "Deficiency"), when added to the Annual Assessments levied by the Association, to pay all Common Expenses of the Association as they become due. Notwithstanding the foregoing, in no event shall Declarant (and the beneficiaries of Declarant if Declarant is a trust) be obligated to pay an amount greater than (i) the Annual Assessments and Special Assessments assessed against a Lot owned by a person other than the Declarant with a Residential Unit constructed thereon, multiplied

by (ii) the number of Lots owned by Declarant. Upon the termination of the Class B membership period, the Declarant(s) (or 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) shall pay assessments at the rate of 25% of the Annual Assessments for Lots owned by other than the Declarant(s). Notwithstanding the foregoing, if there is more than one Declarant, then each Declarant's obligation shall be to pay that portion of the Deficiency equal to the number of Finished Lots owned by such Declarant divided the total number of Finished Lots owned by all Declarants.

**6.5 Special Assessments.** The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

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

**6.7 Commencement Date of Assessment Obligation.** All Lots shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

**6.8 Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this

Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lot shall be given credit for prepayments, on a prorated basis, made by prior Owners.

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

6.9.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest specified from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due.

6.9.2 The Association shall have a lien on each Lot for: (i) all charges assessed against the Lot or payable by the Owner of the Lot; (ii) all fines levied against the Owner of the Lot; (iii) all attorney fees, court cost, title report fees, cost and fees charged by any collection agency either to the Association or to an Owner and any other fees or cost incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; and (iv) any amounts payable to the Association pursuant to Section 7.3 or 7.4 of this Declaration. 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 of claimed to be past due as of the date of the recording of the Notice, including interest, lien recording fees and reasonable attorney's fees. Before recording any Notice of Lien against the 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 attorney's fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but at any time after ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot.

6.9.3 The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other government body; and (iii) the lien of any first mortgage or first deed of trust. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgage or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner or the Lot.

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

6.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorney's fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

**6.10 Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with the respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

**6.11 Purposes for which Association's Funds May Be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services projects programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interest of the Project, the Owner and the Residents. The following are some, but not all of the areas in which the Association may seek to aid, promote and provide for such common benefit: Social interaction among Members and Residents, maintenance of landscaping on Common Areas and public right-of-way and drainage areas within the Project, recreation, liability insurance, communications ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds under the laws of the State of Arizona or such municipality's charter.

**6.12 Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual

Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purpose.

**6.13 Working Capital Funds.** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant(s) or Developer(s) (except a Developer-purchaser or Special Builder-purchaser) shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-half (1/2) of the Annual Assessment for the Lot as of the Closing, which Annual Assessment shall be based upon the Lot being owned by the Purchaser and not by the Declarant(s). Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose under the Project Documents; except that such funds may not be used by the Association so long as the Declarant or Developer controls the Board, directly or indirectly. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**6.14 Transfer Fee.** Each Purchaser of a Lot (except a Developer-purchaser or Special Builder purchaser) shall pay to the Association, or party designated by the Association, immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board, which amount shall initially be One Hundred Dollars (\$100.00) per Lot.

## **ARTICLE 7**

### **MAINTENANCE**

#### **7.1 Areas of Association Responsibility.**

7.1.1 General. The Association, or its duly delegated representative, shall manage, maintain, repair and replace, and shall also maintain liability and/or other insurance pursuant to Section 8.1.1 hereof (or pursuant to the requirements of any easement document benefiting the Property) to satisfy the requirements of such easement document and to



insure against Association liability with respect to, the following: all Common Areas (including without limitation all drainage basins, all channels and all other drainage improvements in the Common Areas), open space, private streets (if any) and other Areas of Association Responsibility including the Areas of the Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance repair and replacement of all Areas of Association Responsibility. The Association shall pay all *ad valorem* taxes on the Common Area prior to delinquency. Notwithstanding the foregoing, the Association may take reasonable steps to appeal or protest any Common Area tax assessments.

**7.1.2 Detention/Retention Basin Maintenance Guideline and Checklist.** The detention and retention basins shall be maintained by the Association in accordance with the requirements of the City of Tucson, Arizona.

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

**7.3 Assessments of Certain Cost of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guest or invites, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon

demand and payment of such amounts shall be secured by the Assessment Lien.

**7.4 Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost.

If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

**7.5 Boundary Walls.**

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

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

7.5.3 In the event that any boundary wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners;



7.5.4 In the event any such boundary wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants licensees, guest or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

7.5.5 Notwithstanding any other provision of the Section, an Owner who, by his negligent or willful act, causes any boundary wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

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

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

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

**7.6 Maintenance of Walls other than Boundary Walls.**

7.6.1 Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

7.6.2 Any wall which is placed on the boundary line between a Lot and the Common Area (if any) shall be maintained and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area. In the event any such wall encroaches upon the Common Area of a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

7.6.3 Any wall which is placed on the boundary line between a Lot and public right-of-way shall be maintained, repaired and replaced by the association except that the Owner of the Lot shall be responsible for the repair and replacement of the surface of the wall which faces the Lot.

## **ARTICLE 8**

### **INSURANCE**

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

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00. 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 which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

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

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws Arizona;

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

8.1.5 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 pro-ration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owner; (v) insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.1.6 Any other insurance required pursuant to any easement document benefiting the Property.

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

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

**8.4 Payment of Insurance Proceeds.** With respect to any loss to any Area of Common 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 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**8.5 Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Areas of Association Responsibility which is damaged shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. 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 which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the vote in the Association.

## ARTICLE 9

### RIGHTS OF THE FIRST MORTGAGEES

**9.1 Notification to First Mortgagees.** Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a first Mortgage informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

9.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;

9.1.2 Any delinquency in the payment of Assessments or charges owned by an owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by the Owner of any obligation under the Project Documents, which delinquency remains uncured for the period of sixty (60) days;

9.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

9.1.4 Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 9.2 or 9.3 of this Declaration.

**9.2 Approval Required to Terminate Project.** Any termination of the legal status of the project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

**9.3 Approval Required for Amendment to Declaration, Articles or Bylaws.**

9.3.1 The approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least Fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of this Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (i) Voting rights;

- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (vii) Boundaries of any Lot;
- (viii) Reallocation of interests in the Common Areas or the right to their use;
- (ix) Convertibility of Lots into Common Areas or of Common Areas into Lots;
- (x) Leasing of Lots;
- (xi) Imposition of any restrictions on an Owner's right to sell or transfer his Lot;
- (xii) A decision by the Association to establish self management when professional management had been required previously be an Eligible Mortgage Holder;
- (xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;

- (xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;

**9.4 First Mortgagee's Right of Inspection of Records.**

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

**9.5 Limitation on Partition and Subdivision.** No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

**9.6 Prior Written Approval of First Mortgagees.** Unless at least two-thirds of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, Developer(s) or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to;

9.6.1 Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meeting of this Subsection;

9.6.2 Change the method of determining the obligations, enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the Maintenance of the Common Area;

9.6.3 Change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the Maintenance Standard of the Common Area;



9.6.4 Fail to maintain fire and extended coverage on insurance common area on current replacement cost basis in an amount of at least 100 percent of insurable value;

9.6.5 Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

**9.7 No Priority over First Mortgagees.** No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

**9.8 Failure of First Mortgagees to Respond.** Any First Mortgagees who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

**9.9 Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Project Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of the Article and any other provisions of the Project Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of this Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Section 9.2, 9.3 and 9.6 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that so long as there is a Class B membership in the Association the Declarant(s) without the consent of any Owner or First Mortgagee being required shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association the

Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant(s).

## ARTICLE 10

### GENERAL PROVISIONS

**10.1 Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for by law or in equity. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future.

**10.2 Term; Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the Country Recorder of Pima County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. So long as the Declarant(s) (or 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 any Lot, no termination of this Declaration shall be effective unless the Certificate of Termination is signed by the Declarant(s). Notwithstanding any provision contained in this Declaration to the contrary, Declarant may unilaterally (without a vote of the Owners) terminate the Declaration for the purpose of imposing a new

Declaration on the Property or for the purpose of annexing the Property into another Declaration.

**10.3 Amendments.**

10.3.1 Except for amendments made pursuant to Subsection 10.3.2 and 10.3.3 of this Declaration, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of the holders of not less than seventy-five percent (75%) of the votes of Members entitled to cast votes, and without regard to uniform effect.

10.3.2 The Board may amend this Declaration or the Plat without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant(s) or the Board.

10.3.3 So long as the Declarant(s) (or 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 any Lot, (i) any amendment to this Declaration must be approved in writing by the Declarant(s) and (ii) Declarant may unilaterally amend this Declaration (including, without limitation, a complete restatement of this Declaration) without the need for a vote of the Members or Owners.

10.3.4 Any amendment approved pursuant to Subsection 10.3.1 of this Declaration or by the Board pursuant to Subsection 10.3.2 of this Declaration or by the Declarant pursuant to Section 10.3.3 shall be recorded with the County Recorder of Pima County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Unless a later effective date is provided for in the amendment, any such amendment shall be effective upon the Recording of the amendment.

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

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

**10.6 Rule Against Perpetuities.** If any interest, privilege, covenant or right created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such interest, privilege, covenant or right shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is Recorded.

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

**10.8 Notice of Violation.** The Association shall have the right to record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer of the association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a

statement of the specific steps which 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 or Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

## **10.9 Laws, Ordinances and Regulations.**

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

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

**10.10 References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person

claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

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

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

**10.14 FHA/VA Approval.** Provided the Declaration was approved by the Veterans Administration ("VA") or the Federal Housing Administration ("FHA") initially and so long as there is a Class B Membership in the Association, the following actions shall require the prior written approval of the FHA or the VA, but only if the applicable laws or rules or regulations of the FHA or VA require such approval: Annexation of additional properties, dedication, mortgaging or conveyance of Common Areas, and amendment to this Declaration.

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



**10.16 References to VA and FHA.** In various places throughout the project Documents, references are made to the VA and the FHA and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Project Documents to meet certain requirements of such agencies should Declarant(s) request approval of the Project by either or both of those agencies. However, Declarant(s) shall have no obligation to request approval of the Project by either or both of such agencies. Unless and until the VA or the FHA have approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Lot to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force and effect. Further, notwithstanding the express provisions of this Declaration, no consent or approval of FHA or VA is required if the applicable laws or rules or regulations of FHA or VA do not require such consent or approval.

**10.17 Annexations, De-Annexations and Supplementary Declarations.** The annexations and de-annexations described under Section 1.31 and the creation of any Sub-Associations shall be made by Recording a Supplementary Declaration of Covenants, Conditions, Restrictions and Easements. If portions of Annexable Property are annexed, they shall thereupon become fully a part of the Property subject to all provisions of this Declaration (including, but not limited to, provisions hereof regarding Assessments). A Supplementary Declaration may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof), or of a Sub-Association. In no event, however, shall any such Supplementary Declaration revoke or conflict with this Declaration or any Recorded Tract Declaration except to the extent specifically permitted hereby. All Supplementary Declarations, and all amendments to same must be executed by the Declarant so long as the Declarant (or 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 any Lot or otherwise by the Association. Any amendment

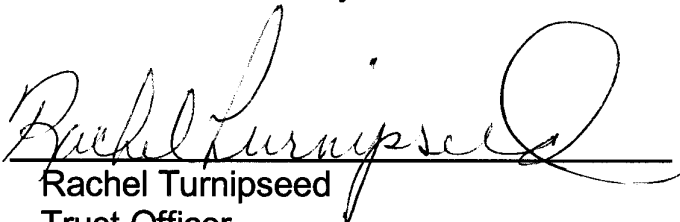


to a Supplementary Declaration not containing a signature by the Declarant or the Association, as applicable, shall be null and void. All annexations and Sub-Association declarations shall not become effective until recorded in the office of the Pima County Recorder, Pima County, Arizona. The Declarant shall have the right to Annex or De-Annex any property in Exhibit A or Exhibit B or other properties at their sole and absolute discretion so long as the Declarant (or 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 any Lot. At such time as the Declarant (or 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) no longer owns any Lot, Annexations and De-Annexations will require the affirmative vote of 67% of the Members of the Association.

**10.18 Attorneys' Fees.** In the event the Declarant or the Association employs an attorney to enforce any lien or to collect any moneys that are due pursuant to the Governing Documents, or to enforce compliance with or specific performance of the Governing Documents, or otherwise seeks to enforce these restrictions, the Declarant or Association, as the case may be, will be reimbursed by the Owner whose actions have necessitated the enforcement proceeding, for all costs including attorney fees, expended in such enforcement efforts, regardless of whether or not a civil action is actually commenced. These costs will be assessed against the Owner as an Individual Assessment and each Owner's Lot will be subject to an Assessment lien for all sums incurred. Nothing herein will be deemed to indicate that damages at law constitute an adequate remedy for any violation of the Governing Documents. The violation of the Governing Documents will not affect the lien of any recorded mortgage or deed of trust. All expenses incurred by the Association in defending any action or claim brought by any Owner against the Association including any claim that is filed with the Department of Building and Fire Safety under A.R.S. §41-2198, including, but not limited to attorney fees and all costs and expenses of enforcement, (whether taxable costs or not) must be paid to the Association by the Owner involved in such action or claim, if the Association is the substantially prevailing party and will become an individual Assessment against the Owner and the Owner's Lot.

**10.19 Attorney's Fees.** In the event the Declarant or the Association employs an attorney to enforce any lien or to collect any moneys that are due pursuant to this Declaration (as amended) or the Articles of Organization, Bylaws, Architectural Guidelines, Association Rules or other rules, regulations or the like of the Association (collectively the "Governing Documents"), or to enforce compliance with or specific performance of the Governing Documents, or otherwise seeks to enforce these instructions, the Declarant or Association, as the case may be, will be reimbursed by the Owner whose actions have necessitated the enforcement proceeding, for all costs including attorney fees, expended in such enforcement efforts, regardless of whether or not a civil action is actually commenced. These costs will be assessed against the Owner as an Individual Assessment and each Owner's Lot will be subject to an Assessment lien for all sums incurred. Nothing herein will be deemed to indicate that damages at law constitute an adequate remedy for any violation of the Governing Documents. The violation of the Governing Documents will not affect the lien of any recorded mortgage or deed of trust. All expenses incurred by the Association in defending any action or claim brought by an Owner against the Association including any claim that is filed with the Department of Building and Fire Safety under A.R.S. §41-2198, including, but not limited to attorney fees and all costs and expenses of enforcement (whether taxable costs or not), must be paid to the Association by the Owner involved in such action or claim, if the Association is the substantially prevailing party and will become an Individual Assessment against the Owner and the Owner's Lot.

Title Security Agency, LLC, a Delaware limited liability company as Trustee under Trust No. 201827-T, as Trustee only and not otherwise

By:   
Rachel Turnipseed  
Its: Trust Officer



**EXHIBIT A**

**DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION**

Tres Pueblos Este, Block 1, Lots 1 through 103, an FLD Subdivision, Lots 104 through 156, an R-1 Subdivision, and Common Areas A-1 through A-4 and B-1 through B-2, according to the plat of record in the office of the County Recorder of Pima County, Arizona, in Sequence No. 20191720866.

## **EXHIBIT B**

### **DESCRIPTION OF ANNEXABLE PROPERTY**

Any lands and improvements owned, wholly or partially, directly or indirectly by Declarant, Forestar (USA) Real Estate Group Inc., adjacent to or within one-half (1/2) mile of the Property.