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Garcia

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, RESERVATIONS AND
EASEMENTS FOR
SAND FLOWER**

WHEREAS, Stardust Development, Inc. an Arizona corporation, (“Declarant”) recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Sand Flower on December 7, 1994 at Recording No. 1994-0858580, Official Records of Maricopa County, Arizona Recorder; as amended by the First Amendment to Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Sand Flower, recorded on July 14, 1997 at Recording No. 1997-0471751, Official Records of Maricopa County, Arizona Recorder; as supplemented by the Supplementary Declaration of Covenants, Conditions, Restrictions and Easements for Sand Flower recorded on January 29, 1999 at Recording No. 1999-0093700, Official Records of Maricopa County, Arizona Recorder; as supplemented by the Second Supplementary Declaration of Covenants, Conditions, Restrictions and Easements for Sand Flower recorded on May 11, 2000 at Recording No. 2000-0361243, Official Records of Maricopa County, Arizona Recorder (collectively, the “ Original Declaration”), that governs the following property:

Lots 1 through 38 inclusive, and Tracts A through D inclusive, SAND FLOWER, according to the Plat recorded in Book 386 of Maps, Page 15, records of Maricopa County, Arizona Recorder;

Lots 39 through 100 inclusive, and Tracts A through D inclusive, SAND FLOWER II, according to the Plat recorded in Book 394 of Maps, Page 43, records of Maricopa County, Arizona Recorder (collectively, “Sand Flower” or the “Property”);

WHEREAS, the Association, by and through its members, wishes to amend and restate the Original Declaration in its entirety as set forth herein;

NOW THEREFORE, the Association hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any rights, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1 **DEFINITIONS**

Unless otherwise specified, when capitalized, the following words, phrases or terms used in this Declaration shall have the following meanings:

“Annual Assessment” shall mean the charge levied and assessed each year against each Membership pursuant to Section 7.2 hereof.

“Areas of Association Responsibility” shall mean: (a) the Common Area; (b) any area within the Property that the Association is required to maintain pursuant to this Declaration or a Recorded document; and (c) any area within the Property that the Association agrees to maintain.

“Articles” shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

“Assessment” shall mean an Annual Assessment, Special Assessment, Maintenance Charge, plan review fee or any other fee or charge levied pursuant hereto.

“Assessment Lien” shall mean the lien created and imposed by Article 7 hereof.

“Association” shall mean the Arizona nonprofit corporation organized to administer and enforce this Declaration and to exercise the rights, powers and duties set forth in this Declaration.

“Board” shall mean the Board of Directors of the Association.

“Bylaws” shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

“Common Area” and “Common Areas” shall mean all real property and improvements or amenities thereon, owned, controlled or operated by the Association (including without limitation areas used for landscaping, drainage, flood control, open areas and the like), intended for the use and enjoyment of the Owners and Occupants of Sand Flower.

“Declarant” shall mean and refer to the above recited Declarant.

“Declaration” shall mean this Amended and Restated Declaration of Covenants, Conditions, Restrictions, Reservations and Easements, as amended or supplemented from time to time.

“Design Review Committee” shall mean the committee of the Association created pursuant to Article 11 hereof.

“Design Guidelines” shall mean those guidelines established and amended by the Design Review Committee from time to time pursuant to Section 11.1 hereof.

“Dwelling Unit” shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

“Lot” shall mean any area of real property within Sand Flower designated as a Lot on the Plat; as used herein, “Lot” shall include the improvements on a Lot.

“Maintenance Charges” shall mean any and all costs assessed pursuant to Article 10 hereof.

“Member” shall mean any person holding a Membership in the Association pursuant to this Declaration.

“Membership” shall mean a Membership in the Association and the rights granted pursuant to Article 6 hereof to participate in the Association.

“NAOS” shall mean those “natural areas and open space” designated pursuant to Article 4.2 hereof.

“Occupant” shall mean any person other than the Owner occupying any Dwelling Unit with the permission of the Owner thereof, including family members, guests and tenants.

“Owner” shall mean the record owner whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include: (i) the purchaser of a Lot under an executory contract for the sale of real property, (ii) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (iii) a lessee or tenant of a Lot. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement the beneficiary of any such trust shall be deemed to be the Owner.

“Plat” shall mean and refer to, collectively: (a) SAND FLOWER, according to the Plat recorded in Book 386 of Maps, Page 15, records of Maricopa County, Arizona Recorder; and (b) SAND FLOWER II, according to the Plat recorded in Book 394 of Maps, Page 43, records of Maricopa County, Arizona Recorder.

“Project Documents” shall mean and include this Declaration, the Bylaws, the Articles, the Association Rules and the Design Guidelines.

“Property” or “Sand Flower” shall mean the real property described in the Recitals section hereto.

“Recording” or “Recordation” shall mean placing an instrument of public record in the Office of the County Recorder of Maricopa County, Arizona, and “Recorded” shall mean having been so placed of public record.

“Single Family” shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

“Visible From Neighboring Property” shall mean, with respect to any given object, that such object is, or would be, visible to a person standing on a Lot, street or common area at a distance of two hundred (200) feet or less from the nearest boundary of the property being viewed.

ARTICLE 2 **PROPERTY SUBJECT TO THE** **DECLARATION**

Section 2.1 General Declaration Creating Sand Flower. All of Sand Flower is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that any property owned by or dedicated to a governmental agency or the public shall not be subject to this Declaration while owned by any such governmental entity or the public, except that any restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of Sand Flower and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Sand Flower. This Declaration shall run with Sand Flower for all purposes and shall be binding upon and inure to the benefit of the Association, and all Owners and Occupants of Sand Flower and their successors in interest.

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

Section 3.1 Easements of Enjoyment. Every Owner and Occupant of Sand Flower shall have a right and easement of enjoyment in and to all of the Common Areas which easement shall be appurtenant to, and shall pass with, the title to every Lot subject to the following provisions:

- (a) The right of the Association to regulate the use of the Common Areas through the Association Rules and to prohibit or limit access to those Common Areas, and other specified landscaped areas, not intended for use by the Members. The Association Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, and otherwise shall serve to promote the best interests of the Owners and Occupants of Sand Flower.

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or quasi-public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association, so long as either (i) the Board determines that the Members are not materially or adversely affected, or (ii) Owners holding two-thirds (2/3) of the Memberships in the Association have executed an instrument agreeing to such dedication or transfer.

(c) The right of the Association to change the use of the Common Areas in accordance with this Declaration.

(d) The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas and to abandon or otherwise transfer Common Areas so long as, in each case, either (i) the Board determines that the Members are not materially or adversely affected, or (ii) Owners holding two-thirds (2/3) of the Memberships in the Association have executed an instrument agreeing to such change in size, shape or location, exchange, abandonment or transfer.

Section 3.2 Delegation of Use. Any Owner or Occupant may, in accordance with the Declaration and the Association Rules and the limitations therein contained, delegate his right of enjoyment in the Common Areas and facilities to the members of his family, his tenants or his guests; provided, however, that the Association shall have the right to limit the number of guests of an Owner or Occupant using the Common Areas.

Section 3.3 Waiver of Use. No Owner may exempt himself from personal liability for assessments, nor release the Lot owned by him from the liens or charges arising under this Declaration by waiver of his use and enjoyment of the Common Areas.

Section 3.4 Drainage Retention Easement. Each Lot shall be subject to an easement for the drainage and/or retention of water from other Lots, Common Area or other property in accordance with the drainage plans for the Property or for any Lot as shown on the drainage plans on file with the City of Scottsdale.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

Section 4.1 Covenants, Conditions, Restrictions and Easements Applicable to the Property. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all portions of Sand Flower, the Owners and Occupants thereof.

(a) Architectural Control. Sand Flower is subject to architectural control as established by the Design Review Committee. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, excavation, grading,

landscaping (including, without limitation, removal of natural or landscaped vegetation or removal, relocation, or alteration of boulders, rock outcroppings, or other substantial rock formations), or other work which in any way alters a Lot, or the exterior appearance of improvements located thereon, shall be made or done without the prior approval of the Design Review Committee. No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without prior written approval of the Design Review Committee. The exterior of any building fence, wall, residence or other structure shall not be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Design Review Committee.

(b) Restriction on Further Property Restrictions. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Occupant or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void.

(c) Landscaping. With the exception of replacement of a plant with the same or similar plant, all changes or alterations to landscaping shall be subject to prior approval by the Design Review Committee as set forth herein. It is strongly recommended that the Owner retain the services of a landscape architect who has special knowledge of plant material and watering systems suitable to Xeriscape landscaping in the Sonoran desert region and the plant materials approved by the Design Review Committee and contained in the Sand Flower Landscape Guidelines, as amended by the Board from time to time. Landscaping shall be subject to the following general requirements: (i) no grass or grass turf shall be planted or permitted within the front or side yards of a Lot (the foregoing, however, shall not preclude grass or grass turf in the back yard of Lot); (ii) landscape design shall reinforce and compliment the architectural and site planning; (iii) landscape design will recognize and respect the natural beauty and ecosystem of the Sand Flower site; (iv) except as may be specifically permitted by the Design Review Committee, only planting materials indigenous to the Sonoran Desert region may be used; (v) landscape design shall promote continuity while creating interesting character for the community; (vi) no hedge more than three (3) feet in height shall be closer than the front yard setback as may be required by the City of Scottsdale. Except as otherwise expressly provided in this Declaration, such landscaping and incidental work shall not be commenced without the prior written approval of the Design Review Committee and no material changes or deviations (as determined by the Design Review Committee) in or from any plans and specifications approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee.

(d) Utility Easements. There is hereby created a blanket easement upon, across, over and under Sand Flower for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems, as such utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Areas and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings thereon. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated within Sand Flower except as initially created or approved by Declarant without the prior written approval of, in the case of a Common Area, the Association and the Design Review Committee or, in the case of a Lot, the Owner of such Lot and the Design Review Committee. Nothing contained herein shall entitle any utility in exercising the rights granted herein to disturb any Dwelling Unit constructed in accordance with the requirements hereof.

(e) Health, Safety and Welfare. In the event any uses, activities and facilities on any Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or Occupants, the Board may make rules restricting or regulating their presence within Sand Flower as part of the Association Rules, or may direct the Design Review Committee to make rules governing their presence on Lots as part of the Design Guidelines.

(f) Maintenance of Lawns and Plantings. Each Owner shall keep neatly trimmed, properly cultivated and free from trash, weeds and other unsightly material, all shrubs, trees, hedges, grass and plantings of every kind located on their Lot; provided, however, that such Owner shall not be responsible for maintenance of any area over which: (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a Recorded instrument as provided in Section 10.2 of this Declaration, or otherwise; or (3) the City of Scottsdale, County of Maricopa or other public agency assumes responsibility, for so long as the Association, said political subdivision or other public agency assumes or has responsibility as provided in (1), (2) or (3) above. Each Owner shall maintain the NAOS located on the Lot in accordance with the Guidelines adopted by the City of Scottsdale, including but not limited to, taking required measures to address invasive species of plants.

(g) Nuisances and Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors 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 Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants, including but not limited

to unreasonably loud noise, excessive dog barking and unreasonably loud music. Without limiting the generality of any of the foregoing provisions, no exterior horns, whistles, fireworks, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot. 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 all 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 shall be piled only in such areas as may be approved by the Design Review Committee. All trash and construction debris shall be immediately deposited in an enclosed metal container or dumpster maintained by the Owner on the Lot, and all metal containers and dumpsters are subject to prior notice and approval by the Design Review Committee. Only one (1) metal container or dumpster may be used on a Lot at any given time, and shall be subject to the time frame approved by the Design Review Committee. Such container shall be emptied with sufficient frequency to prevent the accumulation of trash and debris. Each Owner shall be responsible for immediately removing any dirt, mud or debris collecting in public streets as a result of the Owner's construction activities. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements (including in metal containers and dumpsters) may be kept only in areas approved by the Design Review Committee. The Design Review Committee may also require screening of said storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

(h) Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair, and all buildings and structures on the Lot shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall be immediately repaired or rebuilt as necessary.

(i) Signs. No signs whatsoever which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

(i) Signs required by legal proceedings, or which cannot be prohibited by law.

(ii) Numbering designating the street address of the Dwelling Unit (a) stenciled and located on the curb immediately in front thereof or (b) affixed to the Dwelling Unit.

(iii) Commercially-produced "For Sale", "For Rent/Lease" and "Open House" signs and sign riders in conformance with the industry standard size, displayed in accordance with the Design Guidelines..

(iv) Political signs in such size and number as permitted by statute, and displayed in accordance with the Design Guidelines.

(v) One standard sized security/monitoring sign.

(j) Roofs and Equipment. If the Dwelling Unit does not have a pitched roof (i.e., a “flat” roof), the roofing material Visible From Neighboring Property shall be the same color as the Dwelling Unit and all flashings, galvanized steel and other reflective surfaces shall be painted or coated with non-reflective covering. If the Dwelling Unit has a pitched roof, the roofing material for that portion Visible From Neighboring Property must be clay or concrete tile. No heating, air-conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof, or on a Lot if it is Visible From Neighboring Property. Notwithstanding the foregoing, solar panels may installed on the roof, subject to the provisions of the Design Guidelines. Existing structures at the time of the adoption of this Declaration that would otherwise be in violation of this section, may be the subject of a waiver of the application of this section for good cause shown, upon application to the Board and in the Board’s discretion.

(k) 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, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Declarant or as may be otherwise approved by the Design Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee.

(l) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Occupant of a Lot, any member of the Design Review Committee, any member of the Board, or any agent thereof shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of the Project Documents have been, or are being, complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

(m) Permitted Uses; Business Use. The Lots shall be used, improved and devoted exclusively to residential use by Single Families. No gainful occupation, profession, trade, business, or other non-residential use shall be conducted on any Lot, except that an Owner or other resident of a Lot may conduct a business activity upon the Lot

so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Lot; (iii) the business activity does not involve the door-to-door solicitation of Owners or other Occupants in the Property; (iv) no regular on-street parking occurs relating to the business activity; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Property, as may be determined from time to time by the Board. Furthermore, no advertising or directional signs may be placed upon the Lot or any portion of the Common Areas regarding the business activity. 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: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity.

(n) Animals. No animal, horse, bird, poultry or livestock, other than a reasonable number of generally recognized house pets, shall be maintained on any Lot. An animal is permissible only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner or Occupant, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is a generally recognized house pet, whether such a pet is a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein and in the Declaration.

(o) Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be constructed, erected, placed or used on any part the Property at any time for any purpose whatsoever, either temporarily or permanently.

(p) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

(q) Antennas. No radio, television, satellite or other antennas or devices of any kind or nature, or device for the reception or transmission of television, radio, microwave or other similar signals, shall be placed or maintained upon any Lot

except those devices covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, will be permitted as provided herein. Any such device shall comply with any Association Rules governing antenna installation and shall be mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property. The devices governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule) as of the date of the recording of this Declaration are as follows: (i) Direct Broadcast Satellite (“DBS”) antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite; (ii) Multi-point Distribution Service (“MDS”) antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (iii) Antennas designed to receive local television broadcast signals (“TVBS”); and (iv) Antennas designed to receive and/or transmit data services, including Internet access. If the FCC expands the types of antennas that fall under the FCC Rule, this Section shall encompass those antennas as well.

(r) 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 City of Scottsdale and acceptable to the appropriate garbage/trash collector. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. In no event shall such containers be placed for collection before sunset of the day immediately preceding the day of collection. All rubbish, trash, or garbage shall be promptly removed from all Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot. Bulk trash pickup shall be subject to the restrictions set forth in the Association Rules.

(s) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot.

(t) Window Treatments. All windows within any Dwelling Unit or garage shall be covered with appropriate window treatments. No reflective materials, including but not limited to aluminum foil, reflective screens or glass, mirrors or similar-type items shall be installed or placed on the outside or inside of any windows, unless approved by the Design Review Committee. The exterior side of all drapes, curtains or other window coverings shall be white, off-white, beige or natural wood-toned in color.

(u) Walls and Fences. No solid wall or fence shall be constructed or maintained closer to the front street line, side yard lines and back yard lines of any lot than the minimum front yard, side yard and backyard building set back lines, respectively. No side or rear fence and no side or rear wall shall be more than six (6) feet in height. No wall or fence may be built in any area designated as NAOS. Fences must be six (6)

inch deep slump block (cinder block), slump block with wrought iron inserts, or entirely wrought iron. If slump block is used, it must be stucco-finished on both sides and painted to match the color of the Dwelling Unit on the Lot. All metals shall be a complementary color to the color of the Dwelling Unit on the Lot. All wall and fence installations require prior approval from the Design Review Committee. No rusting or untreated rebar, chain link or wire fencing shall be allowed.

(v) Number and Height. No structure shall be erected, altered, placed or permitted to remain on any Lot in Sand Flower other than one (1) detached single family Dwelling Unit, not to exceed 22 feet in height, one (1) guest house, one (1) outbuilding, one (1) tennis or "sport" court (provided, however, the artificial lighting, if any, proposed for any tennis court shall not be installed or operated without the prior written consent of the Design Review Committee) and a private garage. Any modification or replacement of the Dwelling Unit (including any observation deck fencing) shall not exceed twenty-two (22) feet in height, unless at the time of the effective date of this Declaration, the Dwelling Unit exceeds twenty-two (22) feet, in which case, the modification or replacement of the Dwelling Unit shall not exceed the elevation of the existing Dwelling Unit. The height limit of the Dwelling Unit shall not include chimneys: provided that the chimney shall not be greater than four (4) feet higher than the lowest point at which it enters the roof. All Dwelling Units shall be single or split-level (subject to the floor area limitation set forth below). Any structure detached from the Dwelling Unit may also not exceed one story and shall not exceed the lower of the elevation of the Dwelling Unit or twenty-two (22) feet measured from finished grade.

(w) Size of Dwelling Unit. Each Dwelling Unit shall have a ground floor area of at least twenty-eight hundred (2,800) square feet. All ground floor area measurements shall include the walls proper of the house, but shall exclude open porches, balconies, view decks or any other similar structure, pergolas or outbuildings, any guest houses, attached garages, or other similar extension or projection. All exterior designs for all dwelling houses shall be characteristic of one (1) story Southwestern, Spanish, Southwest Indian or Mexican architecture, except as may be otherwise be approved by the Design Review Committee.

(x) Overhead Encroachments. No tree, shrub or planting of any kind on any Lot shall be allowed to materially overhang or otherwise encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of ten feet (10') without the prior approval of the Design Review Committee.

(y) Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding $\frac{3}{4}$ ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or street in Sand Flower so as to be Visible From Neighboring Property or to be

visible from the Common Areas or the streets.

(ab) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street in Sand Flower, and no inoperable vehicle may be stored or parked on any such Lot or street so as to be Visible From Neighboring Property or to be visible from the Common Areas or the streets.

(ac) Parking. Vehicles of all Owners, Occupants, Lessees and guests are to be parked in the garages and on driveways whenever possible. Service and delivery vehicles may park on the street or the driveway, so long as no wheels are parked on any landscaped area. At no time may any trailer, ATV, watercraft or similar vehicle be parked or stored so as to be Visible From Neighboring Property, including behind a gate. All parked vehicles must remain completely on the street, concrete road edge, driveway or concrete driveway edge. The Board may further restrict parking of vehicles in the Association Rules.

(ad) No Porte Cochere. No porte cochere, car port or similar structure shall be constructed on the Lot or incorporated as part of the Dwelling Unit.

(ae) Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family tenant ("Lessee") from time to time by the Owner, subject to the provisions of this Declaration. Pursuant to Article 1 above, "Single Family" means: "a group of one (1) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit." Leases or rentals to persons other than a Single Family are not permitted.

All leases and rental agreements shall be in writing and shall provide that the terms of the lease or rental agreement shall be subject in all respects to the provisions of the Project Documents. The lease or rental agreement shall also provide that any failure by the Lessee or Lessee's family members or invitees to comply with the terms of the Project Documents shall be a default under the lease or rental agreement. The Owner shall remain liable for any violation of the Project Documents committed by the Lessee or Lessee's family members or invitees.

Prior to executing a lease or rental agreement, an Owner shall give the lessee copies of the Project Documents or a summary thereof approved by the Board. Within five (5) days of leasing or renting the Lot, an Owner shall notify the Association of the commencement date and termination date of the lease or rental agreement, the name and contact information for any adults occupying the Lot, and a description and license plate numbers of the vehicles of the Lessee and Lessee's family members. The owner shall pay to the Board's designee a fee of \$25 for each lease or rental agreement term, except that no fee shall be paid for a lease renewal.

Except as to current Owners, as of the time this Declaration is adopted, all leases must be for a minimum term of thirty (30) days. Any new Owner who purchases a Lot after

adoption of this Declaration will be subject to the thirty (30) day leasing restriction set forth herein.

No subleasing or leasing of less than all of the Dwelling Unit shall be permitted. All of the other terms of this paragraph (ae) shall apply to leases or rental agreements for less than thirty (30) days. The Board may promulgate additional rules and regulations regarding leases and rental agreements from time to time consistent with this Declaration and governing law.

(af) Environmental Protections. Neither the Lot nor any facilities on the Lot shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste.

(ag) No Subdivision. No Lot shall be further subdivided by any Owner into smaller lots or parcels and no portion less than all of any such Lot shall be conveyed, transferred or hypothecated by any Owner.

Section 4.2 Covenants, Conditions, Restrictions and Easements Applicable to NAOS. The following covenants, conditions, restrictions and reservations of easements and rights shall apply, as applicable, to the NAOS:

(a) Definitions. The “NAOS” shall be those areas designated as NAOS on the Plat. In no event shall the term, as used herein, refer to those areas on a Lot not so designated on the Plat but which the City may otherwise designate as natural, open, or undisturbed area in connection with the construction of a Dwelling Unit.

(b) Natural Area. The NAOS shall remain in its natural state and shall not be disturbed in connection with such construction or used in any manner which will detract from, or alter, its natural and open desert setting. No fences, signs, structures or materials of any kind shall be constructed or placed thereon, except those originally installed by Declarant or except by approval of the Board. The Owner of a Lot shall maintain the NAOS located on its Lot, if any, in its natural state. In no event shall the Association be responsible for maintaining the NAOS on a Lot unless the NAOS is located within an Area of Association Responsibility. The Owner shall not plant, trim, remove or replace any vegetation other than to remove noxious weeds or to prevent fire hazards.

(c) NAOS Restrictions. The NAOS located on Common Area property shall be used solely for pedestrian and non-motorized access (except as may be necessary for handicapped access), and such other cultural, recreational or educational uses as the Board may from time to time determine are consistent with the maintenance of the desert landscape, including natural plant and animal communities, in its natural state to the maximum extent practicable. Consistent

with the foregoing, the Board shall be entitled, but under no obligation, to install and maintain trails and trail markers, and appropriate signs identifying plants or other natural features of the desert setting.

All NAOS property located within the Project shall be subject to the following restrictions:

- (i) Temporary Structures. No structures of a temporary character shall be permitted on the NAOS and no trailers, and no tents, shacks or barns shall be permitted on the NAOS either temporarily or permanently.
- (ii) Business or Offensive Activities. No noxious or offensive activity may be carried on or permitted on any part of the NAOS, nor shall anything be done thereon which may be or become an annoyance or nuisance to any part or all of Sand Flower; nor, except as the Board may expressly permit, shall any part of the NAOS be used for commercial purposes.
- (iii) Signs. Except as provided above, and as the Board may expressly permit, no sign of any nature whatsoever shall be displayed or placed upon the NAOS.
- (iv) Outside Lighting. Except as may be initially installed by Declarant, no spotlights, floodlights or similar type high intensity lighting shall be placed or utilized upon any part of the NAOS which in any way allow light to be reflected on any Lot or the improvements thereon in Sand Flower or any part thereof without the written authorization of the Board. Other types of low intensity lighting which do not disturb the Owners or Occupants of any of the Lots shall be allowed on the Lots, as may be permitted by the Design Review Committee. No such lighting shall be shined upon the Common Area NAOS from any Lot, except as expressly approved by the Design Review Committee.
- (v) Animals; Pets. Pets shall not be allowed loose or unsupervised on any part of the NAOS. The pet owner is responsible for immediate removal of any pet waste from the NAOS.
- (vi) Vehicles. No vehicles, boats, vans, campers or other similar item shall be parked in the NAOS. No vehicle (including, without limitation, motorcycles or motorbikes) shall be driven on or through the NAOS.
- (vii) Trash; Unsightly Items. Rubbish, trash and garbage shall not

be burned on or allowed to accumulate on the NAOS except in receptacles approved by the Association. No incinerators shall be permitted on the NAOS or any part thereof.

(viii) Noisy Equipment or Loud Music. Except for emergencies or as the Board may expressly permit, no equipment which emanates disturbing sounds, loud noises or loud music, shall be operated in, or directed at, any part of the NAOS.

ARTICLE 5

ORGANIZATION OF ASSOCIATION

Section 5.1 Formation of Association. The Association is a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 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 as the same may be amended from time to time. The size of the Board shall be as set forth in the Bylaws. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

Section 5.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the "Association Rules." The Association Rules may restrict and govern the use of any Lot or any other portion of the Property by any Member, Occupant or guest within the limits of this Declaration, the Articles or the Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 5.4 No Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

ARTICLE 6

MEMBERSHIPS AND VOTING

Section 6.1 Owners of Lots. Each Owner of a Lot which is subject to assessment, pursuant to Article 7 hereof, shall be a Member of the Association. There shall be one (1) Membership per Lot. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not cause there to be more Memberships than the number established for purposes of this Section 6.1.

Section 6.2 Voting. Each Owner shall be entitled to one (1) vote for each Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions

Section 6.3 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, 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 Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

Section 6.4 Meeting of Members. Meetings of the Members shall be called as provided in the Bylaws of the Association.

Section 6.5 Ballots. For all votes described in this document, proxy voting shall be permitted. Absentee ballots shall be permitted, as defined in the Bylaws of the Association and in such form as directed by Arizona Revised Statutes 33-1812 or its successor.

Section 6.6 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 6.7 Transfer of Membership. The rights and obligations of the Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot. A transfer of ownership to a Lot may be effectuated by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is 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 the ownership of a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

Section 6.6 Suspension of Voting Rights. If any Owner is ninety (90) days in arrears in the payment of any Assessments or other amounts due the Association from an Owner and such delinquency is not cured before the record date of any meeting of the Members where votes are to be taken, the Owner's right to vote as a Member of the Association shall not be exercisable for such meeting and shall remain suspended until all payments, including accrued interest, penalties and attorneys' fees as set forth below, are brought current.

ARTICLE 7

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 7.1 Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. Each Lot Owner, by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article; (2) Special Assessments for Capital Improvements or other extraordinary expenses or costs established by this Article; and (3) Maintenance Charges established by Article 10, all such assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, and Maintenance Charges (sometimes hereinafter referred to collectively as the "Assessments" and individually as the "Assessment"), together with interest, penalties, costs, and reasonable attorney's fees, shall be a charge, continuing servitude and lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the Assessment was due. The personal obligation for delinquent assessments shall not pass to the successors in title of the Owner unless expressly assumed by such successors.

Section 7.2 Annual Assessments. To provide for the uses and purposes specified in Article 9 hereof, including the establishment of replacement and maintenance reserves, real estate taxes, insurance, management fees and such expenses that the Board deems reasonable or necessary to conduct the business of the Association, the Board shall assess against each Membership an Annual Assessment. The amount of the Annual Assessment shall be determined with the objective of fulfilling the Association's obligations under this Declaration to provide for the uses and purposes specified in Article 9. Subject to the limits set forth under A.R.S. 33-1803(A) outlined in Section 7.4, the Board may, during the assessment period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts anticipated by the Association and collect such increased assessment in accordance with procedures established below.

Section 7.3 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in

any assessment period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses; provided that any such Special Assessment must be approved by at least two thirds (2/3) of the votes of the Members who are voting (in person or by absentee ballot) at a meeting duly called for such purpose. The quorum for any meeting at which a vote on special assessments is taken shall be fifty percent (50%) of the Members.

The provisions of this section shall not preclude or limit the Assessment, collection or use of the Annual Assessments for the aforesaid purposes.

Section 7.4 Uniform Rate of Assessment. The Annual Assessments may be collected on a monthly, quarterly, or annual basis and Special Assessments may be collected as specified by the Board. The amount of any Assessment shall be in the sole discretion of the Board except that the Annual Assessment must be fixed at a uniform rate for each Lot. Pursuant to A.R.S. 33-1803(A), the amount of the Annual Assessment may not be increased by more than twenty percent (20%) over the prior years' Annual Assessment without the approval of a majority of all of the Members.

Section 7.5 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein, for the billing and collection of the Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien shall not be foreclosed until notice as required by statute has been provided to the Owner. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an assessment period; successor Owners of Lots shall be given credit on a prorated basis for prepayments made by prior Owners.

Section 7.6 Collection of Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear a late fee (not to exceed the statutory limit) and default interest at the rate of eighteen percent (18%) per annum, and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting such amounts or in enforcing all of the rights and remedies provided herein. The Board also may, but is not obligated to, Record a Notice of Lien against any Lot as to which an Assessment is delinquent. The Recordation of a lien is not required to perfect the Assessment Lien.

The Association may enforce the payment of such Assessments and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments;

(b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages or, if applicable, a non-judicial sale under deeds of trust (including, where applicable, the right to recover any deficiency and, if foreclosed as a realty mortgage, the Lot may be redeemed after foreclosure sale as provided by law).

Section 7.7 Subordination of Assessment Lien to First Mortgage or Deed of Trust: Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot.

Section 7.8 Costs to be Borne by Member in Connection with Enforcement of Annual Assessments, Special Assessments and Maintenance Charges. In any action taken to collect delinquent Assessments, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments, Special Assessments and Maintenance Charges together with interest, penalties and the Association's collection costs and attorney's fees.

Section 7.9 Evidence of Payment of the Assessments. Pursuant to Arizona statute, upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating (a) that all Assessments (including costs and attorney's fees, if any, as provided above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all Assessments have not been paid, the amount of such Assessments (including costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charge must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

Section 7.10 No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Declaration.

ARTICLE 8

ENFORCEMENT OF PROJECT DOCUMENTS

Section 8.1 Enforcement. The Association shall have the right, but not the duty, to enforce the provisions of the Project Documents, which shall include the right to expend Association monies in pursuance thereof. This right of enforcement shall be in any manner provided for in this Declaration or by law or in equity, including, but not limited to, imposition of reasonable monetary penalties, commencing an action to obtain an injunction to compel removal of any improvements constructed or altered in violation of this Declaration or to otherwise compel compliance with the Project Documents. Nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. Each remedy provided by this Declaration is cumulative and not exclusive. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(a) Notice of Violation. The Association shall have the right to record a written Notice of a Violation by any Owner or resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and resident(s), 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.

(b) Costs of Enforcement. In the event the Association acts to enforce the Project Documents, regardless of whether suit is filed, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs and other related expenses incurred in connection therewith. Said attorneys' fees, costs and expenses shall be collectible against the Owner in the same manner as unpaid assessments. If, however, a lawsuit is filed and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorneys' fees, court costs and other related expenses.

ARTICLE 9 **USE OF FUNDS**

Section 9.1 Purposes for which Association's Funds May Be Used. The Association shall

apply all funds and property collected and received by it (including the Annual Assessments and Special 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 Sand Flower and the Owners and Occupants 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 Sand Flower, which may be necessary, desirable or beneficial to the general common interests of Sand Flower, the Owners and Occupants. 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: maintenance of walls, project signage and landscaping on Areas of Association Responsibility, obtaining of liability insurance, supplying of utilities and other public services, providing for communication and transportation within and dissemination of information concerning Sand Flower, indemnification of officers and directors of the Association, including such Director and Officer liability insurance as the Board deems appropriate, and generally protecting the health and safety of the Owners and Occupants.

Section 9.2 Borrowing Power. The Association may borrow money only if such loan is approved by Owners holding at least two-thirds (2/3) of all of the votes in the Association.

Section 9.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual Assessments, Special Assessments, fees or otherwise), 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.

Section 9.4 Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas, with the amount and type of coverage to be determined by the Board. The Association shall also carry fidelity coverage in an amount sufficient to protect the Association's funds, and workers compensation coverage if required by Arizona law.

ARTICLE 10 **MAINTENANCE**

Section 10.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage, all Common Areas and other Areas of Association Responsibility, including, but not limited to, entry signs, drainage and flood control areas, the landscaping, project perimeter walls, walkways, paths, parking areas, drives and other facilities.

The Association shall also be responsible for maintaining retention basins and the drainage easements designated as "D.E." on the Plat; however, any Owner whose Lot has such an easement designated thereon shall keep the easement area clean and free of debris and garbage.

The Association shall also maintain any landscaping and other improvements not on Lots which are within the exterior boundaries of the Property which are intended for the general benefit of the Owners and Occupants of Sand Flower, including bike paths, equestrian trails, signs and lighting.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said Property so the Sand Flower development will reflect a high pride of ownership. In connection therewith the Association may, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any Area of Association Responsibility;
- (b) Remove or replace injured and diseased trees and other vegetation in any Area of Association Responsibility, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (c) Place and maintain upon any Area of Association Responsibility such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (d) Do all such other and further acts which the Board deems necessary to preserve and protect the Areas of Association Responsibility and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

Section 10.2 Landscaping Maintenance and Easement Agreements Pertaining to Specific Lots. Landscaping Maintenance and Easement Agreements have been recorded against a total of thirteen (13) Lots within Sand Flower. Pursuant to these Agreements, the Association shall be responsible for maintenance, upkeep and repair of certain improvements and landscaping located on such Lots, including perimeter walls, monuments, planters, irrigation systems and lighting systems. The Owner of each such lot shall be responsible for maintaining the landscaping not included in the Agreements. The recording numbers of the Agreements in the Records of the Maricopa County Recorder are as follows: 2005-0233500 (Lot 1); 2005-0233501 (Lot 2); 2005-0437591 (Lot 3); 2005-0233502 (Lot 4); 2005-0233503 (Lot 5); 2005-0369666 (Lot 6);

2005-0233504 (Lot 7); 2005-0233652 (Lot 8); 2005-0233653 (Lot 82); 2005-0233654 (Lot 83); 2005-0233655 (Lot 84); 2005-0260427 (Lot 92); 2005-0233656 (Lot 100).

Section 10.3 Assessment of Certain Costs of Maintenance and Repair of Areas of Association Responsibility. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject, and shall be secured by the Assessment Lien.

Section 10.4 Improper Maintenance and Use of Lots. Each Owner shall keep their Lot and all improvements thereon in a well-maintained manner at all times. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of Sand Flower which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates the Project Documents, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (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 shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien.

ARTICLE 11

DESIGN REVIEW COMMITTEE

Section 11.1 Establishment. There shall be a Design Review Committee which shall establish and adopt Design Guidelines and procedural rules and regulations to direct the Design Review Committee in the performance of its duties. The Design Review Committee shall consist of three (3) regular members and an alternate member, each appointed by the Board. The Board may replace any member of the Design Review Committee at any time with or without cause. Pursuant to Arizona statute, the chairperson of the Design Review Committee shall be a member of the Board.

Section 11.2 Purpose. The purpose of the Design Review Committee is to maintain consistency of architectural and landscaping standards throughout Sand Flower and thereby preserve the aesthetic and economic value of Sand Flower. The Design Review Committee is hereby empowered to supplement and amend the Design Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary; provided, however, that such modifications are in general conformity with the standards set forth in this Declaration. Neither the Design Review Committee nor Association is assuming any liability for the economic value nor structural integrity of any improvement. Design Review Committee's decisions shall pertain solely

to the matters set forth herein and shall in no way constitute a representation or warranty of economic value or structural integrity.

In the event an Owner is aggrieved by the decision of the Design Review Committee, such Owner may submit a written request for an appeal to the Board within sixty (60) days of the issuance of the Design Review Committee's decision. The Board shall hear the appeal. Any Board decision on the appeal shall be final.

Section 11.3 Operation/Authority. It shall be the duty of the Design Review Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. A quorum for any such meeting of the Design Review Committee shall consist of two (2) members and a vote of two (2) of the members of the Design Review Committee shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The Design Review Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections, which may be indicated on the plans submitted or as the Design Review Committee may deem otherwise appropriate. The Design Review Committee shall have broad discretionary powers in determining whether an application is in conformance with the Design Review Guidelines. In addition, the Design Review Committee may disapprove any application if it, in its discretion, believes the applicant has not supplied sufficient or accurate information for the Design Review Committee to exercise the judgment required by this Declaration. The Design Review Committee has the authority to grant variances to the Design Guidelines by an affirmative vote of the majority of the members of the Design Review Committee. In no event, however, shall the Design Review Committee have the authority to grant any variance from a prohibition, restriction, requirement or other provision of this Declaration, unless expressly provided otherwise herein. The Design Review Committee shall keep complete written records of all applications for approval submitted to it in connection with all actions taken by it under the provisions of the Design Guidelines. For these purposes, an "application" to the Design Review Committee shall not be deemed submitted unless (i) it is in writing and in such form as the Design Review Committee may from time to time request, (ii) it is submitted with such elevations, drawings and other documents prepared by design professionals in accordance with industry standards and such requirements as the Design Review Committee may impose, (iii) it is submitted in such multiple copies and at such location or locations as specified by the Design Review Committee, (iv) it is accompanied by an application fee in the full and correct amount, and (v) it meets such other requirements as the Design Review Committee may from time to time impose. Each Owner is encouraged to submit to the Design Review Committee preliminary elevations for review to avoid incurring unnecessary costs making unacceptable final submissions.

Section 11.4 Fee. The Board shall have the right, in its sole discretion, to assess against applicants a processing fee to, among other things, defer the costs incurred by the Design Review Committee for the services of an architect or other professionals in considering any requests for approval submitted to it. An architect or other professionals may serve on the Design

Review Committee. The fee shall be in such amount and payable in accordance with such schedule as reasonably determined by the Design Review Committee. Any processing fee not paid in full at the time of submittal of the request for approval shall be added to, and become a part of, the Assessment to which the requesting Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien. The Design Review Committee shall be entitled, however, to refuse to process the application if the applicant does not include payment of such fee.

Section 11.5 No Liability of Design Review Committee. All plans, drawings and specifications approved by the Design Review Committee are not approved for engineering, design or architectural competence. Through its approval of such plans, drawings and specifications, the Design Review Committee does not assume liability or responsibility therefor or for any defect in any structure constructed from such plans, drawings and specifications. Members of the Design Review Committee and members of the Board shall not be liable to the Association, any Owner or any other entity for any damage, loss or prejudice suffered or claimed because of: (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.

Section 11.6 Waiver. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval.

ARTICLE 12 **RIGHTS AND POWERS OF ASSOCIATION**

Section 12.1 Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers may encompass any and all things which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration.

ARTICLE 13 **AMENDMENT**

Section 13.1 Amendments. This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and shall certify that the amendment was approved by Owners holding at least seventy-five percent (75%) of the votes cast (in person or by absentee ballot). For purposes of this Section only, quorum for such meeting shall be Members voting holding at least fifty percent (50%) of the votes in the Association.

ARTICLE 14
MISCELLANEOUS

Section 14.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, 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 benefitted or bound by the covenants and provisions hereof.

Section 14.2 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.

Section 14.3 Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States on the date hereof.

Section 14.4 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.

Section 14.5 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.

Section 14.6 Indemnification/Acknowledgment. THE OWNERS, AS DEFINED HEREIN, ACKNOWLEDGE THAT: (1) THE PROPERTY SUBJECT TO THIS DECLARATION CONTAINS NATURAL AREAS, OPEN SPACE AND SCENIC AREAS (NAOS) AND COMMON AREAS; (2) THE NAOS AND COMMON AREAS ARE INTENDED SOLELY FOR AESTHETIC PURPOSES AND LIMITED RECREATIONAL USE; (3) THE NAOS AND COMMON AREAS POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS AND OTHERS; (4) NO SAFETY PERSONNEL WILL PATROL THE NAOS AND OTHER COMMON AREAS AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS OR OTHERS; AND (5) THE OWNERS INDEMNIFY, DEFEND AND HOLD HARMLESS THE ASSOCIATION, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, AND THEIR SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, INJURIES, DAMAGES,

EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES, INCURRED BY OR CLAIMED AGAINST THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, AND THEIR SUCCESSORS AND ASSIGNS UNDER ANY LAWS ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE NAOS AND THE COMMON AREAS.

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CERTIFICATION

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Amended and Restated Declaration have been approved by Owners of the required percentage of Lots.

DATED this 10 day of June, 2023

SAND FLOWER COMMUNITY ASSOCIATION,
an Arizona non-profit corporation

By [Signature]

Its: President

STATE OF ARIZONA)

) ss.

County of Maricopa

On this 10th day of June, 2023 before me personally appeared

Peter Trethewey whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

[Signature]
 Notary Public

Notary Seal:

