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PAGE: 1 of 96

**FIRST AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR HAVASU RIVIERA COMMUNITY,  
LAKE HAVASU CITY, MOHAVE COUNTY, ARIZONA**

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**FIRST AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR HAVASU RIVIERA COMMUNITY  
LAKE HAVASU CITY, MOHAVE COUNTY, ARIZONA**

This First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Havasu Riviera Community (the "Declaration") is made this 11<sup>th</sup> day of February, 2020, by Havasu Riviera, L.L.C., an Arizona limited liability company, as Declarant, and Marina View LLC, an Arizona limited liability company, a Tract Declarant.

**BACKGROUND**

A. Havasu Riviera, L.L.C., as owner of fee title real property located in or near Lake Havasu City, Arizona, legally described on Exhibit "A" attached hereto (the "Property"), executed and recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Havasu Riviera Community, Lake Havasu City, Mohave County, Arizona, recorded January 27, 2020, at Fee No. 2020004224, and re-recorded February 5, 2020, at Fee No. 2020006798 in the Official Records of Mohave County, Arizona to establish and govern the development of a master planned community known as Havasu Riviera Community located in Lake Havasu City, Arizona. All the Property in Havasu Riviera Community is subject to the Declaration of Covenants, Conditions, Restrictions and Easements for Havasu Riviera Community.

B. Marina View LLC, an Arizona limited liability company, as the owner of fee title real property legally described on Exhibit "B" attached hereto, located within, adjacent and contiguous to the Property joined in the execution and recordation of the Declaration of Covenants, Conditions, Restrictions and Easements for Havasu Riviera Community identified in Recital A to establish and govern the development of the Exhibit "B" property as a part of the master planned community known as Havasu Riviera Community. As Tract Declarant, Marina View LLC has or may record a Tract Declaration as contemplated by this Declaration.

C. Declarant and Tract Declarant, in accordance with the provisions of section 11.6, execute and record this Declaration to amend and restate in its entirety the Havasu Riviera Community Declaration identified in Recital A to read in its entirety as set forth herein.

D. Declarant intended to and imposed upon the Property mutually beneficial covenants, conditions and restrictions and easements to establish a flexible and reasonable procedure for the overall development, administration, maintenance, use and preservation of the Property. The Declarant intends the Declaration to create equitable servitudes and covenants appurtenant to and running with the Property and which would be binding upon all further Owners of all or any portion of the Property and any other Person acquiring any right, title or interest in or to all of any portion of the Property. This Declaration vests in the Declarant a significant amount of control and flexibility over the development of the Property and the operation of the Association.

Declarant hereby declares, grants, reserves, covenants, and agrees as follows:

## **ARTICLE 1 DEFINITIONS**

1.1. "**Additional Property**" means: any other real property, together with the Improvements located thereon, located not more than one mile from property described on Exhibit A.

1.2. "**Annual Assessments**" means the Assessments levied pursuant to section 6.2.

1.3. "**Apartment Project**" means a development constructed on lands designated for Residential Apartment Development Use by a Tract Declaration consisting of one or more buildings containing dwelling units which are not intended for separate ownership and which are rented or offered for rent for residential occupancy.

1.4. "**Apartment Unit**" means a dwelling unit located within an Apartment Project.

1.5. "**Applicable Governmental Entity**" means whichever governmental entity, the City of Lake Havasu City or the County of Mohave, as the case may be, that has jurisdiction over the property, in whole or in part.

1.6. "**Areas of Association Responsibility**" means: (a) all Common Area; and (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot or a public right-of-way which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration, a Tract or Neighborhood Declaration or other Recorded document executed by the Declarant or the Association.

- 1.7. "**Articles**" means the articles of incorporation of the Association, as amended from time to time.
- 1.8. "**Assessable Property**" means each Lot or Tract, except for Exempt Property.
- 1.9. "**Assessment**" means a Master Association Assessment, Neighborhood Assessment or Special Assessment.
- 1.10. "**Assessment Lien**" means the lien created and imposed by Article 6.1.
- 1.11. "**Assessment Period**" means the period set forth in section 6.8.
- 1.12. "**Association**" means Havasu Riviera Community Association, an Arizona nonprofit corporation, and its successors and assigns.
- 1.13. "**Association Land**" means all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest, easement or license for as long as the Association is the owner of the fee or holds such leasehold interest, easement or license. An easement created by operation of section 4.5 shall not cause the servient land to be Association Land.
- 1.14. "**Association Rules**" means the rules adopted by the Board pursuant to section 5.3, as amended and supplemented from time to time.
- 1.15. "**Board**" means the board of directors of the Association.
- 1.16. "**Board Resolutions**" means the resolutions adopted by the Board pursuant to section 5.3, as amended from time to time.
- 1.17. "**Bylaws**" means the bylaws of the Association, as amended from time to time.
- 1.18. "**City**" means the City of Lake Havasu City, Arizona, an Arizona municipality incorporated and existing under the laws of the State of Arizona, and any and all municipal agencies, boards, commissions, or departments of the City.
- 1.19. "**Collection Costs**" means all costs, fees, charges and expenditures including, without limitation, attorney's fees (whether or not a legal action is filed),

demand fees, court costs, filing fees and recording fees incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, interest or other amounts payable to the Association pursuant to this Declaration.

1.20. "**Common Area**" means: (a) all Association Land; (b) all land, and the Improvements situated thereon, which is designated on a Recorded subdivision plat Recorded by the Declarant or approved by the Declarant or the Association as land which is to be owned, improved, maintained, repaired and replaced by the Association.

1.21. "**Common Expenses**" means expenditures made by or financial liabilities of the Association together with any allocations to reserves.

1.22. "**Common Wall**" means a division wall built and paid for by the Declarant or builder between two adjacent properties belonging to different persons and used for the mutual benefit of both parties. A "Common Wall" may also be a wall built and paid for by two adjacent private property owners who have entered into a private agreement between themselves. It is not necessary that the wall should stand part upon each of two adjoining lots, and it may stand wholly upon one lot. Any wall constructed by an Owner on his Lot or Tract shall not be considered a Common Wall and is specifically excluded from this definition.

1.23. "**Community Master Planner**" means Raging River Management Corporation, a Delaware corporation, acting through its managing member, or such other Person as may be designated as the Community Master Planner by the Declarant pursuant to section 2.9.

1.24. "**Concealed From View**" means the obscuring from view of objects permitted under Association documents to be placed, kept or maintained in side or rear yards by placing, keeping or maintaining said objects behind a wall and/or opaque gate of not less than five feet nor more than six feet in height approved by the Design Review Board. To be deemed concealed from view, the objects shall not be Visible from Neighboring Property or streets within the Havasu Riviera Community.

1.25. "**Condominium Development**" means a residential or commercial condominium established in accordance with applicable Arizona law.

1.26. "**Condominium Tract**" means a parcel designated as having a Land Use Classification of Residential or Commercial Condominium Development Use by a Neighborhood Declaration.

1.27. "**Condominium Unit**" means a "unit" (together with any appurtenant interest in all "common elements") within a Condominium Development (as such quoted terms are defined in the Arizona Condominium Act, Chapter 9 of Title 33 of the Arizona Revised Statutes, as amended, or any successor statutes, as amended).

1.28. "**Construction**" means any devegetation, excavation or grading work or the construction, erection or installation of an Improvement on a Lot or Tract.

1.29. "**Contractor**" means an individual or entity licensed under the provisions of Title 22 Arizona Revised Statutes to effect the Construction or Modification of Improvements.

1.30. "**County**" means the County of Mohave, Arizona, political subdivision of the State of Arizona, and any and all agencies, boards, commissions, or departments of the County.

1.31. "**Declarant**" means Havasu Riviera, L.L.C., an Arizona limited liability company, its successors and any Person to whom it may expressly assign any or all of its rights under this Declaration.

1.32. "**Declarant Affiliate**" means any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.33. "**Declarant Control Period**" means the period commencing on the date of the Recording of this Declaration and ending on the earlier of: (a) the date on which Declarant (including any Affiliates) no longer owns a Lot or Tract in the Project ; (b) December 31, 2084; or (c) the date the Declarant Records a written instrument terminating the Period of Declarant Control.

1.34. "**Declaration**" or "**Havasu Riviera Declaration**" means this Declaration of Covenants, Conditions, Restrictions and Easements for Havasu Riviera Community, as amended from time to time.

1.35. "**Design Review Board**" means the board appointed by the Declarant to promulgate guidelines, standards, and procedures for review and approval of all plans for Construction or Modification of any Improvement within Havasu Riviera Community.

1.36. "**Design Review Guidelines**" means the rules and guidelines adopted by the Design Review Board pursuant to section 3.4, as amended or supplemented from time to time.

1.37. "**Developer**" means any Person (other than the Declarant) who is in the business of developing, subdividing, selling or leasing real property and who acquires one or more Tracts in connection with, and in the course of, such business, for the purpose of developing, subdividing, selling or leasing such Tracts.

1.38. "**Eligible Votes**" means votes held by Members in Good Standing.

1.39. "**Enforcement Assessment**" means an assessment levied pursuant to section 6.6.

1.40. "**Exempt Property**" means: (a) all land and improvements owned by, or dedicated to and accepted by, the United States, the State of Arizona, Mohave County or the City of Lake Havasu City, or any political subdivision of any of them, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective; (b) all Association Land; (c) all Neighborhood Common Areas; (d) all real property which is part of the common elements of a Condominium Development; (e) any parcel with a Land Use Classification of Park Use, or Educational Use, unless otherwise indicated in the applicable recorded Tract Declaration; and (f) any portions of a Non-Residential Tract designated as Exempt Property in the Tract Declaration Recorded with respect to that Tract pursuant to Article 12.

1.41. "**First Mortgage**" means a Mortgage Recorded against a Lot, Tract or other portion of the Project which has priority over all other Mortgages Recorded against that Lot, Tract or other portion of the Project.

1.42. "**Improvement**" means: (a) any structure, building, fence or wall; (b) any swimming pool, tennis court, basketball court, road, driveway, parking area or satellite dish; (c) any trees, plants, shrubs, grass or other landscaping improvements of every type and kind; (d) any statuary, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot or Tract); (e) security gates, (f) streets; and (g) any other structure of any kind or nature.

1.43. "**Hotel**" means an establishment providing accommodations, meals or other services to travelers or tourists.

1.44. "**Landscaping**" means all shrubs, trees, hedges, grasses and plantings of every kind together with an irrigation system (including an electrically operated landscape controller) designed to adequately water the shrubs, trees, hedges, grasses, plantings and other landscaping improvements. Non-organic materials such as colored rocks and boulders may be incorporated into Landscaping.

1.45. "**Land Use Classification**" as more fully discussed in section 3.1, means the classification established by a Tract Declaration which designates the type of Improvements which may be constructed on a Lot or Tract and the purposes for which such Lot or Tract, and the Improvements situated thereon, may be utilized.

1.46. "**Land Use Map**" means the Havasu Riviera Land Use Map, as may be amended.

1.47. "**Lien**" means a charge upon real property securing payment to the Association of assessments, fines and penalties as well as other charges permitted or authorized under this Declaration.

1.48. "**Lessee**" means the lessee or tenant under a lease, oral or written, of any Lot or Tract (or part thereof), including an assignee of the lessee's or tenant's interest under a lease.

1.49. "**Lot**" means: (a) a portion of the Project intended for independent ownership use and designated as a parcel or lot on any Subdivision Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Tract or Lot; or (b) a Condominium Unit.

1.50. "**Maintenance**" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

1.51. "**Maintenance Standard**" means the standard of Maintenance of Improvements situated on Lots or Tracts established from time to time by the Board pursuant to this Havasu Riviera Declaration. The Master Association may delegate this right to establish a Maintenance Standard to a Neighborhood Association. In the absence of any standard established by the Board, the standard of Maintenance of Improvements situated on Lots generally prevailing throughout the Project.

1.52. "**Maximum Membership Assessment**" shall have the meaning given such term in section 6.3(a)(ii).

1.53. "**Member**" means any Person who is a Member of the Association as provided in section 5.8.

1.54. "**Member in Good Standing**" means a Member who is current in its obligations to the Association, including but not limited to payment of all Assessments, fines and penalties and is in compliance with all Association Documents.

1.55. "**Membership**" means a membership in the Association.

1.56. "**Membership Assessment**" shall have the meaning given such term in section 6.3(a)(i).

1.57. "**Modification**" means an addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot or Tract.

1.58. "**Mortgage**" means a deed of trust or a mortgage Recorded against a Lot or Tract.

1.59. "**Natural Open Space**" means any approved revegetated area and any area of undisturbed natural desert with no man-made improvements.

1.60. "**Neighborhood**" shall mean and refer to any part of the Project designated in a Tract or Neighborhood Declaration (or other Recorded instrument approved by the Declarant, and by the Owner of the property subject thereto, if other than Declarant), which is to be a separately developed and denominated area comprised of one (1) or more housing or commercial developments subject to this Declaration, Tract or Neighborhood Declaration, and Neighborhood Association, in which owners may have common interests other than those common to all Association Members, such as a common theme, entry feature, development name, and/or common areas and facilities which are not available for use by all Association Members. For example, and by way of illustration and not limitation, a commercial center, a townhome development, cluster home development, multi-family home development and single-family detached housing development may constitute a separate Neighborhood.

1.61. "**Neighborhood Assessment**" means an Assessment levied against fewer than all of the Lots and Tracts in the Project pursuant to sections 2.2 or 2.3.



1.62. "**Neighborhood Assessment Area**" means any part of the Project designated in a Tract or Neighborhood Declaration (or other Recorded instrument approved by the Declarant, and by the Owner of the property subject thereto, if other than the Declarant) as an area which is to be operated, maintained, repaired and replaced by the Association but which is for the sole or primary benefit of the Owners of fewer than all of the Lots and Tracts in the Project. In the event the Neighborhood Assessment Area has a Land Use Classification of Residential or multi-family, the Neighborhood Assessment Area shall be deemed Neighborhood Common Elements to be owned, operated, maintained, and repaired by a Neighborhood Association.

1.63. "**Neighborhood Association**" means any homeowners association or similar association formed or organized pursuant to a Tract or Neighborhood Declaration.

1.64. "**Neighborhood Common Area**" means: (a) all land, together with all Improvements situated thereon, which a Neighborhood Association at any time owns in fee or in which a Neighborhood Association has a leasehold interest, easement or license for so long as the Association is the owner of the fee or holds such leasehold interest, easement or license; and (b) any and all other property and Improvements identified, designated or defined, by a Tract or Neighborhood Declaration, Recorded subdivision plat or other Recorded instrument, as "Common Area" of a Neighborhood Association.

1.65. "**Neighborhood Declaration**" means any declaration of covenants, conditions and restrictions or similar instrument (as amended from time to time), other than this Declaration or a Tract Declaration which: (a) is Recorded by the Declarant (or bears the written approval of the Declarant thereon or Community Master Planner); (b) affects (or indicates by its terms that it is intended ultimately to affect) a Tract or Tracts or a Lot or Lots; and (c) contains a provision expressly identifying itself as a "Neighborhood Declaration" for purposes of this Declaration.

1.66. "**Noncompliance**" means the failure to comply with the provisions of a Declaration, Tract Declaration, Neighborhood Declaration, Design Review Guidelines, Tract Design Review Board or Neighborhood Design Review Board.

1.67. "**Non-Residential Tract**" means any Tract designated as such in a Tract Declaration Recorded against that Tract as provided in Article 12.

1.68. "**Occupant**" means any Person other than an Owner who occupies or is in possession of a Lot or Tract, or any portion thereof or building or structure thereon, whether as a Lessee or otherwise, other than on a merely transient basis (and shall include, without limitation, a Resident).

1.69. "**Owner**" means the Person or Persons who individually or collectively own fee title to a Lot or Tract (as evidenced by a Recorded instrument), provided that: (a) the Declarant (and not the fee title holder) shall be deemed to be the "Owner" of each Lot or Tract with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of the Declarant or a Declarant Affiliate; (b) in the event that, and for so long as, the Declarant or a Declarant Affiliate has, pursuant to a written agreement, an existing right or option to acquire any one or more Lots or Tracts (other than by exercise of a right of first refusal or right of first offer), the Declarant shall also be deemed to be the "Owner" of each Lot or Tract with respect to which the Declarant or a Declarant Affiliate has such right or option; and (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot. Where reference is made in this Declaration to Lots or Tracts "owned by" a Person, such phrase shall be deemed to refer to Lots or Tracts of which that Person is the Owner, as determined pursuant to this section.

1.70. "**Parcel**" means each area of real property in the Project, and all Improvements situated thereon, shown as a separate parcel of land on the recorded plat to be owned and maintained by the Association as Common Areas.

1.71. "**Parcel Plat**" means a parcel plat Recorded against any portion of the Project with the intent of or which has the effect of identifying a developable parcel, together with all amendments, supplements, and corrections to such parcel plat.

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

1.73. "**Project**" or "**Property**" means the real property described on Exhibit A together with all Improvements located thereon, and all real property together with all Improvements located thereon, which is annexed and subjected to this Declaration pursuant to section 2.4, but excluding any real property, together with all Improvements thereon, which is withdrawn pursuant to section 2.5.

1.74. "**Project Documents**" means Havasu Riviera Declaration, all Tract Declarations, and Neighborhood Declarations, the Articles, the Bylaws, the Association Rules, the Design Review Guidelines, Rules, and the Board Resolutions.

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

1.76. "**Record,**" "**Recording,**" "**Recorded**" and "**Recordation**" means placing or having placed an instrument of public record in the official records of Mohave County, Arizona.

1.77. "**Resident**" means each individual who resides in any Residential Unit.

1.78. "**Residential Unit**" means: (a) any building, or portion of a building, situated upon a Lot or Tract (other than a Condominium Unit) and designed and intended for separate, independent use and occupancy as a residence excluding guest houses; or (b) a Condominium Unit.

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

1.80. "**Special Assessment**" means any Assessment levied pursuant to section 6.5.

1.81. "**Special Use Fees**" means any fees charged by the Association for use of Common Areas pursuant to section 4.1(vi).

1.82. "**Subdivision Plat**" means any subdivision plat or condominium plat Recorded against any portion of the Project with the intent of, or which has the effect of, subdividing such portion into Lots (together with any related Common Area, Neighborhood Common Area and public rights-of-way), together with all amendments, supplements and corrections to such plat.

1.83. "**Tenant**" means a Person occupying any part of the Covered Property under any type of rental agreement.

1.84. "**Tract**" means each area of real property in the Project, and all Improvements situated thereon, shown as a separate parcel of land on the Land Use Plan

described in paragraph 1.46 provided, however, that in the event a Tract is split in any manner into portions under separate ownership (other than by subdivision of the Tract by Recordation of a subdivision plat into Lots), each portion under separate ownership shall thereafter constitute a separate Tract. If two or more contiguous parcels of land are owned by the same Person, they shall be considered one Tract for purposes of this Declaration. A Tract shall cease to be a Tract when it has been fully subdivided into Lots (together with Common Area and Neighborhood Common Area, if any) or otherwise developed for use. If a portion of a Tract is subdivided into Lots (and Common Area and Neighborhood Common Area, if any), the subdivided portion shall cease to be a Tract, but each remaining unsubdivided portion shall be a Tract if it otherwise meets the requirements of the definition set forth in this section.

1.85. "**Tract Declarant**" means the owner of certain real property, other than Declarant, who executes a Tract Declaration pursuant to section 2.2.

1.86. "**Tract Declaration**" means a declaration recorded pursuant to section 2.2 which establishes land use classifications and allocates memberships.

1.87. "**View Preservation Fencing**" means fencing constructed upon a Lot or Tract which abuts lands designated as natural open spaces, public lands held by the Bureau of Land Management, or public lands owned by the City, which view the lake or other area which the Design Review Board deems View Preservation Fencing desirable. The use of View Preservation Fencing does not create or impose a view, light or air easement on any Lot or Tract for the benefit of other Lots or Tracts.

1.88. "**Violation**" means the failure to comply with a rule promulgated by the Association or Neighborhood Association.

1.89. "**Visible From Neighboring Property or Streets**" means, with respect to any given object or Improvement, that such object or Improvement is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot or Tract, the Common Area or any street within or adjacent to the Project.

## ARTICLE 2 PLAN OF DEVELOPMENT

2.1. **Property Initially Subject to the Declaration.** This Declaration is being Recorded to establish a general plan for the overall development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the property within the Project shall be held, sold and conveyed subject to this Declaration. This

Declaration vests in the Declarant a significant amount of control and flexibility over the development of the Property and the operation over the Association. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or 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. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its 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.

**2.2. Tract Declarations.** A Tract Declaration shall be recorded against each Tract or Lot within the Project at the time a Subdivision or Parcel Plat is Recorded (and with respect to portions of the Additional Property, in connection with, or subsequent to, the annexation and subjection of such portions to this Declaration pursuant to section 2.4). The Tract Declaration shall designate a Land Use Classification for the Lots or Tracts, assign memberships to a Lot or Tract and may exempt the Tract from Assessments as provided in Article 12. A Tract Declaration must be executed by the Declarant, Community Master Planner and by the Owner of the Tract or Lots subject to such Tract Declaration, if other than the Declarant.

A Tract Declaration may: (i) reserve or grant easements to such Persons and for such purposes as the Declarant may deem appropriate; (ii) may define and specify the permitted and prohibited uses within the Land Use Classification; (iii) impose such additional covenants, conditions and restrictions as the Declarant may deem appropriate for the property subject to the Tract Declaration except that Neighborhood Common Areas shall be established by a Neighborhood Declaration, which may be a part of the Tract Declaration; (iv) annex and subject the property covered thereby to this Declaration (subject to the provisions of section 2.2 and 2.4); and (v) designate a Tract as a NonResidential Tract and, in such case, contain such additional provisions as permitted or contemplated by Article 12 specifically addressing the right of the Community Association to impose Design Review Guidelines on Improvements within the NonResidential Tract.

Except as otherwise expressly provided in the Tract Declaration itself, a Tract Declaration may only be amended by a written instrument executed by all of the following: (i) Owners holding at least sixty-seven percent (67%) of the eligible votes in the Association held by the Owners of all of the Lots and Tracts subject to that Tract Declaration (or in the case of a NonResidential Tract, by Owners of at least sixty-seven percent (67%) of the net square footage of such Tract); (ii) the Association; and (iii) the Declarant so long as the Declarant owns any Lot or Tract in the Project. Each Tract Declaration shall be construed as a supplement to this Declaration and shall be enforceable as if all of the provisions of the Tract Declaration were set forth in this Declaration.

**2.3. Neighborhood Declarations.** The Declarant reserves the right, but not the obligation, to Record or cause to be Recorded one or more Neighborhood Declarations with respect to Lots and Tracts within the Project. If a neighborhood has Neighborhood Common Areas or Neighborhood Assessments, a Neighborhood Declaration shall be recorded concurrent with the Neighborhood Final Plat. A Neighborhood Declaration may be combined with the Tract Declaration. A Neighborhood Declaration must be executed by the Declarant, Community Master Planner, and by the Owner of the Tract or Lots subject to such Neighborhood Declaration, if other than the Declarant. A Neighborhood Declaration may: (a) designate Common Area, Neighborhood Common Area and Neighborhood Assessment Area; (b) reserve or grant easements to such Persons and for such purposes as the Declarant may deem appropriate; and (c) impose such additional covenants, conditions and restrictions as the Declarant may deem appropriate for the property subject to the Neighborhood Declaration. If a Neighborhood Declaration designates any Neighborhood Assessment Area, the Neighborhood Declaration shall also designate the Lots and Tracts which solely or primarily benefit from the Neighborhood Assessment Area and which shall be subject to Neighborhood Assessment pursuant to section 6.4.

Except as otherwise expressly provided in the Neighborhood Declaration itself, a Neighborhood Declaration may only be amended by a written instrument executed by all of the following: (i) Owners holding at least sixty-seven percent (67%) of the eligible votes in the Association held by the Owners of all of the Lots and Tracts subject to that Neighborhood Declaration (or in the case of a NonResidential Tract, by Owners of at least sixty-seven percent (67%) of the net square footage of such Tract); (ii) the Association; and (iii) the Declarant so long as the Declarant owns any Lot or Tract in the Project.

Each Neighborhood Declaration shall be construed as a supplement to this Declaration, the applicable Tract Declaration, and shall be enforceable as if all of the provisions of the Neighborhood Declaration were set forth in this Declaration.

**2.4. Annexation of Additional Property.**

(a) At any time on or before December 31, 2080, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person (other than the Person who owns the property to be annexed, if other than the Declarant). The annexation of all or any portion of the Additional Property shall be effected by the Community Master Planner and the Owner of the Additional Property Recording a written instrument which shall be a Tract Declaration that sets forth the legal description of the Additional Property being annexed and states that such portion of the Additional Property is annexed and subjected to the Declaration.

(b) 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. Property annexed by the Community Master Planner pursuant to this section 2.4 need not be contiguous with other property in the Project, 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 Community Master Planner makes no assurances that any of the Additional Property will be annexed.

**2.5. Withdrawal of Property.** At any time on or before December 31, 2080, the Declarant shall have the right to withdraw property from the Project without the consent of any other Owner or Person (other than the Owner of such property, if other than the Declarant), except as otherwise expressly provided in the Tract Declaration with respect to such property. The withdrawal of all or any portion of the Project shall be effected by the Community Master Planner Recording a written instrument setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from the Project pursuant to this section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

**2.6. Development Plan; Disclaimer of Representations Regarding Completion and Development.** Havasu Riviera Community is a master planned community. Multiple and mixed uses are contemplated as depicted on the proposed Land Use Plan attached hereto as Exhibit "C". The Declarant makes no representations or warranties whatsoever that: (a) the Project will be completed in accordance with the

proposed Land Use Plan or any other plans for the Project as they exist on the date this Declaration is Recorded; (b) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (c) any property not now subject to this Declaration will be subjected to the provisions hereof; or (d) the use of any property subject to this Declaration will not be changed in the future. The Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Proposed Land Use Plan with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the property owned by the Declarant or changing the nature or extent of the uses to which such property may be devoted. Nothing contained in this Declaration and nothing which may be represented to a Purchaser by real estate brokers or salesmen representing the Declarant, Developer or any builder shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration or of any part of the Additional Property.

**2.7. Restriction on Liability of the Association and the Declarant.**

Guardhouses and/or privacy gates may be constructed within or adjacent to the Project in order to limit access and to provide more privacy for the Owners and Occupants. If any such guardhouses and/or privacy gates are installed, the Declarant makes no representations or warranties that a guard service will be provided or, if guard service is provided, that it will be provided during any particular hours or be continued in the future. If guardhouses and/or privacy gates are installed, each Owner and Occupant, and their families, guests and invitees, acknowledge and expressly agree to assume the risk that any such guardhouse and/or privacy gate will restrict or delay entry into, or access within, the Project by police, fire department, ambulances or 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 Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such guardhouse.

**2.8. Security.** Havasu Riviera Community Association, Inc., will strive to maintain the Havasu Riviera Community as a safe, secure community. HOWEVER, NEITHER HAVASU RIVIERA COMMUNITY ASSOCIATION, INC. NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS, INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE HAVASU RIVIERA COMMUNITY ASSOCIATION, INC. AND ITS COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING,



ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THAT DECLARANT HAS MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

2.9. **Community Master Planner.** The Community Master Planner is the land planner for Havasu Riviera communities. The Community Master Planner is vested with the authority to establish, promulgate or otherwise determine the land uses and development of Lots and Tracts within Havasu Riviera Community. The Community Master Planner shall approve and execute a Tract Declaration to establish Land Use Classifications and allocate memberships, and all Subdivision or Parcel Plats for property within Havasu Riviera Community. During the Declarant's Control Period, Raging River Management Corporation, a Delaware corporation, acting through its managing member, or its designee shall serve as the Community Master Planner. Until the termination of the Declarant Control Period, the Declarant shall be entitled to change the Community Master Planner at any time and from time to time as it may determine in its sole and absolute discretion by a Recorded designation of Community Master Planner. Upon the termination of the Declarant Control Period, the Association shall serve as the Community Master Planner.

### **ARTICLE 3**

#### **LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS**

3.1. **Land Use Classifications.** The purposes for which property within the Project may be used shall be determined by the Land Use Classification of the property as established by a Tract Declaration covering the property. Accordingly, as portions of the Property are readied for development in accordance with the Land Use Plan, any number of Land Use Classifications, including any number of subclassifications for any special uses, may be fixed by Declarant and the Community Master Planner in the recorded Tract Declaration. A particular Tract Declaration shall affect only those portions of the Project specifically described in that Tract Declaration. Until a Tract Declaration is recorded against a Tract designating a particular Land Use Classification, Declarant and Community Master Planner may designate the Tract with any Land Use Classification (or combination of Land Use Classifications) which may be permitted under the Land Use Plan and the City zoning ordinances as either may then exist.

(a) **Contemplated Land Use Classifications.** The Land Use Classifications contemplated as of the date of this Declaration are:

(i) "Cluster Residential Use", consisting of Lots with Dwelling Units intended for occupancy by a Single Family, which may include those types of residential housing arrangements known as "townhouses", "clustered housing", "attached housing", "zero-lot line housing", "patio homes", "duplexes", "four-plexes", "zipper lots", and similar arrangements, together with related amenities;

(ii) "Residential Apartment Development Use", which may be converted to Residential Condominium Development Use, consisting of multifamily buildings containing Apartment Units;

(iii) "Residential Condominium Development Use", which may be converted to Residential Apartment Development Use, consisting of Condominium Units for individual ownership;

(iv) "Single Family Residential Use", consisting of detached Dwelling Units designed for use and occupancy by a Single Family;

(v) "Single Family Residential Suburban Use" consisting of detached Dwelling Units designed for use and occupancy by a Single Family;

(vi) "Common Areas";

(vii) "Commercial Office Use";

(viii) "Commercial Storage Use";

(ix) "Hotel";

(x) "Shopping Center Use";

(xi) "General Commercial Use";

(xii) "Residential Service Use";

(xiii) "Park Use";

(xiv) "Natural Open Space Use"; and

(xv) Such non-residential uses as may be set forth in a Tract Declaration Recorded by Declarant pursuant to Article 12.

Unless otherwise specifically provided in this Declaration, the exact definitions and characteristics of the Land Use Classifications (and the specific permitted and prohibited uses of the real property within a particular Land Use Classification) will be determined in the respective recorded Tract Declarations. In the event of any conflict or inconsistency between the Land Use Classification for a Lot or Tract as established by a Tract Declaration and statements or notations on any Subdivision Plat or on the Land Use Plan with respect to the uses which may be made of property within the Project, the provision of the Tract Declaration for the Lot or Tract shall prevail.

**3.2. New Land Use Classifications.** Declarant and the Community Master Planner may from time to time create new Land Use Classifications for the Property which are consistent with the applicable uses and restrictions imposed by the Applicable Governmental Entity under the Applicable Governmental Entity's zoning ordinances and the Development Plan. No Member is entitled to vote on the creation of any new Land Use Classification.

**3.3. Change in Land Use Classification.** Once a Tract has been designated as having a particular Land Use Classification, the Land Use Classification may be changed only if:

(a) the change is permitted under the Applicable Governmental Entity's zoning ordinances (including a final rezoning, if necessary); and

(b) either (i) the change is proposed by Declarant, or (ii) the change is approved by the Community Master Planner.

No Member, other than the Declarant as provided above, is entitled to vote on a change in a Land Use Classification. Changes in Land Use Classification may include, but are not limited to, the conversion of Residential Apartment Development Use to Residential Condominium Development Use, and vice versa, as well as Residential Single Family to Residential Multi-Family, and vice versa.

**3.4. Design Review Board.** The Design Review Board shall be appointed by and serve at the pleasure of the Declarant during the Declarant Control Period. The Declarant may designate and/or retain the services of a licensed professional architect, landscape architect or similar professional to serve as the Design Review Board.

Upon termination of the Declarant Control Period, the Design Review Board shall be appointed by the Board.

The Design Review Board shall establish guidelines for the development of the Project. The guidelines shall establish general development guidelines for all Improvements to be constructed and maintained within Havasu Riviera Community. Havasu Riviera Community is an environmentally conscientious community. The guidelines shall also address such items as building heights, setbacks, finish elevations, location of Improvements on Lots or Tracts, finish materials, fencing requirements, color schemes and landscaping, by way of illustration only and not by way of limitation. The Design Review Board may establish guidelines on purely aesthetic considerations. The guidelines may vary from Tract to Tract, and subdivision to subdivision. The Design Review Board shall also promulgate standards for the construction, maintenance and ongoing use of Model Homes and Model Home complexes.

The Design Review Board shall review and approve, prior to implementation, all architectural guidelines adopted pursuant to a Tract or Neighborhood Declaration. **Each Owner acknowledges that the guidelines are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that guidelines adopted by the Design Review Board are enforceable just the same as though set forth in this Declaration.**

**3.5. Prior Approval of Improvements.** No Construction or Modification to an Improvement within the Project shall occur without the prior written approval of the Design Review Board and, if applicable, the Neighborhood Architectural Committee. This includes any alterations to Landscaping that is not screened from view, existing or approved. No Construction or Modification to an Improvement shall be performed within the Project on a Tract without the prior written approval of a conceptual plan by the Design Review Board, or its delegatee. Any change, deletion or addition to the plans and specifications approved by the Design Review Board, or its delegatee must be approved in writing by the Design Review Board, or its delegatee.

**3.6. Submittals to the Design Review Board.** Any Owner or other Person desiring approval for the Construction or Modification of any Improvement which would alter the exterior appearance of his, her or its Lot, Tract or other portion of the Project, or any Improvements located thereon, shall first obtain the approval of the Design Review Board by submitting a written request for approval on a on a form promulgated by the Design Review Board specifying, in detail, the nature and extent of the Construction or Modification which such Owner or other Person desires to perform, including any additional information, plans and specifications which the Design Review Board may

reasonably request. In the event that the Design Review Board fails to approve or disapprove an application for approval within forty-five (45) days after the completed application, and together with all supporting information, plans and specifications required by the Design Review Guidelines or reasonably requested by the Design Review Board, have been submitted to it, approval will not be required and this section will be deemed to have been complied with by the Owner or other Person who submitted such application for approval.

(a) **Review Considerations.** In reviewing plans and specifications for any Construction or Modification, the Design Review Board may consider any and all factors which it, 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 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 Review Guidelines. The Design Review Board may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Review Guidelines if, in its sole and absolute discretion, the Design Review Board determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.

**Decisions of the Design Review Board 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 Board shall be final on all matters submitted to it pursuant to this Declaration.**

(b) **Non-Waiver as to Future Approvals.** The approval by the Design Review Board of any Construction or Modification pursuant to this section shall not be deemed a waiver of the Design Review Board's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

(c) **Diligent Pursuance of Completion.** Upon receipt of approval from the Design Review Board for any Construction or Modification to an Improvement, the Owner, builder or contractor who has requested such approval shall proceed to perform such Construction or Modification approved by the Design Review Board as soon as practicable and shall diligently pursue such work so that it is completed as soon

as reasonably practicable and within such time as may be prescribed by the Design Review Board. Design Review Board approvals automatically terminate on the second anniversary of issuance of the approval with no additional action required by the Design Review Board. Provided however, if vertical construction has commenced on the site, the Design Review Board approval shall automatically be extended one year.

(d) **Reasonable Fee.** The Design Review Board shall have the right to charge a reasonable fee for reviewing requests for approval of any Construction or Modification, pursuant to this section, which fee shall be payable at the time the application for approval is submitted to the Design Review Board. Such fee, if established and charged by the Design Review Board, shall be set at such reasonable level as the Design Review Board may estimate will be necessary to defray the reasonable costs and expenses of the Design Review Board in reviewing and evaluating any such request or application, and may include, if the Design Review Board deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Design Review Board by an architect or engineer.

(e) **Declarant Exemption.** The provisions of this Article do not apply to, and approval of the Design Review Board shall not be required for, the Construction or Modification of any Improvements or any other work made by, or on behalf of, a Declarant or the Community Master Planner.

(f) **Exemptions for Certain Construction or Modifications.** The Design Review Board, by resolution, may exempt certain Construction or Modifications from the application and approval requirements of this Article, provided such Construction or Modifications are undertaken in strict 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 the 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.

(g) **Compliance Deposit.** The Design Review Board shall have the right to condition approval on receipt of a reasonable deposit to ensure compliance with the Project Documents. The amount of the deposit, if required by the Design Review Board, shall be determined by the Design Review Board and shall be set at such reasonable level as the Design Review Board may estimate will be necessary to defray the reasonable costs and expenses causing the construction to comply with the Project Documents. Upon satisfactory completion, in the sole discretion of the Design Review Board, of the Construction or Modification pursuant to this section, the deposit shall be

refunded to the Owner or other Person who paid the deposit. In the event the Construction or Modification pursuant to this section is not completed to the satisfaction of the Design Review Board, then, without prejudice to any other rights, remedies or causes of action of the Association, the deposit shall be paid to the Association to be used, to the extent reasonably possible, to cause the construction to comply with the Project Documents.

**3.7. Neighborhood Architectural Committee.** A Neighborhood Association may have an Architectural Committee to perform the functions assigned to it as set forth in this Declaration by the Design Review Board, a Tract Declaration and/or a Neighborhood Declaration. So long as the Tract Declarant owns any Lot, Tract or other property within the Neighborhood, the Neighborhood Architectural Committee shall consist of three (3) regular members, each of whom shall be appointed by, and serve at the pleasure of, the Tract Declarant. Two members shall constitute a quorum. At such time as the Tract Declarant no longer owns any Lot, Tract or other property within the Neighborhood, the Neighborhood Architectural Committee shall consist of such number of members as the Neighborhood Association Board may deem appropriate from time to time (but in no event less than three (3) nor more than five (5) regular members, two (2) members shall establish a quorum, each of whom shall be appointed by, and serve at the pleasure of, the Board.

Subject to approval of the Design Review Board, the Neighborhood Architectural Committee shall promulgate architectural design guidelines and standards (including, but not limited to, color palettes and plant materials) to be used in rendering its decisions. Any architectural design guidelines and standards promulgated, adopted, amended or modified must be approved in writing in advance by the Design Review Board. These design guidelines and standards, as the same may be amended from time to time, are incorporated into this Declaration by this reference and shall be enforceable just the same as though wholly set forth herein. The decision of the Neighborhood Architectural Committee shall be appealable to the Design Review Board whose decision shall be final on all matters appealed to it pursuant to this Declaration. The Neighborhood Architectural Committee may establish a reasonable fee to defer the costs of considering any requests for approvals submitted to the Neighborhood Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

**3.8. Governmental Approvals.** The approval required of the Design Review Board pursuant to this section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, or under any other Recorded instrument. The Design Review Board may condition its approval of any application, plans or other items submitted to it on delivery of evidence satisfactory to the Design Review Board that the Owner or other

Person seeking its approval has also made appropriate applications for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The Design Review Board shall cooperate reasonably with any other approving authorities or entities, provided, however, that the Design Review Board shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity. A Neighborhood Architectural Committee shall be bound by any approval or decision of the Design Review Board.

**3.9. Required Approvals for Further Property Restrictions.**

(a) All proposed site plans and Subdivision Plats for any Lot or Tract, or any portion thereof, must be approved in writing by the Community Master Planner prior to Recordation thereof or commencement of Construction on the applicable Lot or Tract. No Lot, or portion thereof, shall be further subdivided or subjected to a condominium declaration, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Community Master Planner, provided that nothing in this subsection shall be deemed to prohibit sales by the Declarant or a Developer of Lots into which a Tract is divided, so long as the plat(s) and other items required to be approved pursuant to this section 3.9 have been so approved.

(b) No Tract or Neighborhood Declaration or further covenants, conditions, restrictions, condominium declarations or easements shall be Recorded against any Lot or Tract, or portion thereof, without the prior written approval of the Community Master Planner.

(c) No applications for rezoning, variances or use permits, or for waivers of or modifications to existing variances, use permits, zoning stipulations or similar restrictions, shall be filed with any governmental authority or agency without the prior written approval of the Community Master Planner, and then only if such proposed zoning, variance or use, or waiver or modification, is in compliance with this Declaration, any applicable Tract or Neighborhood Declaration, and the Development Plan. This provision shall not apply to Declarant.

(d) No Subdivision Plat, condominium declaration, Tract or Neighborhood Declaration, easement, declaration of further covenants, conditions, restrictions or easements or other instrument which is to be Recorded and which is required by this section 3.9 to be approved by the Community Master Planner shall be effective unless the required approval is evidenced on such instrument by the signature of the Community Master Planner.



(e) No site plan, Lot split, Parcel Plat, Subdivision Plat, condominium declaration or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be submitted to the Applicable Governmental Entity or any other governmental authority or agency unless the same has first been approved in writing by the Community Master Planner as provided in this section 3.9; further, no changes or modifications shall be made in any such documents, instruments or applications once the documents have been approved by the Community Master Planner hereunder (whether requested by the Applicable Governmental Entity or otherwise) unless such changes or modifications have first been approved by the Community Master Planner in writing.

(f) Notwithstanding the foregoing, the Declarant shall not be required to seek or obtain any of the approvals or consents otherwise required under this section 3.9 as to any Lot or Tract, or any portion of either, of which Declarant is the Owner.

3.10. **Incidental Uses.** Subject to the prior approval of the Community Master Planner, the Design Review Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment of the Owners and Occupants of the property within the Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Design Review Board may wish to impose, in its sole discretion, for the benefit of the Project as a whole.

3.11. **Variances.** Subject to the prior approval of the Design Review Board, the Design Review Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 or in any Tract or Neighborhood Declaration if the Design Review Board determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on an Owner or Occupant or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (b) the activity permitted under the variance will not have any substantial adverse effect on Owners and Occupants and is consistent with the high quality of life intended for residents of the Project and the design meets the intent of the provision sought to be varied.

3.12. **Change of Use of Common Area.** Upon: (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners; and (b) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy, at a meeting duly called for

such purpose and who are entitled to use such Common Area under the terms of this Declaration or any Tract Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be consistent with any zoning regulations restricting or limiting the use of the Common Area. This section shall not apply to, or be deemed to limit in any way, the right and power of the Association pursuant to section 4.1(a)(i) to grant easements over, under or through portions of the Common Area, or to dedicate portions of the Common Area, to public, quasi-public or private utility companies, municipalities or other governmental agencies or entities, in connection with or at the time of development of property within or adjacent to the Project, where required or requested by any municipality or other governmental agency or entity, or any public, quasi-public or private utility company.

3.13. **New Construction.** All Improvements constructed within the Project or moved to the Project shall be of new construction.

3.14. **Landscape.**

(a) **Landscape of Residential Lot or Tract.** The landscaping of a Residential Lot shall be completed within sixty (60) days of the completion of a Residential Unit on a Lot. Landscaping shall be installed in the front (streetside) and side yards on corner lots commencing at the back of the curb and continuing to the front of the nearest portion of the Residential Unit, wall or fence. Any back yard of a Lot or Tract which is not fully enclosed by a solid fence or wall at least six (6) feet high must also be landscaped within sixty (60) days after the completion of a Residential Unit on the Lot. All Landscaping must be installed in accordance with Havasu Riviera Community Design Review Guidelines, Neighborhood Architectural Committee Guidelines and specific plans approved in writing by the Neighborhood Architectural Committee. If Landscaping is not installed on a Lot in the manner and by the applicable dates provided for in this section, the Association shall have the right, but not the obligation, to enter upon such Lot to install such Landscaping as the Association deems appropriate and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments. For purposes of this section, a Residential Unit, Condominium Unit or other building shall be deemed completed when a Certificate of Occupancy is issued by the Applicable Governmental Entity.

(b) **Landscape of Non-Residential Lots or Tracts.** The landscaping of Lots or Tracts upon which a building has been constructed shall be completed within thirty (30) days of completion of a building. The Lot or Tract Owner shall landscape or cause to be landscaped the Lot or Tract in compliance with the Design Review Guidelines.

(c) **Maintenance of Landscaping.** Each Owner of a Lot or Tract shall properly maintain and keep neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material, all Landscaping located on: (a) all areas of his, her or its Lot or Tract not subject to an Association Landscape Easement; (b) any public right-of-way or easement area which abuts or adjoins the Owner's Lot or Tract and which is located between the boundary line of his Lot or Tract and the back of curb of any street, sidewalk, bike path or similar area (unless assumed by the Association) and (c) any non-street public right-of-way or easement area adjacent to his Lot or Tract (unless otherwise directed by the Board); provided, however, that such Owner shall not be responsible for maintenance of any area over which: (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by a Tract or Neighborhood Declaration; or (iii) the Applicable Governmental Entity assumes responsibility, for so long as the Applicable Governmental Entity assumes or has responsibility. For purposes of this section, proper maintenance of Landscaping shall include, without limitation, removal and replacement of dead Landscaping, in compliance with the Design Review Guidelines. This section is not intended to apply to the natural open space designated on the Plat or in a Tract Declaration.

(d) **Landscape of Unimproved Lots or Tracts.** In the event an Owner does not commence construction of Improvements within 365 days of the date on which the Developer first conveyed the Lot or Tract to Owner as evidenced by a recorded deed, the Owner shall install temporary landscaping as prescribed in the Design Review Guidelines.

### 3.15. **Rental/Lease.**

(a) **Single Family Residential Use Neighborhoods.** The renting or leasing of Lots or Tracts in a neighborhood assigned a Land Use Classification of Single Family Neighborhood in a Tract Declaration is permissible subject to the following restrictions: (1) the rental or lease agreement shall not be for a period of time less than three (3) months; daily, weekly and monthly rentals are expressly prohibited; (2) the Owner renting or leasing his Lot or Tract shall give notice thereof to the Association on a form promulgated by the Association; and (3) the Tenant or Lessee executes a receipt

evidencing he, she or it has been provided a set of Project Documents and agrees to comply with the terms and provisions of the Project Documents. This rental provision shall apply to all single family residential neighborhoods without regard if it is set forth in the Tract Declaration or Neighborhood Declaration. The Association shall be entitled to assess a reasonable fee for the Project Documents delivered to the Tenant or Lessee. Any assignment, in whole or in part, including any sub-lease, shall comply with the terms of this provision.

(b) **Multi-Family or Commercial Neighborhood.** The renting or leasing of Lots or Tracts in a neighborhood with a Land Use Classification other than Single Family Residential Use Neighborhood shall be as permitted in the Tract Declaration. Multi-family or commercial neighborhoods may adopt the same limitation as set forth above at 3.15(a), a modified version thereof or no provision. If a Tract Declaration establishing a Land Use Classification Other than Single Family Residential is silent on the issue of rentals, it shall be presumed short term rentals are not permitted.

### 3.16. **Signs.**

(a) **Signs in Residential Areas.** No signs whatsoever which are not Concealed From View shall be erected or maintained on any Lot or Tract in Residential Areas except:

- (i) Signs required by legal proceedings.
- (ii) Signs expressly permitted by A.R.S. Section 33-1808 as the same may be amended from time to time.
- (iii) Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Design Review Board.
- (iv) Signs of Developers or builders approved from time to time by the Design Review Board as to number, size, color, design, message content, location and type.
- (v) Such construction job identification signs, business identification signs and subdivision identification signs which are in conformance with the requirements of any municipality having jurisdiction over the property and which have been approved in writing by the Design Review Board as to number, size, color, design, message content and location.

(vi) Temporary "for sale," "for rent," "open house" and similar signs may be allowed in accordance with such guidelines as may be established by the Design Review Board permitting such temporary "for sale," "for rent," "open house" and similar signs which regulate, among other things, the number, size, color, design, message content, and location. Notwithstanding the provisions of this subsection (vi), the Design Review Board shall not be obligated to establish guidelines allowing temporary "for sale," "for rent," "open house" and similar signs. It shall remain within the discretion of the Design Review Board to prohibit temporary "for sale," "for rent," "open house" and similar signs.

(b) **Signs in Areas Other Than Residential Areas.** Signs are permitted and shall be erected or maintained on any Lot or Tract in Areas other than Residential Areas subject to the following:

(i) Signs required by legal proceedings are excepted.

(ii) Business identification signs which are in conformance with the requirements of the Applicable Governmental Entity having jurisdiction over the property and which have been approved in writing by the Design Review Board as to number, size, color, design, message content and location.

(iii) Such construction job identification signs, and business identification signs which are in conformance with the requirements of the Applicable Governmental Entity having jurisdiction over the property and which have been approved in writing by the Design Review Board as to number, size, color, design, message content and location.

(iv) Neighborhood monument signage, street signage and other way finding or identifying signs shall be approved by the Design Review Board as to number, size, color, design, message content and location.

### 3.17. **Fences and Walls.**

(a) **General Provisions.** Fences and walls shall not exceed six (6) feet in height. No fence or wall shall be constructed on the streetside of the structure which extends beyond the front of the Residential Unit located nearest the fence or wall. Provided however, retaining walls as may be required for slope stabilization may be permitted in compliance with the Design Review Guidelines. All fences and walls shall be constructed and finished (including color) in compliance with the Havasu Riviera

Community Design Review Guidelines. No Owner shall permit removal, alteration or painting of such fences or walls without the prior approval of the Design Review Board. If an Owner fails to maintain such a fence or wall in accordance with the foregoing, the Association may perform such maintenance, and the cost thereof shall be assessed to the Owner as an Assessment.

(b) **View Preservation Fencing.** Fences and walls along rear lot lines for all lots overlooking the lake, public lands owned by the United States Government or the City shall be constructed in compliance with the requirements and specifications promulgated by the Design Review Board. Said rules shall take into account state statutes and municipal ordinances governing pools and other bodies of water and pool safety in the event the Owner constructs or installs a swimming pool.

3.18. **Antennas, Poles, Towers and Dishes.** No television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot, Tract or other part of the Property unless such antenna, pole, tower or dish is fully and attractively screened from view; if screening or concealment is required by this subsection, the method of screening or concealment shall be subject to the rules and guidelines established by the Design Review Board which shall be consistent with the Telecommunications Act of 1996. Nothing in this section shall be deemed to prohibit the Declarant from installing and maintaining flagpoles on, at or adjacent to model homes within the Project. Poles to which basketball backboards, goals and related equipment are affixed shall be governed by section 3.30.

3.19. **Mineral Exploration.** No Lot, Tract 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, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Declarant.

3.20. **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, Tract or other property except in sanitary, covered containers of a type, size and style which are approved by the Design Review Board. Such containers shall be maintained so as to be Concealed From View 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, Tracts and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be maintained on any Lot, Tract or other property.

3.21. **Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot, Tract or other property unless said clothesline or other outside facilities for drying or airing of clothes are Concealed From View. No clothes, towels or similar items may be hung from fences or balconies for drying purposes.

3.22. **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, Tract or other property 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 Board. Power poles or other transmission lines existing as of the date of the recording of this Declaration are excluded from the provisions of this section. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings or structures approved by the Design Review Board. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a residence or other building facing the street running directly in front of or beside such residence or other building.

3.23. **Overhead Encroachments.** No tree, shrub or planting of any kind on any Lot, Tract or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, bicycle path or pedestrian way from ground level to a height of eight (8) feet without the prior approval of the Design Review Board.

3.24. **Residential Use and Trades or Businesses.** All Residential Units shall be used, improved and devoted exclusively, to residential use by a Single Family. No trade or business may be conducted on any Lot or Tract or in or from any Residential Unit, except that an Owner or other Resident may conduct a business activity in a Residential Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements; (c) the business activity does not involve the door-to-door solicitation of Owners or other Residents in the Project; (d) the use of the Residential Unit for trade or business shall in no way destroy or be incompatible with the residential character of the Residential Unit or the surrounding neighborhood; (e) the trade or business shall be conducted only inside the

Residential Unit or inside an accessory building, and shall not involve the viewing, purchase or taking delivery of goods or merchandise at, to, from or in any Residential Unit, including excessive small package deliveries by US Postal Service, UPS, or Federal Express type carriers; (f) the trade or business shall be conducted by a Resident or Residents of the Residential Unit with no employees; (g) no more than twenty percent (20%) of the total floor area of the Residential Unit shall be used for trade or business; (h) the Residential Unit used for trade or business shall not be used as a storage facility for a business conducted elsewhere; (i) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (j) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (k) a trade or business shall not utilize large vehicles not customary to a residential use. 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 to or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this section. Further, nothing in this section shall be deemed to prevent or limit the construction, operation and maintenance of an apartment building or apartment complex on a Tract for which such use is permitted by the Tract or Neighborhood Declaration Recorded with respect to that Tract, or the use and operation of apartment units therein as model units in connection with rental or leasing operations for such building or complex, or the operation on that Tract of rental, leasing, marketing or management offices for such building or complex.

3.25. **Animals.** No animal, livestock, poultry or fowl of any kind, other than a reasonable number of house pets, shall be maintained on or in any Lot or Tract and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. All structures for the care, housing or confinement of any pet shall be Concealed From View. Notwithstanding the foregoing, no pets may be kept on or in any Lot or Tract which, in the opinion of the Board, result in an annoyance or danger to other Owners or Occupants in the vicinity. The board of the Community Association may adopt a list of prohibited dogs which may include by way of illustration, but not limitation, rottweilers, terriers (standard, American or pit), Doberman pinchers, Akitas, Chow Chows and German Shepards. All pets shall be leashed when not on property owned by the pet's owner or on which the pet's owner is a Resident or guest, and persons walking



any pet shall promptly and properly remove and dispose of the pet's waste. No Owner shall feed or undertake any action whatsoever that intentionally or unintentionally attracts wild animals or fowl with the exception of the feeding of quail, song or hummingbirds.

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

3.27. **Vehicles and Recreational Equipment.**

(a) **Trailers, Campers and Boats.** No motor home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar recreational equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot, Common Area or other portion of the Property, or on any street, except for: (a) temporary construction trailers or facilities maintained during, and used exclusively in connection with, Construction or Modification of any Improvement approved by the Design Review Board; (b) boats and vehicles parked on Lots in a manner to be Screened from View so long as such vehicles are in good operating condition and appearance and are not under repair; (c) the storage of vehicles in any area designated or approved for such purposes by Declarant or by the Board (including, but not limited to, one or more recreational vehicle storage facilities, whether operated on a for profit or not-for-profit basis); (d) the parking (but not maintenance, construction, reconstruction or repair) of motor vehicles not exceeding seven (7) feet in height and eighteen (18) feet in length which are not used for commercial purposes; and (e) the parking of a recreational vehicle in an Owner's driveway for purposes of loading or unloading of the recreational vehicle for not more than twenty four (24) hours.

(b) **Motor Vehicles.**

(i) Except for emergency vehicle repair, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project, and no inoperable vehicle may be stored or parked on such Lot or other property in the Project.

(ii) No motorcycle, motorbike, all-terrain vehicle, off-road vehicle or any similar vehicle shall be parked, maintained or operated on any portion of

the Project except in garages or in areas screened from view on Lots except as approved by Design Review Board. The operation or use of a street legal licensed motorcycle on paved roads for normal and ordinary transportation means shall not be precluded by this provision.

(iii) No automobile or other motor vehicle shall be parked on any private road or street in the Project except as may be permitted by the Association. Violations of this provision by Guests of Owners or Residents may result in fines against an Owner, which shall be collectible as an Assessment. Owners or Residents shall park automobiles or other motor vehicles only in their garages or driveways and not on the street.

(iv) Notwithstanding any provision of this section, with the prior approval of the Declarant and Community Master Planner, a Tract Declaration may amend, modify or abrogate the on street parking prohibitions on the express condition the roads are constructed of a width to safely accommodate on street parking on one or both sides of the road.

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

3.28. **Rooftop HVAC Equipment Prohibited.** No heating, ventilating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit, structure or other building unless Screened From View.

3.29. **Solar Collecting Panels or Devices.** The Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, the Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon,

thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Design Review Board, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property so long as such solar collecting panels and devices are placed, constructed and maintained in such locations, and with such means of screening or concealment as the Design Review Board may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed from any street or from any other property (whether within or outside the Property). Notwithstanding any other provision of this Declaration to the contrary, the Declarant (during the Declarant Control Period) or the Board (after the expiration or termination of the Declarant Control Period) shall have the right, without the consent or approval of any Owner or other Person, to amend this section (which amendment may, without limitation, impose additional or different restrictions on solar collecting panels and devices) as the Declarant or the Board (as applicable) deems appropriate in the event that, after the date this Declaration is Recorded, section 33-439 of the Arizona Revised Statutes (or any successor thereto) is amended, repealed or replaced.

3.30. **Basketball Goals or Play Structures.** No basketball goal, backboard or similar structure or device, and no swingsets or other play structures or fences shall be placed or constructed on any Lot without the prior written approval of the Design Review Board (including, without limitation, approval as to appearance, screening and location). Permanent Basketball Goals are prohibited.

3.31. **Tanks.** No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot or Tract. Nothing herein shall be deemed to prohibit use or storage upon any Lot, or Tract of a propane tank 5 gallons or less in size, incidental to the use of a residential barbeque, so long as any such tank is appropriately located, stored, used and/or screened, in accordance with the Design Review Board Rules or as otherwise approved by the Design Review Board, so as to be Screened From View.

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

3.33. **Garages and Driveways.** Garages shall be used only for parking vehicles and storage, and shall not be used or converted for living or recreational activities.

3.34. **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, Tract or other property, and no odors, loud noises or loud music shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon or adjacent to any Lot, Tract or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. No Person shall permit any thing or condition to exist upon any Lot, Tract or other property which shall induce, breed or harbor infectious diseases or noxious insects.

Normal construction activities and parking in connection with the building of Improvements on a Lot, Tract or other property shall not be considered a nuisance or otherwise prohibited by this Declaration; however during construction periods, Lots, Tracts and other property shall be kept in a neat and tidy condition, trash and debris shall not be permitted to accumulate. Any construction equipment, building materials (supplies of brick, block, lumber and the like) shall be piled or stored only in such areas as may be approved in writing by the Design Review Board, which may require screening. Cement delivery trucks or pumping equipment may not leave debris from the cleaning or clearing of delivery chutes or pumps on adjacent Lots.

The Design Review Board in its sole discretion shall have the right to determine the existence of a nuisance. The provisions of this section shall not apply to construction activities of the Declarant.

3.35. **Health, Safety and Welfare.** In the event additional uses, activities or facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Residents, Lessees and Occupants, the Board may make rules restricting or regulating their presence in the Project as part of the Association Rules or may direct the Design Review Board to make rules governing their presence on Lots, Tracts or other property as part of the Design Review Board Rules.

3.36. **Exterior Lighting.** The Declarant intends for Havasu Riviera Community to be a dark sky community affording all Owners a view of the night sky and all its brilliant stars undiminished by excessive light pollution. In order to fulfill this intent exterior lighting shall be limited to type and quantity. Exterior down lighting shall

be permitted on a Lot or Tract so long as (a) such lighting is limited to that which is reasonably necessary for the safety and convenience of the Occupants of such Lot or Tract and when appropriate, motion sensor activated; (b) no up-lighting of any type shall be used; (c) no filament image, opal globes, or clear glass shall be used; (d) light sources must be concealed; and (e) such lighting also conforms to such requirements as may be imposed by the Design Review Board. Landscape lighting is permitted provided it has been approved by the Design Review Board and conforms to such requirements as may be imposed by the Design Review Board. Notwithstanding the foregoing, but subject to reasonable regulation by the Design Review Board, Owners or Occupants of Lots or Tracts may display temporary holiday lighting during the Christmas season, provided that no such lighting shall be permitted for a period in excess of forty-five (45) days.

3.37. **Temporary Buildings.** Temporary buildings, trailers or other structures may only be used during the construction of Improvements approved by the Design Review Board and shall be removed immediately after the completion of construction. In no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of eight months without the prior written approval of the Design Review Board. Temporary residences of any type are expressly prohibited. Builders may maintain a sales office in a temporary building or structure during that period of time the builder is actively engaged in sales of homes in Havasu Riviera Community. Any such temporary sales office shall be installed, constructed and maintained in compliance with the terms and provisions of this Declaration, including but not limited to compliance with Design Review Guidelines, and Maintenance Standards.

3.38. **Model Homes.** Any provisions of this Declaration or Tract Declarations which prohibit non-residential use of Lots and certain Tracts and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes or other model Residential Units of any kind (including, without limitation, any used in whole or in part as sales offices) (collectively, "Models") or parking incidental to the visiting of such Models, so long as the construction, operation and maintenance of such Models and parking otherwise comply with all of the provisions of this Declaration. The Design Review Board shall promulgate standards for the construction, maintenance, and ongoing use of Model Homes and Model Home complexes. The Design Review Board may also permit Lots and other areas to be used for parking in connection with the showing of Models. Any homes or other structures constructed as Models shall cease to be used as Models at any time the Owner or Lessee thereof is not actively engaged in the construction and sale of Residential Units in the Project. No home or other structure shall be used as a Model for the sale of homes or other structures not located in the Project. This section shall not apply to model apartment units in an apartment building or apartment complex on a Tract for which such use is permitted by the Tract Declaration

Recorded with respect to that Tract. Neither the provisions of this section nor the provisions of any other section of this Declaration or of any Tract Declaration shall restrict or prohibit the right of the Declarant or a Declarant Affiliate to construct, operate and maintain Models in the Project.

#### **ARTICLE 4 EASEMENTS**

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

(a) Subject to the rights and easements granted to the Declarant in section 4.4, each Owner, and each Occupant of such Owner's Lot or Tract, shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, which right and easement shall be appurtenant to and shall pass with the title to each Lot and Tract, subject to the provisions of this Declaration including, without limitation, the following.

(i) Except as otherwise provided, in this Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Common Area shall be effective unless approved by Owners representing two-thirds (2/3) of the votes of the Members and the Declarant. Notwithstanding the preceding sentence or any other provision of this Declaration to the contrary, the Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property or of the Additional Property), to dedicate portions of the Common Area to the public, or grant easements over, under or through portions of the Common Area to the public, to any municipal or other governmental agency or entity, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by the Applicable Governmental Entity or other governmental agency or entity having jurisdiction, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property or of portions of the Additional Property.

(ii) The Association shall have the right to regulate the use of the Common Area through the Association Rules (which may include, without limitation, the adoption and implementation of a reservation system for such portions of the Common Area, or Improvements or amenities thereon, as the Board deems appropriate) and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

(iii) If a Recorded Tract or Neighborhood Declaration designates a portion of the Common Area as a Neighborhood Assessment Area, then only the Owners and Occupants of those Lots and Tracts which are assessed a Neighborhood Assessment for such Neighborhood Assessment Area shall have the right to use such Neighborhood Assessment Area.

(iv) The Declarant and the Association shall each have the right to grant easements or licenses to Developers for the construction of Improvements on the Common Area, and the Declarant and the Association shall each have the right to grant ingress and egress easements over the private streets and roads in the Project, if any, to Persons who are not Members of the Association.

(v) The Declarant and the Association shall each have the right to convey certain portions of the Common Area to Owners of adjoining Lots or Tracts in connection with the correction or adjustment of any boundary between Common Area and any one or more adjoining Lots or Tracts; provided, however, that neither the Association nor the Declarant shall have the right to transfer or convey any portion of the Common Area upon which is situated any recreational facility unless approved by a vote of the Members pursuant to section 4.1(a)(i).

(vi) The Association shall have the right to charge Special Use Fees for the use of the Common Area. The Special Use Fees, if any, shall be set by the Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or use of those portions of the Common Area, if any, selected by the Board to be, subject to a Special Use Fee; and shall be imposed only where the Board deems it appropriate to collect revenue from the actual users of such selected portions of the Common Area so that all of the costs of operating such selected portions of the Common Area are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other Persons using such selected portions of the Common Area.

(vii) The Association shall have the right to suspend the rights of any Owner or Occupant to use and enjoy recreational facilities on the Common Area: (1) for any period during which an Assessment remains delinquent; (2) for a period not to exceed 60 days for any infraction of the Project Documents; or (3) for successive 60 day periods if any such infraction is not corrected during any preceding suspension period.

(b) If a Lot or Tract is leased or rented by its Owner, the Occupants of such Lot or Tract shall have the right to use the Common Area during the term of the

lease, and the Owner of such Lot or Tract shall have no right to use the Common Area until the termination or expiration of such lease.

(c) The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

4.2. **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area, Lots, Tracts and other property for reasonable ingress, egress, installation, replacement, repair or maintenance 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 install and maintain the necessary equipment on the Common Area, Lots, Tracts and other property but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Area, Lots, Tracts and other property except as initially designed, approved and/or constructed by the Declarant or as approved by the Board (and, in the case of a Lot or Tract, by the Owner of such Lot or Tract). If any utility company requests that a more specific easement be granted in its favor in substitution for the blanket easement hereby established with respect to the Common Area, the Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant or deny the more specific easement on such terms and conditions as the Board deems appropriate.

4.3. **Easements for Ingress and Egress.** There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and Tracts and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Common Area and all private streets, private roadways, private driveways and private parking areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel.

4.4. **Declarant's Use and Easements.**

(a) The Declarant shall have the right and an easement (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject



to such terms and conditions as the Declarant may deem appropriate) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area and Neighborhood Common Area with respect to the sales of Lots, Tracts or other, property in the Project or within any of the Additional Property. The Declarant reserves the right (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject to such terms and conditions as the Declarant may deem appropriate) to place models, management offices and sales and leasing offices on any Lots, Tracts or other property owned by the Declarant or Developer(s), as applicable and on any portion of the Common Area and Neighborhood Common Area in such number, of such size and in such locations as the Declarant deems appropriate.

(b) So long as the Declarant is marketing Lots, Tracts or other portions of the Property or the Additional Property, the Declarant shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(c) The Declarant shall have the right and an easement on and over the Common Area to construct all Improvements the Declarant may deem necessary and to use the Common Area and any Lots, Tracts 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 and property adjacent to the Project.

(d) The Declarant shall have the right and an easement upon, over and through the Common Area and Neighborhood Common Area as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by the Declarant in this Declaration.

4.5. **Easement in Favor of Association.** The Lots, Tracts, Common Areas, and Neighborhood Common Areas 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 during reasonable hours of the Lots, Tracts, Common Areas and Neighborhood Common Areas in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of portions of the Common Area and/or Neighborhood Common Area accessible only from such Lots, Tracts;

(c) For inspection, maintenance, repair and replacement of Landscaping within the Landscape Easements defined;

(d) For correction of emergency conditions on one or more Lots, Tracts, Common Areas or Neighborhood Common Area or on portions of the Common Area or Neighborhood Common Area accessible only from such Lots or Tracts;

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

(f) For inspection during reasonable hours of the Lots, Tracts, Common Areas and Neighborhood Common Area in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Project Documents.

The exercise or use of any easement granted the Association by this Paragraph shall not be deemed a trespass.

**ARTICLE 5**  
**THE ASSOCIATION; ORGANIZATION;**  
**MEMBERSHIP AND VOTING RIGHTS**

5.1. **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Design Review Guidelines, this Declaration shall control. Upon the incorporation of the Association, this Declaration will be binding upon and shall benefit the Association and its successors and assigns.

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. During the Declarant Control Period, the Declarant shall appoint all members of the Board which need not be Owners, or employees or

members of Declarant. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area; the Board shall determine the compensation to be paid to any such manager.

5.3. **Association Rules and Board Resolutions.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations or resolutions pertaining to: (a) the management, operation and use of the Common Area and Neighborhood Common Area including, but not limited to, any recreational facilities situated upon the Common Area; (b) traffic and parking restrictions including speed limits on public or private streets within the Project; (c) minimum standards for any maintenance of Common Areas, Neighborhood Common Areas, Lots and Tracts within the Project; or (d) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules or Board Resolutions, the provisions of this Declaration shall prevail.

5.4. **Personal Liability.** No member of the Board, Design Review Board, or any other 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 or any member thereof, the Design Review Board or any member thereof, the manager, any representative or employee of the Association, any officer of the Association or any member of any other committee of the Association; provided, however, the limitations set forth in this section shall not apply to any person who has failed to act in good faith or has engaged in wilful or intentional misconduct. The provisions of this paragraph shall extend to and include the Community Master Planner and any Neighborhood Association.

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. **Neighborhood Associations.** Neighborhood Associations are required for each Subdivision or Neighborhood if Neighborhood Assessment or Neighborhood Common Areas are contemplated. No Neighborhood Declaration (nor any amendment to

any such declaration) shall be Recorded except in the manner prescribed by section 2.3. No articles of incorporation, bylaws or similar formative or governing documents (or any amendment thereto) of a Neighborhood Association or formed by any Person other than Declarant shall be filed or effective unless they have been expressly approved in writing by: (a) the Declarant, so long as the Declarant owns any Lot or Tract in the Project; (b) the Community Master Planner; or (c) the Board, if at the time the Declarant no longer owns any Lot or Tract in the Project.

5.7. **Neighborhood Associations Bound.** Upon the establishment of any Neighborhood Association, this Declaration will be binding upon and will benefit the Neighborhood Association and its successors and assigns.

5.8. **Membership in the Association.** Every Owner of a Lot or Tract which is Assessable Property shall be a Member of the Association, and the Declarant shall be a Member of the Association so long as it owns any part of the Project or of the Additional Property (unless and until the Declarant expressly relinquishes in writing its status as a Member). Each such Owner shall have the following number of Memberships in the Association:

(a) An Owner shall have one (1) Membership for each Lot owned by that Owner.

(b) An Owner of a Tract shall have the number of Memberships assigned to the Tract by the applicable Tract Declaration.

(c) Declarant shall have sole authority to assign Memberships to Tracts in the Tract Declaration required by section 2.2. The actual number of Memberships assigned a Tract shall be determined as follows:

(i) Each Owner other than the Declarant shall be entitled to one (1) vote for each Membership held by such Owner.

(ii) One Membership for each residential Condominium Unit permitted by a Recorded horizontal property regime which is completed and owned by the Member;

(iii) One Membership for each acre (43,560 square feet) or fraction thereof in each Parcel owned by the Member, except any Parcels which have a land use classification of residential Condominium Development, Apartment Development, Single Family Residential, Cluster Residential or Mobile Residential.

(d) If, at anytime when the Declarant is a Member of the Association but would have no Memberships pursuant to this section, the Declarant shall nevertheless be deemed to have one (1) Membership.

**5.9. Votes in the Association.**

(a) Each Owner other than the Declarant shall be entitled to one (1) vote for each Membership held by such Owner.

(b) One Membership for each residential Condominium Unit permitted by a Recorded horizontal property regime which is completed and owned by the Member;

(c) One Membership for each acre (43,560 square feet) or fraction thereof in each Parcel owned by the Member, except any Parcels which have a land use classification of residential Condominium Development, Apartment Development, Single Family Residential, Cluster Residential or Mobile Residential.

**5.10. Voting Procedures.** A change in the ownership of a Lot or Tract shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded; the Board shall thereafter be given written notice of such change and provided satisfactory evidence thereof. The vote for each such Lot or Tract must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot or Tract 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 Tract, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot or Tract unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote or votes for a particular Lot or Tract, the vote or votes for that Lot or Tract shall be deemed void and shall not be counted.

**5.11. 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 or Tract, and then only to the transferee of ownership of the Lot or Tract. A transfer of ownership of a Lot or Tract may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot or Tract shall operate to transfer the Membership

appurtenant to said Lot or Tract to the new Owner thereof. Each Purchaser of a Lot or Tract shall notify the Association of his, her or its purchase of a Lot or Tract. The Association may require the Purchaser of a Lot or Tract to pay to the Association a transfer fee in an amount to be set by the Board, and the transfer fee shall be secured by the Assessment Lien.

## **ARTICLE 6 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

6.1. **Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot and Tract, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot or Tract, 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 or Tract and shall be a continuing lien upon the Lot or Tract 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 each Person who was an Owner of the Lot or Tract 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 (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

### 6.2. **Annual Assessment.**

(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, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot and Tract which is Assessable Property.

(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 prior 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 Assessments 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 (provided, however, that the total Annual Assessment for such Assessment Period shall not exceed the maximum amount determined pursuant to section 6.3(a)(ii)).

**6.3. Rate of Assessment.**

(a) The amount of the Annual Assessment against each Lot or Tract shall be determined as follows:

(i) The term "Membership Assessment" shall mean the amount equal to the total budget of the Association (except for any Common Expenses to be assessed as a Neighborhood Assessment under section 6.4) for the applicable Assessment Period divided by the total number of Memberships in the Association (subject to subsection (b) below).

(ii) Except for Lots and Tracts subject to assessment pursuant to subsection (iii) below, each Lot and Tract shall be assessed an Annual Assessment in an amount equal to the number of Memberships attributable to such Lot or Tract multiplied by the Membership Assessment. For the fiscal year ending December 31 of the year of Recordation of this Declaration, the Maximum Membership Assessment shall be determined by the Board based on a budget covering the Common Expenses estimated to be incurred during the coming year and including a capital contribution. Thereafter, the Membership Assessment may not be increased by more than twenty percent (20%) per annum. In order to increase the annual assessment by more than twenty percent (20%), in any given year, the members, by a 2/3rds majority of the voting power of the Association at a meeting must approve the increase. The Association is under no obligation to increase the Membership Assessment by twenty percent (20%) a year. In the event the Association does not increase the Membership Assessment by the maximum amount of twenty percent (20%) in any year, the Association shall not be deemed to have waived its right to do so in the future.

(iii) Declarant is not obligated to pay Membership Assessments for any Lots or Tracts owned by Declarant, PROVIDED, however, that the Declarant shall pay to the Association any deficiency in monies experienced by the Association in its operations.

(iv) 1. A Developer who acquires a Tract for further subdivision as single or multi-family residences shall be obligated to pay Membership Assessments on the unsubdivided Tract until the first day of the first month following the completion of the improvements (streets and essential underground utilities) as certified by the Engineer of Record for the Subdivision or the 270th day following the recordation of the final plat for the re-subdivision of the Tract, whichever occurs first. An Owner who has acquired a Lot in a Tract (as re-subdivided) subject to the provisions of this paragraph shall not be obligated to pay dues until the first day of the first month following the completion of the improvements (streets and essential underground utilities) as certified by the Engineer of Record for the Subdivision or the 270th day following the recordation of the final plat whichever occurs first.

2. A Developer who acquires a subdivided Tract or substantial portion thereof for development as single or multi-family residences shall not be obligated to pay Membership Assessments on the Lots in the Tract until the first day of the first month following the completion of the improvements (streets and essential underground utilities) as certified by the Engineer of Record for the Subdivision or the 270th day following the recordation of the final plat, whichever occurs first. An Owner who has acquired a Lot in a Tract subject to the provisions of this paragraph shall not be obligated to pay dues until the first day of the first month following the completion of the improvements (streets and essential underground utilities) as certified by the Engineer of Record for the Subdivision or the 270th day following the recordation of the final plat, whichever occurs first.

(v) Membership Assessments shall commence for each Lot or Tract on the first day of the first month following conveyance to an Owner other than Declarant, except as provided by (iii) or (iv) above.

(vi) Subject to the limitations of subsection 6.3(a)(ii), if the Board determines during any Assessment Period that Membership Assessments with respect to any Membership Assessment Area are, or will, become inadequate to meet all Common Expenses pertaining to that Membership Assessment Area for any reason, including, without limitation, nonpayment of Membership Assessments by Members, the Board may increase the Membership Assessment for that Assessment Period and the revised Membership Assessment shall commence on the date designated by the Board.

(b) If the rate of assessment for any Lot or Tract changes during any Assessment Period pursuant to the provisions of subsection 6.3(a), the Annual Assessment attributable to such Lot or Tract shall be prorated between the applicable



rates upon the basis of the number of days in the Assessment Period that the Lot or Tract was assessed under each rate.

6.4. **Neighborhood Assessments.** All Common Expenses of the Association pertaining to the operation, maintenance, repair and replacement of Neighborhood Assessment Area shall be shown separately in the budget adopted by the Neighborhood Board. The Common Expenses pertaining to the operation, maintenance, repair and replacement of a Neighborhood Assessment Area (which Common Expenses shall for purposes of this section include, without limitation: (a) any contributions to reserves for maintenance, replacement and repairs and for contingencies; (b) any additional insurance premiums charged to the Association because of the type or nature of the Neighborhood Assessment Area; and (c) any costs, losses, damages, liabilities or expenses, including without limitation reasonable attorneys' fees and court costs, suffered or incurred by the Association by reason of its ownership, operation, maintenance, replacement or repair of the Neighborhood Assessment Area (to the extent they exceed the amount of any insurance proceeds received by the Association or any proceeds recovered by the Association from other parties, as reasonably determined by the Board) shall be assessed solely against the Lots and Tracts which are benefitted by the Neighborhood Assessment Area as established by the Tract or Neighborhood Declaration designating the Neighborhood Assessment Area. No Common Expenses pertaining to the operation, maintenance, repair or replacement of a Neighborhood Assessment Area shall be used in computing the Annual Assessments to be levied pursuant to Sections 6.2 and 6.3. Unless otherwise provided for in the applicable Tract or Neighborhood Declaration, Neighborhood Assessments shall be levied against the Lots and Tracts benefitted by the Neighborhood Assessment Area at a uniform rate per Membership. If the Board determines during any Assessment Period that Neighborhood Assessments with respect to any Neighborhood Assessment Area are, or will, become inadequate to meet all Common Expenses pertaining to that Neighborhood Assessment Area for any reason, including, without limitation, nonpayment of Neighborhood Assessments by Members, the Board may increase the Neighborhood Assessment for that Assessment Period and the revised Neighborhood Assessment shall commence on the date designated by the Board.

6.5. **Special Assessments.** The Association may levy against each Lot and Tract which is Assessable Property, 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 Improvements upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. A Neighborhood Association shall also have the right to levy Special Assessments.

6.6. **Enforcement Assessment.** There shall be imposed against an Owner as an Enforcement Assessment the following expenses: (a) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; and (b) any monetary penalties levied against the Owner. The Enforcement Assessment shall be automatically imposed against an Owner at such time as the Collection Cost or other amounts are incurred by the Association or, in the case of a monetary penalty, the date the monetary penalty is imposed on the Owner by the Board. The provisions of this paragraph extend to Neighborhood Associations.

6.7. **Reserves.** The budget for each Assessment Period shall include reasonable amounts as determined by the Board to be designated as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas. All amounts designated as reserves and received by the Association shall be deposited by the Board in a separate bank account (the "Reserve Account") and are to be segregated from and not commingled with any other funds of the Association. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected without the approval of Members holding more than fifty percent (50%) of the eligible votes in the Association. After the termination of the Declarant Control Period, the Board shall obtain a reserve study at least once every three (3) years, which study shall at a minimum include (a) identification of the major components of the Common Areas which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life or less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost or repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. The Board shall modify the budget in accordance with the findings of the reserve study.

6.8. **Assessment Period.** The period for which the Annual Assessments and Neighborhood Assessments are to be levied (the "Assessment Period") shall be the calendar year. The Board in its sole discretion from time to time may change the Assessment Period.

6.9. **Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose

of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment 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 or Tract changes during an Assessment Period; successor Owners of Lots or Tracts shall be given credit for prepayments, on a prorated basis, made by prior Owners. The provisions of this paragraph extend to a Neighborhood Association.

**6.10. Effect of Nonpayment of Assessments, Remedies of the Association.**

(a) Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

(b) The Association shall have a lien on each Lot and Tract for all Assessments levied against the Lot or Tract and for all other fees and charges (Enforcement Assessment) payable to the Association by the Owner of the Lot or Tract pursuant to this Declaration. 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 or Tract against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

(c) The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body; and (c) the lien of any First Mortgage. Regardless whether the Assessment Lien has, or is deemed to have, priority over liens securing assessments levied pursuant to a Tract or Neighborhood Declaration, foreclosure of the Assessment Lien with respect to a Lot or Tract shall not impair, extinguish or otherwise affect such

other assessment liens or relieve or release any obligations for such other assessments secured by such Lot or Tract.

(d) The Association shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot or Tract 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: (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) bringing an action to foreclose the Assessment Lien against the Lot or Tract in the manner provided by law for the foreclosure of a realty mortgage. 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 or Tracts purchased at such sale.

(f) The provisions of this Article extend to a Neighborhood Association.

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

6.12. **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 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 the Project; which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. 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 Occupants, maintenance of landscaping on Common Area and public right-of-way and drainage areas within the Project, construction, operation and maintenance of recreational and other facilities on Common Area, operation, maintenance, replacement and repair of Neighborhood Assessment Area and Improvements thereon, recreation, insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Association, employment of professional managers, and hiring professional consultants such as architects, engineers, attorneys and accountants.

6.13. **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.

6.14. **New Owner Operating Capital Contribution.** Each Purchaser of a Lot or Tract shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Regular Assessment for the Lot. Funds paid to the Association pursuant to this section may be used by the Association for payment for operating expenses or any other purpose permitted under the Association Documents. Payments made pursuant to this section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this section shall be deemed a contribution to the operating capital of the Association.

6.15. **Contribution to Capital Improvement.** Except as otherwise provided in this section, each Purchaser of a Lot or Tract shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Regular Assessment for an Assessable Lot (the "Capital Improvement Contribution") as a contribution to the Association's Capital Improvement Fund for the construction of additional association recreation facilities or amenities, the expansion or addition to existing community recreation facilities and amenities or the future periodic maintenance,

repair or replacement of the Areas of Association Responsibility. The Capital Improvement Contribution shall be in addition to, and not in lieu of, any other Assessments or amounts payable to the Association by the Owner making the Capital Improvement Contribution, and the Capital Improvement Contribution shall be secured by the Assessment Lien. The Capital Improvement Contribution shall be deemed a contribution to the capital improvement fund of the Association.

No Capital Improvement Contribution shall be payable with respect to: (a) the transfer or conveyance of a lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Capital Improvement Contribution; or (d) the transfer or conveyance of a Lot as a result of a trustee's sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

All Capital Improvement Contributions may only be used to pay costs and expenses related to the design or construction of recreational facilities and amenities on the Common Area, for the design and construction of additions to or expansions of existing community recreational facilities and amenities situated on the Common Area or the maintenance, repair or replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the Capital Improvement Contributions for other purposes is approved by the vote of owners having two-thirds (2/3) of the eligible votes.

6.16. **Transfer Fee.** Each Purchaser of a Lot or Tract shall pay to the Association immediately upon becoming the Owner of the Lot or Tract a transfer fee in such amount as is established from time to time by the Board.

6.17. **Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments.** Notwithstanding any other provision hereof or of the Articles, Bylaws or Association Rules, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by section 6.5 hereof; or (b) approving any increase in the Maximum Membership Assessment greater than that permitted by section 6.3(a)(ii), shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Membership Assessment, a quorum shall consist of sixty percent (60%) total eligible voting power of Members (whether represented in

person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (½) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

## **ARTICLE 7 MAINTENANCE**

### **7.1. Common Area and Public Right of Way.**

(a) The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Area and all Improvements located thereon (subject to section 7.1(c)), except the Association shall not be obligated to maintain areas which any governmental entity or any utility company is maintaining or is obligated to maintain. Provided, however, the Association may enter into a maintenance agreement with the applicable governmental entity to allow the Association to landscape and maintain areas of public right-of-ways.

(b) The Board shall be the sole judge as to the appropriate maintenance of all Common Area and other properties maintained by the Association. 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.

(c) In the event any Subdivision Plat, Tract or Neighborhood Declaration, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots or Tracts will be responsible for maintenance of certain Common Area or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract to provide maintenance service to Owners of Lots and Tracts having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

**7.2. Lots and Tracts.** Each Owner of a Lot or Tract shall be responsible for maintaining, repairing or replacing his, her or its Lot or Tract, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot or Tract which is Common Area (unless otherwise required by the

Board pursuant to section 7.1(c)) in compliance with the Maintenance Standard(s) adopted by the Board.

7.3. **Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of the Common Area or any other area maintained by the Association is caused through the willful or negligent act of any Member, his family, tenants, 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 or Tract is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot or Tract pursuant to this section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

7.4. **Improper Maintenance and Use of Lots and Tracts.** In the event any portion of any Lot or Tract is maintained in a manner that fails to satisfy the Maintenance Standards promulgated by the Board, or in the event any portion of a Lot or Tract is being used in a manner which violates this Declaration or any Tract or Neighborhood Declaration applicable thereto, or in the event the Owner of any Lot or Tract is failing to perform any of its obligations under the Project Documents or any Tract or Neighborhood Declaration applicable thereto, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is take within ten (10) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 10 day period 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 or Tract is subject and shall be secured by the Assessment Lien.

7.5. **Improper Maintenance of Neighborhood Common Area.** If any Neighborhood Common Area is not maintained in compliance with the Maintenance Standards or if any portion of the Neighborhood Common Area is being used in a manner which violates this Declaration or any Tract or Neighborhood Declaration applicable thereto or if the Neighborhood Common Area is not maintained in the manner required by this Declaration, or any Tract or Neighborhood Declaration applicable thereto, the Board may make a finding to such effect specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the Neighborhood Association responsible for the maintenance of such Neighborhood Common Area that unless corrective action is taken within ten (10) days the Board may cause such action to be taken at the Neighborhood Association's expense. If at the expiration of such 10 day



period, 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 payable to the Association by the Neighborhood Association within ten (10) days after demand therefor is made by the Association.

7.6. **Walls.** Walls (other than common walls) located on a Lot or Tract shall be maintained, repaired and replaced by the Owner of the Lot or Tract. Any Common Walls built by private property owners by agreement shall be maintained as defined in the agreement between the private property owners. The Association shall have no responsibility with regards to the maintenance of Common Walls between private land owners. Any wall which is placed on the boundary line between a Lot or Tract and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot or Tract, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area.

(a) **Easement.** In the event any Common Wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall.

7.7. **Maintenance of Natural Open Spaces.** All property designated as Natural Open Space, whether by a Tract or Neighborhood Declaration or by applicable zoning or other laws or ordinances, shall be maintained by the Owner thereof in a natural, undisturbed condition (after any initial approved revegetation), and the Owner thereof shall promptly remove any litter, waste or debris as may be dumped, left or deposited thereon, and shall otherwise protect and preserve the same and maintain the same in compliance with any and all applicable laws or ordinances, and with any applicable provisions of the Design Review Guidelines.

## ARTICLE 8 INSURANCE

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

(a) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of

the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$ 2,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and 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) Directors and officers liability insurance or equivalent Association liability insurance;

(d) Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

(e) Commercial crime insurance, including employee fidelity insurance, in an amount determined by the Board's best business judgment but not less than one-sixth of the Annual Assessments on all Lots plus reserves on hand. Such commercial crime insurance shall cover funds held by the Association's management company, unless such management company's insurance insures the Association against crimes committed by or against such management company. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

(f) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

(g) Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or adversely affect recovery on the policy;

(iii) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Association or other Owners or Occupants;

(v) Statement naming the Association as the insured;

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

(h) Havasu Riviera Community Board may purchase insurance coverage as required by this section 8 for the benefit of some or all Neighborhoods in Havasu Riviera Community. In the event Havasu Riviera Community Board acquires such insurance for the benefit of Havasu Riviera Community, the Association shall not be required to purchase duplicate coverage.

8.2. **Certificates of Insurance.** An insurer which 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 or Mortgagee. Any insurance obtained pursuant to this Article shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

8.3. **Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to 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 the Common Area covered by property insurance obtained by the Association, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of section 8.5, the

proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

8.5. **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Area 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 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 the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area 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.

## **ARTICLE 9 ADJACENT LANDS**

### 9.1. **City.**

(a) The City of Lake Havasu City owns lands adjacent and contiguous to the Project which is not a part of the Project. The City may or may not develop a portion of those lands as a golf course. The City may develop the lands in any manner it sees fit. Neither membership in the Association nor ownership or occupancy of a Lot or Tract shall confer any ownership interest in or right to use the golf course, if one should be constructed. If the City develops the lands as a golf course, the City may restrict or prohibit access, pedestrian, pet or vehicular, to the golf course from any Lots or Tracts adjacent and contiguous to the golf course.

(b) No guarantees or representations are made that the City will develop the land as a golf course or that the Lots or Tracts adjacent thereto will have a view or that the view, should there be one, will not be impeded or impaired by landscaping on the golf course, including trees or structures. Any development of the City lands as a golf course, or otherwise, may diminish or obstruct any view from the Lots or Tracts and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

(c) If the City develops the land as a golf course, each Owner of a Lot or Tract adjacent thereto hereby grants the owner of the golf course an easement for the right to have golf balls land on and fly over each Lot or Tract. Each Owner or Occupant agrees to assume all risks of harm or damage from errant golf balls associated with or incidental to owning a Lot or Tract contiguous and adjacent to the golf course. Each Owner or Occupant acknowledges that fencing or netting of any type as protection from or to deter errant golf balls may be prohibited and each Owner or Occupant agrees not to install any such fencing or netting by accepting of title to a Lot or Tract.

(d) As a routine part of the maintenance of a golf course, there may be times that Improvements on Lots or Tracts abutting the golf course are subject to inundation or sprinkling of irrigation water on walls, fences, patio areas (including furniture), windows or other parts of the Lot or Tract or Improvements thereon which may cause Owner or Occupant additional maintenance or may cause actual damage to Improvements. Each Owner acknowledges that such risk exists and expressly assumes all responsibility for maintenance of his, her or its walls, fences, patio areas (including furniture), windows or other parts of the Lot or Tract or Improvements thereon. An Owner or Occupant shall not be authorized to alter any irrigation device of the golf course to prevent or divert such occurrences. Owner acknowledges Golf course operator owes Owner no duty to avoid errant water.

(e) The water used to irrigate the golf course and to fill the lakes may be tertiary treated. The water is safe for exterior contact only. The water is **NOT POTABLE. IT IS NOT SAFE FOR HUMAN OR PET CONSUMPTION.** Care should be exercised by all users of the golf course and Residents adjacent to the golf course to not consume or intake in any manner the irrigation or lake water. Swimming in the lakes is expressly prohibited.

(f) This Article 9 is included herein to disclose the possibility of a golf course and to address issues which may be faced by Owners of Lots or Tracts adjacent thereto. It is Declarant's intention that the Association and the City shall cooperate to the maximum extent possible in the development of the Properties. Each shall reasonably assist the other in upholding the aesthetics of Havasu Riviera Community Association. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the golf course. Incidental to the operation of the golf course and clubhouse, there may be lighting (for example but not by way of limitation landscape lighting, parking lot lighting and driving range lighting) that does not comply with the dark sky intent of Declarant as expressed herein.

9.2. **United States Lands.** Portions of the Project are located adjacent or near lands owned and controlled by the United States, Bureau of Land Management. Declarant has no knowledge regarding future development and use of said lands. No guarantees or representations are made that the United States will develop the land or that the Lots or Tracts adjacent thereto will have a view or that the view, should there be one, will not be impeded or impaired by landscaping on the lands, including trees or structures. Any development of the United States lands or otherwise, may diminish or obstruct any view from the Lots or Tracts and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

## ARTICLE 10 DISPUTE RESOLUTION

10.1. **Agreement to Resolve Certain Disputes Without Litigation.** As used in this Article 10, the term "Claim" shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction, or development of the Association Common Area or any Lot or Tract or any Improvements situated thereon, including, without limitation, any claim or cause of action that the Association Common Areas are defective or that a Declarant or their respective agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; of (b) any claim or cause of action against a Declarant or any employee, agent, director, member or officer of a Declarant arising out of or in any way related to the development of Havasu Riviera Community or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Association, the Declarant, all Owners, Lessees, Residents, and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Article (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article shall apply to all Claims.

10.2. **Notice of Claim.** Any Bound Party who has or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), within sixty (60) days after the Claimant knows or, in the exercise of reasonable diligence, should have known of the Claim. The Claim Notice shall state plainly and concisely: (a) the nature of the 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. If a Claimant does not issue a Claim Notice within the time period provided for in this section, the Claimant shall be deemed to have waived the claim and

each Person who might otherwise have been a Respondent shall be released and discharged from all liability with respect to the Claim.

In the event the Claimant is the Association, the Association must provide written notice to all Members prior to the issuance of a Claim Notice or the initiation of any legal action, proceeding, reference or arbitration against a Declarant which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of any Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the claim against a Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorney's fees and expert fees and costs necessary to pursue the claim against a Declarant and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action against a Declarant, and (h) an affirmative statement from the Board 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 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 following information: 1) the expert's qualifications to express an opinion on the licensed professional's standard of care or liability for the claim; 2) the factual basis for each claim against a licensed professional; 3) the licensed professional's acts, errors or omissions that the expert considers to be a violation of the applicable standard of care resulting in liability; and 4) the manner in which the licensed professional's acts, errors or omissions caused or contributed to the damages or other relief sought by the claimant.

10.3. **Mediation.** 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) days additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Declarant.

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.

10.4. **Binding Arbitration.** In the event a Claim is not resolved by Mediation, the Claimant shall have fifteen (15) days after the date of Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this section. 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. If the Claimant submits the Claim to binding arbitration in accordance with this section, 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 American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (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 10.4 the provisions of this section 10.4 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 subsection is referred to in this section 10.4 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.

(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 Subsection 10.4.(c) above.

(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 statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) **Management of 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 the State of 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 (within sixty (60) days of 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; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

10.5. **Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time after the receipt by a Declarant of a Claim Notice pertaining to an alleged deficiency in the planning, design, engineering, grading, construction or development of the Association Common Area or any Lot or Tract, or any Improvement constructed on the Association Common Area or a Lot or Tract (an "Alleged Defect"), the Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Association Common Area, any Tract or Lot, including any Residence or building constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant or the Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this section shall be construed to impose any obligation on a Declarant to inspect, test, repair or replace any item or Alleged Defect for which a Declarant is not otherwise obligated under applicable law or any limited warranty provided by a Declarant in connection with the sale of the Lots or Tracts and/or the Improvements constructed thereon. The right of a Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by a

Declarant. In no event shall any statutes of limitations be tolled during the period in which a Declarant conducts any inspection or testing of any Alleged Defects.

10.6. **Use of Funds.** In the event the Association recovers any funds from a Declarant or any other Person as a result of a Claim involving an Alleged Defect, the funds shall first be used to correct and/or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any remaining funds shall be paid into the Association's reserve fund.

10.7. **Approval of Litigation.** After the expiration of the Declarant Control Period, the Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the Eligible Votes, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of 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 10.2.

## ARTICLE 11 GENERAL PROVISIONS

11.1. **Rules and Regulations.** In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt, as part of the Association Rules, additional rules and regulations with respect to any other aspects of the Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Project Documents. Once adopted the Rules and Regulations shall have the same force and effect as if they were included in this Declaration.

11.2. **Enforcement.** The Association, the Declarant or any Owner shall have the right to enforce the Project Documents at law or in equity. Specifically the Project Documents may be enforced by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. The Association shall be entitled to recover its

Collection Costs when enforcing the Project Documents, without regard to whether or not litigation commences. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party any costs and expenses in connection therewith, including reasonable attorney's fees.

In addition to such other rights provided elsewhere herein, the Association shall have the right to enforce any of the rules and regulations of the Association and the obligations of any Owner or Resident under this Declaration or any provisions of the Association's Articles of Incorporation or Bylaws:

(i) by assessing a reasonable fine against such Owner or Resident, which said fine shall be enforceable as an Assessment;

(ii) recording a Notice of Violation or Noncompliance against Owner's property in compliance with section 11.3 hereof;

(iii) suspending the right of such Owner or Resident to use Association Property: (1) for any period during which an Assessment remains delinquent, (2) for a period not to exceed 60 days for any infraction of the Project Documents, or (3) for successive 60 day periods if any such infraction is not corrected during any preceding suspension period; or,

(iv) suspending the right of such owner to vote at meetings of the Association, provided that such voting suspension may not be imposed for a period longer than thirty (30) days per violation.

No penalty may be imposed under this section until the Owner or Resident accused of any such violation has been afforded the right to be heard in person, by submission of a written statement, or through a representative at any such hearing. The Association may also take judicial action against any Owner or Resident to enforce complaints with such rules, regulations or other obligations or to obtain damages for violation, all to the extent permitted by law.

**11.3. Notice of Violation or Noncompliance.** The Association shall have the right to Record a written notice of a violation or noncompliance by any Owner or Occupant of any restriction or provision of the Project Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot or Tract against which the notice is being Recorded; (c) a

brief description of the nature of the violation or noncompliance; (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 Occupant to cure the violation or noncompliance. Recordation of a notice of violation or noncompliance shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot or Tract, that there is such a violation or noncompliance. If, after the Recordation of such notice, it is determined by the Association that the violation or noncompliance referred to in the notice does not exist or that the violation or noncompliance 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 or Tract against which the notice of violation or noncompliance was recorded, the Recording data of the notice of violation or noncompliance, and shall state that the violation or noncompliance referred to in the notice of violation or noncompliance has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation or noncompliance shall not constitute a waiver of any existing violation or noncompliance or evidence that no violation or noncompliance exists.

**11.4. Association's Right to Cure Violation or Noncompliance.** If, after the recording of the Notice of Violation or Noncompliance, the violation or noncompliance has not been cured, the Association shall have the right, upon not less than twenty-four (24) hours prior written notice, to enter upon any Lot for the purpose of curing the violation or noncompliance, including but without limitation, removal of any unauthorized improvements and restoration of the premises, removal of any unauthorized personal property and placing the same in storage at the expense of the defaulting Owner, repainting the exterior of any building which has been painted in an unapproved manner of color, replacement of any trees, or other vegetation which has died or been removed without approval and cleaning up any unsightly material or debris upon any Lot. Any such entry shall not be deemed a trespass. Any expenses incurred by the Association through the exercise of the right of entry to enforce the Declaration shall be enforceable as an assessment against the Lot enforced as a lien. As easement for access, ingress and egress, across each Lot is granted the Association for purposes of this provision.

**11.5. Term; Method of Termination.** Unless terminated in accordance with this section, this Declaration shall continue in full force and effect for a term of forty (40) years from the date this Declaration is Recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Members holding ninety percent (90%) or more of the votes in the Association. 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 applicable law.

**11.6. Amendments.**

(a) Except for amendments made pursuant to subsection 11.6(b) or 11.6(c) and subject to the provisions of 11.6(d) of this Declaration, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Members holding not less than sixty-seven percent (67%) of the eligible voting power in the Association.

(b) Either the Board or the Declarant may amend this Declaration, without obtaining the approval or consent of any Owner, Mortgagee or other Person, in order to conform this Declaration 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 or the Project Documents is required by law or requested by the Declarant.

(c) During the Declarant Control Period, the Declarant may amend this Declaration without the consent or approval of any other Owner or other Person.

(d) So long as the Declarant or any Declarant Affiliate owns any Lot, Tract or other portion of the Property, or any portion of the Additional Property, no amendment to this Declaration shall be effective unless approved in writing by the Declarant (or unless the Declarant expressly waives in writing its right to approve such amendments).

(e) Any amendment approved pursuant to subsection 11.6(a) of this Declaration or by the Board pursuant to subsection 11.6(b) of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this section. Any amendment made by the Declarant pursuant to subsection 11.6(b) or 11.6(c) of this Declaration shall be executed by the Declarant and shall be Recorded.

**11.7. 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 benefitted or bound by this Declaration.

11.8. **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.

11.9. **Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

11.10. **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.

11.11. **Laws, 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 or the Design Review Board with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

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

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

11.13. **Gender and Number.** Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

11.14. **Captions and Title; Section References; Exhibits.** 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 meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

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

11.16. **Indemnification.** The Association shall indemnify each and every officer and director of the Association, each and every member of the Design Review Board, and each and every member of any committee appointed by the Board (including, for purposes of this section, former officers and directors of the Association, former members of the Design Review Board, and former members of committees appointed by the Board) and any management agent hired by the Board, and its employees (collectively, "Association Officials" and individually an "Association Official") to the full extent permitted by A.R.S. § 10-2305(C), as amended from time to time. This indemnification shall include indemnification against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Association, by reason of the fact that the Association Official is or was a member, director, officer, employee or agent of the Association or is or was serving at the request of the Association



as a member, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorney fees, and against judgments, fines and amounts paid in settlement (if the settlement is approved by the Board serving at the time of such settlement) actually and reasonably incurred by the Association Official in connection with such action, suit or proceeding if the Association Official acted, or failed to act, in good faith and in a manner the Association Official reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this section or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

**11.17. No Partition.** No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot or Tract (and only appurtenant thereto), or except as otherwise expressly permitted herein. This section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area) which may or may not be subject to this Declaration.

11.18. **Property Held in Trust.** Except as otherwise expressly provided in this Declaration, any and all portions of the Property (and of the Additional Property) which are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trusts is the Declarant or a Declarant Affiliate, shall be deemed for all purposes under this Declaration to be owned by the Declarant or such Declarant Affiliate, as applicable, and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by the Declarant or such Declarant Affiliate, as applicable. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by the Declarant or any such Declarant Affiliate to any such trust (or the trustee thereof) or to the Declarant or any such Declarant Affiliate by any such trust (or the trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

11.19. **Number of Days.** In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

11.20. **Disclaimer of Representations.** Notwithstanding anything to the contrary herein, neither the Declarant nor any Declarant Affiliate makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that any real property now owned or hereafter acquired by the Declarant or by any Declarant Affiliate is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While neither the Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Tract in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Tract agrees to hold the Declarant and all Declarant Affiliates harmless therefrom.

11.21. **Amendments Affecting Declarant Rights.** Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including

but not limited to, this section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as the Declarant, any Declarant Affiliate or a trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Declarant.

11.22. **High Power Transmission Lines.** Each Owner, by accepting a deed to a Lot or Tract, or by otherwise acquiring title to a Lot or Tract, acknowledges that: (a) the Project includes, or may include or be adjacent to or in the vicinity of, property which is subject to easements for high power transmission lines and related towers, systems and other equipment (some of which may be on or over Common Area, Neighborhood Common Area and/or other open space or recreational areas); (b) some studies have suggested links between such high power transmission lines, or similar systems or equipment, and increased incidences of various illnesses in persons residing nearby (including, without limitation, some forms of cancer); (c) the Declarant has made no representations, warranties or statements regarding such easements or such high power transmission lines or related towers, systems or equipment (except to note their existence), or any health or other risks related (or potentially related) thereto; and (d) such Owner (for such Owner and its family members, other Occupants, successors and assigns) hereby accepts and assumes any and all health and other risks as may now or hereafter be or become associated with such high power transmission lines, or similar systems or equipment, or any new or replacement equipment or systems, and agrees not to assert or make any claim against the Declarant, any Declarant Affiliate or the Association, or any director, officer, employee, agent, representative or contractor of any of them, related thereto.

11.23. **Bulk Service Agreements.**

(a) The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots, Tracts or both within the Property, or within one or more portions thereof, utility services (including but not limited to electric, water, wastewater, telephone and gas), cable television, community satellite television or other electronic entertainment, information or communication services: (a) which might not otherwise be generally available to such Owners and occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and

Occupants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

(b) If all Lots and Tracts within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill (which may be effected by a separate bulk service charge on the regular assessment statement) to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement if not all Lots and Tracts within the Property will be served by a particular Bulk Service Agreement. The Declarant may exempt Lots and Tracts from the Bulk Service Agreement under the provisions of a Tract Declaration.

(c) The Declarant, for each Lot and Tract, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot or Tract, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot or Tract) by the Board pursuant to this section 11.23, and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots or Tracts against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorney's fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot or Tract at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

(d) No Owner of a Lot or Tract covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot or Tract under this section 11.23, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot or Tract upon which no Residential Lot or Tract or other building has been completed.

(e) "Bulk Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide, utility services (including but not limited to electric, water, wastewater, telephone and gas), cable television, community satellite television or other electronic entertainment, information or communication services to Lots, Tracts or both within the Property, or within one or more portions thereof, pursuant to a "Bulk Service Agreement" (as defined below). Declarant, or an Affiliate of Declarant, may be a Bulk Provider of services pursuant to a Bulk Service Agreement.

(f) "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television or other electronic entertainment, information or communication services to Lots, Tracts or both within the Property, or within one or more portions thereof.

(g) During the Period of Declarant Control, the Board shall not, without the approval of Members holding at least sixty-seven percent (67%) of the votes represented in person or by proxy at an annual or special meeting of the Members of the Association, enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant or a Developer which, in either case, agrees in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any such cable television, community satellite television or electronic entertainment, information or communication services, but nothing in this Section 11.23(g) shall prevent the Board from entering into, or require approval by the Members of, any Bulk Service Agreement which imposes on the Association or its Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Lake Havasu City, Arizona, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

#### **11.24. Recreational Amenity Agreements.**

(a) The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more Recreational Amenity Agreements with one or more Recreational Amenity Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots, Tracts or both within the Property, or within one or more portions thereof, recreational amenities such as use of a Clubhouse, beach access, launch facilities and/or services, boat

storage facilities, fueling docks and other recreational amenities: (a) which might not otherwise be generally available to such Owners and occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

(b) If all Lots and Tracts within the Property are to be served by a particular Recreational Amenity Agreement, the Board shall have the option either to: (a) include the Association's costs under such Recreational Amenity Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill (which may be effected by a separate amenity charge on the regular assessment statement) to each Owner his, her or its proportionate share of the Association's costs under such Recreational Amenity Agreement if not all Lots and Tracts within the Property will be served by a particular Recreational Amenity Agreement. The Declarant may exempt Lots and Tracts from the Recreational Amenity under the provisions of a Tract Declaration.

(c) The Declarant, for each Lot and Tract, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot or Tract, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot or Tract) by the Board pursuant to this section 11.24, and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots or Tracts against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorney's fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot or Tract at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

(d) No Owner of a Lot or Tract covered by a Recreational Amenity Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot or Tract under this section 11.24, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Recreational Amenity Agreement, or otherwise. However, the Board

shall have the right, at its option, to exempt from payment of such amounts any Lot or Tract upon which no Residential Lot or Tract or other building has been completed.

(e) "Recreational Amenity Provider" means a private, public or quasi-public entity or other company which provides, or proposes to provide, recreational amenities or services including, but not limited to, a clubhouse facility, launch facilities, storage facilities, (boat, R.V. or otherwise) semi-private or private beach, clubhouse, or within one or more portions thereof, pursuant to a "Recreational Amenity Agreement" (as defined below). Declarant, or an Affiliate of Declarant, may be a Recreational Amenity Provider of services pursuant to a Recreational Amenity Agreement.

(f) "Recreational Amenity Agreement" means an agreement between the Association and a Recreational Amenity Provider pursuant to which the Recreational Amenity Provider would provide launch facilities, clubhouse, dry boat storage, recreational vehicle storage, beach access, and other recreational type amenities to Lots, Tracts or both within the Property, or within one or more portions thereof.

(g) During the Period of Declarant Control, the Board shall not, without the approval of Members holding at least sixty-seven percent (67%) of all Class A votes represented in person or by proxy at an annual or special meeting of the Members of the Association, enter into a Recreational Amenity Agreement which imposes on the Association or its Members (other than Declarant or a Developer which, in either case, agrees in writing thereto) any obligation to pay the direct costs of construction or purchase of any such recreational amenity facilities but nothing in this Section 11.23(g) shall prevent the Board from entering into, or require approval by the Members of, any Recreational Amenity Agreement which imposes on the Association or its Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Lake Havasu City, Arizona, area, if such service is available.

## **ARTICLE 12 NON-RESIDENTIAL TRACTS**

The Declarant shall have the right, at its option, to execute a Tract Declaration pursuant to section 2.2 to designate a Lot or Tract as a Non-Residential Tract. Any Non-Residential Tract shall be deemed to be fully a part of the Property, and such Non-Residential Tract and each Owner and Occupant thereof shall be deemed to be fully subject to this Declaration and all of the Project Documents, except as provided in the Tract Declaration Recorded for the NonResidential Tract in accordance with this Article. The Declarant may, in the Tract Declaration for a Non-Residential Tract, exempt that

Non-Residential Tract from such provisions of the Project Documents as the Declarant sees fit, or modify the effect of one or more provisions of the Project Documents in such manner and to such extent as the Declarant sees fit (including exemption of Assessments) except that the Non-Residential Tract may not be exempted from the authority and powers of the Community Master Planner and the Design Review Board. The Declarant may impose, substitute or modified use restrictions, architectural controls and other provisions relating to the use and development of that Non-Residential Tract. It is the Declarant's intent, in reserving to itself the rights, options and privileges in this Article 12, to permit itself the latitude and flexibility to include within the Property parcels devoted to non-residential uses and purposes where, in the Declarant's judgment, doing so would promote the consistent development and maintenance of property in and about the Project, including without limitation Common Areas, drainage channels and facilities, and other open space and greenbelt areas, while at the same time limiting, to the extent appropriate in the Declarant's judgment, the effect on such Tracts of provisions of this Declaration and of the other Project Documents more suited for application to residential properties.

**The rest of this page is left blank intentionally**



IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

HAVASU RIVIERA, L.L.C.,  
an Arizona limited liability company

By: *[Signature]*  
By: *Jim Kerwick*  
Its: Managing Member

MARINA VIEW LLC,  
an Arizona limited liability company

By: *[Signature]*  
By: *Jack Deane*  
Its: Managing Member

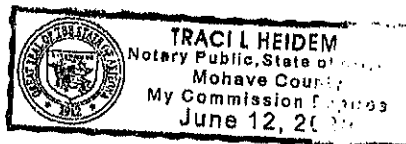
STATE OF ARIZONA     )  
                                  ) SS  
COUNTY OF MOHAVE    )

On this, the 11<sup>th</sup> day of February, 2020, before me, the undersigned notary public, personally appeared Jim Kerwick, who acknowledged himself to be the Managing Member of Havasu Riviera, L.L.C., an Arizona limited liability company and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company, by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:  
June 12, 2020

*[Signature]*  
Notary Public.  
*[Signature]*



STATE OF ARIZONA )  
 ) SS  
COUNTY OF MOHAVE )

On this, the 11<sup>th</sup> day of February, 2020, before me, the undersigned notary public, personally appeared Jack Dunn, who acknowledged himself to be the Managing Member of Marina View LLC, an Arizona limited liability company and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company, by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Traci Heideman  
Notary Public  
Traci Heideman

My Commission Expires:  
June 12, 2020



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Parcel No.1:

The East Half of the Northeast Quarter; The East Half of the Northwest Quarter of the Northwest Quarter of the Northeast Quarter; the Northeast Quarter of the Northwest Quarter of the Northeast Quarter; the South Half of the Northwest Quarter of the Northeast Quarter; the North Half of the Southwest Quarter of the Northeast Quarter; the Southeast Quarter of the Northeast Quarter of the Northwest Quarter; the Northeast Quarter of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter of the Southeast Quarter; the North Half of the Southeast Quarter of the Southeast Quarter; of Section 25, Township 13 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona.

Together with an easement in gross for ingress and egress, recorded August 26, 2019 at Fee No. 2019047306, over a portion of the Northeast quarter of the Northwest quarter of the Northwest quarter and the North half of the Northeast quarter of the Northwest quarter and the West half of the Northwest quarter of the Northwest quarter of the Northeast quarter of Section 25, Township 13 North, Range 20 West of the Gila and Salt River Meridian, Mohave County, Arizona.

Being more particularly described as follows:

Commencing at the North quarter corner of said Section 25, said point being the True Point of Beginning;

Thence bearing S 89°29'04" E along the North section line, a distance of 329.62 feet;

Thence bearing S 0°22'09" W a distance of 660.90 feet;

Thence bearing N 89°30'24" W a distance of 329.62 feet;

Thence bearing N 89°43'52" W a distance of 659.11 feet;

Thence bearing N. 89°37'05" W a distance of 214.95 feet;

Thence bearing N 0°22'55" E a distance of 125.00 feet;

Thence bearing S 89°37'05" E a distance of 245.75 feet;

Thence bearing N 30°22'55" E a distance of 174.36 to a non tangent curve, radial bearing at said point bears S 78°50'42" W;

Thence along said curve having a radius of 45.00 feet, a delta angle of  $78^{\circ}27'47''$ , and whose long chord bears  $S 50^{\circ}23'11'' E$  a distance of 56.92 feet;

Thence bearing  $S 89^{\circ}37'05'' E$  a distance of 261.84 feet;

Thence bearing  $N 29^{\circ}28'50'' E$  a distance of 483.33 feet to the True Point of Beginning.

EXCEPTING therefrom any portion of said land lying within the bed or former bed of the Colorado River and/or Lake Havasu waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water.

EXCEPT all oil, gas, coal, and minerals as set forth in instrument recorded in Book 79 of Deeds, Page 461.

Parcel No.2:

A portion of the Northeast quarter of the Northwest quarter of the Northwest quarter and the North half of the Northeast quarter of the Northwest quarter and the West half of the Northwest quarter of the Northwest quarter of the Northeast quarter of Section 25, Township 13 North, Range 20 West of the Gila and Salt River Meridian, Mohave County, Arizona.

Being more particularly described as follows:

Commencing at the North quarter corner of said Section 25, said point being the True Point of Beginning;

Thence bearing  $S 89^{\circ}29'04'' E$  along the North section line, a distance of 329.62 feet;

Thence bearing  $S 0^{\circ}22'09'' W$  a distance of 660.90 feet;

Thence bearing  $N 89^{\circ}30'24'' W$  a distance of 329.62 feet;

Thence bearing  $N 89^{\circ}43'52'' W$  a distance of 659.11 feet;

Thence bearing  $N. 89^{\circ}37'05'' W$  a distance of 214.95 feet;

Thence bearing  $N 0^{\circ}22'55'' E$  a distance of 125.00 feet;

Thence bearing  $S 89^{\circ}37'05'' E$  a distance of 245.75 feet;

Thence bearing  $N 30^{\circ}22'55'' E$  a distance of 174.36 to a non tangent curve, radial bearing at said point bears  $S78^{\circ}50'42''W$ ;

Thence along said curve having a radius of 45.00 feet, a delta angle of  $78^{\circ}27'47''$ , and whose long chord bears  $S 50^{\circ}23'11'' E$  a distance of 56.92 feet;

Thence bearing  $S 89^{\circ}37'05'' E$  a distance of 261.84 feet;

Thence bearing  $N 29^{\circ}28'50'' E$  a distance of 483.33 feet to the True Point of Beginning.

EXCEPT all oil, gas, coal, and minerals as set forth in instrument recorded in Book 79 of Deeds, Page 461.

**EXHIBIT "B"**

**Lots 1 through 76, inclusive, and Parcels A and B, Tract 2399, Marina View at Havasu Riviera**, according to the plat recorded October 10, 2019, at Fee No. 2019055752, and thereafter an Affidavit of Scrivener's Error recorded December 18, 2019, at Fee No. 2019068572, in the office of the Recorder of Mohave County, Arizona.

EXCEPT all oil, gas, coal, and minerals as set forth in instrument recorded in Book 79 of Deeds, Page 461.

**EXHIBIT "C"**  
**LAND USE PLAN**

HAVASU RIVIERA

# Land Use Plan

