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AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CIVANO I: NEIGHBORHOOD I

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TABLE OF CONTENTS

1	ARTICLE 1: DEFINITIONS	2
	1.1 "Additional Covenants"	2
	1.2 "Additional Property"	2
	1.3 "Agencies"	2
	1.4 "Annual Assessment"	2
	1.5 "Apartment Parcel"	2
	1.6 "Apartment Unit"	2
	1.7 "Articles"	2
	1.8 "Assessment Lien"	3
	1.9 "Assessment Period"	3
	1.10 "Assessments"	3
	1.11 "Association"	3
	1.12 "Association Rules"	3
	1.13 "Board"	3
	1.14 "Bylaws"	3
	1.15 "Common Areas"	3
	1.16 "Condominium Parcel"	3
	1.17 "Condominium Unit"	3
	1.18 "Covered Property"	3
	1.19 "Declarant"	4
	1.20 "Declaration"	4
	1.21 "Declaration of Annexation"	4
	1.22 "Design Guidelines"	4
	1.23 "Developer Owner"	4
	1.24 " Dwelling Unit"	4
	1.25 "Exempt Property"	4
	1.26 "FHA"	4
	1.27 "Foreclosure"	4
	1.28 "Governing Documents"	4
	1.29 "Government Property"	5
	1.30 "Land Use Classification"	5
	1.31 "Lot"	5
	1.32 "Maintenance Assessments"	5
	1.33 "Master Association"	5
	1.34 "Master Development Plan"	5
	1.35 "Master Declaration"	5
	1.36 "Member"	5
	1.37 "Mixed Use"	6
	1.38 "Mortgage"	6
	1.39 "Net Acre"	6
	1.40 "Non-Developer Owner"	6
	1.41 "Non-Residential Parcel"	6

000002

1.42	"Occupant"	6
1.43	"Owner"	6
1.44	"Parcel"	6
1.45	"Person"	7
1.46	"Residential Apartment Development"	7
1.47	"Residential Condominium Development"	7
1.48	"Review Committee"	7
1.49	"Rules"	7
1.50	"Single Family"	7
1.51	"Single Family Parcel"	7
1.52	"Special Assessments"	7
1.53	"Special Use Fees"	7
1.54	"Subsidiary Association"	7
1.55	"Tenant"	7
1.56	"Tract Declaration"	8
1.57	"VA"	8
1.58	"Visible from Neighboring Property"	8
2	ARTICLE 2: PROPERTY AND PERSONS BOUND BY THIS DECLARATION	8
2.1	<u>General Declaration</u>	8
2.2	<u>Owners and Occupants Bound</u>	9
2.3	<u>Association Bound</u>	9
3	ARTICLE 3: EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS	9
3.1	<u>Easements and Rights of Enjoyment</u>	9
3.3	<u>Delegation of Use</u>	10
3.4	<u>Waiver of Liability for Assessments</u>	10
3.5	<u>Temporary Sign Easement</u>	11
3.6	<u>Easements for Encroachments</u>	11
3.7	<u>Facilities Easement</u>	11
3.8	<u>Reserved Rights of Conveyance and Resubdivision</u>	11
4	ARTICLE 4: ARCHITECTURAL AND LANDSCAPING RESTRICTIONS AND CONTROL	12
4.1	<u>Approval Required</u>	12
4.2	<u>Landscaping Restrictions</u>	12
4.3	<u>Power and Duties</u>	12
4.4	<u>Organization of the Review Committee</u>	13
4.5	<u>Meetings and Compensation of the Review Committee</u>	13
4.6	<u>Design Guidelines</u>	14
4.7	<u>Obligation to Obtain Approval</u>	15
4.8	<u>Review of Plans by Other Owners</u>	15
4.9	<u>Declarant's Jurisdiction over Non-Residential Parcels</u>	15

2025 RELEASE UNDER E.O. 14176

4.10	<u>Waiver</u>	16
4.11	<u>Liability</u>	16
4.12	<u>Appeal</u>	17
4.13	<u>Fee</u>	17
4.14	<u>Inspection</u>	17
5	ARTICLE 5: LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS	18
5.1	<u>Land Use</u>	18
5.2	<u>Covenants, Conditions, Restrictions and Easements Applicable to All Land Use Classifications</u>	20
5.3	<u>Covenants, Conditions, Restrictions and Easements Applicable to Lots and Parcels with Single Family Residential, Residential Apartment Development, Residential Condominium Development or Mixed Use Land Use Classifications</u>	28
5.4	<u>Covenants, Conditions, Restrictions and Easements Applicable to Mixed Use, Commercial/Retail Use and Industrial Use</u>	34
5.5	<u>Variances</u>	37
6	ARTICLE 6: ORGANIZATION OF ASSOCIATION	37
6.1	<u>Formation of Association</u>	37
6.2	<u>Board of Directors and Officers</u>	37
6.3	<u>Association Rules</u>	38
6.4	<u>Personal Liability</u>	39
6.5	<u>Mergers or Consolidations</u>	39
7	ARTICLE 7: MEMBERSHIPS AND VOTING	39
7.1	<u>Votes of Owners of Lots and Parcels</u>	39
7.2	<u>Membership is Appurtenant to Ownership</u>	40
7.3	<u>Declarant</u>	40
7.4	<u>Voting Classes</u>	41
7.5	<u>Right to Vote</u>	41
7.6	<u>Members' Rights</u>	42
7.7	<u>Transfer of Membership</u>	42
8	ARTICLE 8: ASSESSMENTS AND LIEN RIGHTS	42
8.1	<u>Covenants to Pay</u>	42
8.2	<u>Annual Assessments</u>	43
8.3	<u>Rate of Assessment</u>	44
8.4	<u>Special Assessments</u>	48
8.5	<u>Maintenance Assessments</u>	48
8.6	<u>Reimbursement Assessments</u>	48
8.7	<u>Annual Assessment Period</u>	48
8.8	<u>Additional Charges</u>	48
8.9	<u>Statement of Payment</u>	49

8.10	<u>Fines and Penalties</u>	50
8.11	<u>Exempt Property</u>	50
9	ARTICLE 9: ENFORCEMENT AND THE ASSESSMENT LIEN	50
9.1	<u>Association Remedies to Enforce Assessments</u>	50
9.2	<u>Sale of Transfer of any Lot or Parcel</u>	51
9.3	<u>Billing and Collection Procedures</u>	51
10	ARTICLE 10: MAINTENANCE	52
10.1	<u>Common Areas and Public Rights-Of-Way</u>	52
	10.1.1 <u>Areas of Association Responsibility</u>	52
	10.1.2 <u>MID Funding</u>	53
	10.1.3 <u>Delegation of Responsibilities</u>	53
10.2	<u>Excess Maintenance Costs</u>	53
11	ARTICLE 11: RIGHTS AND POWERS OF THE ASSOCIATION	53
11.1	<u>Rights, Powers and Duties of the Association</u>	53
11.2	<u>Rules and Regulations</u>	53
11.3	<u>Association's Rights of Enforcement</u>	54
11.4	<u>Contracts with Others</u>	54
11.5	<u>Procedure for Change of Use of Common Areas</u>	54
12	ARTICLE 12: MORTGAGEE'S PROTECTION PROVISIONS	54
12.1	<u>Definition</u>	54
12.2	<u>No Personal Liability</u>	54
12.3	<u>Trustee's Sale and Foreclosure</u>	55
12.4	<u>Obligation to Pay Assessments</u>	55
12.5	<u>Title Acquired Through Foreclosure or Default</u>	55
12.6	<u>Right to Pay Charges in Default</u>	55
12.7	<u>Precedence of First Mortgage</u>	55
12.8	<u>Notice</u>	56
13	ARTICLE 13: TERM; AMENDMENTS; TERMINATION	56
13.1	<u>Term; Method of Termination</u>	56
13.2	<u>Amendments</u>	57
13.3	<u>Right to Amend if Requested by Governmental Agency or Federally Chartered Lending Institution</u>	57
14	ARTICLE 14: ANNEXATION OF ADDITIONAL PROPERTY	58
14.1	<u>Annexation of Additional Property</u>	58
14.2	<u>Declaration of Annexation</u>	58
14.3	<u>Withdrawal of Property</u>	59
15	ARTICLE 15: EMINENT DOMAIN AND INSURANCE ON THE COMMON AREAS	59

**AMENDED AND RESTATED DECLARATION OF
COVENANTS CONDITIONS AND RESTRICTIONS
FOR CIVANO I: NEIGHBORHOOD I**

THIS AMENDED AND RESTATED DECLARATION is made this 4th day of January, ~~1999~~ 2000, by First American Title Insurance Co., a California Corporation as Trustee under Trust No. 4717 and not otherwise ("Declarant"), and by Civano I Neighborhood Association I, Inc., an Arizona nonprofit corporation.

RECITALS

Declarant is the owner of portions of the following described real property:

1. Lots 1 through 165, Common Areas A, B, and C of Civano I (the "Initial Tract Plat"), a subdivision of Pima County, recorded Book 50 of Maps and Plats at Page 56 Pima County Records, being a resubdivision of a portion of Block 82 of Civano: Master Block Plat, Blocks 79 through 82, a subdivision of Pima County recorded in Book 50 of Maps and Plats at Page 36 records of the Pima County Recorder (hereinafter, the "Block Plat");
2. Lots 1 through 29 and Common Area A of Civano Villas (the "Second Tract Plat"), a subdivision of Pima County, recorded in Book 51 of Maps and Plats at Page 96, Pima County Records, being a resubdivision of Lots 163 and 164 of the Initial Plat;
3. Civano I, Lots 166 through 527, and Common Areas A, B, and C; recorded Book 52 of Maps and Plats, at Page 84 thereof, Pima County Records (the "Third Tract Plat"), being a resubdivision of a portion of Block 82 of the Block Plat.

The Initial Tract Plat, Second Tract Plat and Third Tract Plat, as they may be amended from time to time, are collectively referred to herein as the "Plat" and the properties subject to the Plat shall be referred to herein as the "Covered Property." This Declaration shall apply to the Covered Property, as defined, and to such property later made a part of the Covered Property by reference thereto in a Tract Declaration later recorded, or, in the case of Additional Property, by recordation of the Declaration of Annexation or Tract Declaration with respect thereto.

This instrument shall amend and restate in its entirety, that certain Declaration of Covenants, Conditions and Restrictions for CIVANO I: NEIGHBORHOOD I, recorded in Docket 10676 at Page 224, Pima County Records, as amended by that certain Amendment to the Declaration of Covenants, Conditions and Restrictions for CIVANO I: NEIGHBORHOOD I recorded in Docket 10752 at Page 2075, Pima County Records, and that certain Supplemental Declaration Civano I: Neighborhood I, recorded in Docket 10976 at Page 837, Pima County Records.

Declarant desires to develop this real property as a mixed use community which will include a neighborhood center, a variety of residential living environments, recreational and cultural facilities and open space.

Declarant declares that the Covered Property shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, conditions and restrictions shall run with the Covered Property and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each such party.

1 ARTICLE 1: DEFINITIONS

- 1.1 "Additional Covenants" refers to the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens, or easements in addition to those provided for in this Declaration that are provided for in any Tract Declaration, Declaration of Annexation or any recorded contract, deed, declaration, or other instrument that may be permitted under this Declaration.
- 1.2 "Additional Property" refers to any real property from within the exterior boundaries of the Block Plat which may be annexed hereunder, and any other nearby or adjacent land the Declarant may elect to allow to be annexed hereunder and made a part of the Covered Property by recordation of a Declaration of Annexation with respect thereto.
- 1.3 "Agencies" or "Governmental Agencies" mean Federal Housing Administration ("FHA"), Veterans Administration ("VA"), Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation and any other governmental agencies or financial institutions.
- 1.4 "Annual Assessment" refers to the annual assessments which are levied by the Board pursuant to Section 8.3 of this Declaration.
- 1.5 "Apartment Parcel" refers to a Parcel designated in a Tract Declaration for use as a Residential Apartment Development.
- 1.6 "Apartment Unit" refers to any part or portion of a multifamily residential building other than a condominium intended for use and occupancy as a residence by a Single Family.
- 1.7 "Articles" refer to the Articles of Incorporation of the Association which have been or will be filed in the Office of the Arizona Corporation Commission and which may be amended from time to time.

- 1.8 "Assessment Lien" refers to the lien in favor of the Association and against an Owner's Lot or Parcel for the payment of Assessments levied against that Lot or Parcel, Special Use Fees, Additional Charges, and any other fees and charges levied pursuant to this Declaration.
- 1.9 "Assessment Period" refers to each period for which Assessments are levied against a Lot or Parcel pursuant to this Declaration, as set forth in Section 8.7 of this Declaration.
- 1.10 "Assessments" refer to the Annual Assessments, Special Assessments, Maintenance Assessments and Reimbursement Assessments.
- 1.11 "Association" refers to the CIVANO I: NEIGHBORHOOD I ASSOCIATION, INC., an Arizona non-profit corporation, its successors and assigns.
- 1.12 "Association Rules" or "Rules" refers to those guidelines, standards, rules and regulations as promulgated and amended by the Board from time to time, pursuant to this Declaration.
- 1.13 "Board" refers to the Board of Directors of the Association.
- 1.14 "Bylaws" refer to the Bylaws of the Association, as may be amended from time to time by the Members of the Association.
- 1.15 "Common Areas" refers to all of the real and personal property from time to time owned by the Association for the common use and enjoyment of the Members of the Association, including, but not limited to, all recreational facilities, swimming pools, jogging paths, common parking areas bicycle paths, walkways, equestrian trails, private streets, and pedestrian and vehicular ingress and egress.
- 1.16 "Condominium Parcel" refers to a Parcel designated in a Tract Declaration for use as a Residential Condominium Development.
- 1.17 "Condominium Unit" refers to a "unit" in a Residential Condominium Development, together with any appurtenant interest in all "common elements," as such terms are defined in the Arizona Revised Statutes, Section 33-1200 et. seq, as amended from time to time, but shall also include any residential component of a commercial condominium, such as a downstairs business and upstairs living quarters.
- 1.18 "Covered Property" refers to the property described above, plus additional property, if any, made a part of the Covered Property by recordation of a Tract Declaration with respect thereto, as well as property annexed to the project from the Additional Property.

- 1.19 "Declarant" refers to First American Title Insurance Co., a California corporation as Trustee under Trust No. 4717 and not otherwise, the beneficiary of which is The Community of Civano, L.L.C., its successors and assigns.
- 1.20 "Declaration" refers to this Declaration as may be amended from time to time.
- 1.21 "Declaration of Annexation" refers to any declaration approved by Declarant and providing for the annexation of Additional Property within the purview of this Declaration, the use of which land shall be governed by a Tract Declaration. A Declaration of Annexation may take the form of a Tract Declaration.
- 1.22 "Design Guidelines" refers to those rules and regulations adopted, amended and supplemented by the Review Committee pursuant to Section 4.6 of this Declaration.
- 1.23 "Developer Owner" refers to a Person, other than the Declarant, in the business of developing, leasing and/or selling real property and who has acquired one or more Lots or Parcels with the intent of leasing, selling or developing such Lots or Parcels, including a Person who acquires a Non-Residential Parcel for that Person's own development and use. In either case, however, Declarant must have agreed in writing that such Person may enjoy the status of a Developer Owner.
- 1.24 "Dwelling Unit" refers to the real property and improvements placed within the boundary of any Lot, including garages, and which is intended for the use and occupancy as a residence by a Single Family and, unless the context otherwise clearly indicates, includes a mixed use dwelling.
- 1.25 "Exempt Property" refers to portions of the Covered Property which are not subject to Assessments, including:
- a. All Government Property; and
 - b. All Common Areas for so long as either the Declarant or the Association is the owner of such Common Areas.
- 1.26 "FHA" refers to the Federal Housing Administration.
- 1.27 "Foreclosure" refers to the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by a trustee's deed at a trustee's sale, of a mortgage, deed of trust or other security interest in any Lot or Parcel.
- 1.28 "Governing Documents" refers to this Declaration, as amended from time to time, the Master Declaration, any Tract Declaration, the Bylaws and Articles of Incorporation of the Association and any Rules adopted by the Board of Directors.

- 1.29 "Government Property" refers to all land and improvements which are owned by or dedicated to the public or governmental agency or authority for so long as the public or governmental agency or authority is the owner or beneficiary (including property of a public utility company used for the general benefit of the Covered Property), except land and/or improvements which are owned and/or operated by a public or governmental agency or authority which is acting in a proprietary capacity.
- 1.30 "Land Use Classification" refers to the classification of a portion of the Covered Property for a particular use, as described in Section 5.1 of this Declaration.
- 1.31 "Lot" refers to:
- a. Any numbered plot of land within the Covered Property which is shown as a Lot on any recorded subdivision Plat and has a designated Land Use Classification of Single Family Residential or Mixed Use;
 - b. Any Condominium Unit; and
 - c. Any Apartment Unit.
- 1.32 "Maintenance Assessments" refers to those assessments which are levied by the Board pursuant to Section 8.5 of this Declaration, including assessments levied against Lots or Parcels as a result of unique services provided to such Lots or Parcels or because of other conditions, costs, services or circumstances unique to such Lots or Parcels, as more specifically set forth herein.
- 1.33 "Master Association" refers to the Civano Community Association.
- 1.34 "Master Development Plan" refers to the conceptual plan for CIVANO: TUCSON SOLAR VILLAGE, as amended from time to time in the sole and absolute discretion of Declarant. A copy of the Master Development Plan shall be on file at all times in the Association's office.
- 1.35 "Master Declaration" refers to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Civano: The Tucson Solar Village, recorded in Docket 10915 at Page 639, as amended from time to time. In the event of a conflict between this Declaration and the Master Declaration, the provisions of the Master Declaration have priority. This Declaration is subordinate to the provisions of the Master Declaration, as well as the Bylaws, Articles of Incorporation and Rules and Regulations of the Master Association.
- 1.36 "Member" refers to a person entitled to membership in the Association as provided in this Declaration, including the Declarant for so long as the Declarant owns any portion of the Covered Property.

- 1.37 "Mixed Use" refers to use of a Lot or Parcel as both a residence and business, to the extent permitted by this Declaration or by a Tract Declaration.
- 1.38 "Mortgage" shall mean any consensual monetary encumbrance on a Lot, evidenced by an instrument in recordable form and shall specifically include both mortgages and deeds of trust. The term "Mortgagee" shall include a beneficiary under a Deed of Trust, and the term "First Mortgagee" shall mean the holder of any Mortgage or the beneficiary of any deed of trust under which the interest of any Owner of a Lot is encumbered and which Mortgage or deed of trust has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments (which shall be referred to herein as a "First Mortgage").
- 1.39 "Net Acre" refers to a gross acre of Forty-Three Thousand Five Hundred Sixty (43,560) square feet, less dedicated rights of way for public roads, public and private drainage ways, and public utilities, and less Common Areas accepted for ownership by the Association, if any. Net Acre computations shall be rounded to the nearest one-hundredth of an acre.
- 1.40 "Non-Developer Owner" refers to any Owner who is not a Developer Owner.
- 1.41 "Non-Residential Parcel" refers to a Parcel which is restricted to non-residential uses, and does not include Mixed Use Parcels unless the context otherwise clearly requires.
- 1.42 "Occupant" refers to each Tenant who resides on the Covered Property, and the licensees, guests and members of the immediate family of each Tenant and Owner who reside on the Covered Property.
- 1.43 "Owner" refers to the record owner, whether one or more Persons, of the fee simple title to any Lot or Parcel which is part of the Covered Property, including a buyer under a contract for conveyance of real estate governed by A.R.S. §33-741, et seq., but excluding persons holding an interest merely as security for the performance of an obligation.
- 1.44 "Parcel" refers to any parcel of land within the Covered Property other than Common Areas and Lots, as defined, and any portion, pad, or subparcel thereof, if such portion, pad, or subparcel shall have been created by a parcel split or subdivision approved or permitted in accordance with this Declaration. A Parcel shall, prior to being used or improved, be defined and limited to a specific development type or land use by a Tract Declaration, unless the use thereof has already been established by this Declaration. Notwithstanding the preceding sentence, a Parcel or portion thereof, other than a Non-Residential Parcel, shall cease being a Parcel upon recording of a subdivision plat therefor dividing the land into Lots intended for ultimate use, sale or lease. In the case of the subdivision of

the Covered Property into other residential parcels, such as planning blocks or parcels which are intended to be divided in the future (such intent to be determined by the Board in its reasonable discretion), or in the case of the annexation of land later to be subdivided, such blocks or parcels shall be deemed Parcels and not Lots. In the case of a staged development, the term "Parcel" shall include portions of a Parcel and areas not yet covered by a recorded subdivision plat or declaration of condominium creating Lots.

- 1.45 "Person" refers to a corporation, limited liability company, partnership, firm, association or society, as well as a natural person.
- 1.46 "Residential Apartment Development" refers to a development comprised of Apartment Units and surrounding area that is integrated into the development and is under the same ownership.
- 1.47 "Residential Condominium Development" means a development comprised of Condominium Units intended for residential use.
- 1.48 "Review Committee" refers to the committee formed pursuant to Article 4 of this Declaration.
- 1.49 "Rules" means any rules or regulations adopted by the Board pursuant to this Declaration which govern the conduct of the Owners and Occupants on the Covered Property.
- 1.50 "Single Family" refers to a group of persons related by blood, marriage or legal adoption or a group of not more than five unrelated persons who maintain a common household.
- 1.51 "Single Family Parcel" means a Parcel designated under this Declaration as having a Single Family Residential Land Use Classification.
- 1.52 "Special Assessments" means the special assessments which are levied by the Board under this Declaration.
- 1.53 "Special Use Fees" refers to any fees charged by the Association for the use of the Common Areas pursuant to Section 3.1.1 of this Declaration.
- 1.54 "Subsidiary Association" refers to an incorporated association responsible for the governance of property within a subdivision of the Covered Property having common area or common elements.
- 1.55 "Tenant" refers to a Person who occupies any portion of the Covered Property, under any type of rental agreement, whether for residential or commercial use of the property encompassed in the rental agreement.

- 1.56 "Tract Declaration" refers to any declaration of covenants, conditions, and restrictions or like instrument, including without limitation a Declaration of Annexation, recorded after the recording of this Declaration in regard to one or more Parcels or portions thereof, or group of Lots, which instrument is subordinate to this Declaration.
- 1.57 "VA" refers to the United States Veterans Administration.
- 1.58 "Visible from Neighboring Property" refers to, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on neighboring property.

2 ARTICLE 2: PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 General Declaration.

- 2.1.1 Declarant intends to develop the Covered Property in accordance with the Master Development Plan, as it may change from time to time, and to sell and convey the Lots and Parcels, or portions thereof. As portions of the Covered Property are developed, Declarant intends to record Tract Declarations and adopt rules and regulations which will, among other things, designate Land Use Classifications, designate Common Areas and establish additional restrictions which may be appropriate for the respective portions of the Covered Property. Declarant declares that all of the Covered Property is and shall be held, conveyed, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as it is amended or modified from time to time. Nothing in this Declaration shall constitute a representation or warranty of any nature whatsoever that any particular development or type of development will occur, nor shall any provision hereof constitute a representation or warranty that all of the Covered Property or any other property will be developed within any particular period of time.
- 2.1.2 Notwithstanding the preceding sentence, except as expressly provided for in this Declaration, Government Property shall not be subject to this Declaration. This Declaration sets forth a general plan for the development and sale of the Covered Property and is established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property. This Declaration shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Covered Property and their successors in interest.

2.1.3 Nothing in this Declaration shall be construed to prevent the Declarant from modifying any part of the Master Development Plan as it applies to the Covered Property or from dedicating or conveying portions of the Covered Property for uses other than as a Lot, Parcel, or Common Areas.

2.2 Owners and Occupants Bound. This Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Parcel or Lot to or from such Owners or Occupants.

2.3 Association Bound. This Declaration shall be binding upon and benefit the Association, and its successors and assigns.

3 **ARTICLE 3: EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS**

3.1 Easements and Rights of Enjoyment. Each Owner has a nonexclusive easement for the use and enjoyment in and to the Common Areas. This nonexclusive easement is appurtenant to and passes with the title to each Owner's Lot or Parcel. All Occupants have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

3.1.1 The Association has the right to charge Special Use Fees for the use of the Common Areas. The Special Use Fees shall be set by the Board from time to time, in its absolute discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Common Areas selected by the Board to be subject to a Special Use Fee. Special Use Fees shall be collected from the actual users of these Common Areas so that all of the costs of operating such Common Areas are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other Persons who use such Common Areas;

3.1.2 The Association may, in its absolute discretion, suspend the right of an Owner, his/her family, or his/her lessees or tenants, to use the recreational facilities for any period during which any Assessment against a Lot or Parcel remains unpaid or for any violation of this Declaration or the Rules of the Association. The Association also has the right to suspend the voting rights of any Owner for any period in which the Assessment against his/her Lot or Parcel remains unpaid or for any violation of this Declaration or the Rules of the Association.

3.1.3 The Association has the right to limit the number of guests of Owners and Occupants, or the number of Persons from Non-Residential Parcels or Mixed Use Lots or Parcels who may use the Common Areas.

3.1.4 The Association has the exclusive right to control and manage the use of the Common Areas in accordance with this Declaration.

3.2 Ingress and Egress Over Certain Common Areas. In the event Common Area separates a Lot or Parcel from the street nearest to the Lot or Parcel, and no alternative access exists, the Owner or Occupant of such Lot or Parcel shall have a reasonable ingress and egress easement over the Common Areas. Declarant hereby creates, grants and conveys to such Owner and Occupants and their agents, employees, guests and invitees, a permanent, nonexclusive easement (an "Access Easement") for vehicular and pedestrian ingress and egress in, upon, over and across such Common Area. The exact location of the Access Easement shall be determined by the Declarant or the Review Committee, as applicable, and indicated on a recorded instrument acceptable to Declarant or Review Committee, as applicable.

At its sole cost and expense, the Owner of a Lot or Parcel which is benefitted by an Access Easement shall construct all necessary improvements used in connection with the Access Easement, and maintain these improvements in good working order, condition and repair and in compliance with all applicable governmental regulations. During the construction phase of the improvements on any Parcel or Lot, Declarant or the Association, as applicable, grants the Owner, its agents and employees, a temporary license to enter the Common Areas for the purpose of constructing these improvements, and the Owner is fully responsible and liable for making any and all repairs to such Common Areas which are caused by or resulting from such activities.

3.3 Delegation of Use. Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his/her rights to use and enjoy the Common Areas: (a) in the case of an Owner or Occupant of property restricted to residential uses, to the members of his/her family or to his/her tenants or guests (so long as such guests are accompanied by such Owner or Occupant or one or more of his family members); or (b) in the case of an Owner, or Occupant of a Non-Residential Parcel or Mixed Use Property, to his/her Occupants, employees and customers, in both cases (a) and (b) subject to the limitations set forth in this Declaration and in the Association Rules. The Association's Rules may limit the number of Persons from a Non-Residential Parcel or Mixed Use Lot or Parcel who may have access to the Common Areas.

3.4 Waiver of Liability for Assessments. No Owner may waive or otherwise escape personal liability for Assessments or release the Lot or Parcel owned from any lien and charges arising under this Declaration by reason of non-use of the Common

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Areas by the Owner, or for any other reason, including any allegations that the Board of Directors is not properly performing its obligations under the Governing Documents.

- 3.5 Temporary Sign Easement. Declarant reserves to itself and its agents and designees a temporary easement over, upon and across those portions of the Common Areas adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs identifying and directing interested parties to Persons building upon or developing portions of the Covered Property; provided, however that all such signs and their proposed location are expressly approved in writing by Declarant. This easement terminates upon the completion of the construction and sales activities on the Covered Property.
- 3.6 Easements for Encroachments. Each Lot and Parcel and the Common Areas are subject to an easement for incidental encroachments created by construction, settling and overhangs, and for common walls. A valid easement for those encroachments and for the maintenance of same shall continue for so long as they exist.
- 3.7 Facilities Easement. Declarant hereby reserves for itself and its agents, licensees, guests, invitees, successors, and assigns, and grants unto the applicable sewer and water utility or company, a nonexclusive easement for the maintenance and repair of any water and sewer lines dedicated to and accepted by such utility upon, or over any portions of the Covered Property, Lots or Parcels.

Every Owner covenants at all times to remain in compliance with the rules and regulations of the said public utility and acknowledges that the sewer lines servicing each Lot or Parcel shall be maintained exclusively by the Owner of such Lot or Parcel, or by a Subsidiary Association formed with respect thereto.

- 3.8 Reserved Rights of Conveyance and Resubdivision. The foregoing rights granted or recognized over and across Common Areas are subject, among other things, to the right of the Declarant to resubdivide and cause the Common Areas to be sold and conveyed, or to cause the Association to accomplish same. Without limitation, Declarant shall have the right to convey, or cause the Association to convey, Common Areas without the consent or vote of any other Person or Member, should Declarant, in its sole discretion, determine that such conveyance or transfer is in the best interests of the Covered Property or should Declarant determine that the said Common Areas are no longer necessary or are a burden to the Association and that the interests of the Association are best served by disposing of same. Any sale or disposition of the Common Areas shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof. The rights of Declarant hereunder with respect to Common Areas shall include conveyance and dedication to the public of roads, streets, drainageways, culverts, and sewer facilities, none of which shall require the approval of any Owners or Members of the Association. The provisions

of this Section are subject, however, to the provisions of Section 16.12, and, except for minor slivers or insignificant areas requiring action as a result of scrivener or like errors, any mortgage or conveyance of Common Areas shall require the vote or written consent of the Owners representing not less than two-thirds (2/3) of the total votes held by the Members.

4 ARTICLE 4: ARCHITECTURAL AND LANDSCAPING RESTRICTIONS AND CONTROL

4.1 Approval Required. In addition to the requirements set forth herein, all development of the Covered Property shall comply with the development plan review process and submittal requirements set forth in the Master Declaration. Nothing contained in this Declaration shall eliminate the requirement that all development construction, alterations, or modifications to any improvements on any Lot or Parcel within the Covered Property must be approved by the design review committee of the Master Association in accordance with the Master Declaration.

4.2 Landscaping Restrictions.

4.2.1 General Requirements. Except as expressly provided for in this Declaration or as approved by the Review Committee, landscaping within the Covered Property shall comply with the provisions hereof, and with the design guidelines promulgated by the Master Association.

4.2.2 Restrictions Applicable to Lots and Parcels. All Lots and Parcels, excluding driveways and parking areas, and in the case of a Lot, excluding that portion of the Lot, if any, which is enclosed by a perimeter wall around the yard, shall be landscaped in a manner and using plants and soil which have been approved by the Review Committee. Trees of any type planted or maintained by an Owner, including any planted in rear yards, shall not be permitted to materially interfere with views as determined in the sole discretion of the Review Committee.

4.3 Power and Duties. The Review Committee has all of the powers, authority and duties conferred upon it by the Governing Documents. The Review Committee is responsible for considering and acting upon all proposals or plans submitted to it; adopting or modifying the Guidelines; performing any other duties delegated to it by the Board; carrying out all other duties imposed upon it by the Governing Documents. The Review Committee shall, when necessary, hire architects and engineers to assist it in the performance of its duties.

000018

- 4.4 Organization of the Review Committee. The Review Committee is to be organized in the following manner:
- 4.4.1 Committee Composition. The Review Committee shall consist of three regular members and one alternate member. The Board may, in its discretion, increase the number of members on the Review Committee. A member of the Review Committee must be a member of the Association, or an officer, agent or employee of Declarant.
 - 4.4.2 Alternate Members. In the event any member of the Review Committee is absent or unable to serve on this Committee, the remaining regular members, even though less than a quorum, may designate an alternate member to act as a substitute for the regular member of the Review Committee so long as any one or more regular members remain absent or disabled.
 - 4.4.3 Term of Office. Unless a member of the Review Committee has resigned or been removed, his/her term on the Committee shall be for a period of one (1) year, or until the appointment of his/her respective successor. Any new member appointed to replace a member who has resigned or has been removed shall serve for the remainder of that member's unexpired term. Members of the Review Committee who have resigned, been removed or whose terms have expired may be reappointed.
 - 4.4.4 Appointment and Removal. For so long as there is a Class B Member of the Association, the Class B Member shall have the right to appoint and remove all of the members of the Review Committee. Upon the expiration of Class B membership, the right to appoint and remove, at any time, and without cause, all regular and alternate members of the Review Committee is vested solely in the Board upon the vote or written consent of a majority of the Board members.
 - 4.4.5 Resignations. Any regular or alternate member of the Review Committee may at any time, resign from the Review Committee by giving written notice to the Board.
 - 4.4.6 Vacancies. The Board shall fill any vacancies on the Review Committee. A vacancy on the Review Committee occurs upon the death, resignation or removal of any regular or alternate member.
- 4.5 Meetings and Compensation of the Review Committee. The Review Committee shall meet when necessary to perform its duties. The vote or written consent of a majority of the regular members (including any substitute regular member serving pursuant to Section 4.4.2) shall constitute the act of the Review Committee. The Review Committee shall keep and maintain a written record of all actions which it

takes. Although members of the Review Committee are not entitled to compensation for their services; consultants hired by the Review Committee, if authorized by the Board, may be entitled to compensation at the discretion of the Board.

4.6 Design Guidelines. Subject to the written approval of the Board, the Review Committee shall adopt, and may from time to time amend, supplement or repeal, any part or all of the Design Guidelines. The Design Guidelines, and any amendments, supplements or modifications thereto, must be approved by the Board of Directors of the Master Association. The Design Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for the review of modifications to existing improvements on, and/or construction and installation of improvements on, any Covered Property, and the standards for development within the Covered Property. The Design Guidelines have the same force and effect as the Association Rules. These Design Guidelines shall not conflict with the Master Development Plan or the Design Guidelines promulgated by the DRC of the Master Association. These Design Guidelines shall include, without limitation, provisions regarding:

- 4.6.1 the size of Single Family Dwelling Units;
- 4.6.2 architectural design, with particular harmony of the design with surrounding structures and topography;
- 4.6.3 location of improvements, landscaping and buildings on the Covered Property;
- 4.6.4 types of sustainable building techniques to be used in the construction of the improvements and building on the Covered Property;
- 4.6.5 landscaping design, content and conformity with harmony and integrity in the Covered Property;
- 4.6.6 requirements concerning exterior color schemes, exterior finishes and material throughout the Covered Property;
- 4.6.7 orientation of buildings to maximize the natural patterns of the sun, the wind and the seasons;
- 4.6.8 signs;
- 4.6.9 wall design and appearance;
- 4.6.10 standards and requirements related to the use of energy in the construction on and occupancy of any Lot or Parcel; and

4.6.11 performance standards, design guidelines and criteria prescribing a residential potable water budget for interior use of not more than 53 gallons per person per day, and a commercial potable water budget for interior use (subject to case-by-case review of above-average water use businesses) of not more than 15 gallons per employee per day, and a residential non-potable water (reclaimed water, gray water or harvested rainwater, as appropriate and permitted under applicable regulations) budget for exterior use of not more than 28 gallons per person per day. In the case of conflict, the applicable rules of the Department of Water Resources and adopted management plans for the Tucson Active Management Area shall govern water use and conservation on the Covered Property.

4.7 Obligation to Obtain Approval.

4.7.1 Except as otherwise expressly provided in the Governing Documents, the following actions require that plans and specifications be submitted to and receive the prior written approval of the Review Committee:

4.7.1.1 all improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any Lot or Parcel; and,

4.7.1.2 all buildings, out-buildings, fences, walls, pools, driveways or any other structure, improvement or grading which is to be commenced, erected, maintained, altered, changed or made on any Lot or Parcel at any time.

4.7.2 No item or matter required by this Declaration to be approved in accordance with Article 4 shall be done, undertaken or permitted until first approved by the Review Committee, and then approved by the DRC in accordance with the provisions of Article 4 of the Master Declaration.

4.8 Review of Plans by Other Owners. The Review Committee, or any member of that Committee, may, but is not required to, consult with or listen to the views of the Association or any Owner regarding the plans, drawings, specifications, or any other proposal submitted for review. The Owner who is applying for the approval of the Committee has the right to present his/her views to the Review Committee.

4.9 Declarant's Jurisdiction over Non-Residential Parcels. Notwithstanding the other provisions of this Article (or any other provision of this Declaration), the Declarant has all of the rights and powers of the Review Committee (or the Board) regarding improvements to be constructed on the Non-Residential Parcels, including all buildings, fences, walls, pools, landscaping, driveways and other structures and

improvements (including, but not limited to, all exterior additions to or changes or alterations in any such structure or improvement). Such rights and powers become vested in the Review Committee only upon the occurrence of the first of the following event(s): (a) the date all of the approved buildings and other improvements have been completed (as evidenced by certificates of occupancy or any similar instrument issued by the appropriate governmental authority), in accordance with site plans approved by the Declarant on all the Non-Residential Parcels within the Covered Property, and (b) the date specified in a recorded instrument executed by Declarant expressly waiving its right to exercise the rights and powers conferred upon it by this Section (or, if no date is specified, the date of recordation of such instrument). All decisions made by Declarant in exercising the rights and powers conferred upon it by this Section are final and binding and are not subject to appeal to, or review by, the Review Committee or the Board. Further, no variances of any of the restrictions in this Declaration regarding the Non-Residential Parcels and no consents or approvals required or permitted to be given by the Board or the Review Committee which relate to the Non-Residential Parcels shall be granted or given without the prior written consent of Declarant until the earlier of the two dates specified in (a) and (b) of this Section.

4.10 Waiver. Approval by the Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

4.11 Liability. Neither the Declarant, the Association, the Board nor the Review Committee (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

4.11.1 the approval or disapproval of any plans, drawings or specifications, whether or not defective;

4.11.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

4.11.3 the development of any Lot or Parcel; or

4.11.4 the execution and filing of any estoppel certificate or statement, whether or not the facts are correct.

The liability of any member of the Review Committee is contingent upon such member acting in good faith on the basis of such information as may be possessed by him/her.

000022

- 4.12 Appeal. Any Owner or Occupant aggrieved by a decision of the Review Committee may appeal the decision to the Board in accordance with procedures established in the Design Guidelines. The Board of Directors shall review the decision of the Review Committee and either approve it, reject it, or modify it. The decision of the Board is final and binding and shall modify the decision of the Review Committee to the extent specified by the Board.
- 4.13 Fee. The Board may establish a reasonable processing fee to defer the costs of the Review Committee in considering any requests for approvals submitted to the Review Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted. Such fee shall be paid by the Owner on the terms and within the time established by the Board. Any fee not paid when required may become a lien against the Lot or Parcel and collected in the same manner as Assessments.
- 4.14 Inspection. Any member or authorized consultant of the Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass, enter upon any Lot or Parcel, after reasonable notice to the Owner or Occupant of such Lot or Parcel, in order to inspect any improvements constructed or being constructed on such Lot or Parcel to ascertain that such improvements have been, or are being, built in compliance with the Design Guidelines, plans and specifications approved in accordance with this Article 4, this Declaration, and any applicable Tract Declaration.
- 4.15 Delegation of Review to a Subsidiary Association. The Review Committee may, at its sole discretion, delegate to a Subsidiary Association its right and obligation to review any improvements, additions, modifications or changes which an Owner may make to its Lot or Parcel. Such delegation may specify the types of improvements which the Subsidiary Association has the authority to approve, may impose limitations on the powers of the Subsidiary Association to review plans and specifications and may specify a period of time during which the delegation applies. It shall be in writing and signed by the President of the Association and the chairperson of the Review Committee. Unless such a delegation has been made, the Review Committee shall have the sole right to approve or disapprove of any plans or specifications which have been submitted in accordance with the provisions of this Declaration. If the Review Committee delegates all or any portion of its power to approve plans for modifications, changes, additions or improvements, the Subsidiary Association may, at its discretion, form any committee which it deems advisable to assist the Subsidiary Association with these tasks and to promulgate any rules pertaining to this approval process; provided, however, that such rules shall not conflict with any of the Design Guidelines and shall have been approved, in writing, by the Review Committee.

5 ARTICLE 5: LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

5.1 Land Use Classifications. As portions of the Covered Property are readied for development, the Land Use Classifications, restrictions, easements, right-of-way, and other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall, unless already established hereunder, be established and approved by Declarant in a Tract Declaration which shall be recorded for that portion of the Property, unless already established by this Declaration. Each Tract Declaration shall be construed as a supplement to this Declaration and as fully a part of this Declaration as if all of the provisions of the Tract Declaration were set forth in this Declaration; provided, however, that if any provision of a Tract Declaration is inconsistent with any provision of this Declaration, the provision of this Declaration shall control. The land use restrictions established by a Tract Declaration shall not be changed except as specifically permitted by Declarant, by this Declaration and by such Tract Declaration.

Land Use Classifications include the following:

- 5.1.1 "Residential Apartment Development";
- 5.1.2 "Residential Condominium Development";
- 5.1.3 "Single Family Residential";
- 5.1.4 "Recreational Areas";
- 5.1.5 "Mixed Use", which is a use of a Lot or Parcel for both a residence and business;
- 5.1.6 "Commercial/Retail Use", which includes the Neighborhood Center and the Sustainability Resource and Technology Center; and
- 5.1.7 "Industrial Use".

The following Land Use Classifications, subject to further change, are hereby established for the Lots specified:

- i) Single Family Residential: Lots 1 through 29, 43 through 81, and 100 through 161 of the Initial Tract Plat; Lots 1 through 29 of the Second Tract Plat; and Lots 166 through 527 of the Third Tract Plat.
- ii) Mixed Use: Lots 30 through 42 and 82 through 99 of the Initial Tract Plat;

iii) Commercial/Retail: Lots 162 and 165 of the Initial Tract Plat.

Land Use Classifications shall be established for other Lots and Parcels as development proceeds. Unless otherwise specifically provided for in this Declaration and subject to applicable zoning laws and subject to the provisions of this Section, the definitions and characteristics of the Land Use Classifications and the permitted and prohibited uses of the real property within a particular Land Use Classification shall be determined by the Declarant and set forth in the respective Tract Declaration. Such uses may at any time be amended to change the designated uses in their entirety or permit other uses, provided the provisions of the Tract Declaration dealing with amendment have been met.

Notwithstanding the Land Use Classifications listed in this Section, the Declarant is not obligated to establish within the Covered Property each of the uses set forth in this Section. Declarant is in no way prohibited from establishing other Land Use Classifications, and Declarant may approve of other Land Use Classifications in the case of Additional Property annexed under the purview hereof, in which case the Tract Declaration shall set for such Land Use Classification.

A Parcel shall, prior to being used or improved, be defined and limited to a specific Land Use Classification by a Tract Declaration approved by Declarant in accordance with the provisions hereof. Declarant or the Class B Member may require imposition of special conditions in a Tract Declaration in any case where deemed appropriate in the sole and absolute discretion of said Declarant or Class B Member, and may require adequate provisions for assessments, maintenance of property and improvements, septic systems and appurtenances and such other provisions as are deemed proper.

Declarant has the right, at any time, to record an instrument against such Lot or Parcel, such as a Tract Declaration, which further limits the uses of that Lot or Parcel, or, in the event Declarant deems it appropriate, to change in its entirety the uses or add additional uses which may be made of the Lot or Parcel.

Following the conveyance by the Declarant of title to a Parcel to an Owner other than Declarant, and upon application by that Owner (and with the Owner's written consent), the Association may record, subject to the written approval of the Declarant, an instrument which pertains to that Parcel, adding additional uses which may be made of the Parcel.

No Condominium Parcel, commercial condominium, or subdivision containing common area may be developed nor shall a Tract Declaration therefor be approved unless an incorporated owners association is established for the maintenance and repair of such common elements or common area, except in cases where the Association may elect to accept ownership of same.

5.2 Covenants, Conditions, Restrictions and Easements Applicable to All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels within the Covered Property and to the Owners and Occupants thereof:

5.2.1 Prohibited Uses. The following uses are prohibited:

5.2.1.1 any use which is offensive because of odors, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Lot, Parcel, Owner or Occupant; and

5.2.1.2 any use which violates any law (unless there is a validly granted or adopted variance, exception or special use ordinance) or regulation of the United States, the State of Arizona, Pima County, City of Tucson or any other governmental entity having jurisdiction over the Covered Property.

5.2.2 Temporary Occupancy and Temporary Buildings: Outside Storage. No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed or maintained on a Lot or Parcel with the prior written approval of the Review Committee in accordance with Article 4, including the approval of the structure's location and appearance. Such temporary structures shall immediately be removed after the completion of construction, with the Lot or Parcel being restored in accordance with the Design Guidelines. Except during construction, no materials, supplies, equipment, finished or semifinished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened by a solid visual barrier so it is not Visible From Neighboring Property. However, during construction of improvements on any Lot or Parcel, necessary construction materials and supplies may be stored on the Lot or Parcel without the need for a solid visual barrier provided such materials and supplies are kept in neat order, taking into consideration the construction activities being conducted on that property. The Board is authorized to designate the areas and manner in which supplies of building materials and construction equipment are stored and the routes construction vehicles may use. All such designations shall be reasonable.

5.2.3 Repair of Buildings. No building or improvement on any Lot or Parcel shall fall into disrepair and each building and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the building or improvement. In the event any building or improvement is damaged or destroyed, then, subject to the approval of the Review Committee under Article 4, such building or improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs, within the time limits established by the Board, the Board is empowered to enter on the Lot or Parcel and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments.

5.2.4 Maintenance of Landscaping. Unless the Board of Directors determines, in its sole discretion, that the Association shall provide and maintain the landscaping on the Lot or Parcel, each Owner is responsible for the proper maintenance of all landscaping in the following locations:

5.2.4.1 on the Owner's Lot or Parcel (including set back areas);

5.2.4.2 on those portions of the Common Areas adjacent to an Owner's Lot or Parcel and which are on the Lot's or Parcel's side of any wall erected on such Common Areas; and

5.2.4.3 public right-of-way areas between sidewalks (or bicycle paths) and the street curb on the Owner's Lot or Parcel, or other public or easement areas adjacent to the Owner's Lot or Parcel.

As used herein, maintenance shall include, but not be limited to landscaping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly material. All trees, shrubs, plants and ground covers shall be timely and properly trimmed according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately. All ground areas shall be kept free of weeds and cultivated periodically as needed. Landscape may be required to be placed on a Lot or Parcel within certain time frames established by the Review Committee. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways and parking areas, located on the Owner's Lot or Parcel. Any Owner who fails to properly maintain the landscaping upon the Lot or Parcel, shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such

landscaping maintenance to his/her Lot or Parcel, after receiving notice from the Board to do so, the Association is empowered to enter upon the Lot or Parcel, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as assessments.

- 5.2.5 Nuisances; Dust Control; Construction Activities. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or Parcel which creates a nuisance or renders any such property or activity on the Lot or Parcel, unsanitary, unsightly or offensive. Each Lot and Parcel shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots and Parcels must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot or Parcel, nor shall anything be done which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or Parcel or to CIVANO: TUCSON SOLAR VILLAGE or which will interfere with the quiet enjoyment of each of the Owners and Occupants.
- 5.2.6 Diseases and Insects. No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Parcel which induces, breeds or harbors infectious plant or animal diseases or noxious insects.
- 5.2.7 Antennas and Dishes. No television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not visible from the street or (when reasonably feasible) from neighboring property or integrated with the Residence and surrounding landscaping to prevent or limit such

visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

- 5.2.8 Signs. All signs must be approved in writing by the Review Committee prior to installation. Subject to Review Committee approval, the following signs are allowed: signs which identify the name and business of the Owner or the Occupants; give directions; offer the premises for sale or for lease; or, during any construction period, identify the builder, architect, contractors, subcontractors or lenders. Signs may not be of an unusual size or shape when compared to the building or buildings, if any, on the Lot or Parcel. The Review Committee and/or the Design Guidelines may provide for severe limitations on the existence of, and the size, color, location, and other characteristics of signs on Mixed Use Lots or Parcels. Any permitted sign shall conform to all governmental ordinances and regulations. Nothing in this Section prohibits signs required by legal proceedings.
- 5.2.9 Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind.
- 5.2.10 Clothes Drying Facilities. Clotheslines or other facilities for drying or airing clothes may be placed on any Lot or Parcel provided that they are not visible from the public walkways and streets and provided that they are retractable.
- 5.2.11 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot or Parcel outside of a building except:
- 5.2.11.1 machinery or equipment used in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or improvements (but only if approved in accordance with Article 4);
 - 5.2.11.2 with respect to Non-Residential Lots or Parcels, forklifts or other similar types of equipment which are generally used in the operation of a business provided that such forklifts or other equipment are, except when in use, stored so as not to be Visible From Neighboring Property; or
 - 5.2.11.3 machines or equipment which the Declarant or the Association may require for the development, operation and maintenance of the Covered Property.

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5.2.12 Restrictions on Further Subdivision, Property Restrictions, and Rezoning.

5.2.12.1 All proposed site plans, subdivision plats, Non-Residential or Mixed Use condominium declarations, easements or further covenants, conditions or restrictions, or applications for rezoning, variances or use permits for any Lot or Parcel, or any portion of a Lot or Parcel, must be approved in writing by the Declarant prior to the expiration of the Class B Membership, and by the Board thereafter. The required approval shall be evidenced on such instrument by the signature of the Declarant or of an authorized representative of the Board, as applicable. Except for property owned by the Declarant, no Lot or Parcel, or any portion of a Lot or Parcel, shall be further subdivided and no portion less than all of the Lot or Parcel, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board, unless such subdivision, subsection, conveyance or transfer:

- a is made in connection with the development of one or more pads, lots or other subdivisions of a Parcel for commercial or industrial use; and,
- b is made in accordance with a site plan for such Lot or Parcel approved by the Board.

5.2.12.2 No site plan, subdivision plat, Non-Residential or Mixed Use condominium declaration, or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits, shall be made, filed, submitted to, or recorded with Pima County, the City of Tucson or any other governmental authority or agency unless it has first been approved in writing as provided in this Section. No changes or modifications shall be made in any such documents, instruments or applications once they have been approved as provided in this Section (whether requested by the City or otherwise) unless such changes or modifications have also been approved in advance, in writing, in accordance with this Section. This Section does not apply to portions of the Covered Property owned by Declarant or to site plans, subdivision plats, condominium declarations, or further covenants, conditions, restrictions or easements, or applications for rezoning, variances or use permits, made,

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filed, submitted or recorded by Declarant and pertaining to portions of the Covered Property owned by Declarant.

5.2.13 Blanket Utility Easements.

5.2.13.1 A blanket easement is created on, over and under each Lot, each Parcel, and the Common Areas for ingress to, egress from, and the installation, replacement, repair and maintenance of all utility equipment and service repair and maintenance of all utility equipment and service lines and systems, as such equipment, lines and systems are installed in connection with the initial development of the Lots, Parcels, and Common Areas and the construction of buildings thereon; provided that such easements shall be specifically and permanently described and fixed by a recorded instrument either:

- a at the time a subdivision plat, approved as required by this Declaration, is recorded for that portion of the Covered Property to be served or burdened by such easement(s), as applicable; or
- b within 120 days following approval, as required by this Declaration and by the appropriate governmental agencies, of a site plan for that portion of the Covered Property to be served or burdened by such easement(s), as applicable.

5.2.13.2 In the event the easements on the Covered Property are not specifically and permanently described and fixed by a recorded instrument at or within the time specified above, the blanket easements created on, over or under the Covered Property shall automatically terminate and expire.

5.2.13.3 Utility or service facilities and equipment may be affixed and maintained on, in and under the roofs and exterior walls of buildings on the Lots, Parcels, and Common Areas. Notwithstanding anything to the contrary contained in this Section, no utility or service equipment or lines may be installed or relocated on any Lot, Parcel, and the Common Areas except as initially approved by the Declarant, or, if installed after the expiration of the Class B membership, by the Review Committee.

5.2.14 Utility Lines and Connections. All utility wires, lines, pipes, conduits, facilities, connections and installations (including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer) shall be installed and maintained underground or concealed in, under, or on structures as approved, in writing, by the Review Committee. No utility meter or apparatus shall be located on any pole or attached to the outside of any building wall which is exposed to view from any street. All transformers shall be placed on or below the surface of the Lot or Parcel. Temporary above-ground power or telephone structures and water lines incident to construction activities shall be permitted but only with prior written approval of the Review Committee.

5.2.15 Party Walls. The rights and duties of Owners of contiguous Lots or Parcels which have shared walls or fences ("Party Walls") shall be as follows:

5.2.15.1 Each Owner has the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment of the Party Wall.

5.2.15.2 If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or Occupant, or their guests, the Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense (provided that this shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any Occupant, agent, guest or other Person who otherwise may be liable to such Owner). Any dispute over an Owner's liability shall be resolved as provided below.

5.2.15.3 In the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or Occupant or their guests, or deteriorates from ordinary wear and tear, it is the joint obligation of all Owners whose Lots or Parcels adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots or Parcels on the damaged or destroyed Party Wall.

5.2.15.4 In the event of a dispute between Owners concerning the Party Wall or the sharing of any costs related to the Party Wall, the Owners shall submit the dispute to the Review Committee, whose decision shall be final and binding unless appealed to the Board, in which case the Board's decision shall be binding

and final. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing the damage.

5.2.15.5 Notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Areas and Lots or Parcels; or, (b) situated on Common Areas within or adjacent to a Lot or Parcel, the Owners and Occupants of such Lots or Parcels shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof. Further, unless otherwise approved in writing by the Board, any wall situated generally between a Lot or Parcel and Common Areas shall be situated entirely upon such Lot or Parcel, and not upon the Common Areas, immediately adjacent to the boundary line between the Lot or Parcel and the Common Areas; and,

5.2.15.6 This Section does not and is not intended to control or relate to Party Walls within condominium developments.

5.2.16 Overhead Encroachments. No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of seven (7) feet without prior written approval of the Review Committee, unless such landscaping was intended to have that effect as part of the overall landscaping plan for the Covered Property, as approved by the Review Committee.

5.2.17 Health, Safety and Welfare. If the uses of, activities on, or facilities upon or within a Parcel or Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or Occupants, the Review Committee may make rules restricting or regulating such nuisances.

5.2.18 Incidental Uses. The Review Committee may approve, regulate and restrict incidental uses of property within a Land Use Classification. For example, and not as a limitation, the Review Committee may permit: private roadways; tennis and/or swimming clubs intended primarily for the benefit of all or certain Owners or Occupants; tennis courts; swimming pools; and other recreational facilities.

5.2.19 Window Coverings. No external window covering or, reflective covering may be placed or permitted to remain on any window of any building, structure or other improvement without the prior written approval of the Review Committee.

5.2.20 Parcel Coverage. The percentage of each Lot or Parcel which may be covered by buildings (as well as the location of such buildings and other improvements on each Lot or Parcel) shall be subject to review and approval by the Review Committee, as part of the review of plans for proposed improvements on such Lot or Parcel, but shall not violate any City of Tucson ordinances and regulations in effect from time to time.

5.2.21 On-Site Grading and Drainage. No water shall be drained or discharged from any Lot or Parcel, or building thereon, except in accordance with:

5.2.21.1 a master drainage study (including any amendments thereto) approved by the appropriate governmental agency (or agencies) and the Board (or other drainage study approved by such entity, if no such master drainage study exists); and

5.2.21.2 grading and drainage plans approved by the Review Committee and in accordance with all applicable governmental ordinances.

Finished grades along the periphery of a Lot or Parcel shall match the existing grades or the top of curb of any constructed or proposed streets which are part of the overall master infrastructure for the Covered Property. The allowed tolerance shall be approved in writing by the Review Committee. Further, no Owner or Occupant shall interfere with the drainage established by the grading and drainage plans for the remainder of the Covered Property or any other property adjacent to the Lot or Parcel.

5.2.22 Building Exteriors. All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved by the Review Committee. All materials used for the exterior of the buildings shall be high quality, long-life, low maintenance materials. Sustainable building materials are encouraged.

5.3 Covenants, Conditions, Restrictions and Easements Applicable to Lots and Parcels with Single Family Residential, Residential Apartment Development, Residential Condominium Development or Mixed Use Land Use Classifications. The following covenants, conditions and restrictions apply to all Lots and Parcels included within the Land Use Classifications of Single Family Residential, Residential Apartment Development, Residential Condominium Development, or Mixed Use, and to the Owners and Occupants of such Lots and Parcels; provided, however, that no provision of this Section shall prohibit Mixed Uses in the Covered Property where such use is permitted by a Tract Declaration. The Board may approve variances where necessary to accomplish the intent hereof.

5.3.1 General.

5.3.1.1 Single Family Residential Use. No structure whatsoever, other than one private, Single Family residence, together with a private garage for not more than three vehicles (which structure and garage must be approved in advance by the Review Committee in accordance with this Declaration) shall be erected, placed or permitted on any Lot with a Single Family Residential Land Use Classification.

5.3.1.2 Residential Apartment Development and Residential Condominium Development. No structure whatsoever, other than one or more buildings each containing one or more private Dwelling Units, together with parking garages or structures, storage facilities and property management sales or rental offices incidental or appurtenant thereto (all of which must be approved in advance by the Review Committee in accordance with this Declaration) shall be erected, placed or permitted on any portion of the Covered Property with a designated Land Use Classification of Residential Apartment Development or Residential Condominium Development.

5.3.1.3 Business Use. Certain trades or business maybe conducted from any Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity only involves the employment of one person at any one time who does not reside on the Properties; (d) the business activity does not involve door-to-door solicitation of residents of the Properties; and (e) the business activity does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. Leasing of a Lot is not considered as a trade or business within the meaning of this Section.

It shall not be deemed a violation of this Section if an individual operates an adult care home, a residential care home for the disabled; or provides child care in the home, in each case subject to the limitations set forth above. Any individual who desires to operate a retail business in the residential use areas of the Covered Property, which business is allowed by the zoning, but is not considered as office or professional use, and

which is not within an area designated as Mixed Use, may make an application to the Board of Directors, which, upon a showing of good cause and minimal impact on the adjacent residential property owners, shall approve such use. The Board of Directors has the absolute authority to approve such uses with conditions thereon, in order to ensure that the residential nature of the area is not disturbed. All uses must be lawful.

5.3.2 Leases.

5.3.2.1 No portion of a Dwelling Unit, Lot or Parcel may be rented, other than the entire Dwelling Unit, Lot or Parcel.

5.3.2.2 All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners also apply to all Occupants of any Lot. Any monetary sanction which is imposed against a Tenant for violations of the Governing Documents shall also be imposed against the Owner of the Lot and shall be collected in the same manner as assessments, including a lien against the Lot.

5.3.2.3 All leases shall be in writing and shall specifically provide:

a The lease is subject in all respects to the provisions of the Governing Documents;

b The failure of the Tenant to comply with the terms and conditions of the Governing Documents constitutes a material default of the lease which may result in termination of the lease and eviction of the tenant from the Lot;

b If the Tenant violates the Governing Documents the Tenant is in default under the Lease and the Owner is entitled to reenter and retake possession of the premises pursuant to the provisions of the Arizona Landlord Tenant Act, A. R.S. §33-1301 et seq.

5.3.2.4 All leases which do not contain these provisions shall be deemed null and void at the option of the Association and the Association may require the Owner to immediately evict the Tenant, or submit a lease which contains the required provisions.

2025 RELEASE UNDER E.O. 14176

- 5.3.2.5 If an Owner leases his/her Lot, the Owner shall give the Association, in writing, the name of the Tenant of the Lot and such other information as the Association may reasonably require.
- 5.3.2.6 The term of the lease may not be for less than thirty days.
- 5.3.2.7 All Owners shall provide the Tenants with copies of the Governing Documents. If an Owner fails to provide these documents to the Tenants, the Association may provide the documents to the Tenant and charge the Owner for the cost of doing so, such cost to be collected in the same manner as Assessments.

5.3.3 Animals.

- 5.3.3.1 No animal, livestock, poultry or other fowl of any kind, other than a reasonable number of generally recognized house pets (and, subject to applicable zoning and other ordinances and governmental regulations) shall be maintained on or in any Lot. No pets shall be kept or raised for commercial purposes. No animals may make an unreasonable amount of noise or create a nuisance.
- 5.3.3.2 No structure for the care, housing or confinement of any animal shall be Visible From Neighboring Property.
- 5.3.3.3 No pet may be kept on any Lot which annoys other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on the Lot on which it resides. All persons walking pets shall remove the pet's excrement from the Covered Property.
- 5.3.3.4 The Board may determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, whether a particular animal is a nuisance, or whether the number of animals is reasonable. The Board may adopt Rules concerning the number and types of pets which may be kept by the Owners.

000037

5.3.4 Garbage.

- 5.3.4.1 All garbage or trash shall be kept in sanitary, covered containers. Recycling of materials is encouraged. Containers shall not be Visible from Neighboring Property, unless a dumpster has been installed for the use of more than one Lot Owner. All trash and garbage shall be regularly removed from each Lot or Parcel and shall not be allowed to accumulate.
- 5.3.4.2 Unless provided by a governmental agency, the Association has the power to regulate the scheduling, type of garbage removal equipment and pick-up days of all private waste removal companies operating within the Covered Property.
- 5.3.4.3 It is permissible for any governmental agency providing trash removal services to use Common Areas to negotiate its vehicles through the project.
- 5.3.4.4 The Association, in its discretion, may contract for private companies to provide trash removal and recycling services to the Covered Property, the cost of which shall be added to the amount of the Assessments due from each Owner of a Lot or Parcel. The Association may also undertake to dispose of solid waste in a manner which is environmentally desirable, the cost of which shall be added to the amount of the Assessments.

5.3.5 Parking. All vehicles shall be parked in the carport or garage on the Lot or Parcel or within the designated parking areas on the streets and within the Common Areas, as determined by the Board in its sole discretion. Parking in driveways, when a garage or carport is available shall be prohibited, and no Owner shall convert a garage or carport into a storage area or room so as to render it unavailable for the parking of a vehicle. Parking in the public or private streets, except in areas designated by the Association, if any, and except during parties or like special events, is prohibited.

- 5.3.5.1 No vehicles shall block any Lot or inhibit access to or from any Lot, or be parked in any manner which restricts the flow of traffic.
- 5.3.5.2 Parking or storage of recreational or similar vehicles (including, but not limited to, trailers, campers, motorhomes, mobile homes, van conversions, busses and boats) is prohibited on all portions of the Covered Property, except in the designated parking areas, if any, as determined by the Board of Directors.

000038

However, a recreational vehicle may be parked on the driveway or the street in front or behind the Lot for a period not to exceed twenty-four (24) hours in any seven (7) day period, for the purpose of loading or unloading the vehicle, or for the purpose of providing temporary parking for a transient guest of an Owner who may be traveling in or towing the recreational vehicle.

- 5.3.5.3 The use of and/or occupancy anywhere on the Covered Property of a trailer, mobile home, motorhome, camper or recreational vehicle as living quarters (on either a temporary or permanent basis) is expressly prohibited, although an Owner's guest may use the motorhome or recreational vehicle as sleeping quarters only on a temporary basis while visiting the Owner, as may be limited by rules of the Board.
- 5.3.5.4 No inoperable, junked or wrecked vehicles shall be parked on any portion of a Lot or on the Common Areas. No vehicles shall be located on the Covered Properties in any state of repair or disassembly, except that vehicles may be parked wholly within a carport for the purpose of repairing such vehicles provided they are not parked in the carport for a period in excess of seven (7) days. Upon a showing of good cause, an owner may make an application to the Board of Directors for a longer period of time within which to keep an inoperable vehicles in the carport.
- 5.3.5.5 All commercial, construction or like vehicles (including, but not limited to, pickup-type vehicles which are larger than three-quarter (3/4) ton and vehicles bearing commercial signs, advertising or other business insignia, and any commercially licensed vehicle) shall be parked inside a fully enclosed garage or carport. This Section does not apply to the vehicles used by Declarant or any Developer Owner in the construction of improvements upon the Lots or Parcels.
- 5.3.5.6 The Board of Directors may establish a system relating to and requiring issuance of parking permits for temporary or other parking, and the Board may establish such other parking regulations as it deems necessary.
- 5.3.5.7 In the event any Owner, Occupant or guest violates this Section regarding vehicle parking and storage, the Association may take any action which is necessary to obtain compliance of this Section, including the removal of vehicles in violation

with the cost of action becoming the responsibility of the owner of the vehicle.

- 5.3.5.8 After notice and hearing, the Association may impose a fine, in an amount determined by the Board of Directors, for each violation of this covenant regarding vehicle parking and storage. These fines shall become a lien against the Lot and collected in the same manner as Assessments.

5.3.6 Model Homes.

- 5.3.6.1 Nothing contained in this Declaration prohibits the construction and maintenance of model homes, model apartments, sales offices, apartment rental offices, property management offices and parking incidental thereto by persons engaged in the construction, marketing, rental or management of Dwelling Units within the Covered Property, provided, however, that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and applicable City of Tucson ordinances.

- 5.3.6.2 Except as otherwise approved in writing by the Board: (a) all model homes and sales offices shall cease to be used as such at any time the Owner (or Tenant thereof as the case may be) is not actively engaged in the construction and sale of Dwelling Units within the Covered Property (provided that the foregoing portion of this sentence shall not apply to model apartments, apartment rental offices or property management offices); and (b) no model home, model apartment, sales office, apartment rental office or property management office shall be used for the sale or rental of residences not located within the Covered Property.

5.4 Covenants, Conditions, Restrictions and Easements Applicable to Mixed Use, Commercial/Retail Use and Industrial Use. The following covenants, conditions, restrictions and reservations of easements and rights apply to all Lots or Parcels included within the Land Use Classifications of Mixed Use, Commercial/Retail Use and Industrial Use, and to the Owners and Occupants thereof.

- 5.4.1 Permitted Uses. Subject to the provisions of this Declaration, any Tract Declaration and to such additional restrictions or limitations which may be imposed on one or more Lots or Parcels by the Board, these Lots or Parcels may be used for any Non-Residential Use or Mixed Use purpose permitted by applicable law. For example, a retail store in a two story building with a residence above the retail store shall be permitted if, and

000040

only if, the Lot or Parcel is restricted to Mixed Use by the provisions hereof, or by a Mixed Use Tract Declaration establishing such Land Use Classification.

5.4.2 Parking. Parking and parking areas shall be governed as follows:

5.4.2.1 Adequate off-street parking shall be provided by each Owner. Vehicles shall be parked on the on-site paved parking spaces (or in one or more parking garages) to be provided by the Owner of a Lot or Parcel. On-street parking in the Covered Property is permitted only in designated areas. Each Owner and Occupant is responsible for compliance with these parking regulations by his/her Occupants, employees, customers and visitors.

5.4.2.2 The location, number, size and surfacing of parking spaces shall be subject to approval in accordance with Article 4 and shall conform to all applicable City ordinances and regulations in effect from time to time.

5.4.2.3 Each Owner shall stripe all the parking areas on that Owner's Lot or Parcel and all parking areas, driveways and roads shall be kept in good repair, and be illuminated with fixtures which have been approved as to height, type, location and appearance in accordance with Article 4. All such fixtures and illumination shall be screened from view from the streets to the extent determined by, and using such means and materials approved by, the Review Committee.

5.4.2.4 Loading and Receiving Areas. All loading and receiving areas shall be screened so they are not Visible From Neighboring Property, using the methods and materials approved in accordance with the provisions hereof.

5.4.3 Waste and Waste Containers.

5.4.3.1 All rubbish, trash, garbage, litter, debris, refuse and other waste shall be stored in clean and sanitary waste containers conforming to the provisions of this Section. Recycling is encouraged and may, at the discretion of the Board, become mandatory. Subject to applicable City ordinances and regulations in effect from time to time which may impose additional or more stringent container requirements, each Lot or Parcel shall have a minimum of one (1) commercial size solid waste container. All waste containers shall be maintained

000041

in good mechanical condition. All waste containers shall be emptied as often as necessary to prevent the container from overflowing and at least once every seven (7) days if the container is used for the deposit of garbage or refuse.

5.4.3.2 All garbage or refuse must be bagged or wrapped so as to be air tight before being deposited in the waste containers. When waste containers are in use, lids and doors must be kept closed at all times except during times when the containers are being emptied or filled. Each waste container shall be screened so as not to be Visible From Neighboring Property. The location and design of such screening shall be subject to prior approval in accordance with Article 4.

5.4.3.3 The Association has the power to regulate the scheduling, type of garbage removal equipment and pick-up days of all waste removal companies operating within the Covered Property.

5.4.3.4 The Association, in its discretion, may contract with a trash removal company to provide trash removal to the Covered Property, the cost of which shall be added to the amount of the Annual Assessments due from the Owner.

5.4.4 Exterior Lighting. Exterior lighting shall conform to the Guidelines and shall be governed as follows:

5.4.4.1 all exterior building lighting fixtures shall be shielded and shall be designed, installed, directed, altered and maintained in accordance with plans and specifications approved in advance in accordance with Article 4; and

5.4.4.2 all exterior lighting shall be kept in good working order; shall be compatible and harmonious throughout the Covered Property; and shall be in keeping with the specific function and building type being served.

5.4.5 Animals. No animal, livestock, poultry or other fowl of any kind shall be maintained on or in any Parcel except for: (a) guard dogs kept or maintained within buildings or fenced areas; (b) reasonable numbers of animals kept in a fully-enclosed building and offered for retail sale to the public in a pet store or similar business (but not in connection with the operation of a commercial breeding business), provided that the animals do not make an unreasonable amount of noise or create a nuisance; and (c) animals undergoing treatment in a veterinary office or veterinary hospital operated on any Parcel in accordance with applicable laws and

this Declaration (or being temporarily boarded in such an office or hospital), provided that such animals do not make an unreasonable amount of noise or create a nuisance, and provided that the boarding facilities are fully enclosed in a manner approved in advance in accordance with Article 4.

5.5 Variances. Subject to the more specific provisions hereof, the Board may, in its sole discretion, grant variances from the restrictions set forth in this Article 5 if the Board determines that:

5.5.1 either: (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; or, (b) a change of circumstances has rendered the particular restriction obsolete; and,

5.5.2 the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants and is consistent with the high quality of life intended for the Covered Property.

A request for a variance must be in writing and be accompanied by adequate supporting documentation. The Board shall approve or disapprove the request, in writing, as promptly as possible under the particular circumstances.

5.6 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by the Declarant, or its agents during the period of development and construction on the Covered Property of improvements, landscaping or signs deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of property within the Covered Property. However, all such improvements and landscaping shall be generally consistent, in terms of appearance and quality, with similar improvements and landscaping elsewhere within the Covered Property.

6 **ARTICLE 6: ORGANIZATION OF ASSOCIATION**

6.1 Formation of Association. The Association is an Arizona nonprofit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. The Articles and the Bylaws shall not be amended or interpreted to be inconsistent with this Declaration.

6.2 Board of Directors and Officers.

6.2.1 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. The Board of Directors serving during the time Declarant is a Class B Member of the Association shall be comprised of a minimum

of three (3) persons, who need not be members of the Association, and each of whom shall be appointed by Declarant without any vote or consent of the Members or Owners.

- 6.2.2 Commencing with the first annual meeting of the Members when there is no longer a Class B Member, or at such time as the Declarant relinquishes its right to elect the members to the Board of Directors, the Board shall consist of, and the voting Members shall elect, seven (7) directors, all of whom must be Members of the Association, or an individual designated by a corporate, partnership or other non-individual Member. The number of directors may be increased pursuant to the procedures set forth in the Bylaws. The directors shall be elected so that there is at least one director representing owners of property within each Land Use Classification existing on the Covered Property, all as more specifically set forth in the Bylaws. The Board of Directors shall appoint two Directors to serve on the Board of Directors of the Master Association pursuant to the provisions of the Bylaws of the Master Association.
- 6.2.3 The terms of the Directors elected during the existence of the Class B Member shall be for a period of one year.
- 6.2.4 Upon the expiration of the Class B Membership, the initial terms for the directors shall be staggered as follows: four (4) of the Directors shall be elected for a one year term and three (3) of Directors shall be elected for a two year term. In succeeding years, all directors shall be elected for a two year term.
- 6.2.5 The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Areas. The Board shall determine the compensation to be paid to the manager.

- 6.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the conduct of the Owners, Occupants and their guests on their Lots or Parcels when such conduct affects the other Owners and Occupants, and govern the use of the Common Areas by all of the Owners, Occupants and their guests. The Association Rules shall not discriminate among Owners and Occupants or among the various Land Use Classifications. The Association Rules shall be intended to enhance the preservation and development of the Covered Property and the Common Areas. Upon adoption, the Association Rules have the same force and effect as if they were set forth in this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association. The

Association rules shall not conflict with any provision of this Declaration, the Master Declaration, the Articles or the Bylaws.

- 6.4 Personal Liability. No Board member, officer, committee member, employee or representative of the Association, or the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section 6.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.
- 6.5 Mergers or Consolidations. The Association has the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association (a "Merger Candidate"). Merger or consolidation of the Association with a Merger Candidate must be approved in advance by members holding at least two-thirds (2/3) of the votes in each class of Members of the Association, whether, in person or by proxy, at a meeting duly called for such purpose. The Association's properties, rights and obligations shall be transferred to and assumed by the surviving or consolidated corporation by operation of law, or, alternatively, the properties, rights and obligations of the Merger Candidate shall be transferred by operation of law to the Association as the surviving corporation. The surviving or consolidated corporation, at a minimum, shall have the same administrative responsibilities and enforcement rights established by this Declaration in regard to the Covered Property. In addition, for so long as there is a Class B Member and to the extent Declarant has sought the approval of an Agency regarding the Association, any such Merger or consolidation will be subject to the approval by such Agency if so required by the rules and regulations of that Agency.

7 **ARTICLE 7: MEMBERSHIPS AND VOTING**

- 7.1 Votes of Owners of Lots and Parcels. Every Owner of a Lot or Parcel which is subject to assessment shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Member has the following applicable number of votes on all matters requiring a vote of the membership:
- 7.1.1 In the case of Lots, including Apartment Units, one (1) vote for each Class A Member and three (3) votes for the Class B Member for each Lot owned;
- 7.1.2 In the case of a Single Family Residential Parcel which has not been divided into Lots by a recorded subdivision plat or other recorded instrument, three (3) votes for each Class A Member and nine (9) votes for the Class B Member for each Net Acre owned within such Parcel (in

the case of fractional Net Acres, rounding to the nearest one one-hundredth of an acre and the nearest whole vote, with each Member to have at least one whole vote).

If a subdivision plat or other instrument creating Lots is recorded which covers all or part of the Parcel, then the votes attributable to the Lots as platted shall be determined pursuant to Section 7.1.1 above. If a subdivision plat for such Parcel is recorded showing a different number of Lots, the number of votes shall be adjusted to reflect the actual number of Lots as set forth in the recorded subdivision plat. All votes attributable to such unsplit Parcel shall cease when all of the area is platted (or otherwise divided into Lots) or dedicated to the public;

7.1.3 In the case of Residential Condominium Development Parcel for which a condominium declaration has not been recorded or a Residential Apartment Development Parcel upon which construction has not yet been completed, six (6) votes for each Class A Member and eighteen (18) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounding to the nearest one one-hundredth of an acre and the nearest whole vote, with each Member to have at least one whole vote); and

7.1.4 In the case of a Mixed Use, Commercial/Retail Use or Industrial Use Parcel, three (3) votes for each Class A Member and nine (9) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounding to the nearest one one-hundredth of an acre and the nearest whole vote, with each Member to have at least one whole vote).

In the case of a commercial condominium, votes allocated to the entire condominium shall be based upon the applicable votes per Net Acre in the Parcel, and such votes shall then be allocated among the individual units based upon each Owner's percentage interest in the common elements.

7.2 Membership is Appurtenant to Ownership. Each Owner's Membership in the Association is appurtenant to and may not be separated from ownership of the Lot or Parcel to which the membership is attributable. There shall be only the Memberships for each Lot and Parcel as set forth in this Declaration. Joint ownership or ownership of undivided interests in any property as to which Membership is established shall not increase the number of Memberships or votes attributable to the Lot or Parcel.

7.3 Declarant. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B Membership.

7.4 Voting Classes. The Association shall have two classes of voting Members:

7.4.1 Class A. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided for below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with this Declaration, a Class A Member has the number of votes provided in Section 7.1. Notwithstanding the foregoing, a Class A Member is not entitled to vote for so long as that Owner is paying reduced Assessments pursuant to Section 8.3.1.

7.4.2 Class B. The Class B Member is the Declarant. The Class B Member shall have the number of votes as provided in Section 7.1 of this Declaration. The number of Class B votes shall increase as land is annexed hereunder and made part of the Covered Property. The Class B Membership shall terminate upon the happening of the first of the following events:

7.4.2.1 the date which is 120 days after the date on which the total votes of the Class A Members entitled to vote equals or exceeds the total votes of the Class B Member, or

7.4.2.2 the date which is fifteen (15) years after the date this Declaration is recorded.

The Class B Membership shall be revived should annexation or other events cause the votes of the Class B Member to exceed those of the Class A Members.

7.5 Right to Vote. No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence of the change, for example, the recorded deed showing the name of the owner of such Lot or Parcel. The vote for each Member must be cast as a single unit. Fractional votes are not allowed. In the event that a Lot or Parcel is owned by more than one Person and the Owners cannot agree on how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Parcel, the Owner will conclusively be presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot or Parcel all such votes shall be deemed void.

7.6 Members' Rights. Each Member has the rights, duties and obligations set forth in the Governing Documents.

7.7 Transfer of Membership. The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel, and then only to the transferee. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a non-approved form of transfer is void. Any transfer of ownership of a Lot or Parcel also transfers the Membership appurtenant to Ownership to the new Owner.

8 ARTICLE 8: ASSESSMENTS AND LIEN RIGHTS

8.1 Covenants to Pay. Declarant, for each Lot and Parcel it owns, and each Owner, by the acceptance of a deed to a Lot or Parcel, whether or not it is expressly stated in the deed, covenants and agrees to pay to the Association all Special Use Fees, Assessments and any Additional Charges levied pursuant to this Declaration.

8.1.1 Liability for Payment. The obligation to pay Assessments runs with the land so that each successive record Owner of a Lot or Parcel is liable for the payment of all such Assessments. No Owner may waive or otherwise escape personal liability for Assessments or release the Lot or Parcel owned by it/him/her from any lien and charges, by non-use of the Common Areas, by abandonment of the Lot or Parcel, by attempting to renounce rights in the Common Areas or the facilities or services, or for any other reason. Each assessment constitutes a separate assessment; is the separate, distinct and personal obligation of the Owner of the Lot or Parcel at the time when the assessment was levied; and binds its/his/her heirs, devisees, personal representatives and assigns. Any assessment which is not paid by its due date is delinquent. After an Owner transfers its/his/her interest in a Lot or Parcel, as evidenced by the recordation of a deed in the office of the Pima County Recorder, it/he/she shall not be liable for any charges levied by the Association after the date the deed is recorded.

8.1.2 Offset. No offsets against any assessment is permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

8.1.3 Amount and Time for Payment. The amount and time for payment of Special Use Fees and Assessments shall be determined by the Board, in its sole and absolute discretion.

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8.2 Annual Assessments.

8.2.1 Payment of Annual Assessments.

8.2.1.1 Annual Assessments. Annual Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Annual Assessments shall be levied on a fiscal year basis. The Board may determine that the Annual Assessments are payable in installments and may designate different installment periods for the payment of such Annual Assessments due from the Owners based on the type of Land Use Classification. In the event that any installment of the Annual Assessment is not paid when due, then the entire amount of the remaining Annual Assessment amount shall all be due and payable. Annual Assessments shall commence for all Lots and Parcels on the first day of the month following the conveyance of such property to the Owner, or on such other date as the Board of Directors, in its sole discretion, may determine.

8.2.1.2 Purpose of Assessments. The Annual Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and Occupants, to enhance the quality of life within the Covered Property, to preserve the value to the Covered Property, to pay the costs of administration of the Association and to pay for the maintenance of the Common Areas, to fund any project which the Board, in its sole discretion deems appropriate based on the type of Land Use Classification, to pay any sums due to the Master Association, and to otherwise further the interests of the Association as the Board deems appropriate.

8.2.1.3 Budgeting. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a budget containing: (1) estimated revenue and expenses, showing the amount of Assessments due from the Owners based on the Land Use Classification and the services being provided to such Owners; (2) the amount of the total cash reserves held in a special account of the Association for replacement or major repair of Common Areas and for contingencies (the "Reserve Account"); (3) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the Common Areas; and (4) a general statement setting

forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas. The Board shall prepare and approve the annual budget and distribute a copy to each Member, together with written notice of the amount of the Annual Assessments to be levied against the Owner's Lot or Parcel, not less than thirty (30) days prior to the beginning of the fiscal year.

8.2.1.4 Discretion of Board. The total amount needed to fund the annual budget shall be charged against the Lots or Parcels as Annual Assessments in a manner determined by the Board of Directors.

8.2.1.5 Supplemental Assessment. At any time during the fiscal year, the Board may revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the procedures set forth in this Article. The Association shall give the Owners at least thirty-days (30) notice of an increase in the amount of the Annual Assessment.

8.2.2 Reserve Account. Out of the Reserve Account, the Association shall pay those costs attributable to the maintenance, repair or replacement of capital improvements for which reserves have been collected and held. Except for funds collected for contingencies, no funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

8.2.3 Non-Waiver Of Assessments. If before the expiration of any fiscal year the Association fails to determine the amount of the Annual Assessments for the next fiscal year, the Annual Assessment established for the preceding year shall continue until a new Annual Assessment is established by the Board.

8.3 Rate of Assessment. The amount of the Annual Assessments, Maintenance Assessments and Special Assessments shall be established by the Board, in its sole discretion.

In establishing its budget and creating its plan for Assessments each year, the Board shall first establish an Annual Assessment per Lot (the "Base Assessment"). In the case of a Single Family Residential Parcel, Mixed Use Parcel, Commercial/Retail Use Parcel or Industrial Use Parcel that has not been subdivided into Lots or a commercial subdivision having its own common area, the Annual

Assessment shall be three (3) times the Base Assessment for each Net Acre, rounded to the nearest one one-hundredth) in the Parcel.

In the case of a Residential Condominium Development Parcel for which a condominium declaration has not been recorded or a Residential Apartment Development Parcel upon which construction has not been completed, the Annual Assessment shall be six (6) times the Base Assessment for each Net Acre, rounded to the nearest one one-hundredth) in the Parcel.

In the case of a subdivision of a Commercial/Retail Use or Mixed Use Parcel into uses comprising a commercial subdivision (other than a commercial condominium) having its own common area, a Subsidiary Association shall be established to collect and pay Assessments to the Association and to maintain such common area. An Annual Assessment shall be levied equal to three (3) times the Base Assessment, multiplied by the number of Net Acres of the entire commercial subdivision (including common area), then allocated to each Parcel by multiplying by a fraction the denominator of which is the total square footage of all Parcels within the commercial subdivision (excluding common area), and the numerator of which is the square footage of the Parcel in question (excluding common area).

In a commercial condominium the Board shall assess the commercial condominium on the basis of six (6) times the Base Assessment, multiplied by the number of Net Acres of the entire commercial condominium, then allocated to each Parcel within the condominium by multiplying the percentage interest of each Owner in the common elements, with the lien limited accordingly. The allocation to the Parcel shall establish the amount due for such Parcel, and no delinquency for other Parcels shall cause there to be a delinquency against or Assessment Lien upon a Parcel for which the Owner has paid the allocable share.

8.3.1 Obligation of Developer Owner. The initial Developer Owner of a Lot or Parcel shall pay twenty-five percent (25%) of the Annual Assessment and Special Assessment for such Lot or Parcel until the earliest of:

- 8.3.1.1 the initial conveyance of such Lot or Parcel to a different Owner;
- 8.3.1.2 six (6) months after commencement of construction;
- 8.3.1.3 completion of construction of improvements on the Lot or Parcel as evidenced by the issuance of a certificate of occupancy, or in the case of Non-Residential parcels, a similar instrument or completion of any other improvements which allow the Lot or Parcel to be used in any trade or business; and

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- 8.3.1.4 two (2) years after the date such Developer Owner first acquired title to such Lot or Parcel.

In the case of a site plan approved by the Association or Board for a Parcel which contemplates the construction of more than one building, the Parcel shall, for the purposes of this Section only, be deemed subdivided into the number of sub-parcels equal to the number of approved buildings set forth on the approved site plan, in which case the Annual Assessments and Special Assessments for the entire Parcel shall be deemed divided equally among such sub-parcels with each of the buildings being allocated to a separate sub-parcel, and the Developer Owner shall pay reduced Assessments in accordance with this Section as such Parcel, individually.

If a Developer Owner ceases to qualify for the reduced rate as provided herein during any Assessment Period, that Developer Owner shall immediately notify the Board, in writing, of its change in status. If an Owner of a Lot or Parcel who has the right to pay a reduced Assessment amount as provided for in this Declaration, fails to notify the Board of the date the payment amount is to be increased, that Owner shall still be liable for the full amount of the Assessment as of the date it was required to pay the full amount of the Assessment and such Owner's failure to notify the Board shall not relieve the Owner of liability for the full amount of the Assessment. The Association may at any time request that any Developer Owner which is being assessed at a reduced rate furnish the Association with evidence that such Developer Owner continues to be entitled to a reduced assessment rate under this Section. If such Developer Owner fails to produce such evidence within thirty days of the date of the Association's request, or if the evidence which is furnished is unsatisfactory, in the Board's reasonable discretion, to demonstrate that Developer Owner's continued entitlement to the reduced assessment rate, the Board may terminate the reduced assessment rate as of a date reasonably deemed appropriate by the Board.

- 8.3.2 Obligation of Non-Developer Owner. A Non-Developer Owner (not including Declarant) is not entitled to the reduced assessment rates set forth in the above Sections and a Developer Owner is only entitled to such reduced rates if it is a Developer Owner of the specific Lot or Parcel being assessed.

- 8.3.3 Obligation of Declarant to Pay Assessments. Anything in this Declaration to the contrary notwithstanding, the Declarant shall not be liable for and shall not be required to pay Assessments upon Lots or Parcels owned by Declarant, nor shall Declarant be liable for the payment of any Assessments for any Lot or Parcel that, having been previously sold to a

purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure.

In consideration for Declarant's exemption from assessment, Declarant agrees that it shall pay, for any given Assessment Period in which Declarant has paid or contributed to the Association less than the full Annual Assessment for each Lot or Parcel owned, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Areas, but only up to the full Annual Assessment for each such Lot or Parcel owned within the Covered Property. A shortfall or deficiency shall exist if current ordinary expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant shall not be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments or Base Assessment from those charged during any prior year, nor for any shortfall or deficiency incurred after expiration of the Class B Membership. Declarant may at any time at its sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay up to the full Annual Assessment for each Lot or Parcel within the Covered Property owned by Declarant instead. Declarant's duty to contribute toward any deficiency shall be enforceable by a lien against the property owned by Declarant.

In the event of a deficit, the Declarant, prior to contributing any funds to the Association's operating account, may increase the Assessments payable from each Developer Owner from twenty-five percent (25%) up to one hundred percent (100%) of the Annual and Special Assessments due for each Lot or Parcel owned. The Association shall provide written notice to the Developer Owner of the amount of the deficit in the operating account, which shall include the Association's calculations of the number of months that the Developer Owner will be required to increase its Assessments to cover such deficit. The increase in Developer Owners' Assessments shall commence on the first of the month which is at least thirty days after the Association has provided notice to the Developer Owners of the increase in the Assessments.

Should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignee shall, in the case of any deficiency as described above (and meeting the conditions set forth above), be liable for its ratable share of same, up to the full amount of the Annual Assessment for each Lot or Parcel owned, and not more. For example, if there are 100 acres of land in the Covered Property owned by all of the Declarants and one Declarant owns 25 acres, then that Declarant shall pay 25% of the amount needed

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to fund the deficit in the operating or reserve account. Thirty days prior to any annual assessment period, the Association shall determine the total number of acres owned by all of the Declarants and the total number of acres owned by each Declarant. That percentage of ownership shall be used during the next twelve calendar months in calculating each Declarant's share of the deficit, regardless of whether a Declarant sells any of the land it owns during this time period. In addition, such assignee's exemption, if any, shall expire with respect to any Lot or Parcel upon which construction of improvements has been completed.

- 8.4 Special Assessments. The Board of Directors, in its discretion, may levy Special Assessments in addition to the Annual Assessments for (1) constructing capital improvements; (2) correcting an inadequacy in the current operating account; (3) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Lot(s) or Common Areas; or (4) paying for such other matters as the Board deems appropriate.
- 8.5 Maintenance Assessments. In addition to any Annual Assessment or Special Assessment and the Assessments arising hereunder, the Board has the authority to levy and collect Maintenance Assessments for costs and expenses arising out of any special characteristics or needs of a particular Lot or Parcel, or if the Owner of a Lot or Parcel contracts with the Association for the Association to provide particular maintenance services to such Owner's Lot or Parcel. Furthermore, if any common expense is caused by the misconduct of an Owner of a Lot or Parcel, his/her tenants, guests, invitees or licensees, the Association may assess that expense exclusively against that Owner and his/her Lot or Parcel.
- 8.6 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his/her Lot or Parcel if a failure to comply with the Governing Documents has (1) necessitated an expenditure of monies by the Association to bring the Owner or his/her Lot or Parcel into compliance; or (2) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall not be levied by the Association until notice and an opportunity for a hearing has been given to the Owner. Reimbursement Assessments may be enforced in the same manner as Annual and Special Assessments.
- 8.7 Annual Assessment Period. The Annual Assessment Period shall be the fiscal year of the Association. The Board may, in its sole discretion, from time to time, change the Assessment Period.
- 8.8 Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur in the process of collecting monies due and delinquent from the Owner. All Additional Charges shall

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be included in any judgment in any suit or action brought to enforce collection of delinquent Assessments or may be levied against a Lot as a Reimbursement Assessment. Additional Charges include, but are not limited to, the following:

- 8.8.1 Attorneys' Fees. Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any Assessment or sum due, including, but not limited to: sums incurred in perfecting the Association's lien, the filing of a lawsuit, and any costs incurred in collecting any judgment.
 - 8.8.2 Late Charges. A late charge ("Late Charge") in an amount determined by the Board, to compensate the Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due. The Late Charge shall be added to each delinquent Assessment if the delinquent Assessment is not paid by the due date.
 - 8.8.3 Costs of Suit. Costs of suit and court costs incurred which are allowed by a Court.
 - 8.8.4 Interest. Interest on all sums, including delinquent Assessments, reasonable costs of collection, reasonable attorneys' fees and late charges, at an annual percentage rate established by the Board.
 - 8.8.5 Collection Costs. The Board may charge the Owner a fixed fee to be reimbursed to the Association for the Association's costs in perfecting its Assessment Lien, processing the delinquency, and releasing the Assessment Lien. This fee shall be treated as a collection cost of the Association secured by the Assessment Lien in the Association's favor.
 - 8.8.6 Other. Any other additional costs which the Association may incur in the process of collecting delinquent Assessments or other sums.
- 8.9 Statement of Payment. Upon receipt of a written request from any Owner, the Board, within a reasonable time, shall provide the Owner with a written statement of the status of the Owner's account. The Association may impose a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth in the statement. This statement shall state that as of the date of that statement:
- 8.9.1 all Assessments, Special Use Fees and Additional Charges have been paid which could be the basis of an Assessment Lien against the Lot or Parcel specified in the Owner's request; or
 - 8.9.2 if such these sums have not been paid, the amount which is due and payable.

- 8.10 Fines and Penalties. If any Owner or Occupant, or such Owner or Occupant's guest, violates the Governing Documents, the Board may levy a fine upon the Owner of not more than One Hundred and No/100 Dollars (\$100.00) for each violation and/or may suspend the right of such person to use the Common Areas, under such conditions as the Board may specify, for a period not to exceed thirty (30) days for each violation. However, for each day a violation continues after written notice to cease has been mailed, it shall be considered a separate violation and subject to the imposition of the fine for each day the violation continues. The Board shall establish a schedule of fines and a procedure by which it imposes such fines, including the right to a hearing if requested by the Owner. Any fines which remain unpaid for a period of fifteen (15) days or more after being assessed against the Owner shall become a lien on the Owner's Lot or Parcel and shall be collected in the same manner as Assessments.
- 8.11 Exempt Property. Exempt Property is exempt from the payment of Assessments (except as may be provided herein with respect to Maintenance Assessments) and any Assessment Lien, and the Owners of Exempt Property have no voting rights in the Association. However, if any Exempt Property ceases to be Exempt Property for any reason, it shall then be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and the Owners of such property shall be entitled to have voting rights in the Association as set forth in this Declaration.

9 **ARTICLE 9: ENFORCEMENT AND THE ASSESSMENT LIEN**

- 9.1 Association Remedies to Enforce Assessments. If any Owner fails to pay any Assessments, Special Use Fees or Additional Charges when due, the Association may (and each Owner authorizes the Association to), in addition to any other remedies provided by law, enforce the obligations of any Owner to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:
- 9.1.1 By Suit. The Association may file a lawsuit against any Owner personally obligated to pay a delinquent assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, additional charges and any other amounts the court may award, including reasonable attorneys' fees. A proceeding to recover a judgment for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the Assessment Lien.

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9.1.2 By Lien.

9.1.2.1 Recordation of this Declaration constitutes notice of the Association's right to asserts a lien against any Lot or Parcel. The Assessment Lien arises when any assessment or other sum due to the Association, against a Lot or Parcel is delinquent. The Assessment Lien is in favor of the Association and is for the benefit of all the Owners. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The Assessment Lien is prior and superior to all other liens, except (1) liens for real estate taxes and other governmental assessments or charges against the property; (2) the lien of any first mortgage or deed of trust; and (3) all liens and encumbrances recorded before this Declaration is recorded.

9.1.2.2 For purposes of this Article the Assessment Lien shall extend to (and phrases such as "appropriate Lot or Parcel" or "the Lot or Parcel" shall be deemed to include) all Lots or Parcels owned by the delinquent Owner, regardless of whether the delinquent amounts owed by the Owner in question relate to all or less than all of the Lots or Parcels owned by such Owner.

9.2 Sale or Transfer of any Lot or Parcel. The sale or transfer of any Lot or Parcel does not affect the Assessment Lien. However, the sale or transfer of any Lot or Parcel pursuant to any foreclosure of the first mortgage or deed of trust or any proceeding in lieu of foreclosure, extinguishes the Assessment Lien only as to payments which were due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel from liability from any Assessment which becomes due nor from the Assessment Lien which arises when Assessments are delinquent. In addition, a foreclosure of a subordinate lien does not impair the Assessment Lien, except that any Person who obtains an interest in a Lot or Parcel through a foreclosure action takes title subject only to the Assessments which accrue after the date the Person acquires its interest. No sale or transfer, including foreclosure, relieves any Owner of its/his/her personal liability for Assessments.

9.3 Billing and Collection Procedures. The Board has the right to adopt procedures for making, billing and collecting the Assessments, Special Use Fees and Additional Charges. The failure of the Association to send an invoice to an Owner does not relieve the Owner of liability for the payment of any Assessment or Special Use Fee.

9.3.1 Foreclosure of Association's Lien. The Association may institute foreclosure proceedings of the Association's Assessment Lien after it has provided the Owner with at least thirty (30) days written notice to cure the delinquency. The notice shall be addressed to the Owner at the address

of the Owner reflected on the records of the Association. It is the Owner's responsibility to inform the Association in writing of a change in his/her address.

- 9.3.2 Refunds of Payments. The Association is not required to refund any payments received by the Association even though the ownership of a Lot or Parcel changes during an Assessment period. Any successor Owner shall be given credit for any prepayments made by any prior Owner.

10 ARTICLE 10: MAINTENANCE

10.1 Common Areas and Public Rights-Of-Way.

- 10.1.1 Areas of Association Responsibility. Except as provided in Section 3.2, the Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, riparian areas and washes, even if dedicated to the City of Tucson, including without limitation, areas included in municipal improvement districts. The Association is not responsible for providing or maintaining the landscaping or structures on any Lot or Parcel unless:

- 10.1.1.1 such landscaping or structures are intended for the general benefit of the Owners and Occupants; and,
- 10.1.1.2 the Association assumes in writing the responsibility for such maintenance.

The Association shall also maintain any landscaping and other improvements not located on Lots or Parcels but located within the Covered Property if these areas are intended for the benefit of Owners and Occupants, unless such areas are maintained by a governmental entity or public utility and in fact are being maintained by such entity or utility or are the responsibility of a Lot or Parcel Owner. Common Areas to be maintained by the Association may be identified on recorded subdivision plats or development plans for any commercial block, but the failure to identify such areas does not affect the Association's rights or responsibilities regarding such areas. Without limiting the foregoing, the Association's duties shall include maintenance and repair of any private roadways or streets within the Covered Property, and the establishment of reserves therefor, and for the insurance of same. The Association shall also be responsible for the performance of any duties required by state or local law, including by requirement of the City of Tucson appearing on any plat, relating to the maintenance or care of retention or detention areas, and for necessary engineering studies and reports relating thereto.

- 10.1.2 MID Funding. If any portion of the Covered Property is included in a municipal improvement district ("MID"), unless otherwise agreed with the municipality, the Association shall be responsible for the maintenance of such property to the same extent set forth herein for Common Areas in general, and the Association shall be responsible for obtaining the applicable MID funding from the municipality.
- 10.1.3 Delegation of Responsibilities. If any recorded subdivision plat, map of dedication, recorded deed restriction, the Master Declaration or this Declaration permits the Association to determine whether Owners of certain Lots or Parcels are responsible for the maintenance of certain Common Areas or public rights-of-way, the Board has the discretion to determine whether the Association or an individual Owner is responsible for such maintenance, and may charge the Owner or Owners in question, and may impose a lien for the collection of such charges, if deemed appropriate by the Board.
- 10.2 Excess Maintenance Costs. If the use of any Lot or Parcel causes the maintenance or repair costs incurred or to be incurred by the Association in maintaining any portion of the Common Areas to be substantially greater than what would typically be incurred for such portion of the Common Areas, whether such use or activity is of a continuing nature or an isolated event, the Board may make a written finding to that effect setting forth the amount of the excess costs incurred or expected to be incurred by the Association and the method by which such costs were determined. The Board shall provide a copy of the written finding to the Owner and may add the amount of these excess costs to the Assessment due from that Owner of such Lot or Parcel.

11 **ARTICLE 11: RIGHTS AND POWERS OF THE ASSOCIATION**

- 11.1 Rights, Powers and Duties of the Association. In addition to the rights and powers of the Association set forth in the Governing Documents, the Association has those rights and powers which are reasonably necessary in order to effectuate all of the objectives and purposes of the Association. A copy of the Governing Documents shall be available for inspection by any Owner at the office of the Association during reasonable business hours.
- 11.2 Rules and Regulations. In addition to the right to adopt, amend and repeal rules and regulations on the matters expressly mentioned in this Declaration, the Board has the right to adopt, amend and repeal rules and regulations pertaining to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of the Governing Documents. Upon adoption, the Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

- 11.3 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, has the right, but not the obligation, to enforce the provisions of this Declaration. Further, any Owner (including Declarant, for so long as Declarant is an Owner) has the right and authority, but not the obligation, to enforce the provisions of this Declaration.
- 11.4 Contracts with Others. Subject to the restrictions and limitations contained in the Governing Documents and in the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant and Declarant's affiliated companies, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant's affiliates. However, the such interest shall be disclosed or made known to the other members of the Board who are acting on such contract or transaction and, the transaction or contract must be fair and reasonable. Notwithstanding the foregoing, any management contract entered into by the Association must be terminable, without penalty, by the Association for cause at any time and without cause upon reasonable notice. Any contract between the Association and Declarant or Declarant's affiliates must be terminable by the Association without penalty upon no more than 30 days notice.
- 11.5 Procedure for Change of Use of Common Areas. Upon adoption of a resolution by the Board stating that the use of a specified part of the Common Areas is no longer in the best interests of the Owners and Occupants, and upon the approval of such resolution by not less than two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for that purpose, the Board has the power and right to change the use of that Common Area provided that the new use: (a) also is for the common benefit of the Owners and Occupants; and (b) is consistent with any recorded deed, recorded plat, recorded restrictions or zoning regulations.

12 ARTICLE 12: MORTGAGEE'S PROTECTION PROVISIONS

- 12.1 Definition. Notwithstanding, and prevailing over, any other provision of this Declaration or the Articles or the Bylaws of the Association, the following terms and provisions shall apply to and shall be for the exclusive benefit of each First Mortgagee.
- 12.2 No Personal Liability. No First Mortgagee shall in any instance or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, rule, Article, or Bylaw, except for those matters which are enforceable by injunctive or other equitable actions not requiring the payment of money and except as hereinafter provided.

- 12.3 Trustee's Sale and Foreclosure. During the pendency of any trustee's sale or with respect to any proceeding to foreclose a First Mortgage, including any period of redemption, the First Mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot including, but not limited to, the right, if any, to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.
- 12.4 Obligation to Pay Assessments. At such time as a First Mortgagee shall become record Owner of a Lot, said First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligation to pay as and when due any and all assessments and charges accruing thereafter and assessable against the Lot acquired, in the same manner as any Owner.
- 12.5 Title Acquired Through Foreclosure or Default. The First Mortgagee, or any other party acquiring title to a Lot through foreclosure, trustee's sale, or any equivalent proceeding arising from a default under a First Mortgage (including the taking of a deed in lieu of foreclosure) shall acquire title to the Lot free and clear of any lien authorized by or arising out of any of the provisions of this Declaration or the Articles or Bylaws of the Association which secured the payment of any assessment accrued prior to the final conclusion of the proceeding (including the expiration date of any period of redemption). Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the Lot to the Association, and the Board of Directors of the Association may use reasonable efforts to collect the same from the Owner regardless of whether said Owner is or is not a Member of the Association. There shall be a lien upon the interest of the First Mortgagee or other party acquiring title to a Lot by foreclosure or by equivalent procedure for all assessments authorized by this Declaration or by the Bylaws of the Association which accrue and are assessed after the date the First Mortgagee or other acquirer has acquired title to the Lot free and clear of any right of redemption.
- 12.6 Right to Pay Charges in Default. First Mortgagees are hereby granted the right but shall not be obligated to jointly or severally pay such taxes or other charges as are in default and which may or have become a charge against any Common Areas owned by the Association, and such First Mortgagees may, jointly or severally, pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Areas, and any First Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.
- 12.7 Precedence of First Mortgage. Nothing in this Declaration shall in any manner be deemed to give an Owner, or any other party, priority over any rights of a First Mortgagee under the terms of such First Mortgagee's Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses

or to a taking of any Dwelling Unit or any part of the Common Areas owned by the Association.

12.8 Notice. Each First Mortgagee shall, upon written request to the Association, be entitled to:

12.8.1 Receive written notice from the Association of:

12.8.1.1 a distribution by the Association to an Owner of insurance proceeds or the proceeds of a condemnation award resulting from the damage or taking of a portion of the Common Areas;

12.8.1.2 any default in the performance by the Owner of a Lot encumbered by the Mortgage in favor of such First Mortgagee of any obligation created hereunder or under the Articles of Incorporation, Bylaws, or Rules of the Association that is not cured within sixty (60) days;

12.8.1.3 an abandonment or termination of the Association, at least thirty (30) days prior thereto;

12.8.1.4 any material amendment to the Declaration, Articles or Bylaws;

12.8.1.5 a decision by the Association to terminate professional management and assume self-management of the Association, at least thirty (30) days prior to the effective date thereof;

12.8.1.6 all meetings of the Association, and designate a representative to attend such meetings.

12.8.2 Inspect the books and records of the Association during normal business hours.

12.8.3 Receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

13 **ARTICLE 13: TERM; AMENDMENTS; TERMINATION**

13.1 Term; Method of Termination. The provisions, conditions, restrictions and covenants, and each of them set forth herein, shall, subject both to amendment and to repeal, run with the land and continue and remain in full force and effect at all times and against all persons. This Declaration may be terminated with the approval of seventy-five percent (75%) of the votes of each Class of Members. If the necessary votes and consents are obtained, the Board shall Record a Certificate

of Termination, executed by the President or Vice President of the Association and attested to by the Secretary of the Association. Upon recording the Certificate of Termination this Declaration shall have no further force and effect and the Association shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona.

- 13.2 Amendments. This Declaration may be amended by the Owners of Lots and Parcels within the Property representing not less than seventy-five percent (75%) of the total votes allocable to the Membership (meaning the total number of votes of both Classes of Membership, not each Class separately), provided that any such amendment made so long as Declarant owns a single Lot or Parcel shall require the consent of Declarant, or shall be void.

The provisions above notwithstanding, Declarant hereby reserves the right to amend this Declaration as may be necessary or appropriate in its sole discretion at any time while Declarant owns a single Lot or Parcel if such amendment is intended to eliminate ambiguities, correct errors, clarify the scope and intent of the provisions hereof (including, but not limited to, the elimination of hazards and detriments to the Properties), avoid undue hardship caused by unforeseen topographical or soils problems, or to better enable the Association to administer the Properties. Should Declarant determine that such amendments are necessary or advisable, then no other consent or approval shall be required, and Declarant's determination that such amendment is proper shall be binding upon all Owners and members.

In addition, Declarant shall have the right, without any vote or consent of members, to record such amendments to this Declaration as may be necessary to conform to any resubdivision plat recorded with respect to the Property or to further confirm the provisions of any Tract Declaration.

A Tract Declaration may be amended by Declarant so long as Declarant retains the Class B Membership. Thereafter, a Tract Declaration may only be amended by the affirmative vote of a majority of the votes possessed by Owners of property governed by the Tract Declaration, provided that the Board must also approve of such amendment.

- 13.3 Right to Amend if Requested by Governmental Agency or Federally Chartered Lending Institution. Notwithstanding anything else in this Declaration, the Declarant reserves the right to amend this Declaration if requested or required by the FHA, VA, or any other Agency with whom Declarant elects to do business as a condition precedent to such Agency's approval of this Declaration or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot or Parcel or purchasing loans secured thereby. Any amendment shall be effected by Declarant recording a certificate of amendment duly executed and acknowledged by Declarant specifying the Agency or the lending institution requesting the amendment and setting forth the requested or required

amendment(s). Recordation of such a certificate is conclusive proof of the Agency's or institution's request or requirement and such certificate, when recorded, shall be binding on all of the Covered Property and all Owners. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Covered Property. If any amendment requested or required pursuant to the provisions of the Section deletes, diminishes or alters such control, the Declarant shall have the right to prepare, provide for and adopt as an amendment to this Declaration, other and different control provisions which will be binding on the Covered Property and the Owners without a vote of the Owners. Notwithstanding the foregoing, any amendment of this Declaration applicable to any real property owned by the Persons other than the Declarant which is requested by any Agency other than the FHA or VA shall require the reasonable approval of Declarant.

14 ARTICLE 14: ANNEXATION OF ADDITIONAL PROPERTY

14.1 Annexation of Additional Property. Declarant may, in its sole discretion, so long as it owns any portion of the land shown on the Block Plat, or until the date which is fifteen years after the date of recordation of this Declaration, whichever is later, annex to the Covered Property any Additional Property it acquires or may own, provided that unless Declarant is the Owner of the land to be annexed, the annexation shall have the written consent of the Owner thereof. To effect such annexation, a Declaration of Annexation covering the additional property shall be executed and recorded by Declarant and shall specify that this additional property shall be subject, in all respects, to the provisions of this Declaration, and the Owners and Occupants of the additional property shall also be subject to this Declaration and the jurisdiction of the Association. After the expiration of the fifteen year period during which the Declarant has the right to annex additional property, any annexation of additional property requires approval by: (a) the Owners holding seventy-five percent (75%) of all Class A votes; and (b) the Declarant, prior to the expiration of the Class B Membership.

14.2 Declaration of Annexation. Any annexation authorized under this Article shall be made by recording a Declaration of Annexation. This Declaration of Annexation may contain complementary additions to and modifications of this Declaration which may be necessary to reflect the different character, if any, of any additional property; provided that such additions or modifications do not revoke or conflict with this Declaration or the Master Declaration. If additional property is annexed into the Covered Property, Declarant shall be entitled to additional votes in accordance with this Declaration and the additional property shall become part of the Covered Property subject to all provisions of this Declaration, including, but not limited to, the provisions regarding Assessments. If the Class B Membership has terminated prior to any such annexation because of one of the events described in Subsection 7.4.2. and if the votes to which Declarant would be entitled for such annexed property when added to other Class B votes to which Declarant would be entitled under

Section 7.4.2 if the Class B votes had not terminated, exceed the total number of Class A votes then the Declarant's Class B membership shall be reinstated until the earlier of the events described in Subsection 7.4.2.

14.3 Withdrawal of Property. Declarant may, at its sole discretion, and without the approval, assent, or vote of the Association or other Owners, from time to time until fifteen (15) years after the Recordation of this Declaration, remove or withdraw from the Subdivision, portions of the Covered Property or any annexed property, which Declarant, in its sole discretion, deems necessary or desirable in connection with the development of the subdivision; provided, however, that: (i) with respect to the removal or withdrawal of any property which lies within a Parcel or Lot owned by an Owner other than the Declarant or an Affiliate of Declarant, Declarant must obtain the prior written consent of such Owner to the removal or withdrawal of that property; and (ii) FHA, VA, FNMA, FHLMC, or any other Agency, as the case may be and to the extent they or each of them may be involved with the removal or withdrawal of any of the Covered Property has approved the withdrawal. A Declaration of Withdrawal covering the property to be removed shall be executed and recorded by Declarant. The Recordation of such Declaration of Withdrawal shall constitute and effectuate the removal, withdrawal and De-Annexation of the property described therein, releasing such property and the Owners of that property from encumbrance by this Declaration and jurisdiction of the Association. If property is removed or withdrawn, the votes held by the Declarant shall be recalculated in accordance with Section 7.1 of this Declaration.

15 **ARTICLE 15: EMINENT DOMAIN AND INSURANCE ON THE COMMON AREAS**

15.1 Eminent Domain. The term "Taking" as used in this Section means condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of any portion of the Common Areas, the Owners appoint the Board and such Persons as the Board may delegate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, regarding any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received as a result of the Taking shall be paid to the Association. In the event of a total Taking, the Board in its sole discretion, may retain any award in the general funds of the Association or distribute all or a portion to the Owners, using any formula adopted by the Board, taking into account a reduction in the distribution to those Owners which pay reduced amounts for Assessment, and all holders of liens and encumbrances, as their interest may appear of record.

15.2 Insurance.

15.2.1 Except as otherwise provided in this Article, the Association is responsible and obligated to purchase and maintain at all times the following types of insurance:

15.2.1.1 Comprehensive general liability and property damage insurance covering all Common Areas and all other areas under the jurisdiction or control of the Association. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot or Parcel Owner because of negligent acts of the Association or of any other Owners. The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use as the Covered Property. Coverage shall be for at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence for personal injury and/or property damage.

15.2.1.2 Blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage shall be obtained. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona, on a replacement cost basis, in an amount of not less than one hundred percent (100%) of the insurable value (based upon the replacement cost).

15.2.2 Premiums for all insurance on the Common Areas shall be a common expense of the Association. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement costs. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

15.2.3 In the event any improvement constructed on the Common Areas is subject to a mortgage or deed of trust, then each policy of insurance must

15.2.4.6 The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- a a waiver of subrogation by the insurer as to any claims against the Association, its Board, its manager, the Owners, and their respective tenants, servants, agents and guests;
- b a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
- c a statement that no policy may be canceled, invalidated, suspended or subject to non-renewal because of the actions of any Owner;
- d a statement that no policy may be canceled, invalidated, suspended or subject to non-renewal because of the conduct of any director, officer or employee of the association, or its duly authorized manager, without making a prior demand in writing and delivered-to the Association demanding that the defect be cured and allowing a reasonable time within which the defect may be cured by the Association, its manager, any Owner or Mortgagee;
- e that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- f that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification or non-renewal.

15.2.5 In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, workers compensation insurance, if and to the extent required by law; directors' and officers' liability coverage, fidelity insurance on directors, officers, employees and other persons handling or responsible for the Association's funds; and flood insurance, if required. The amount of fidelity coverage shall be determined in the Board's best business judgment but, if reasonably available, may not be less than one and one-half (1½) times the annual operating expenses and reserves. Fidelity insurance shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or non-renewal.

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15.2.6 In the event of substantial damage to or destruction of any part of the Common Areas, any first mortgagee will be entitled to timely written notice of any such damage or destruction and the first mortgagee has priority over the Owner of the Common Areas when the insurance proceeds are distributed.

15.3 Unacceptable Policies of Insurance. Policies shall be unacceptable where:

15.3.1 Under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against any Owner; or

15.3.2 by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carriers board of directors, policyholders or members; or

15.4 Destruction of Improvements. In the event of total destruction of the improvements on the Common Areas, the Association has the option of restoring and, repairing such improvements to their former condition as promptly as is practicable or placing the insurance proceeds into the general operating account and using them for any other purposes. If there is a partial destruction of the improvements on the Common Areas, the Association shall restore and repair such improvements to their former condition as promptly as is practicable and in a lawful and workmanlike manner. In the event any excess insurance proceeds remain after repair and replacement, the Board shall retain such sums in the general funds of the Association. If the Board restores and replaces the improvements and there are insufficient insurance proceeds, then, upon a majority vote of the Owners entitled to vote, the Association may impose a special assessment against the Owners of each Lot or Parcel to provide the necessary funds for restoration and replacement. In the alternative, the Owners may vote not to replace or restore the improvements but to retain such proceeds in the Association's general fund. Notwithstanding anything to the contrary, the distribution of any insurance proceeds for any damage or destruction to the Common Areas shall be subject to the prior rights of any Mortgagees.

15.5 Individual Responsibility. It is the responsibility of each Owner or Occupant to provide insurance on his/her Lot or Parcel, including, but not limited to, additions and improvements, furnishings and personal property, his/her personal liability to the extent not covered by the property and public liability insurance, if any, obtained by the Association. Each Owner and Occupant shall also provide any other insurance which is not carried by the Association which he/she desires. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. Neither the Association, any Board member, nor the Declarant is liable to any Person or

mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

- 15.6 Insurance Claims. The Association is irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement giving the trustee the authority to negotiate losses under any policy purchased by the Association.

16 ARTICLE 16: MISCELLANEOUS

- 16.1 Enforcement Rights. Each Owner (including Declarant, so long as Declarant is an Owner) has the right and authority, but not the obligation, to enforce the provisions of this Declaration.
- 16.2 Attorney's Fees. In the event any legal action is instituted to enforce the provisions of this Declaration, the successful party shall be entitled to judgment against the other party for all attorney's fees and court costs incurred.
- 16.3 Interpretation of the Covenants. Except for judicial construction, the Board, has the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions in Article 5. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions of this Declaration is final, conclusive and binding on all Persons and property benefitted or bound by this Declaration.
- 16.4 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.
- 16.5 Rule Against Perpetuities. If any of the interests, privileges, covenants or rights created by this Declaration are unlawful, void or voidable for violation of the rule against perpetuities, any related rule, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States in office on the date this Declaration is recorded.
- 16.6 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.

- 16.7 Declarant's Disclaimer of Representation. Notwithstanding anything to the contrary stated in this Declaration, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of CIVANO I: NEIGHBORHOOD I or for CIVANO: TUCSON SOLAR VILLAGE, can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of these restrictive covenants shall assume all risks of their validity and enforceability and by accepting a deed to the Lot or Parcel agrees to hold Declarant harmless from any liability.
- 16.8 Successors and Assigns. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers under this Declaration. Any assignment shall be evidenced by a recorded instrument executed by Declarant and its successor or assignee.
- 16.9 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders. Words in the singular shall include the plural and words in the plural shall include the singular.
- 16.10 Captions. 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 or to be used in determining the intent or context of such provisions.
- 16.11 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 any resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified, such notice requirement is satisfied if notice of such action or meeting is published once in any newspaper of 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.
- 16.12 FHAVA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA in regard to the Covered Property, then for so long as there is a Class B Member of the

Association, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: dedications or other changes in configuration or use of Common Areas; annexation of additional property; and amendments to this Declaration.

16.13 Water Rights. The Association has the right to receive all water which any Lot or Parcel, or the Owner thereof, is entitled to receive from any irrigation district serving such Lot or Parcel. The Association shall use such water for maintaining the Common Areas and for other appropriate uses for the benefit of the Owners and Occupants generally. Each Owner shall execute any assignments or instructions as the Association or any irrigation district may request in order to maintain, increase or obtain allocations of water to which such Owner's Lot or Parcel is entitled and to enable the Association to receive all water which is at any time allocated to the Lot or Parcel. The right to receive such water from an irrigation district is and shall remain appurtenant to the Lot or Parcel. Declarant, for each Lot or Parcel and any portion thereof, covenants and agrees and each Owner by acceptance of deed to a Lot or Parcel is deemed to covenant and agree that the irrigation district shall have no obligation or duty to construct or in any way provide ditches for water delivery, regardless of the then current use of the Lot or Parcel. The Association shall pay any and all assessments and charges made by the irrigation district for the delivery and use of water to which the Lot or Parcel is entitled when used by the Association for maintaining the Common Areas and for other appropriate uses for the benefit of the Owners and Occupants generally. Notwithstanding the foregoing, any Owner has the right to require direct delivery of water to which his, her or its land is entitled from any such irrigation district. In the event an Owner requires direct delivery, such Owner, and not the Association, shall bear any and all expenses associated with direct delivery, including, but not limited to, the construction and installation of a delivery system and all future assessments and charges for the delivery and use by such Owner of water to which his, her or its land is entitled.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration.

FIRST AMERICAN TITLE INSURANCE CO., a
California Corporation, as Trustee of Trust No. 4717

By: _____

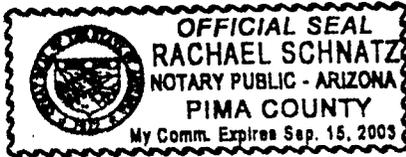
Its: ATP _____

STATE OF ARIZONA)
) ss:
County of Pima)

On this 4th day of January, 1999, Bright Echarre²⁰⁰⁰ of First American Title Insurance Co., a California Corporation, in his/her capacity as the Trustee of Trust No. 4717, personally appeared before me, and acknowledged that he/she is authorized to execute this Declaration of Covenants, Conditions and Restrictions.

Rachael Schnatz
Notary Public

My Commission Expires

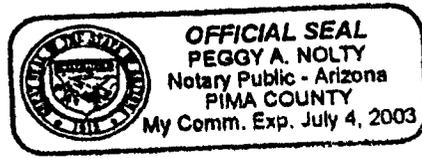


STATE OF ARIZONA)
) ss:
County of Pima)

On this 3rd day of November, 1999, Kevin M. Kelly, the President of CIVANO I: NEIGHBORHOOD I ASSOCIATION, INC., in his/her capacity as the President, personally appeared before me, and acknowledged that he/she is authorized to execute this Declaration of Covenants, Conditions and Restrictions.

Peggy A. Nolty
Notary Public

My Commission Expires



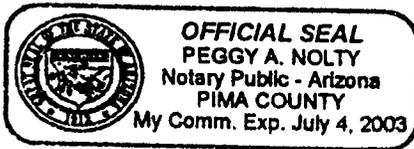
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STATE OF ARIZONA)
) ss:
County of Pima)

On this 31st day of November, 1999, Lawrence P. Lamy,
the Secretary of CIVANO I: NEIGHBORHOOD I ASSOCIATION, INC., in his/her capacity
as the Secretary, personally appeared before me, and acknowledged that he/she is
authorized to execute this Declaration of Covenants, Conditions and Restrictions.

Peggy A. Nalty
Notary Public

My Commission Expires



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