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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MONTEVISTA**

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MONTEVISTA

This Declaration of Covenants, Conditions, and Restrictions for Montevista (this "Declaration") is made this 23 day of August, 2007, by Toll Brothers AZ Construction Company, an Arizona corporation (the "Declarant").

## ARTICLE I DEFINITIONS

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

1.1 "Additional Property" means any real property, together with all Improvements situated thereon, the boundary of which is within a one mile radius of the boundaries of the Project.

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

1.3 "Areas of Association Responsibility" means (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association, but specifically excluding any areas within a Lot which the Association may be required to maintain in connection with an Optional Maintenance Assessment program which may be established pursuant to **Section 6.7** herein; (iii) all real property, and the Improvements situated thereon, within or adjacent to the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas; and (iv) all land within the Project or in close proximity to the Project which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance, and for which the Association benefits by limited use, full use or aesthetic consistency, including, but not limited to, those certain obligations set forth in the Development Agreement, but excluding any City parks or portions of stormwater management systems developed as City recreational facilities.

1.4 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.



1.5 “**Assessment**” means an Annual Assessment, a Special Assessment, an Optional Maintenance Assessment or any other amounts assessed by the Association pursuant to the terms of this Declaration.

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

1.7 “**Assessment Period**” means the period set forth in Section 6.8 of this Declaration.

1.8 “**Association**” means the Arizona nonprofit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. The Declarant intends to incorporate the Association under the name of **Montevista Community Association**, but if such name is not available, the Declarant reserves the right to incorporate the Association under such other name as the Declarant deems appropriate.

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

1.10 “**Benefited Property Assessment**” means an assessment levied against less than all of the Lots and Parcels pursuant to Section 6.4 of this Declaration.

1.11 “**Benefited Property Assessment Area**” means a portion of the Project designated in a Supplemental Declaration as an area containing Limited Common Area or as an area in which the Association will provide Special Services.

1.12 “**Benefited Property Expenses**” means the actual or estimated expenses, including allocations to reserves, incurred or anticipated to be incurred by the Association for the maintenance, repair and replacement of Limited Common Areas or to provide Special Services to the Owners, Lessees and Residents in a Benefited Property Assessment Area.

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

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

1.15 “**City**” means the City of Phoenix, Arizona.

1.16 “**Claimant**” means the Association or any Unit Owner who contends or alleges to have a Claim.

1.17 “**Common Area**” means (i) the real property, together with all Improvements situated thereon, designated as “Tracts” on a Recorded Plat covering any portion of the Property described on Exhibit A; (ii) upon annexation into the Project pursuant to Section 2.3, any Common Area tracts designated as Common Area on a Recorded Plat for the Additional Property or as so designated pursuant to a Supplemental Declaration pursuant to Section 2.4; (iii) all land, together with all Improvements situated thereon which the Association at any time owns in fee or

in which the Association has a leasehold or easement interest for as long as the Association is the owner of the fee, leasehold or easement interest; and (iv) all land within the Property which the Declarant, by this Declaration or other instrument Recorded with the Office of the Maricopa County Recorder, makes available for use by Members and evidences its intent to convey to the Association at a later date. Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

1.18 **“Common Expenses”** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, including, but not limited to, any prorata share of maintenance and repair costs, if any, payable under the Development Agreement.

1.19 **“Community Systems”** means any and all cable television, telecommunication, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials, installations and fixtures (including those based on, containing and serving future technological advances not now known) installed by the Declarant or pursuant to any grant of easement or authority by the Declarant within the Project.

1.20 **“Declarant” or “Project Declarant”** means Toll Brothers AZ Construction Company, an Arizona corporation, and any Person or Persons to whom it may expressly assign any or all of its Declarant rights under this Declaration by a Recorded instrument.

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

1.22 **“Design Guidelines”** means the procedures, standards and guidelines adopted by the Design Review Committee pursuant to **Section 11.1**, as amended or supplemented from time to time.

1.23 **“Design Review Committee”** means the committee which may be established by the Board pursuant to **Section 11.1**, and if no such Design Review Committee has been created by the Board, reference in this Declaration to the Design Review Committee shall be deemed to be a reference to the Board.

1.24 **“Developers or Developer”** means the Declarant or any entity affiliated with the Declarant engaged in the marketing of Lots and/or Residences. As used in **Article X** of this Declaration, **“Developers”** or **“Developer”** also means any contractor, subcontractor, architect, engineer or other professional retained or employed by the Declarant to design or construct Improvements.

1.25 **“Development Agreement”** means the Development Agreement 2004-026-COS between the City of Phoenix and Edmunds-Toll Construction Company, dated the April 1, 2004, and Recorded in the official records of Maricopa County, Arizona, at instrument number 20040358702, and thereafter amended pursuant to Amendment No. 1 to Development Agreement 2004-026-COS dated May 17, 2004, and Recorded in the official records of Maricopa County, Arizona, at instrument number 20040592199. Certain rights, title, interest, and obligations of Edmunds-Toll Construction Company under the Development Agreement were thereafter assigned to the Declarant. The Declarant intends to assign to the Association the

costs, if any, for ongoing maintenance required in Section 10 and Section 11 of the Development Agreement.

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

1.27 “Improvement” means any building, fence, wall or other structure (including, without limitation, any sheds, basketball poles/hoops, play structures, patio covers and balconies), and any swimming pool, road, driveway, parking area (paved or unpaved) and any trees, plants, shrubs, grass and other landscaping of every type and kind and any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind.

1.28 “Indemnified Parties” means the Persons identified in Section 5.4 of this Declaration.

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

1.30 “Limited Common Area” means real property, and the Improvements situated thereon, which are part of the Common Area and which are designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Limited Common Areas may include, without limitation, access gates, drainage or retention areas or landscape medians.

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

1.32 “Maintenance Standard” means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project, or as required under the Development Agreement.

1.33 “Member” means any Person who is an Owner of a Lot within the Property.

1.34 “Modification” means any construction, installation, addition, alteration, repair, change or replacement, or other work to any Improvement within the Project, including initial construction of Improvements upon a Lot.

1.35 “Notice of Alleged Defect” means a notice given pursuant to Section 10.3.

1.36 “Optional Maintenance Assessment” means any assessment levied and assessed pursuant to Section 6.7 of this Declaration.

1.37 “Owner” means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the

fee simple interest of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of Arizona Revised Statutes (A.R.S.) §33-741 et. seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. §33-801, et seq., the trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.38 **“Parcel”** means a portion of the Project annexed and subjected to this Declaration pursuant to **Section 2.3** but not yet included in a Recorded Plat.

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

1.40 **“Plat”** means collectively (a) any subdivision plat Recorded against all or any part of the Property described on Exhibit A, in the records of the County Recorder of Maricopa County, Arizona, and all amendments, supplements and corrections thereto; and (b) any subdivision plat recorded against all or any part of the Additional Property which is annexed and subjected to this Declaration pursuant to **Section 2.3**, and all amendments, supplements are corrections thereto.

1.41 **“Project” or “Property”** means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon, and all portions of the Additional Property, together with all Improvements located thereon, which are annexed and subjected to this Declaration pursuant to **Section 2.3**.

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

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

1.44 **“Recording,” “Record” or “Recordation”** means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and **“Recorded”** means having been so placed of public record.

1.45 **“Resident”** means each individual occupying or residing in any Residence including, but not limited to, a Lessee and the members of a Lessee’s or Owner’s family.

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

1.47 “Special Assessment” means any assessment levied and assessed pursuant to Section 6.6 of this Declaration.

1.48 “Special Services” means services designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Special Services may include, without limitation, guard services (including the maintenance of guard gates) and landscape maintenance services for landscaping situated on Lots and/or Parcels.

1.49 “Supplemental Declaration” means a Supplemental Declaration executed by the Declarant and Recorded pursuant to Section 2.4 of this Declaration.

1.50 “Termination of Negotiations” means the end of the period to negotiate pursuant to Section 10.5 of this Declaration.

1.51 “Visible From Neighboring Property” means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of any adjoining Lot, street, or Common Area at the same elevation as the object being viewed.

1.52 “Working Capital Fee” means the fee due pursuant to Section 6.15 of this Declaration.

## ARTICLE II PLAN OF DEVELOPMENT

2.1 Property Subject to the Declaration. This Declaration is being Recorded to establish a general plan for the development, sale, lease, and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant declares that all of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person binds itself, and its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person thereby acknowledges that this Declaration sets forth a general plan for the development, sale, lease, and use of the Property and hereby evidences the Owner’s intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. The Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be

conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 **Disclaimer of Representations.** The Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future. No representations or warranties of any kind, express or implied, have been given or made by the Declarant, any Developer, or their agents, consultants, or employees in connection with the Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration or in a Public Report for the Project issued to the Declarant or a Developer, or in any written contract executed by the Declarant or a Developer.

2.3 **Annexation of Additional Property.** So long as the Declarant owns any Lot, Parcel, or any part of the Additional Property, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property. The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording a Declaration of Annexation setting forth the legal description of the Additional Property being annexed and stating that such portion of the Additional Property is annexed and subjected to this Declaration. If the portion of the Additional Property being annexed is not owned by the Declarant, the Declaration of Annexation must be signed by the Owner of fee title to the portion of the Additional Property being annexed. The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The property annexed by the Declarant pursuant to this Section need not be contiguous with other property already subject to this Declaration, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property. The Declarant makes no assurances as to which, if any, part of the Additional Property will be annexed. The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date such Lots are subject to Assessment pursuant to **Section 6.9** of this Declaration.

2.4 **Supplemental Declarations.** The Declarant shall have the right to record one or more Supplemental Declarations for various parts of the Project. If the property covered by the Supplemental Declaration is not owned by the Declarant, then the Supplemental Declaration must also be signed by the owners of fee title to the property covered by the Supplemental Declaration. A Supplemental Declaration may (i) designate Common Areas or other Areas of Association Responsibility, (ii) impose such covenants, conditions, restrictions and easements as the Declarant deems appropriate for the property to be covered by the Supplemental Declaration, and (iii) designate Benefited Property Assessment Areas, Limited Common Area and Special Services. If a Supplemental Declaration designates any Limited Common Areas or Special Services, the Supplemental Declaration shall also designate the Benefited Property Assessment Areas containing the Lots which will be subject to a Benefited Property Assessment. A

Supplemental Declaration may be amended only by (a) the affirmative vote of Owners holding at least two-thirds (2/3) of the votes held by Owners of all Lots subject to the Supplemental Declaration or such greater percentage of votes as may be required by Supplemental Declaration; (b) the Association; and (c) the Declarant as long as the Declarant owns any Lot, Parcel, or any part of the Additional Property. If an amendment to a Supplemental Declaration adds, deletes or changes any Limited Common Areas or Special Services or any Benefited Property Assessment Area, then such amendment must also be approved by at least two-thirds (2/3) of the votes held by Owners of Lots and Parcels within such Benefited Property Assessment Area or by such greater percentage of votes as may be required by the Supplemental Declaration. Any amendment to a Supplemental Declaration approved in accordance with this Section shall be executed by the Association and shall be effective only upon the Recording of the Supplemental Declaration.

## 2.5 Restriction on Liability of the Association and Declarant.

(a) The Declarant intends to construct gated entries on the private streets leading into the Project to limit access and to provide more privacy for the Owners and Residents; however, there are no guarantees that such gated entries will be completed or, if and when completed, will provide complete security and safety to all Owners, Residents, and their families, guests and invitees. Each Owner and Resident, for themselves and on behalf of their families, guests and invitees, acknowledge and assume the risks that the gated entries may restrict or delay entry into the Project by the police, fire department, ambulances and other emergency vehicles or personnel. Neither the Declarant, the Association, nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner or Resident, or their families, guests or invitees, for any claims or damages resulting, directly or indirectly, from the construction, existence, operation, failure of operation, or maintenance of the gated entries and/or delays caused by reason of restricted access to the Project and the Lots therein.

(b) Each Owner and Resident hereby releases the Declarant and the Association, and its directors, officers and agents, from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting from activities or occurrences described in this Section 2.5.

(c) Notwithstanding anything contained in this Declaration to the contrary, so long as the Declarant or any Developer is constructing Residences or other Improvements within the Project, no restrictions shall be approved by the Board or otherwise imposed upon the Declarant or a Developer which restricts construction traffic or access to the Project though the gated entries, restricts the hours when construction work may be performed, or eliminates any easements for construction purposes reserved to the Declarant or a Developer in this Declaration. The foregoing shall survive the termination of the Declarant's Class B membership and may not be amended without approval of the Declarant.

2.6 Withdrawal of Property. As long as the Declarant owns a Lot or Parcel within the Project, the Declarant shall have the right to withdraw property from the Project without the

consent of any Owner (other than the Owner of such property, if other than the Declarant) provided such property is not then subject to Assessments. The withdrawal of all or any portion of the property within the Project shall be effected by the Declarant Recording a written instrument setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from the Project, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

### ARTICLE III USE RESTRICTIONS

#### 3.1 Residential Use.

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

(b) The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The use of model homes by the Declarant or the use of Project facilities by the Declarant for the purpose of developing and marketing the Project, or the leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Except for



temporary buildings, trailers or other structures used by the Declarant, temporary buildings, trailers or other structures used during the construction of Improvements approved by the Design Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee.

3.3 **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No condition shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property. No Person shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Design Review Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant.

3.4 **Antennas.** To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be subject to the prior written approval of the Design Review Committee. Therefore, no antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed, installed, erected, used or maintained on any Lot without the prior written approval of the Design Review Committee unless applicable law prohibits the Design Review Committee from requiring such approval. Even if applicable law prohibits the Design Review Committee from requiring prior approval for the installation of certain antennas, any such antennas must still be installed in accordance with the Design Guidelines.

3.5 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers be kept or placed on a Lot so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or

garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

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

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

3.8 Animals.

(a) No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that a reasonable number of dogs, cats, parakeets or similar household birds may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have the authority to determine what is a reasonable number of dogs, cats, parakeets or similar household birds for any particular Lot, and the Board's determination shall be final. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

(b) No animal, bird, fowl, poultry or livestock shall be (i) allowed to make an unreasonable amount of noise or to become a nuisance, or (ii) left unattended or leashed outdoors, including but not limited to in yards, garages or on porches. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained outdoors. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

(c) The Board may adopt rules and regulations further restricting and governing animals within the Property, which rules may include, without limitation rules providing for the removal from the Property of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of

incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Residents.

3.9 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot or such machinery or equipment which the Declarant or the Association may require for the operation and maintenance of the Project.

3.10 **Signs.** No Owner or Resident may place any sign anywhere within the Project other than on a Lot owned or occupied by such Owner or Resident; provided, however, except for signs constructed or erected by or on behalf of the Declarant or by the Association, no signs whatsoever, including but not limited to "for sale," "for lease" or "open house" signs, may be erected, posted or displayed on any Lot in a location that is Visible From Neighboring Property without the prior written approval of the Design Review Committee. All signs must be standardized in color, font and design as directed and approved by the Design Review Committee. This provision does not prohibit the use of "for sale" signs but limits the design, location and placement of such signs.

3.11 **Further Subdivision, Property Restrictions, Rezoning and Timeshares.** Without the prior written approval of the Design Review Committee and the Board, no Owner, other than the Declarant, shall do any of the following: (a) further subdivide a Lot or separate the Lot into smaller lots or parcels; (b) convey or transfer less than all of a Lot; or (c) replat the Lot or combine the Lot with other Lots. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Design Review Committee and the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Design Review Committee and the Board and the proposed use otherwise complies with this Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly or any other type or revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

3.12 **Vehicles and Parking.** As used in this Section: (a) "**Motor Vehicle**" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) "**Street**" means each public or private street shown on the Plat.

(a) No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property.

(b) No Motor Vehicle which exceeds eight feet (8') in height or exceeds twenty-four feet (24') in length or which is designed or used for carrying merchandise, supplies or equipment for commercial purposes shall be parked on a Street or on a driveway or any other part of a Lot so as to be Visible From Neighboring Property, except for: (a) the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Declarant, the Association, or of an Owner, Lessee or Resident, and (b) the temporary parking in the driveway on a Lot of recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident for the purpose of loading or unloading, subject to such limitations as may be established by the Board. No Motor Vehicle of a contractor, subcontractor, supplier or vendor of an Owner, Lessee, or Resident shall be parked overnight on a Lot, a Street or the Common Area. No Motor Vehicle shall be parked on any part of the Common Area other than a Street or designated parking spaces.

(c) Except for Motor Vehicles parked on a Lot, Parcel, or Street in connection with the Declarant's operation of model homes and construction activities, Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot or their guests must be parked in the garage situated on the Lot to the extent space is available in the garage for the parking of such Motor Vehicles. If space is not available in the garage, then such Motor Vehicles may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot by the Declarant. Parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot or their guests may only be parked on a driveway expansion constructed with the approval of the Design Review Committee if space for the parking of such Motor Vehicles is not available either in the garage or in the driveway constructed as part of the initial construction or Improvements on the Lot by the Declarant. No Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot or their guests may be parked on a Street if space for the parking of the Motor Vehicle is available in any of the following areas: (i) the garage situated on the Lot of the Owner, Lessee or Resident; (ii) the driveway on the Lot constructed as part of the initial construction of Improvements on the Lot by the Declarant; or (iii) a driveway expansion constructed on the Lot with the approval of the Design Review Committee. No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Area.

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

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

(f) The Board shall have the right to have any Motor Vehicle or mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents, towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any Motor Vehicle shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, or a Lessee, Resident, guest or invitee of an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

(g) The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board, the provisions of this Section shall control.

3.13 **Drainage.** No Lot shall be graded or contoured and no Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with, or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the municipality in which the Project is located. In addition, no Owner, Lessee, Resident or other Person shall change the grade or elevation over or through any portion of a Lot in any manner that would obstruct, interfere with, impede, or change the direction or flow of water in accordance with the approved drainage plans.

3.14 **Garages.** No garage shall be converted to living space or altered or used for storage of material or other purposes which would prevent the use of the garage for the parking of a minimum of two Motor Vehicles, except that the Declarant may use a garage in one or more model homes for a sales office and/or a construction office. The interior of all garages shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

3.15 **Rooftop HVAC Equipment Prohibited.** No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof or in the windows of any Residence or other building so as to be Visible From Neighboring Property.

3.16 **Basketball Goals and Backboards.** Permanent basketball goal or backboard may be constructed, installed or maintained on any Lot provided they are kept and used in accordance with the Association Rules which govern their size, design, color, material, location, storage, and hours of use. No portable basketball goals or backboards may be kept on a Lot.

3.17 **Playground Equipment.** No jungle gyms, swing sets, trampolines, or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Design Review Committee.

3.18 **Rental of Lots.**

(a) No Owner may lease less than its entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of the Project Documents and that any violation of this Declaration or the Association Rules by a Lessee or Resident shall be a default under the lease.

(b) At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (i) the commencement date and expiration date of the lease term; (ii) the names of each of the Lessees and each other person who will reside in the Residence during the lease term; (iii) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (iv) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases its Lot and the Residence situated thereon must provide the Lessee or Resident with copies of this Declaration, the Design Guidelines, and the Association Rules.

(c) Any lease of a Lot or Residence situated thereon must be for an initial term of at least one (1) month. The Owner shall be liable for any violation of this Declaration, the Design Guidelines or the Association Rules by the Lessees or Residents and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

(d) Notwithstanding the foregoing, in the event a purchase contract between Declarant or Developer, and a Purchaser contains more restrictive leasing provisions than those set forth above, then the more restrictive leasing provisions of such contract shall control and nothing in this Declaration is intended to constitute a waiver by the Declarant or Developer of such more restrictive leasing provisions.

3.19 **Exterior Lights.** Except as initially installed by the Declarant, no spotlights, floodlights or other lights shall be installed on the exterior of a Residence or on the ground or on any wall situated on any Lot without the prior written approval of the Design Review Committee, and no spotlights, floodlights, or other lights shall be modified or redirected to shine upon an adjacent Lot, Residence, or Common Area.

3.20 **Window Cover Materials.** All window coverings facing a street must be of neutral colors compatible with the exterior color of the home unless otherwise approved in writing by the Design Review Committee. No reflective materials (including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items) shall be installed or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Design Review Committee. No drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence which are Visible from Neighboring Property

shall be installed or placed on the inside or outside of the windows of a Residence except in accordance with the approved Design Guidelines.

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

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

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

3.24 **Variances; Diminution of Restrictions.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this **Article III** if the Board determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete; and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners and Residents of the Project and is consistent with the high quality of life intended for Residents of the Project. If any restriction set forth in this **Article III** is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, statute, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

#### ARTICLE IV EASEMENTS

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

(a) Subject to the rights and easements granted to the Declarant, Developers and the Association in **Sections 4.3, 4.4 and 4.5** of this Declaration, every Owner or Resident, and any Person residing with such Owner or Resident, shall have a right and easement of enjoyment in and to the Common Area (including, but not limited to, the right to use any streets which may be part of the Common Area for ingress and egress to the Member's Lot), which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in **Section 5.10** of this Declaration.

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

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

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

4.2 **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed by the Declarant or a Developer, or as approved by the Board. In addition to the foregoing, the Declarant and its affiliates and its and their designees shall have a perpetual easement over, upon and under the Common Area and the portions of the Lots designated in plats for the installation, operation, maintenance, repair, replacement, alteration and expansion of Community Systems and other utilities.

4.3 **Use for Sales and Leasing by Declarant and Developers.**

(a) The Declarant and its duly authorized agents, employees and representatives and assigns, including, but not limited to, any Developer, shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned by the Declarant while the Declarant is selling Lots. The Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by the Declarant and on any portion of the Common Area in such number, of such size and in such locations as the Declarant deems appropriate.

(b) In the event of any conflict or inconsistency between the provisions of this Section 4.3 and any other provision of this Declaration, this Section shall control.



#### 4.4 Declarant's Rights and Easements.

(a) The Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct, modify, replace and repair all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration. Nothing in this Declaration shall limit the right of the Declarant to alter the Common Areas or Lots owned by the Declarant, or to construct additional improvements as the Declarant deems advisable prior to completion of all Improvements within the Project. The Declarant reserves the right to alter its construction plans and designs as it deems appropriate in its sole discretion. In the event of any conflict or inconsistency between the provisions of this Section 4.4 and any other provision of this Declaration, this Section shall control.

(b) The Declarant shall have the right, but not the obligation, to install and provide Community Systems and to provide the services available through the Community Systems to any and all Residences within the Project. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either indirectly, through the Association and paid for as a Common Expense, or directly by the Declarant, an affiliated entity or a third party and paid for by the recipient of the services. The Community Systems shall be the property of the Declarant (or an affiliated entity) unless transferred by the Declarant (or such affiliated entity), whereupon any proceeds of such transfer shall belong to the Declarant (or such affiliated entity). The Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the Community Systems, or all or any portion of the rights, duties or obligations with respect thereto, to the Association or any other Person (including an Owner, as to any portion of the Community System located on such Owner's Residence). The Declarant's rights with respect to the Community Systems installed by the Declarant and the services provided through such Community Systems are exclusive, and no other person may provide such services through the Community Systems installed by the Declarant without the prior written consent of the Declarant. However, the provision of the services available through the Community Systems installed by the Declarant shall be non-exclusive and the Association may permit any third party to install and provide alternative Community Systems and the services available through such alternative Community Systems as shall be constructed and installed by such third party in the Association's sole discretion and on such non-exclusive terms and conditions as the Association may determine; provided, however, that such alternative Community Systems and services shall not affect or modify the rights of the Declarant, its affiliated entities or its successors and assigns.

(c) ALL PERSONS ARE HEREBY NOTIFIED THAT THE ASSOCIATION MAY BE A PARTY TO A CONTRACT FOR SERVICES PROVIDED THROUGH THE COMMUNITY SYSTEMS SERVING THE PROJECT FOR A TERM WHICH EXTENDS BEYOND THE PERIOD IN WHICH THERE IS A CLASS B

MEMBERSHIP AND THAT, IF SO PROVIDED IN SUCH CONTRACT, THE ASSESSMENTS PAYABLE AS TO EACH RESIDENCE WILL INCLUDE CHARGES PAYABLE BY THE ASSOCIATION UNDER SUCH CONTRACT, REGARDLESS OF WHETHER OR NOT THE OWNER OR MEMBERS OF SUCH RESIDENCE ELECT TO RECEIVE SUCH SERVICES THROUGH THE COMMUNITY SYSTEMS.

(d) Subject to the terms set forth above in this Section, to the extent permitted by law and as determined by the Association from time to time, the Association may, acting as agent for the Owners, endeavor to arrange and enter into contracts, agreements or other acceptable arrangements dealing with provision of electrical, telephone, television, water, sewer or any other utility services to all Lots within the Project with a single utility provider or a series of utility providers in the discretion of the Association. It is the intention of the foregoing that, to the fullest extent permitted by law from time to time, but also as may be determined by the Association from time to time, the Association may act as agent for all of the Owners and speak for the Owners in bidding or procuring utilities services as the Association may see fit from service providers including, but not limited to, the Declarant or its affiliated entity, under the so called "deregulated utility regime" in effect in Arizona from time to time. The Association shall be justified and protected in relying upon the reasonable advice of third party experts and consultants in assessing and/or accomplishing the foregoing and it is understood that the Association is under no obligation to investigate or procure any such services. Each Owner, by acceptance of a deed to a Lot, agrees that the Association may so act, but further agrees and shall be deemed to agree, by such acceptance, to execute such documents as may be requested by the Association to implement any of the foregoing.

(e) The Declarant, its affiliated entities, the Association, and their respective successors and assigns may enter into contracts for the provision of security services through any Community Systems. THE DECLARANT, ITS AFFILIATED ENTITIES, THE ASSOCIATION, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, NOTIFY AUTHORITIES OF FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME, AND EVERY OWNER OR OCCUPANT OF PROPERTY RECEIVING SECURITY SERVICES THROUGH THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT THE DECLARANT, ITS AFFILIATED ENTITIES, THE ASSOCIATION, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS ARE NOT INSURERS OF THE OWNER'S OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE RESIDENCE OR OTHER IMPROVEMENTS AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the part of a security service provider to perform any of its obligations with respect to security services and, therefore, every Owner or Resident of Lot or Property receiving security services through the Community Systems agrees that the Declarant, its affiliated entities, the Association, and their respective

successors and assigns assume no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of (i) any failure of the Owner's security system; (ii) any defective or damaged equipment, device, line or circuit; (iii) negligence, active or otherwise, of the security service provider or its officers, agents or employees; or (iv) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every Owner or occupant of a Residence obtaining security services through the Community Systems further agrees for itself, its grantees, Lessees, guests, invitees, licensees and family members, that if any loss or damage should result from a failure of performance or operation or from defective performance or operation, or from improper installation, monitoring or servicing of the system or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of the Declarant, its affiliated entities, the Association, or their respective successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding \$250.00, which limitation applies irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or nonperformance by an officer, agent or employee of the Declarant, its affiliate entities, the Association, or their respective successors or assigns. Further, in no event will the Declarant, its affiliated entities, the Association, or their respective successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

(f) In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable for, and no user of any Community Systems shall be entitled to, any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not the same is caused by reasons within the control of the then-provider of such services.

(g) The Declarant expressly reserves the right to retain one or more Lots in the Project for the construction of guest houses, to be used and enjoyed by the Declarant, its affiliates, employees, invitees, and licensees for any lawful purpose.

(h) Declarant shall have the right, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of the Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to the Declarant, at the discretion of the Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made until the date of its repayment, at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

(i) Following the cessation of Class B membership and conversion of the same to Class A membership as provided herein, until the Declarant has sold every Lot in the Project, the Board may not, without the prior written consent of Declarant in Declarant's sole and absolute discretion, take any action which would discriminate against the Declarant, or which would be detrimental to or adversely affect the sale or leasing of Lots or Residences

owned by the Declarant, and the Board shall continue the same level and quality of maintenance, operations and services as that provided immediately prior to the conversion of membership.

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

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

(b) For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots, or to perform maintenance over those Lots for which Optional Maintenance Assessments are assessed;

(c) For correction of emergency conditions in one or more Lots;

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

(e) For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, Residents, their guests, tenants, invitees.

(f) Except in case of emergency, the Association shall only enter a Lot at reasonable times and upon reasonable notice to the Owner or, if the Lot is leased, to the Lessee. In the event of an emergency, the Association may enter a Lot without prior notice to the Owner or the Lessee, but promptly following the Association's entry into the Lot, the Association shall notify the Owner or the Lessee of the nature of the emergency condition which required entry without notice.

4.6 **Granting Easements in Favor of Developers or Adjacent Lot Owners.** The Declarant or the Board shall have the right to grant easements or licenses to (i) Developers for construction of Improvements within the Project, which construction easements shall expire upon completion of the construction of such Improvements; and (ii) adjoining Lot Owners in perpetuity in connection with the correction or adjustment of a boundary between Common Area and one or more Lots.

## ARTICLE V

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

5.1 **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege. In the event of any conflict or

inconsistency between this Declaration and the Articles, Bylaws or Association Rules, this Declaration shall control.

5.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. So long as the Declarant owns any Lot or Parcel in the Project, the Declarant shall have the sole right to appoint and remove the members of the Board. At such time as the Declarant no longer owns any Lot or Parcel in the Project, the members of the Board shall be elected by the Members. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot, and to impose late charges for payment of such fines if unpaid fifteen (15) or more days after the due date, provided that the late charge shall not exceed the maximum amount allowed by applicable law.

5.3 **The Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (b) minimum standards for any maintenance of Lots; or (c) the health, safety or welfare of the Owners and Residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

5.4 **Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association, whether past or present (the "**Indemnified Parties**"), shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, or an Indemnified Party; provided, however, the limitations set forth in this Section 5.4 shall not apply to any Indemnified Party who has failed to act in good faith or has engaged in willful or intentional misconduct. The Association shall indemnify and hold harmless the Indemnified Parties against all contractual liability to others arising out of contracts made on behalf of the Association unless such contract has been made in bad faith. The Association shall indemnify each Indemnified Party against expenses and liabilities, including reasonable attorneys' fees, incurred or imposed upon him or her in connection with any proceeding in which he or she may be a party, or in which he or she may become involved, by reason of such Person being a director, officer, employee, committee member, or other Person acting on behalf of the Association, except in such cases where such Indemnified Party is adjudged guilty by a court of law of gross negligence or malfeasance in the performance of his or her duties. Indemnification shall be in addition to and not exclusive of all other rights to which such Indemnified Party may be entitled.

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

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

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

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

(b) **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned and ten (10) votes per acre for all Parcels owed by the Declarant until such respective Parcels (or portions thereof) are subjected to one or more Plats. The Class B membership shall cease and be converted to Class A membership when the Declarant no longer owns any Lot or Parcel in the Project. The Declarant may voluntarily relinquish its Class B membership at any time by giving written notice thereof to the Association.

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

5.9 **Transfer of Membership.** The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of

ownership to a Lot shall operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association in writing of the purchase within ten (10) days after such Purchaser becomes the Owner of a Lot.

5.10 Conveyance or Encumbrance of Common Area. Except as provided in Section 4.6 of this Declaration, once conveyed to the Association, the Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B membership of the Association and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by the Class A Members of the Association. Notwithstanding the foregoing or any other provision in this Declaration to the contrary, the Board, on behalf of the Association, shall have the right to grant utility easements in favor of municipal or state agencies.

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

5.12 Approval of Litigation. Except for any legal proceedings initiated by the Association to (a) enforce the use restrictions contained in this Declaration; (b) enforce the Association Rules; or (c) collect any unpaid Assessments levied pursuant to this Declaration, the Association shall not incur litigation expenses, including without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of a Members holding a majority of the votes in the Association, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds, or use monies collected for other specific Association obligations. Each Owner shall notify prospective Purchasers of any legal proceedings initiated by the Association which involve an Alleged Defect and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with Section 10.3 of this Declaration. Nothing in this Section 5.12 shall preclude the Board from incurring expenses for legal advise in the normal course of operating the Association to (i) enforce the Project Documents; (ii) comply with the statutes or regulations related to the operation of the Association or the Areas of Association Responsibility; (iii) amend the Project Documents as provided in this Declaration; (iv) grant easements or convey Common Area as provided in this Declaration; or (v) perform the obligations of the Association as provided in this Declaration. In the event of any conflict between the provisions of this Section 5.12 and Article X, the provisions of Article X shall apply.

**ARTICLE VI**  
**COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

6.1 **Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. Parcels shall not be subject to Assessment until subdivided and a Plat for such Parcel, or a portion thereof, is Recorded, and then only and to the extent of the Lots shown on such Plat.

6.2 **Annual Assessments.**

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

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

6.3 **Uniform Rate of Assessment/Declarant Exemptions.**

(a) The amount of the Annual Assessment for each Lot, other than Lots owned by the Declarant, shall be based upon a proposed budget that takes into account the total Common Areas projected to be included in the Project for the Assessment Period, and the total projected Common Expenses, and dividing the total projected Common Expenses of the



Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots; provided, however, that at any time the Board may elect to establish an estimated total build out budget for the Project, in which event, the amount of the Annual Assessment for each Lot, other than Lots owned by the Declarant, shall be the amount obtained by dividing the total projected Common Expenses of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots.

(b) The Annual Assessment for Lots owned by the Declarant shall be only that portion of the Annual Assessment, if any, that the Board allocates to funding a repair/replacement reserve for the Association.

(c) In addition to the reduced Assessments provided for in **Section 6.3(b)**, and for so long as there is a Class B Membership, the Declarant shall pay its portion of the Association Shortage calculated pursuant to **Section 6.5** herein. When the Declarant ceases to be a Class B Member, the Declarant shall no longer be obligated to pay any portion of the Association Shortage but shall pay Assessments on each Lot owned by the Declarant in an amount equal to the Assessments paid by Class A Members.

**6.4 Benefited Property Assessments.** All Common Expenses pertaining to the maintenance, repair and replacement of Limited Common Areas or pertaining to the providing of Special Services shall be shown separately in the budget adopted by the Board. The Common Expenses pertaining to the maintenance, repair or replacement of a Limited Common Area or to the providing of Special Services shall be assessed solely against the Lots within the Benefited Property Assessment Area as established by the Supplemental Declaration designating the Benefited Property Assessment Area. No Common Expenses pertaining to the maintenance, repair or replacement of Limited Common Area or pertaining to providing Special Services shall be used in computing the Regular Assessments to be levied pursuant to **Section 6.2**. Unless otherwise provided for in the applicable Supplemental Declaration, Benefited Property Assessments shall be levied against the Assessable Lots within the Benefited Property Assessment Area at a uniform amount per Lot. If the Board determines during any Assessment Period that any Benefited Property Assessment is, or will, become inadequate to pay all Common Expenses to be paid by the Benefited Property Assessment for any reason, including, without limitation, nonpayment of Benefited Property Assessments by Owners, the Board may increase the Benefited Property Assessment for that Assessment Period and the revised Benefited Property Assessment shall commence on the date designated by the Board.

**6.5 Obligation of Declarant for Deficiencies.** Unless the Declarant elects to waive its right to pay reduced Assessments pursuant to **Section 6.3** above, the Declarant shall pay and contribute to the Association, as such funds are required by the Association, the amount by which (a) the cost of operating and administrating the Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies exceeds (b) the total amount of Annual Assessments levied against Lots not owned by the Declarant and all other income of the Association (the "**Association Shortage**"); provided, however, the obligation of the Declarant to pay such amounts shall not exceed the amounts that otherwise would have been assessed against Lots owned by the Declarant if the Declarant had been subject to full Assessments. The Declarant shall pay and contribute to the Association its prorata share of the

amounts due under this **Section 6.5** within fifteen (15) days after receipt of a billing from the Association. If the Association Shortage is not paid when due, the Association shall have the right to an Assessment Lien against all Lots subject to the unpaid Association Shortage as provided in **Section 6.11**. Upon request by the Declarant, the Association shall allow inspection of the records of the Association used to establish sums to be collected under this **Section 6.5**. The sums due from the Declarant under this **Section 6.5** shall be calculated by the Association as follows:

(a) Amounts paid direct by the Declarant or Developer to the Association's creditors, or assets purchased by the Declarant or Developer for the Association, or amounts paid for services rendered by the Declarant, Developer, or their affiliates for the benefit of the Association that otherwise would have been an expense of the Association, shall apply against the obligations of the Declarant to pay all or a portion of the Declarant's Assessments and share of Association Shortage. If the amounts paid direct or in-kind contributions made by the Declarant exceeds the Declarant's obligations to pay reduced Assessments or the Association Shortage within the current Assessment Period, then the Association shall pay to the Declarant or credit against the Declarant's obligation for the immediately following fiscal year, as the Declarant may elect, the amount, if any, by which the total of all payments or in-kind contributions paid by or made by the Declarant during such fiscal year exceeded the total obligation of the Declarant for such fiscal year under this **Section 6.5(a)**.

(b) Any subsidy required by the Declarant under this **Section 6.5** may be in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by the Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed. The Declarant shall make payments or in-kind contributions in respect of its subsidy obligations under this **Section 6.5** as set forth in **Section 6.5(a)** above; however, the Declarant shall not be required to make such payments or in-kind contributions more often than monthly. Anything in this Declaration to the contrary notwithstanding, the Declarant shall not be required to pay to the Association as an Association Shortage any amount that would otherwise be assessed against Lots owned by the Class A Members pursuant to **Section 6.2** or **Section 6.6**.

**6.6 Special Assessments.** The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, expenses which include, but are not limited to, litigation, arbitration or other dispute resolution costs, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Areas of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

**6.7 Optional Maintenance Assessments.** The Board shall have the right, but not the obligation, to establish an optional program to provide maintenance within a Lot, such as front-yard maintenance or any other maintenance services that the Board may determine the Owners desire. If the Board establishes such a program, some or all of the Owners may participate in the program at each Owner's sole discretion; provided, however, if an Owner elects to participate in

such program, Optional Maintenance Assessments allocated to such Owner's Lot shall be collected in the same manner as any other Assessment hereunder. The provisions for an Owner to elect to participate in such a maintenance program shall be established by the Board at their sole discretion, and shall be fully set forth in an agreement between the Board and any Owner electing to participate in such program. The Optional Maintenance Assessments shall include all costs for the services outlined in the program, including, but not limited to, any additional liability insurance that may be necessary or appropriate in connection with providing such services. When establishing an Optional Maintenance Assessment for a particular Lot, the Board may take into consideration the type of maintenance to be performed, the type and extent of landscaping within each Lot to be maintained, and other matters which, in the reasonable discretion of the Board, warrants the Optional Maintenance Fee applicable to each Lot. Nothing herein shall require the Board to set a standard fee per Lot for such Optional Maintenance Assessment, and nothing herein shall require an Owner to participate in the optional maintenance program, or, once participating, to prohibit an Owner from later terminating such participation pursuant to the terms of the agreement between such Owner and the Association.

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

6.9 **Commencement Date of Assessment Obligation.** Subject to the provisions of Section 6.3, all Lots within each Recorded Plat shall be subject to assessment upon the conveyance of the first Lot in such Recorded Plat to a Purchaser. Except as provided otherwise in this Declaration regarding Lots and Parcels owned by the Declarant, the voting rights of the Owners of Lots shall be effective as of the date such Lots are subject to Assessment pursuant to this Section.

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

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

(a) Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee, not to exceed the maximum, amount permitted under applicable law), to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due. Notwithstanding anything in this Declaration to the contrary, to the extent applicable law from time to time provides for any shorter period of time after which Assessments or any other amounts payable hereunder may or shall become delinquent, such shorter period shall be deemed to apply in lieu of the time period set forth in this Declaration if so elected by the Board.

(b) The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all monetary penalties levied against the Owner of the Lot; (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (v) any amounts payable to the Association pursuant to Section 7.3 or Section 7.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, Record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, including interest, lien recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the delinquent Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot.

(c) The Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recording of this Declaration; (ii) liens for real estate taxes and other governmental assessments and charges; and (iii) the lien of any First Mortgage or seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any Person acquiring title or coming into possession of a Lot through foreclosure of a First Mortgage purchased at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by such Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

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

(e) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments, and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage; provided, however, that an Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within three (3) years after the full amount of the Assessment becomes due, or as otherwise provided in A.R.S. §33-1807(F), as amended from time to time. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.12 Evidence of Payment of Assessments. Pursuant to A.R.S. §33-1806(A), within ten (10) days after receipt of a written notice of a pending sale of a Lot that includes the name and address of the purchaser, the Association shall mail or deliver, or cause an appropriate officer to mail or deliver, a dated statement setting forth the amount of all Assessments and whether or not all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such statement, or if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date, together with such other information as is required by law. Pursuant to A.R.S. §33-1807(I), upon receipt of a written request from a lienholder, Member or Person designated by a Member, the Association shall issue, or cause an appropriate officer to issue, a statement setting forth the amount of any unpaid Assessment against the Lot, such statement to be furnished within fifteen (15) days after receipt of the request. A reasonable charge may be made by the Association for the issuance of these certificates or statements. If a certificate or statement states an Assessment has been paid, such certificate or statement shall be binding on the Association.

6.13 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping and Improvements on Areas of Association Responsibility, public right-of-way and drainage areas within the Project, recreation, liability insurance and amounts to cover deductibles, communications, ownership and

operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds as permitted under the laws of the State of Arizona or the charter of the municipality in which the Project is located.

6.14 **Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

6.15 **Reserve/Repair Fund.** To assist the Association in establishing adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot (whether acquiring the Lot directly from the Declarant or as a resale transaction through another Owner) shall pay to the Association immediately upon becoming the Owner of the Lot, One Thousand two Hundred Dollars (\$1,200) or such other amount as may be deemed appropriate or desirable by the Board (the "**Working Capital Fee**"). For so long as there is a Class B membership, such funds may only be used to establish a replacement and repair reserve account or to apply towards repair and reconstruction of Improvements within the Areas of Association Responsibility. Thereafter, subsequent Working Capital Fees may be used for any purpose permitted under the Project Documents, at the Board's sole discretion. Payments made pursuant to this **Section 6.15** shall be nonrefundable and shall not be considered as an advance payment of any other Assessments levied by the Association pursuant to this Declaration. When there is no longer a Class B membership, the Board shall have the right, by an affirmative vote of the majority of the members of the Board, and based upon the Board's analysis of replacement and repair reserves, to permanently or temporarily reduce the amount of the Working Capital Fee or cease assessing the Working Capital Fee, and having ceased to assess the Working Capital Fee, the Board shall have the right to reinstate assessment of such fee at any time thereafter, it being the intent that the Board shall have the right to begin or cease assessment of the Working Capital Fee as the Board deems appropriate from time to time.

6.16 **Transfer Fee.** In addition to the Working Capital Fee referred to in **Section 6.15** above and in addition to any fees charged by the Association pursuant to **Section 6.2** above, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to cover the expenses of the Association (or its management company) to change its records, to administer the change in ownership, and to pay any ancillary expenses related thereto.

6.17 **Reserve Studies.** The Board may periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however, (a) no such report or study shall be required until at least three (3) years have elapsed following the date Assessments begin to accrue; and (b) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (c) in

establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (i) the amount of Assessments for the Project as compared to other comparable developments; (ii) the past incidences of required repairs at the Project; and (iii) projected funds available to the Association pursuant to Working Capital Fees payable pursuant to **Section 6.15** of this Declaration.

## ARTICLE VII MAINTENANCE

7.1 **Areas of Association Responsibility.** The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain, in accordance with the Maintenance Standard as determined by the Board. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon. By acceptance of a deed for a Lot within the Project, or by acquiring any interest in any of the Property subject to this Declaration, each Owner and the Association shall be deemed to have agreed that when the Declarant transfers ownership of the Common Areas to the Association, the Common Areas shall be owned and accepted subject to reasonable wear and tear and there shall be no obligation of the Declarant, or its successors, to repair, replace, or otherwise cause the Areas of Association Responsibility to be placed in like-new condition.

7.2 **Lots.** Each Owner of a Lot shall be responsible for maintaining, repairing or replacing the Owner's Lot, and all buildings, Residences, landscaping or other Improvements situated thereon, in accordance with the Maintenance Standard, except for any portion of the Lot which has been designated Areas of Association Responsibility or portions over which the Association has assessed an Optional Maintenance Assessment (for so long as such Optional Maintenance Assessment is paid by the Owner of the Lot). All buildings, Residences, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Each Owner shall maintain a green and neat appearance of all lawns Visible From Neighboring Property or streets on an annual basis. Owners shall overseed any such lawns located on their Lots and Visible From Neighboring Property with a cool season grass prior to the start of the winter season to achieve a healthy, green appearance on an annual basis. Owners may be required to reseed any such lawns located on their Lots and Visible From Neighboring Property with a warm season grass prior to the summer season. Pursuant to **Section 7.4** below, The Board may cause action to be taken, at the Owner's expense, to correct any lawn deemed non-conforming with this Section. Trees, shrubs, vines, plants and grass which die shall be promptly removed and

replaced with living foliage of like kind. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residences, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

7.3 **Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of the Areas of Association Responsibility is caused through the willful or negligent act of any Owner, its family, tenants, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.4 **Improper Maintenance and Use of Lots.** If any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, including, without limitation, the failure to install landscaping within the time allowed under Section 7.7 below, or in the event any portion of a Lot is being used in a manner which violates the Project Documents; or in the event the Owner of any Lot fails to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days of the date of the notice, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof (including but not limited to attorneys fees) shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.5 **Boundary Walls.** Except as may be otherwise provided for in a Supplemental Declaration, the following shall apply to any boundary wall or fence.

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

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

(c) Except as otherwise provided in this Section, the Owners of contiguous Lots who share a boundary wall shall each pay one-half (1/2) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (1/2) of such cost. In the event that any boundary wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild



and repair the boundary wall without cost to the other Owner or Owners who share the boundary wall.

(d) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary wall shall first obtain the written consent of the adjoining Owners.

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

#### 7.6 Maintenance of Walls.

(a) Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot, except as provided in **Section 7.6(b)** below.

(b) Any wall which is placed on or near the boundary line between a Lot and (i) the Areas of Association Responsibility, or (ii) the perimeter of the Project, or (iii) an adjacent right-of-way, shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces Areas of Association Responsibility, the perimeter of the Project, or an adjacent right-of-way. In the event any such wall encroaches upon the Areas of Association Responsibility or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

7.7 Installation of Landscaping. Within sixty (60) days after the later of (a) the issuance of a certificate of occupancy for a Residence upon a Lot, or (b) the date a Purchaser acquires legal title to a Lot, the original Purchaser of a Lot shall install trees, plants or other landscaping improvements (together with any sprinkler system or drip irrigation system sufficient to adequately water the trees, plants or other landscaping improvements) (collectively the "Landscaping") on that part of the Lot which is between the street or public right-of-way adjacent to the Lot and the exterior walls of the Residence situated on the Lot except for any side or back yard of the Lot which is completely enclosed by a wall or fence and except for any part of such area which is within the Areas of Association Responsibility. Within one-hundred twenty (120) days after the date a Purchaser acquires legal title to a Lot, the original Purchaser shall install the Landscaping in any side or back yard of the Lot. The Design Review Committee may require a Compliance Deposit pursuant to **Section 11.10** related to installation of Landscaping.

### ARTICLE VIII INSURANCE

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

(a) Property insurance on all Areas of Association Responsibility, (including, but not limited to, fixtures, Improvements, building service equipment, common personal property and supplies) insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy, including "Agreed Amount" and "Inflation Guard" endorsements. Unless a higher maximum amount is required by Arizona law, the maximum deductible amount for policies covering Areas of Association Responsibility shall be the lesser of \$10,000 or one percent (1%) of the policy face amount.

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of the State of Arizona.

(d) To the extent reasonably available, liability insurance for directors, officers and committee members of the Association in an amount determined by the Board, but not less than \$1,000,000.

(e) If the Project is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy covering the Areas of Association Responsibility and any Improvements thereon in the lesser of one hundred percent (100%) of the insurable value of the Improvements and any other property covered on the required form of policy or the maximum limit of coverage available under the National Flood Insurance Administration program. Unless a higher deductible amount is required by Arizona law, the maximum deductible amount for such policy covering the Areas of Association Responsibility is the lesser of \$10,000 or one percent (1%) of the policy's face amount.

(f) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners and Residents.

(g) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into

contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

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

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

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

8.6 **Waiver by Members.** All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the first mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the

Board, other Owners, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent of insurance proceeds received in compensation for such loss.

8.7 **Owner's Responsibility.** If an Owner desires insurance on its Lot, Improvements or personal property located thereon, it is the responsibility of such Owner to obtain and maintain such insurance. The Association insurance is not intended to cover these items. Additionally, if an Owner's Lot is within a designated Flood Hazard Zone noted in Section 12.2(h), then it is the responsibility of such Owner to obtain and maintain appropriate flood insurance.

8.8 **Master Insurance Program.** Notwithstanding anything to the contrary contained herein, until the Class B membership ceases and is converted to Class A membership, the Declarant reserves the right to satisfy the insurance obligations of the Association through a master insurance program controlled by the Declarant and, upon doing so, such insurance obligations shall be deemed satisfied.

## ARTICLE IX GENERAL PROVISIONS

9.1 **Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees, costs and expenses incurred by the prevailing party in addition to any relief or judgment ordered by the court in the action (including post-judgment attorneys' fees and costs).

9.2 **Term; Method of Termination.** Unless amended or terminated as hereinafter provided, this Declaration shall continue in full force and effect in perpetuity. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

### 9.3 Amendments.

(a) Except for amendments made pursuant to **Sections 9.3(b)** or **9.3(c)** of this Declaration, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners representing at least sixty-six and 2/3 percent (66-2/3%) of the votes entitled to be cast by the Members of the Association. Amendments may be made at any time during the term of this Declaration.

(b) The Declarant, so long as the Declarant owns any Lot, Parcel or any portion of the Additional Property, and thereafter, the Board, may amend this Declaration or any Plat, without obtaining the approval or consent of any Owner in order to conform this Declaration or any Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, any Plat or the Project Documents is required by law or requested by the Declarant or the Board. So long as the Declarant owns any Lot, Parcel, or any portion of the Additional Property, any amendment to this Declaration must be approved in writing by the Declarant.

(c) The Declarant, so long as the Declarant owns any Lot, Parcel, or any portion of the Additional Property, and thereafter, the Board, may amend this Declaration at any time without the consent of any other Owner to correct any error or inconsistency in the Declaration.

(d) Any amendment approved pursuant to **Section 9.3(a)** of this Declaration or by the Board pursuant to **Section 9.3(b)** or **9.3(c)** of this Declaration shall be signed by the President or Vice President of the Association, and any such amendment shall certify that the amendment has been approved as required by this **Section 9.3**. Any amendment made by the Declarant pursuant to **Sections 9.3(b)** or **9.3(c)** of this Declaration shall be signed by the Declarant. All amendments shall be Recorded in the records of Maricopa County to become effective. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

(e) Notwithstanding anything to the contrary herein, no amendment to this Declaration which modifies or deletes any portion of **Article X** or **Section 5.12** of this Declaration which has an affect on the Declarant, in its sole judgment, or a Developer, in its sole judgment, shall be made unless the Declarant, whether or not the Declarant still owns property within the Project, and all Developers, whether or not such Developers currently own property within the Project, approve of such amendment in a Recorded document.

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

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

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

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

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

9.8 **Notice of Violation.** The Association shall have the right to Record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. Such notice shall be executed by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

9.9 **Laws, Statutes, Ordinances and Regulations.**

(a) The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board with respect to certain actions are independent of the obligation of the Owners and other Persons to

comply with all applicable laws, statutes, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, statutes, ordinances and regulations.

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

(c) References in this Declaration to specific laws, statutes, ordinances or regulations shall be deemed to refer to, and applicable provisions shall be construed to be consistent with, any updated, substituted, supplementary, renumbered or replacement laws, statutes, ordinances or regulations as may be appropriate.

9.10 **No Warranty of Enforceability.** The Declarant is not aware that any of the covenants contained in this Declaration are invalid or unenforceable for any reason or to any extent; however, the Declarant makes no warranty or representation as to the present or future validity or enforceability of any particular covenant, or the compliance of any provisions of this Declaration with public laws, statutes, ordinances and regulations applicable thereto. Any Owner acquiring a Lot in reliance on one or more of the covenants contained in this Declaration assumes all risk of the validity and enforceability thereof, and neither the Declarant nor the Association shall be liable in damages or otherwise to any Person in the event any covenant is hereafter determined to be invalid or unenforceable in whole or in part.

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

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

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

9.14 **Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County. This **Section 9.14** 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. Notwithstanding the foregoing, all notices to Association shall be given in writing and either: (a) personally delivered to Association; or (b) mailed by registered or certified mail, postage prepaid, return receipt requested; or (c) sent by private overnight courier such as Federal Express or Airborne addressed as follows:

c/o Rossmar & Grayam  
9362 East Raintree Drive  
Scottsdale, Arizona 85260-2098

All notices to Association pursuant to the preceding sentence shall be deemed given only when actually received by Association. Association may change its address for the receipt of notices at any time by Recording a written notice of such change executed by Association and Recorded in the records of Maricopa County, Arizona.

## ARTICLE X CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

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

(a) **“Alleged Defect”** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit by a Declarant Party including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, statutes, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.

(b) **“Declarant Party”** means: (i) the Declarant and its members, managers, officers and employees; (ii) the entity which platted the Condominium if different from but affiliated with Declarant; (iii) the general contractor for the Condominium; (iv) the subcontractors, material suppliers, labor suppliers, architects, engineers and consultants of any of the said contractors, including but not limited to their respective members, managers, directors, officers, partners, employees, agents and independent contractors; or (v) any employee or other representative of the Declarant who serves as a director or officer of the Association.

(c) **“Claim”** means: (i) any claim or cause of action by a Claimant against a Declarant Party arising out of or related in any way to an Alleged Defect, including, without limitation, any claim or cause of action for breach of express or implied warranties, negligence or that a Declarant Party was negligent in the planning, design, engineering, grading, construction or development of the Condominium; or (ii) any claim or cause of action against a



Declarant Party arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

10.2 **Agreement to Resolve Certain Disputes Without Litigation.** The Association, all Unit Owners and all Declarant Parties agree that it is in the best interests of the Association, the Unit Owners and the Declarant Parties to encourage the amicable resolution of Claims and to resolve Claims without the emotional and financial costs of litigation. Therefore, the Association, all Unit Owners and all Declarant Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this **Article X**.

10.3 **Notice of Alleged Defect.** The Association or any Unit Owner who becomes aware of any Alleged Defect which could be the basis for a Claim against any Declarant Party shall give written notice (the "**Notice of Alleged Defect**") promptly to each Declarant Party who could be responsible for the Alleged Defect. The Notice of Alleged Defect shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Unit Owner giving the Notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. Following the receipt by a Declarant Party of a Notice of Alleged Defect, the Declarant Party and any of its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Association or Unit Owner giving the Notice of Alleged Defect to enter onto or into, as applicable, the Common Elements or any Unit for the purposes of inspecting and/or conducting testing to determine the existence, nature and extent of the Alleged Defect and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Nothing set forth in this **Section 10.3** shall be construed to impose any obligation on any Declarant Party to inspect, test, repair or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated under applicable law or any warranty provided by the Declarant or any other Declarant Party. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace under this Section shall be irrevocable and may not be waived or otherwise terminated, except by written document, in recordable form, executed and recorded by the Declarant Party. In no event shall any statute of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of the Alleged Defect. If the Alleged Defect is not repaired or replaced to the satisfaction of the Association or Unit Owner giving the Notice of Alleged Defect within sixty (60) days after the Notice of Alleged Defect is given to the Declarant Party, then the Association or Unit Owner may proceed with the preparation of the delivery of a Notice of Claim as provided in **Section 10.4**.

10.4 **Notice of Claim.** The Association or any Unit Owner who contends or alleges to have a Claim (a "**Claimant**") against any Declarant Party (a "**Respondent**") shall notify each Respondent in writing of the Claim (the "**Claim Notice**"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim

involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Declarant Party or initiating any legal action, cause of action, proceeding, or arbitration against any Declarant Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Declarant Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Declarant Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "**Licensed Professional**"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

10.5 **Mediation**. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("**Termination of Negotiations**"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("**AAA**") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation Notice**"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

10.6 **Binding Arbitration**. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this **Section 10.6**. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be

arbitrated as a class action. The Association, the Unit Owners and all Declarant Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this **Section 10.6**. The Association, the Unit Owners and all Declarant Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Declarant Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this **Section 10.6**, the arbitration shall be conducted in accordance with the following rules:

(a) **Initiation of Arbitration**. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other rules as the AAA may determine to be applicable (the "**AAA Rules**").

(b) **Governing Procedures**. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this **Section 10.6**, the provisions of this **Section 10.6** shall govern.

(c) **Appointment of Arbitrator**. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this **Section 10.6(c)** is referred to in this **Section 10.6** as the "**Arbitrator**".

(d) **Qualifications of Arbitrator**. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) **Disclosure**. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in **Section 10.6(c)**.

(f) **Compensation**. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) **Preliminary Hearing.** Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) **Management of the Arbitration.** The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) **Confidentiality.** All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) **Hearings.** Hearings may be held at any place within Maricopa County, Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) **Final Award.** The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

10.7 **Right to Enter, Inspect, Repair and/or Replace.** Following the receipt by a Declarant Party of a Claim Notice with respect to an Alleged Defect, the Declarant Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant Party, to

correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this **Section 10.7** shall be construed to impose any obligation on any Declarant Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Declarant Party. In no event shall any statutes of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

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

10.9 **Approval of Arbitration or Litigation.** The Association shall not deliver a Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast more than eighty percent (80%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with **Section 10.4.**

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

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

10.12 **Conflicts.** In the event of any conflict between this **Article X** and any other provision of the Condominium Documents, this **Article X** shall control.

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

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

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

ANY OWNER, THE ASSOCIATION OR THE RESPECTIVE SUCCESSORS AND ASSIGNS.

**ARTICLE XI  
ARCHITECTURAL CONTROL**

11.1 **Design Review Committee.** The Board may create a Design Review Committee to perform the duties and exercise the power and authority imposed on or granted to the Design Review Committee by the Project Documents. So long as the Declarant owns one or more Lots, Parcels, or any part of the Additional Property or holds an option to purchase any Lot, Parcel, or any part of the Additional Property, the Declarant shall have the sole right to determine the number of members on the Design Review Committee and to appoint and remove the members of the Design Review Committee. At such time as the Declarant no longer owns any Lot, Parcel, or any part of the Additional Property or holds an option to purchase any Lot, Parcel, or any part of the Additional Property, the Board shall determine the number of members on the Design Review Committee, and the members of the Design Review Committee shall be appointed and may be removed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Design Review Committee, and in that event the Declarant may require, for so long as the Declarant own any Lot, Parcel, or any part of the Additional Property or holds an option to purchase any Lot, Parcel, or any part of the Additional Property, that specified actions of the Design Review Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(a) The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size and height of Residences; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (iii) placement of Residences and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; (vii) perimeter and screen wall design and appearance; (viii) time periods for commencement and completion of any approved construction or modification; and (ix) rules and regulations governing construction activities. Any adoption, amendment or repeal of the Design Guidelines after the Declarant no longer has the right to appoint the Design Review Committee must be approved by the Board.

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

11.2 **Approval Required.** No Modification shall be made or done without the prior written approval of the Design Review Committee; provided, however, that the provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required for, any Modification or any other work made by, or on behalf of, the Declarant.

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

(b) In the event that the Design Review Committee fails to approve or disapprove a complete application for approval within forty-five (45) days after the application, together with any fee payable pursuant to **Section 11.7** and all supporting information, plans and specifications requested by the Design Review Committee, have been submitted to the Design Review Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Design Review Committee of any Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar Modification subsequently submitted for approval.

**11.3 Review of Plans.** In reviewing plans and specifications for any Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Design Review Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished-grade elevations, roads, Common Area and other structures; (c) the exterior design, finish materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its sole and absolute discretion, determines that the proposed Modification, or some aspect or portion thereof, is undesirable or unattractive.

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

(b) The approval required of the Design Review Committee pursuant to this **Article XI** shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule, regulation, or zoning stipulations applicable to the Property.



(c) The Design Review Committee, by resolution, may exempt certain Modifications from the application and approval requirements of this Article, provided such Modifications are undertaken in compliance with the requirements of such resolution. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a Residence without approval so long as such activity does not affect the exterior appearance of the Residence.

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

11.5 **Construction of Improvements.** Upon receipt of approval from the Design Review Committee for any Modification, the Owner who had requested such approval shall proceed with the Modification approved by the Design Review Committee as soon as practicable and shall diligently pursue such Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee.

11.6 **No Changes Without Approval.** Any Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.

11.7 **Review Fee.** The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any Modification, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. The fee charged by the Design Review Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Design Review Committee in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Association may retain architects, engineers or other persons as deemed necessary to review applications or otherwise assist the Design Review Committee.

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

11.9 No Warranty. The approval by the Design Review Committee of any Modification shall not be deemed a warranty or representation by the Design Review Committee as to the quality of such Modification or that such Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

11.10 Conditional Approval.

(a) The Design Review Committee shall have the right, on a case-by-case basis and in its sole discretion, to condition the approval by the Design Review Committee of plans submitted by an Owner, upon the receipt by the Design Review Committee of a deposit (the "Compliance Deposit") to secure the performance of the Owner's obligations under this Declaration and the Design Guidelines, including, but not limited to, (i) to assure the completion of the proposed Modifications or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Modifications, (ii) to repair any damage which might be caused to any Areas of Association Responsibility as a result of such work; (iii) to clean up and/or remove equipment, building materials, dirt, debris and similar materials, and to protect from damage and repair any damage to Improvements sustained, in connection with construction activities by or for the benefit of an Owner, and (iv) to ensure that the Modification of an Improvement or other structure, whether temporary or permanent, which in any way alters the exterior appearance of any Lot, Residence, or other property within the Project, or the Improvements thereon, from its natural or improved state existing on the date this Declaration is recorded will be made in accordance with the plans and specifications approved by the Design Review Committee.

(b) The Compliance Deposit shall be in such amount as may reasonably be determined by the Design Review Committee. The Design Review Committee may apply the Compliance Deposit toward payment of (i) any costs incurred by the Design Review Committee or the Association with respect to Owner's obligations under Section 11.10(a), including, but not limited to, construction cleanup or removal required and/or the repair or replacement of any damaged or destroyed Improvements, the cost for which the Owner is responsible under this Declaration or the Design Guidelines; (ii) any costs incurred by the Association or the Design Review Committee in connection with the inspection of the Modification to ascertain whether the Modification is being made in accordance with the approved plans; and (iii) any attorney fees, court costs and other costs (including, but not limited to, costs incurred to correct a violation) incurred by the Association in connection with any violation of the Project Documents related directly or indirectly with the Modification.

(c) Following receipt by the Design Review Committee of a written request from an Owner delivered subsequent to the completion of the Modification, and following confirmation by the Design Review Committee that any necessary cleanup work or damages attributable to the Owner or the Owner's contractors, subcontractors, suppliers, employees or agents has been properly performed, repaired or replaced, as applicable, that all costs attributable to the Owner in connection therewith have been paid in full and that the Modification was made in accordance with the plans and specifications approved by the Design Review Committee, the Design Review Committee shall return to such Owner the unapplied portion of the Owner's Compliance Deposit. The liability of an Owner to promptly clean up such Owner's Lot and any

surrounding area and to repair or replace any Improvements damaged or destroyed by an Owner or the Owner's contractors, subcontractors, suppliers, employees or agents shall not be limited to the amount of such Owner's Compliance Deposit, and in no event shall the posting of a Compliance Deposit limit or prejudice the right of the Design Review Committee or the Association to pursue any available legal remedies against the Owner or any of Owner's contractors, subcontractors, suppliers, employees or agents causing the need for cleanup or causing the damage or destruction.

(d) Notwithstanding the foregoing, if a contractor is concurrently performing Modifications on more than three (3) Lots within the Project, the Design Review Committee has the right to modify the Compliance Deposit requirements.

11.11 Improvements to Areas of Association Responsibility. If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is within an Areas of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Modification with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

## ARTICLE XII PROPERTY DISCLOSURES AND OWNER ACKNOWLEDGEMENTS

By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Owner shall be deemed to have acknowledged, agreed to, and accepted the following for itself and its respective Lessees, Residents, guests and invitees.

### 12.1 Adjacent Uses.

(a) Owners and Residents are advised that dikes, floodways, washes, and drainage easements in, adjacent to, or in the vicinity of the Project may pose a hazard to children and adults, especially during times of heavy rainfall.

(b) Owners of the land adjacent to the Project may seek to rezone their property, seek zoning variances for their property, or may modify their site plans within existing zoning. Consequently, no assurance can be given that the zoning or uses for the adjacent lands will not change from time to time.

(c) Lots and/or Common Area facilities may be located adjacent to or in the vicinity of public trails, paths, commercial properties, recreational facilities, and/or major arterial roadways within or outside the Project. Such adjacent uses may create noise, light, odors, and other disturbances which may be detected from a Lot, Common Area, or otherwise from within the Project. The foregoing may create varying degrees of inconvenience, unsightliness, or noise audible to Owners and Residents of the Project.

(d) Development in and around the Project will have an impact on the surrounding environment. The degree of impact will depend on the location, size, planning and

extent of development. Changes in plant and animal life, air and water quality, noise and light levels may affect the use and enjoyment of a Lot or Common Area.

## 12.2 Disclosures and Owner Acknowledgements.

(a) Except as otherwise may be expressly set forth on a Recorded Plat or other instrument Recorded in the records of Maricopa County, Arizona, the Declarant makes no warranties or representations whatsoever that the plans presently envisioned for development of the Project can or will be carried out, that the Project will ever be developed by the Declarant or any other person as a master-planned community or otherwise, or that any land now owned or hereafter acquired by the Declarant is or will be subjected to any of the Project Documents, or that any such land (whether or not it has been subjected to any of the Project Documents) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect.

(b) Horses and rural/agricultural uses are located on property adjacent to or east of the Project. Each Owner should consider contacting the owners of such property and/or Maricopa County, Arizona as well as other sources in order to evaluate issues that may include noise, dust, pests, odors, pollution, and future development plans associated with such land uses.

(c) Public trails and paths have been designated throughout the Project. Each Owner acknowledges that the use of such public trails or paths may create noise, odors, and other disturbances which may be detected from a Lot or Common Areas and may create varying degrees of inconvenience, unsightliness, or noise audible to an Owner or Resident within the Project.

(d) The Project from time to time may, but need not necessarily, experience problems with scorpions, bees, ants, spiders, termites, pigeons, snakes, rats, and/or other insects or pest problems (collectively, "Pests"). Declarant and the Association hereby specifically disclaim any and all representations or warranties, express and implied, with regard to or pertaining to any Pests, and each Owner must make its own independent determination regarding the existence or non-existence of any Pests which may be associated with their Lot.

(e) No representation or warranty is made by the Declarant, Developer, their affiliates, or the Association, or any of their respective directors, officers, agents, or employees, with respect to the presence or continued existence of any view or scene from any portion of a Lot or the Project. The particular view, if any, which a Lot, Common Area or the Project currently enjoys may be impaired or obstructed by the construction of other Improvements or facilities within or outside of the Project.

(f) The Project is impacted by one or more natural wash areas protected by Section 404 of federal Clean Water Act ("404 Corridor"). Even if there are no 404 Corridors located within or adjacent to an Owner's Lot, as shown on the applicable Plat, each Owner is responsible for obtaining current information concerning the location of such corridors within the Project and adjacent areas before commencing any activity within their Lot. The location of a 404 Corridor may change over time, as erosion patterns alter the natural course of a wash;

therefore, consultation with an engineer or other professional is strongly recommended. Any disturbance of any 404 Corridor (whether or not located within the Owner's Lot or elsewhere within the Project) without a federal permit is prohibited under federal law. In the event of a violation, significant civil and criminal penalties may be imposed, and enforcement action by the Association may apply.

(g) There may be minor deviations in the Common Areas and in a Residence from illustrations and designs shown in promotional materials; floor plans, maps, landscaping, and elevation renderings included within promotional brochures and Project information may not have been drawn to scale and any square footage or dimensions shown in such materials are only approximations; construction activity (including but not limited to noise and the transportation of labor, material and equipment) will continue in the Project until the Declarant and/or Developer has sold all Lots in the Project and such activities may cause varying degrees of increased traffic, dust, noise, and other inconveniences to the Owners and Residents.

12.3 **Purchaser's Inspections.** The information in this Article may change from time to time. Purchasers are encouraged to (a) drive the areas surrounding the Project (at different times of the day) to determine whether there exists any activities or conditions that may be of concern to a Purchaser, and (b) determine to Purchaser's own satisfaction whether or not the items mentioned in this Article or discovered by Purchaser's own inspections are of concern to Purchaser. Declarant recognizes that it is impossible to anticipate and describe every activity or condition that may be of importance to an Owner, Resident or Purchaser, and this Article is not intended to be an all-inclusive summary of all activities and conditions in and surrounding the Project which may be of concern to an Owner, Resident or Purchaser.

12.4 **Owner's Assumption of Risks.** All Owners, Lessees, and Residents, and their guests and invitees, assume all risks of bodily injury, death and property damage arising from the uses, operations, and activities described in this Article. Neither the Declarant, Developer, nor the Association, or their respective directors, officers, agents, or employees, shall be liable for any loss, damage, liability, claim or devaluation of property related to, arising out of, or resulting from anything disclosed in this Article.



**EXHIBIT A**

**LEGAL DESCRIPTION OF INITIAL COVERED PROPERTY**

Lots 1 through 302, inclusive, and Tracts A through Y, inclusive, as shown in Final Plat for "Montevista," according to Book 938 of Maps, Page 6, records of Maricopa County, Arizona, situated in the Southeast Quarter of Section 20, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.