

54

WHEN RECORDED, RETURN TO:

Pioneer Title Company

Recorded at the Request of:

Lewton Operating Company  
P. O. Box 525  
Spearfish, SD 57783-0525



**FEE# 2011022065**

OFFICIAL RECORDS  
OF MOHAVE COUNTY  
CAROL MEIER,  
COUNTY RECORDER



04/22/2011 03:29 PM Fee: \$63.00

PAGE: 1 of 54

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MESQUITE BAY AT SAILING HAWKS**

**TABLE OF CONTENTS**

|  | <u>Page</u> |
|--|-------------|
| <b>INTRODUCTION .....</b>  | <b>1</b>    |
| <b>ARTICLE 1 DEFINITIONS.....</b>  | <b>2</b>    |
| <b>ARTICLE 2 PROPERTY AND PERSONS BOUND BY DECLARATION.....</b>                    | <b>6</b>    |
| <b>2.1 PURPOSE AND BINDING EFFECT .....</b>  | <b>6</b>    |
| <b>2.2 DISCLAIMER OF IMPLIED COVENANTS.....</b>                                    | <b>6</b>    |
| <b>2.3 MASTER ASSOCIATION .....</b>  | <b>7</b>    |
| <b>ARTICLE 3 ARCHITECTURAL CONTROL .....</b>                                       | <b>7</b>    |
| <b>3.1 DESIGN REVIEW COMMITTEE .....</b>   | <b>7</b>    |
| <b>3.2 APPROVAL REQUIRED.....</b>  | <b>8</b>    |
| <b>3.3 REVIEW OF PLANS.....</b>  | <b>8</b>    |
| <b>3.4 VARIANCES.....</b>  | <b>9</b>    |
| <b>3.5 CONSTRUCTION OF IMPROVEMENTS .....</b>                                      | <b>10</b>   |
| <b>3.6 NO CHANGES WITHOUT APPROVAL .....</b>                                       | <b>10</b>   |
| <b>3.7 REVIEW FEE .....</b>  | <b>10</b>   |
| <b>3.8 NEW CONSTRUCTION.....</b>   | <b>10</b>   |
| <b>3.9 NO WARRANTY .....</b>   | <b>10</b>   |
| <b>3.10 CONDITIONAL APPROVAL.....</b>  | <b>11</b>   |
| <b>3.11 IMPROVEMENTS TO AREAS OF ASSOCIATION RESPONSIBILITY.....</b>               | <b>11</b>   |
| <b>ARTICLE 4 USE RESTRICTION .....</b>   | <b>11</b>   |
| <b>4.1 RESIDENTIAL USE .....</b>   | <b>11</b>   |
| <b>4.2 TEMPORARY OCCUPANCY AND TEMPORARY BUILDINGS .....</b>                       | <b>12</b>   |
| <b>4.3 NUISANCES; CONSTRUCTION ACTIVITIES.....</b>                                 | <b>12</b>   |
| <b>4.4 ANTENNAS .....</b>  | <b>13</b>   |
| <b>4.5 TRASH CONTAINERS AND COLLECTION.....</b>                                    | <b>13</b>   |
| <b>4.6 UTILITY SERVICE.....</b>  | <b>13</b>   |
| <b>4.7 FENCES, INTERFERENCES AND OBSTRUCTIONS .....</b>                            | <b>14</b>   |
| <b>4.8 ANIMALS.....</b>  | <b>14</b>   |
| <b>4.9 MACHINERY AND EQUIPMENT.....</b>  | <b>14</b>   |
| <b>4.10 SIGNS .....</b>  | <b>15</b>   |
| <b>4.11 FURTHER SUBDIVISION, PROPERTY RESTRICTIONS, REZONING AND TIMESHARES ..</b> | <b>15</b>   |
| <b>4.12 VEHICLES AND PARKING .....</b>   | <b>15</b>   |
| <b>4.13 DRAINAGE .....</b>   | <b>16</b>   |
| <b>4.14 GARAGES .....</b>  | <b>17</b>   |
| <b>4.15 ROOFTOP HVAC EQUIPMENT PROHIBITED .....</b>                                | <b>17</b>   |
| <b>4.16 BASKETBALL GOALS AND BACKBOARDS .....</b>                                  | <b>17</b>   |
| <b>4.17 PLAYGROUND EQUIPMENT .....</b>   | <b>17</b>   |
| <b>4.18 RENTAL OF LOTS .....</b>   | <b>17</b>   |

|   |  |           |
|---|--|-----------|
| 4.19  | EXTERIOR LIGHTS .....  | 18        |
| 4.20  | WINDOW COVER MATERIALS .....   | 18        |
| <b>ARTICLE 5 EASEMENTS .....</b>  |  | <b>18</b> |
| 5.1   | EASEMENTS FOR USE OF COMMON AREA.....                                  | 18        |
| 5.2   | UTILITY AND DEVELOPMENT EASEMENTS .....                                | 20        |
| 5.3   | EASEMENTS TO FACILITATE DEVELOPMENT.....                               | 20        |
| 5.4   | DEDICATIONS AND EASEMENTS REQUIRED BY GOVERNMENTAL AUTHORITY.....      | 21        |
| 5.5   | FURTHER ASSURANCES.....  | 21        |
| 5.6   | ASSIGNMENT OF DEVELOPMENT RIGHTS.....                                  | 21        |
| 5.7   | EASEMENT FOR MAINTENANCE AND ENFORCEMENT.....                          | 21        |
| 5.8   | EASEMENTS FOR ENCROACHMENTS.....                                       | 22        |
| <b>THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS.....</b> |  | <b>22</b> |
| 6.1   | FORMATION OF ASSOCIATION.....  | 22        |
| 6.2   | BOARD OF DIRECTORS AND OFFICERS.....                                   | 22        |
| 6.3   | THE ASSOCIATION RULES .....  | 23        |
| 6.4   | PERSONAL LIABILITY .....   | 23        |
| 6.5   | IMPLIED RIGHTS .....   | 23        |
| 6.6   | IDENTITY OF MEMBERS.....   | 23        |
| 6.7   | CLASSES OF MEMBERS AND VOTING RIGHTS.....                              | 23        |
| 6.8   | VOTING PROCEDURES.....   | 24        |
| 6.9   | TRANSFER OF MEMBERSHIP.....  | 24        |
| 6.10  | CONVEYANCE, LEASE OR ENCUMBRANCE OF COMMON AREA.....                   | 24        |
| 6.11  | SUSPENSION OF VOTING RIGHTS.....                                       | 25        |
| <b>ARTICLE 7 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN .....</b>    |  | <b>25</b> |
| 7.1   | CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS .....         | 25        |
| 7.2   | REGULAR ASSESSMENTS.....   | 26        |
| 7.3   | SPECIAL ASSESSMENTS.....   | 26        |
| 7.4   | ASSESSMENT PERIOD .....  | 27        |
| 7.5   | OBLIGATION OF DECLARANT FOR DEFICIENCIES .....                         | 27        |
| 7.6   | RULES REGARDING BILLING AND COLLECTION PROCEDURES .....                | 27        |
| 7.7   | EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION ..... | 28        |
| 7.8   | PURPOSES FOR WHICH ASSOCIATION'S FUNDS MAY BE USED .....               | 29        |
| 7.9   | SURPLUS FUNDS .....  | 29        |
| 7.10  | WORKING CAPITAL CONTRIBUTION.....                                      | 29        |
| 7.11  | TRANSFER FEE .....   | 30        |
| 7.12  | RESERVE CONTRIBUTION .....   | 30        |
| 7.13  | RESERVES.....  | 31        |
| 7.14  | BORROWING POWER.....   | 31        |
| <b>ARTICLE 8 MAINTENANCE .....</b>                                      |  | <b>32</b> |
| 8.1   | AREAS OF ASSOCIATION RESPONSIBILITY.....                               | 32        |
| 8.2   | LOT OWNER'S RESPONSIBILITY .....                                       | 32        |
| 8.3   | ASSESSMENT OF CERTAIN COSTS OF MAINTENANCE AND REPAIR .....            | 33        |
| 8.4   | IMPROPER MAINTENANCE AND USE OF LOTS.....                              | 33        |

|  |  |           |
|--|--|-----------|
| 8.5  | BOUNDARY WALLS .....   | 33        |
| 8.6  | MAINTENANCE OF WALLS OTHER THAN BOUNDARY WALLS .....                 | 34        |
| 8.7  | CONSTRUCTION ACTIVITIES.....   | 34        |
| <b>ARTICLE 9 INSURANCE .....</b>           |  | <b>35</b> |
| 9.1  | SCOPE OF COVERAGE .....  | 35        |
| 9.2  | CERTIFICATES OF INSURANCE.....                                       | 36        |
| 9.3  | PAYMENT OF INSURANCE PROCEEDS .....                                  | 36        |
| 9.4  | REPAIR AND REPLACEMENT OF DAMAGED OR DESTROYED PROPERTY .....        | 36        |
| 9.5  | INSURANCE TO BE OBTAINED BY LOT OWNERS.....                          | 37        |
| <b>ARTICLE 10 DISPUTE RESOLUTION.....</b>  |  | <b>37</b> |
| 10.1                                       | DEFINED TERMS.....   | 37        |
| 10.2                                       | AGREEMENT TO RESOLVE CERTAIN DISPUTES WITHOUT LITIGATION.....        | 38        |
| 10.3                                       | NOTICE OF CLAIM.....   | 38        |
| 10.4                                       | MEDIATION .....  | 39        |
| 10.5                                       | BINDING ARBITRATION.....   | 39        |
| 10.6                                       | RIGHT TO ENTER, INSPECT, REPAIR AND/OR REPLACE .....                 | 41        |
| 10.7                                       | USE OF FUNDS .....   | 42        |
| 10.8                                       | APPROVAL OF CLAIM NOTICE; LEGAL ACTION; ARBITRATION ; EXPENSES ..... | 42        |
| 10.9                                       | CONFLICTS .....  | 42        |
|  | NOTICE .....   | 41        |
| <b>ARTICLE 11 GENERAL PROVISIONS .....</b> |  | <b>43</b> |
| 11.1                                       | ENFORCEMENT.....   | 43        |
| 11.2                                       | DURATION; TERMINATION .....  | 45        |
| 11.3                                       | AMENDMENTS .....   | 46        |
| 11.4                                       | CONDEMNATION OF COMMON AREA .....                                    | 46        |
| 11.5                                       | INTERPRETATION .....   | 46        |
| 11.6                                       | SEVERABILITY.....  | 47        |
| 11.7                                       | CHANGE OF CIRCUMSTANCES .....  | 47        |
| 11.8                                       | LAWS, ORDINANCES AND REGULATIONS .....                               | 47        |
| 11.9                                       | REFERENCES TO THIS DECLARATION IN DEEDS .....                        | 47        |
| 11.10                                      | GENDER AND NUMBER .....  | 47        |
| 11.11                                      | CAPTIONS AND TITLES .....  | 47        |

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**FOR**

**MEQUITE BAY AT SAILING HAWKS**

This Declaration of Covenants, Conditions and Restrictions for Mesquite Bay at Sailing Hawks (this "Declaration") is made this 31 day of August, 2010 by Lewton Operating Company, a Wyoming Limited Partnership (the "Declarant").

**INTRODUCTION**

A. The Declarant is the Owner of fee title to Lots 1A, 2A, 3 through 11, inclusive, 12A, 13A, 14 through 21, inclusive, 26A, 27A, 28 through 30, inclusive, 33A, 34 thru 38, inclusive, 43, 44 , 45A and 46A, and Parcels A through G inclusive, which constitute over 90% of the real property known as Mesquite Bay at Sailing Hawks, located in Lake Havasu City, Arizona. Mesquite Bay at Sailing Hawks is legally described as Lots 1A, 2A, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12A, 13A, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25A 26A, 27A, 28, 29 30, 31, 32, 33A, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45A, and 46A, and Parcels A through G, inclusive, Mesquite Bay at Sailing Hawks, according to the parcel plat recorded in Book 33 of Parcel Plats, Page 29-29D, as Receipt No. 2010-043911, on July 20, 2010, AND which was Amended in Book 33 Page 57-57D, as Receipt No. 2010064783 on November 2<sup>nd</sup> 2010 and oroginal plat of record recorded February 22, 2008, at Fee No. 2008-12225 records of Mohave County, Arizona. (the "Property").

B. By executing and recording this Declaration with the County Recorder of Mohave County, Arizona, the Declarant intends to impose upon the Property mutually beneficial covenants, conditions, restrictions and easements to establish a flexible and reasonable procedure for the overall development, administration, maintenance, use, and preservation of the Property. Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Property and which will be binding upon all future Owners of all or any portion of the Property and any other Person acquiring any right, title, or interest in or to all or any portion of the Property.

C. Declarant deems it desirable to provide for the creation of a non-profit corporation under the laws of the State of Arizona to administer and maintain, repair, and replace the Areas of Association Responsibility, and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair, replacement and administration of the Areas of Association Responsibility, and the enforcement of the covenants, conditions, and restrictions contained in this Declaration.

## ARTICLE 1

### DEFINITIONS

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

**1.1 "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, the Plat or other Recorded document executed by the Declarant or the Association.

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

**1.3 "Assessable Lot"** means, during the Declarant Control Period, a Lot owned by a Person other than the Declarant. After the termination of the Declarant Control Period, all Lots shall be Assessable Lots.

**1.4 "Assessment"** means a Regular Assessment or Special Assessment.

**1.5 "Assessment Lien"** means the lien created and imposed by Article 7.

**1.6 "Assessment Period"** means the period set forth in Article 7.

**1.7 "Association"** means Mesquite Bay at Sailing Hawks Homeowners Association, Inc., an Arizona non-profit corporation, and its successors and assigns.

**1.8 "Association Rules"** means the rules adopted by the Board pursuant to Article 6.

**1.9 "Board"** means the Board of Directors of the Association.

**1.10 "Bylaws"** means the Bylaws of the Association, as amended from time to time.

**1.11 "Common Area"** means (a) Parcels A through G, inclusive, Mesquite Bay at Sailing Hawks, according to the Plat recorded in Book 33 of Parcel Plats Page 29-29D, as Receipt No. 2010-043911, records of Mohave County, Arizona, on July 20, 2010, AND which was Amended in Book33 Page57-57D, as Receipt No.2010065783 on 11-2-2010 and plat of record recorded February 22, 2008, at Fee No. 2008-12225,

together with all Improvements situated thereon, and (b) all other land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

**1.12 "Common Expenses"** means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

**1.13 "Community Documents"** means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules and Design Guidelines, all as amended or restated from time to time.

**1.14 "Construction"** means any devegetation, excavation or grading work on a Lot or the construction, erection or installation of an Improvement on a Lot which would be Visible From Neighboring Property.

**1.15 "Declarant"** means Lewton Operating Company, a Wyoming Limited Partnership, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

**1.16 "Declarant Control Period"** means the period commencing upon the Recording of this Declaration and ending on the earlier of (a) the date that the Declarant conveys its last Lot to a Purchaser so that the Declarant no longer owns any Lot in the Project or (b) the date on which the Declarant notifies the Association in writing that the Declarant is terminating the Declarant Control Period.

**1.17 "Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Mesquite Bay at Sailing Hawks, as amended or supplemented from time to time.

**1.18 "Design Guidelines"** means the procedures, standards and guidelines adopted by the Design Review Committee pursuant to Article 3, as amended or supplemented from time to time.

**1.19 "Design Review Committee"** means the committee created pursuant to Article 3.

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

**1.21 "First Mortgagee"** means the holder or beneficiary of any First Mortgage.

**1.22 "Improvement"** means: (a) any Residence, building, fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus, or playground equipment; (c) any road, driveway or parking area; (d) any trees, plants, shrubs, grass or other landscaping

improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (f) any other structure of any type, kind or nature.

**1.23 "Lessee"** means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of the lessee's or tenant's interest under a lease.

**1.24 "Lot"** means a parcel of land within the Project, whether improved or unimproved, intended for independent ownership and use, and designated as a "lot" on the Plat, and any Residence, building, structure or other Improvement situated thereon.

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

**1.26 "Maintenance Standard"** means the standard of Maintenance of Improvements situated on Lots established from time to time by the Board or, in the absence of any standard established by the Board, the standard of Maintenance of Improvements situated on Lots generally prevailing throughout the Project.

**1.27 "Master Association"** means Sailing Hawks Community Association, an Arizona non-profit corporation, its successors and assigns, organized pursuant to the provisions of the Master Declaration.

**1.28 "Master Declaration"** means the Declaration of Covenants, Conditions, Restrictions and Easements for Sailing Hawks recorded as document number 2004006376 in Book 4846, Pages 546-616, on January 23, 2004, in the records of the County Recorder of Mohave County, Arizona, as amended from time to time.

**1.29 "Member"** means any Person who is a member of the Association as provided in Article 6.

**1.30 "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 Visible From Neighboring Property.

**1.31 "Owner"** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. In the case of Lots subject to an option agreement, the optioner shall be deemed to be the Owner. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 et. seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of a Lot subject to a deed of trust pursuant to ARS § 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of a Lot the fee simple title to which is



vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

**1.32 "Owner's Agent"** means any employee, agent, contractor or subcontractor acting on behalf of or pursuant to a contract with an Owner.

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

**1.34 "Plat"** means the Plat of Mesquite Bay at Sailing Hawks recorded in Book 33 of Parcel Plats Page 29-29D as Receipt No. 2010-043911, records of Mohave County, Arizona, on July 20, 2010 and plat of record recorded February 22, 2008, at Fee No. 2008-12225, and Amended in Book 33 Page 57-57D as Receipt No. 2010064783 on November 2, 2010 and all amendments, supplements and corrections thereto.

**1.35 "Property" or "Project"** means the real property described as Lots 1A, 2A, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12A, 13A, 14, 15, 16,17, 18, 19, 20, 21, 22, 23, 24, 25A 26A, 27A, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45A, and 46A, and Parcels A through G, inclusive, Mesquite Bay at Sailing Hawks, according to the plat recorded in Book 33 of Parcel Plats, Page 29-29D, records of Mohave County, Arizona, as Receipt No. 2010-043911, on July 20, 2010, AND which was Amended in Book 33 Page 57-57D, as Receipt No. 2010065783 on November 2<sup>nd</sup> 2010 and plat of record recorded February 22, 2008, at Fee No. 2008-12225, together with all Improvements located thereon.

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

**1.37 "Recording"** means placing an instrument of public record in the office of the County Recorder of Mohave County, Arizona, and "Recorded" means having been so placed of public record.

**1.38 "Regular Assessment"** means the Assessments levied pursuant to Article 7.

**1.39 "Residence"** means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

**1.40 "Resident"** means each person occupying or residing in any Residence.

**1.41 "Special Assessment"** means any assessment levied pursuant to Section 7.3.

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

## ARTICLE 2

### **PROPERTY AND PERSONS BOUND BY DECLARATION**

#### **2.1 Purpose and Binding Effect.**

Declarant is the record owner of fee title to over 90% of the Property. Declarant intends by this Declaration to impose upon the Property covenants, conditions, restrictions, and easements to create a general plan of development for the Property and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use, and enjoyment of the Property. The Declarant declares that all of the Property shall be held, sold, used, and conveyed subject to the easements, restrictions, conditions, and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Property. Declarant further declares that all of easements, restrictions, conditions, and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and all Owners, Lessees, and Residents and all other Persons having or acquiring any right, title, or interest in the Property or any part thereof, their heirs, successors, successors in title, and assigns. Each Person who acquires any right, title or interest in the Property, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents, or as to the compliance of any of the provisions of the Community Documents with public laws, ordinances and regulations applicable thereto.

#### **2.2 Disclaimer of Implied Covenants.**

The Declarant makes no representation or warranty that the Project can or will be developed in accordance with the zoning and development plan for the Project as it exists as of the Recording of this Declaration or will be committed to or developed for any particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. Each Owner, Lessee, Resident and other Person acquiring any Lot or other real property in the Project acknowledges that the zoning and development plan may be amended from time to time by the City of Lake Havasu City. The Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to the Project. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration.

**2.3 Master Association.** The Project is part of a master planned community known as Sailing Hawks. The Project shall be subject to the terms and conditions of the Master Declaration and the Articles of Incorporation, Bylaws and Rules and Regulations of the Master Association, as such documents may be amended from time to time (collectively, the "Master Association Documents"). Each Owner will be obligated to pay assessments and other charges to the Master Association in accordance with the Master Association Documents. All Assessments and other charges due to the Association under the Community Documents shall be in addition to the assessments and other charges payable to the Master Association. All consents or approvals of the Board of Directors required by this Declaration shall be in addition to any consents or approvals required under the terms of the Master Association Documents. In the event of any conflict or inconsistency between the restrictions with respect to the use or occupancy of the Lots set forth in the Master Declaration and the restrictions set forth in this Declaration, the more restrictive provision shall control.

### ARTICLE 3

#### ARCHITECTURAL CONTROL

##### **3.1 Design Review Committee.**

A Design Review Committee shall be established to perform the duties and exercise the power and authority imposed on or granted to the Design Review Committee by the Community Documents. So long as the Declarant owns one or more Lots, the Declarant shall have the sole right to determine the number of members on the Design Review Committee and to appoint and remove the members of the Design Review Committee. At such time as the Declarant no longer owns any Lot, the Board shall determine the number of members on the Design Review Committee, and the members of the Design Review Committee shall be appointed and may be removed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Design Review Committee, and in that event the Declarant may require, for so long as the Declarant owns one or more Lots, that specified actions of the Design Review Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. All approvals or disapprovals of matters by the Design Review Committee must be in writing.

The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (a) the size and height of Residences or other Improvements; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (c) placement of Residences and other buildings; (d) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; (g) perimeter and screen wall design and appearance; (h) time periods for commencement and completion of any approved Construction or Modification; and (i) rules and regulations governing construction activities.

Any adoption, amendment or repeal of the Design Guidelines after the Declarant no longer has the right to appoint the Design Review Committee must be approved by the Board.

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

In the event there is no Design Review Committee in existence, then the Board shall undertake the Design Review Committee's powers, duties, and responsibilities under this Declaration, including, without limitation, granting approvals required by this Declaration.

### **3.2 Approval Required.**

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

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

In the event that the Design Review Committee fails to provide written approval or disapproval of a complete application for approval within sixty (60) days after the application, together with any fee payable pursuant to Section 3.7 and all supporting information, plans and specifications requested by the Design Review Committee, have been submitted to the Design Review Committee, the application shall be deemed disapproved. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

### **3.3 Review of Plans.**

In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant, including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Design Review Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished grade

elevations, roads, Common Area and other structures; (c) the exterior design, finish materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its sole and absolute discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.

Decisions of the Design Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration; provided, however, that after the Declarant no longer owns any Lot, any decision of the Design Review Committee may be appealed to the Board by any Owner aggrieved by the decision. Any appeal to the Board must be filed with the Board within thirty (30) days after the date of the decision being appealed.

The approval required of the Design Review Committee pursuant to this Article 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.

The Design Review Committee, 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 originally approved plans and specifications.

### **3.4 Variances.**

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

**3.5 Construction of Improvements.**

Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall proceed with the Construction or Modification approved by the Design Review Committee as soon as practicable and shall diligently pursue such Construction or Modification so that it is completed within twelve (12) months from commencement of the Construction or Modification, unless otherwise approved by the Design Review Committee.

**3.6 No Changes Without Approval.**

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

**3.7 Review Fee.**

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

**3.8 New Construction.**

Unless otherwise approved by the Design Review Committee, all Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

**3.9 No Warranty.**

The approval by the Design Review Committee of any Construction or Modification shall not be deemed a warranty or representation by the Design Review Committee as to the quality or suitability for intended use of such Construction or Modification, or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

**3.10 Conditional Approval.**

The Design Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Design Review Committee in an amount determined by the Design Review Committee to be reasonably sufficient to: (a) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond shall be released or security shall be fully refundable to the Owner upon the completion of the Improvements in accordance with the plans and specifications approved by the Design Review Committee and the Owner's written request to the Design Review Committee.

**3.11 Improvements to Areas of Association Responsibility.**

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

**ARTICLE 4**

**USE RESTRICTION**

**4.1 Residential Use.**

All Residences shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that the Owner, Lessee or other Resident of a Residence may conduct a business activity within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (c) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Lessees or Residents in the Project; (d) the use of the Residence for a trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (f) the trade or business is

conducted by a Resident or Residents of the Residence with no employee working in or from such Residence who is not a Resident thereof; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion and/or is not in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; (i) the use of the Residence for a trade or business does not violate any other provision of the Community Documents; and (j) the use of the Residence for a trade or business does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety or other Owners or Residents, as may be determined by the Board in its sole discretion.

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

#### **4.2 Temporary Occupancy and Temporary Buildings.**

No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Design Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee. This Section shall not prevent the use of a sales trailer by the Declarant on the Common Area or on any Lot owned by the Declarant.

#### **4.3 Nuisances; Construction Activities.**

No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No condition shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property. No Person shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.



Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods; trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Design Review Committee, which may also require screening of the storage areas.

The provisions of this Section shall not apply to construction activities of the Declarant or its respective employees, affiliates, contractors, or subcontractors during the course of construction activities or sales activities upon or about the Property.

The Board shall have the right, but not the obligation, to determine whether or not the provisions of this Section have been violated.

#### **4.4 Antennas.**

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

#### **4.5 Trash Containers and Collection.**

No rubbish, debris, garbage or trash shall be placed or kept on any Lot except in sanitary covered containers of a type, size and style which are provided by a private refuse collection company or by the city or county in which the Project is located. In no event shall such containers be kept or placed on a Lot so as to be Visible From Neighboring Property except on days of collection. All rubbish, trash, debris or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

#### **4.6 Utility Service.**

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

deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved in writing by the Design Review Committee.

**4.7 Fences, Interferences and Obstructions.**

Unless otherwise shown on the Plat, no fence, wall, hedge, shrub or other plant which obstructs sight lines at elevations between two (2) feet and six (6) feet above adjacent public streets shall be permitted on any corner lot within the triangular area formed by the streets and a straight line connecting those property lines at points twenty-five (25) feet from the intersection of those property lines (or, in the case of a rounded Lot corner, from the intersection of those property lines as extended). No trees should be permitted to remain within such area unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

**4.8 Animals.**

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

No permitted household pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any permitted household pet shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular permitted household pet is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

**4.9 Machinery and Equipment.**

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot so as to be Visible From Neighboring property, except (a) such machinery or equipment as is usual and customary in connection with residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot; and (b) machinery and equipment used by the Declarant or its agents, employees, contractors or subcontractors in connection with the construction or repair of Residences or other Improvements on the Lots or the Common Area.

**4.10 Signs.**

No Signs of whatever nature shall be erected, posted or displayed on any Lot in a location that is Visible From Neighboring Property, except (a) signs required by legal proceedings; (b) signs erected or posted on the Common Area by the Association; and (c) signs used by the Declarant in connection with the development of the Project or the marketing and sale of Lots.

**4.11 Further Subdivision, Property Restrictions, Rezoning and Timeshares.**

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

**4.12 Vehicles and Parking.**

As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, motorcycle, all terrain vehicle, pickup truck or other motor vehicle; and (b) "Street" means each of the streets shown on the Plat.

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

No Motor Vehicle which exceeds eight feet (8') in height or exceeds twenty-four feet (24') in length or which is designed or used for carrying merchandise, supplies or equipment for commercial purposes shall be parked on a Street or on a driveway or any other part of a Lot so as to be Visible From Neighboring Property, except for: (a) the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or of an Owner, Lessee or Resident, and (b) the parking for not more than seventy-two (72) hours within any seven (7) day period of recreational vehicles, motor homes and similar vehicles owned or leased

by an Owner, Lessee or Resident in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board. No Motor Vehicle of a contractor, subcontractor, supplier or vendor of an Owner, Lessee or Resident shall be parked overnight on a Lot, a Street or the Common Area. No Motor Vehicle shall be parked on any part of the Common Area other than a Street or designated parking spaces.

All terrain vehicles must be kept in garages or in another part of the Lot which is not Visible From Neighboring Property. No Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot or their guests may be parked on a Street if space for the parking of the Motor Vehicle is available in any of the following areas: (a) the garage or carport situated on the Lot of the Owner, Lessee or Resident; (b) the driveway on the Lot constructed as part of the initial construction of Improvements on the Lot by the Declarant; or (c) a driveway expansion constructed on the Lot with the written approval of the Design Review Committee.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Area.

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

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

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

#### **4.13 Drainage.**

No Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the municipality in which the Project is located. In addition, no Owner or other Person shall change

the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans.

**4.14 Garages.**

No garage shall be converted to living space or altered or used for storage of material or other purposes which would prevent the use of the garage for the parking of at least two motor vehicles, except that the Declarant may use a garage in one or more model homes for a sales office and/or a construction office. Garage doors shall be kept closed except when the opening of the door is reasonably necessary to permit ingress or egress.

**4.15 Rooftop HVAC Equipment Prohibited.**

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

**4.16 Basketball Goals and Backboards.**

Permanent or portable basketball goals or backboards may be constructed, installed, maintained or kept in the back yard of a Lot provided they are kept and used in accordance with the Design Guidelines which govern their size, design, color, material, location and hours of use. No permanent or portable basketball goals or backboards may be constructed, installed, maintained or kept in the front or side yard of a Lot.

**4.17 Playground Equipment.**

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

**4.18 Rental of Lots.**

No Owner may lease less than his entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Community Documents and that any violation of this Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease.

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

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

**4.19 Exterior Lights.**

Except as initially installed by the Declarant, no spotlights, floodlights or other lights shall be installed on the exterior of a Residence or on the ground or on any wall situated on any Lot without the prior written approval of the Design Review Committee.

**4.20 Window Cover Materials.**

Within ninety (90) days of the initial conveyance of a Lot, with a Residence constructed thereon, to an Owner from the Declarant, the Owner or Resident of the Lot shall install permanent window coverings. All window coverings Visible From Neighboring Property must show white or beige colors unless otherwise approved in writing by the Design Review Committee. No reflective materials (including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items) shall be installed or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Design Review Committee. No drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence shall be installed or placed on the inside or outside of the windows of a Residence without the prior written consent of the Design Review Committee. In no event shall windows be covered with paper, bed sheets or other temporary coverings. No metal bars or security shutters shall be installed on the outside of windows.

**ARTICLE 5**

**EASEMENTS**

**5.1 Easements for Use of Common Area.**

Every Owner, Lessee and Resident and their guests shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.10; provided, however, that if the only access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.

(b) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area (such as landscaped areas) not intended for use by the Owners, Lessees or Residents.

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

(d) The rights and easements reserved by or granted to the Declarant by this Declaration.

(e) The right of the Association to rent or lease any portion of the Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees.

(f) The right of the Board to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area.

(g) The right of the Board to permit the use of any recreational facility or amenity situated on the Common Area by persons other than Owners or Residents and their guests upon payment of such fees as may be established by the Board.

(h) The rights and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.

(i) The right of the Declarant or the Association to convey certain portions of the Common Areas to Owners of adjoining Lots in connection with the correction or adjustment of the boundary between the Common Area and adjoining Lots.

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

The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot to which such right is appurtenant.

### **5.2 Utility and Development Easements.**

Subject to such approvals of the Declarant or the Board required by this Section, a non-exclusive, perpetual blanket easement is hereby granted over and through the Common Area for the purpose of: (a) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property or adjacent land any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; and (b) ingress and egress to install, construct, operate, maintain, repair and replace such equipment and (c) storm water management and storm water drainage, as necessary or desirable for the orderly development of the Property. Such easement is hereby granted to any Person providing the aforesaid utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the surrounding vegetation and improvements to their original condition as soon as possible.

The Declarant hereby reserves the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in this Section or for any other purpose necessary or desirable for the orderly development of the Property. If the Person installing the utility or providing a service requests a specific easement by separate recordable documents, then the Declarant or the Association shall have the power to record a document locating such easements.

### **5.3 Easements to Facilitate Development.**

The Declarant hereby reserves to itself and its successors and assigns and to its contractors, subcontractors, suppliers, engineers, architects and agents a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, including without limitation: (a) the construction of all Improvements on the Common Area which Declarant deems necessary; (b) the construction of Residences and other Improvements on Lots; and (c) the storage of supplies



of building materials and equipment necessary to construct Improvements on the Common Area and the Lots.

The Declarant hereby reserves to itself, its successors and assigns the right to: (a) use any Lots owned or leased by the Declarant, any other Lot with written consent of the Owner thereof or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; and (b) install and maintain on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant deems necessary for the development, sale or lease of the Property or any other property owned by the Declarant. So long as the Declarant is selling and/or marketing the Property the Declarant shall have the right to restrict the use of parking spaces situated on the Common Area and to reserve such parking spaces for use by prospective purchasers of Lots, the Declarant's contractors, subcontractors, suppliers, agents or employees or other Persons engaged in sales, marketing or construction activities for or on behalf of the Declarant.

**5.4 Dedications and Easements Required by Governmental Authority.**

The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

**5.5 Further Assurances.**

The easements granted and reservations made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such documents or instruments deemed necessary by the Declarant to evidence or confirm the reservation or grant of rights and easements to the Declarant under this Declaration.

**5.6 Assignment of Development Rights .**

The Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or Maintenance on any portion of the Property. Any such assignments shall be in writing.

**5.7 Easement for Maintenance and Enforcement.**

The Association and its directors, officers, agents, contractors and employees, the Design Review Committee and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residence) for: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by

the Design Review Committee and that all Improvements are being properly maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance; or (e) correcting any condition which violates the Community Documents.

**5.8 Easements for Encroachments.**

If any Improvements on any Lot or portion of the Common Area now or hereafter encroach on any other portion of the Property by reason of: (a) the original construction thereof; (b) deviations within normal construction tolerances in the Maintenance of any Improvement; or (c) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

**ARTICLE 6**

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

**6.1 Formation of Association.**

The Association shall be a non-profit Arizona corporation. The Association shall have all of the common law and statutory powers conferred upon non-profit corporations under Arizona law and all powers necessary or desirable to perform the Association's duties and obligations and to exercise the rights and powers of the Association set forth in the Community Documents. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and maintenance of the Areas of Association Responsibility.

**6.2 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. The initial directors and officers of the Association shall be designated in the Articles, and such persons shall serve until their death, resignation or removal from office. Until the termination of the Declarant Control Period, the Declarant shall have the right to appoint and remove the members of the Board. After the termination of the Declarant Control Period, the Board shall be elected by the Members as provided in the Bylaws. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

**6.3 The Association Rules.**

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

**6.4 Personal Liability.**

No director or officer of the Association, no member of the Design Review Committee or of any committee of the Association, and no other person acting on behalf of the Board shall be personally liable to any Member, or to any other Person for any damage, costs, fees (including, without limitation, attorney fees), loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such person's duties and responsibilities under the Community Documents provided such person acted in good faith.

**6.5 Implied Rights.**

The Association may exercise any right or privilege given to the Association expressly by the Community 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 Community Documents or reasonably necessary to effectuate any such right or privilege.

**6.6 Identity of Members.**

The Members of the Association shall be the Owners of the Lots. All Owners of Lots shall be mandatory Members of the Association, and the Owners of each Lot shall constitute one Member, no matter how many Persons own the Lot. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as said Owner's ownership ceases for any reason, at which time said Owner's membership in the Association shall automatically cease.

**6.7 Classes of Members and Voting Rights.**

The Association shall have the following two classes of voting membership:

**Class A.** Class A Members are all Owners, with the exception of the Declarant, of Lots. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

**Class B.** The Class B Members shall be the Declarant. The Declarant shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall automatically terminate when the Declarant has conveyed all of the Lots to Purchasers.

**6.8 Voting Procedures.**

No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person 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, it will thereafter be conclusively presumed for all purposes that he or she was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made in writing at or prior to the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

**6.9 Transfer of Membership.**

The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each purchaser of a Lot shall notify the Association of said purchase within ten (10) days after said purchaser becomes the Owner of a Lot.

**6.10 Conveyance, Lease or Encumbrance of Common Area.**

The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property. In addition, the Association may convey portions of the Common Areas to make adjustments in the boundary lines between the Common Areas and adjoining Lots or public rights-of-way. Except as expressly permitted by this Section, the Common Area shall not be mortgaged or conveyed without the prior written consent or affirmative vote of the Declarant, so long as the Declarant owns one or more Lots, and the prior written consent or affirmative vote of the Owners other than the Declarant, owning at least two-

thirds (2/3) of the Lots not owned by the Declarant, thereby holding at least two-thirds (2/3) of the Class A votes.

**6.11 Suspension of Voting Rights.**

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

**ARTICLE 7**

**COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

**7.1 Creation of Lien and Personal Obligation for Assessments.**

Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs (including but not limited to reasonable attorneys' fees) incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. During the Declarant Control Period, no Regular Assessment or Special Assessment shall be levied against any Lot owned by the Declarant.

Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot, or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for

any alleged failure of the Association, the Board, or the Design Review Committee, to take some action or perform some function required of it.

## **7.2 Regular Assessments.**

At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments, and the amount to be generated through Assessments against the Lots. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot a Regular Assessment. The Regular Assessment shall be the same for each Assessable Lot. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.

The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the commencement of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board nor relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Regular Assessment for any Assessment Period is required by law, neither the budget nor the Regular Assessment shall be required to be ratified or approved by the Members.

If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, the Board may amend the budget and increase the Regular Assessment for that Assessment Period (subject to such limitations as may be imposed by Arizona law) and the revised Regular Assessment shall commence on the date designated by the Board.

## **7.3 Special Assessments.**

The Association may levy against each Assessable Lot a Special Assessment for the purpose of obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area (including fixtures and personal property related thereto), or to pay unbudgeted expenses or expenses in excess of the amount budgeted. Any Special Assessment must be approved by at least two-thirds (2/3) of the votes entitled to be cast by Class A Members who are voting in person or by proxy at a meeting duly

called for such purpose. So long as the Declarant owns any Lot, any Special Assessment must be approved in writing by the Declarant. Any Special Assessment shall be levied in an equal amount for each Assessable Lot.

**7.4 Assessment Period.**

The period for which the Regular Assessment is to be levied shall be the calendar year, except that the first Assessment Period shall commence on the date, after the date of this Declaration, that the first Lot is conveyed to a Purchaser, and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

**7.5 Obligation of Declarant for Deficiencies.**

During the Declarant Control Period, the Declarant shall pay and contribute to the Association such funds as may be necessary, when added to the Assessments levied by the Association, to pay all Common Expenses of the Association as they become due. The Board may require the contribution of funds by the Declarant from time to time as the Board deems necessary by giving written notice thereof to the Declarant. Each such notice shall state the total amount of funds required to be paid by the Declarant. In no event shall the Declarant be obligated to contribute funds to the Association in excess of the amount of Assessments that would have been payable by the Declarant if the Lots owned by the Declarant had been assessed as Assessable Lots.

**7.6 Rules Regarding Billing and Collection Procedures.**

Regular 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 such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any 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 changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

**7.7 Effect of Nonpayment of Assessments; Remedies of the Association.**

Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee 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.

To the maximum extent permitted by law, the Association shall have a lien on each Lot for: (a) all Assessments levied against the Lot; (b) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) all fines levied against the Owner of the Lot; (d) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; (e) any amounts payable to the Association pursuant to Section 8.3 or 8.4; and (f) any other amounts payable to the Association pursuant to the Community Documents.

The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, but it is not required to, record with the Mohave County Recorder's Office, a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description and street address of the Lot against which the Notice of Lien is recorded, and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

The Assessment Lien shall have priority over all liens or claims except for: (a) liens and encumbrances recorded before the Recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges against the Lot; and (c) any Recorded first Mortgage on the Lot or a seller's interest in a first contract for sale pursuant to Title 33, Chapter 6, Article 3 of the Arizona Revised Statutes Recorded prior to the Association's lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of a First Mortgage, purchased at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other



Person. Any Assessments and charges against the Lot which accrued prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

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

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 (such action may be brought without waiving the Assessment Lien); or (b) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage (including any right to recover any deficiency), subject to the notice requirements of Section 7.6. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

**7.8 Purposes for which Association's Funds May Be Used.**

The Association may use the 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 purpose of: (a) discharging and performing the Association's duties and obligations under the Community Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Community Documents or applicable law; (c) providing or promoting activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Project and the Owners, Lessees and Residents; (d) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owners, Lessees and Residents; and (e) taking such other action as the Board deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Project.

**7.9 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 Regular 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.

**7.10 Working Capital Contribution.**

Each Purchaser of a Lot 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. Funds paid to the Association pursuant to this Section may be used by the

Association for payment of operating expenses or any other purpose permitted under the Community 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 capital of the Association. Payment of Working Capital Contributions pursuant to this Section are secured by the Assessment Lien and are in addition to any other fees payable pursuant to the Community Documents and any other fees payable at the close of escrow.

No Working Capital 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 Working Capital Contribution, in which event a Working Capital Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of 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.

#### **7.11 Transfer Fee.**

Each Purchaser shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative costs resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C. Fees payable pursuant to this Section are secured by the Assessment Lien and are in addition to any other fees payable pursuant to the Community Documents and any other fees payable at the close of escrow.

#### **7.12 Reserve Contribution.**

Except as otherwise provided in this Section, each Purchaser shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution to the reserves of the Association for the periodic maintenance, repair and replacement of the major components of the Areas of Association Responsibility (the "Reserve Contribution"). The amount of the initial Reserve Contribution shall be set by the Board prior to the conveyance of the first Lot to a Purchaser. The Board may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board by more than twenty percent (20%) during any year without being approved by more than fifty percent (50%) of the votes entitled to be cast by Class A Members, and by the Declarant.

No Reserve 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 Reserve Contribution, in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of 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 Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.13. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments. Reserve Contributions payable pursuant to this Section are secured by the Assessment Lien and are in addition to any other fees provided for in the Community Documents and any other fees to be paid at the close of escrow.

#### **7.13 Reserves.**

The Board shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of the Association Responsibility. The reserves may be funded from Regular Assessments, the Working Capital Contributions paid pursuant to Section 7.10, the Reserve Contributions paid pursuant to Section 7.12 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected, and are to be segregated from and not commingled with any other funds of the Association. Unless the Association is exempt from Federal or State taxes, all reserves shall be accounted for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Reserve Account may only be used to pay costs and expenses related to the periodic maintenance, repair and replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the funds in the Reserve Account for other purposes is approved by at least two-thirds (2/3) of the votes entitled to be cast by Class A Members, and by the Declarant. Notwithstanding any other provision of this Section to the contrary, any funds held in the Reserve Account which are in excess of the funds reasonably necessary for the future repair and replacement of the major components of the Areas of Association Responsibility, as determined by the Board in its sole discretion, may be used for the construction of new improvements on the Common Area.

#### **7.14 Borrowing Power.**

The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate and

may utilize Association funds to repay any such loans; provided, however, that no portion of the Common Areas shall be mortgaged or otherwise encumbered, except with the approval of Owners holding at least two-thirds (2/3) of the votes entitled to be cast by Class A Members, and by the Declarant.

## ARTICLE 8

### MAINTENANCE

#### **8.1 Areas of Association Responsibility.**

The Association shall be responsible for the management and Maintenance of the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas so that the Project will reflect a high degree of pride of ownership. The Board, however, shall be the sole judge as to the appropriate level of maintenance of all Common Areas by the Association. Notwithstanding any duty the Association may have to maintain and repair the Common Areas, the Association and Declarant shall not be liable for any damage caused by a latent condition or by any Member, Owner, Resident or other Person. Neither the Association nor Declarant shall be liable to any Person for any claim, injury, or damage arising from the use of the Common Areas, which shall be used at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage or repair the Common Areas.

No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the written approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon.

#### **8.2 Lot Owner's Responsibility.**

Each Owner of a Lot shall be responsible for the Maintenance of its Lot, and all buildings, Residences, landscaping or other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, which is an Area of Association Responsibility. All buildings, Residences, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Design Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no

Residences, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

**8.3 Assessment of Certain Costs of Maintenance and Repair.**

In the event that the need for Maintenance of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such Maintenance shall be paid by such Owner to the Association upon demand, and payment of such amounts shall be secured by the Assessment Lien.

**8.4 Improper Maintenance and Use of Lots.**

In the event (a) any portion of any Lot is so maintained as to present a public or private nuisance or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, (b) any portion of a Lot is being used in a manner which violates this Declaration, or (c) the Owner of any Lot is failing to perform any of its obligations under the Community Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen (15) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken at the Owner's cost. The costs thereof, including an administrative fee equal to ten percent (10%) of the amount of the costs incurred by the Association, together with all damages resulting from such Owner's failure to take the required corrective action, shall be paid by such Owner to the Association within ten (10) days after demand for such payment is made in writing to the Owner. Any amounts that become due and payable to the Association by an Owner pursuant to this Section which are not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the due date until all such amounts are paid in full. All amounts that become payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien.

**8.5 Boundary Walls.**

All Residences shall be constructed so that the framed perimeter wall of the Residence does not touch a masonry wall which may be constructed on or near the boundary line between Lots. The masonry wall which separates adjacent Residences, and any wall which is located on or near the boundary line between two Lots to separate the yard areas of the two Lots, shall constitute a boundary wall. To the extent not inconsistent with this Section, the general rules of law regarding boundary walls shall apply.

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

Except as otherwise provided in this Section, the Owners of contiguous Lots who share a boundary wall shall each pay one-half (½) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (½) of such cost.

In the event that any boundary wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners who share the boundary wall.

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

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

#### **8.6 Maintenance of Walls other than Boundary Walls.**

Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot. Any wall which is placed on the boundary line between a Lot and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Area of Association Responsibility. In the event any such wall encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be. Any wall which is placed on the boundary line between a Lot and public right-of-way shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and replacement of the surface of the wall which faces the public right-of-way.

#### **8.7 Construction Activities.**

Normal construction activities and parking in connection with the construction of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration. Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Design Review Committee. The Design Review Committee may also require screening of said storage areas. Each Owner shall be obligated to: (a) keep such Owner's Lot, as well as surrounding areas of the Project, including, without limitation, all pedestrian and road rights-of-way and

drives, reasonably clean and clear of equipment, building materials, dirt, debris and similar materials in connection with or related to construction activities by or for the benefit of such Owner; and (b) make reasonable efforts to protect from damage, and in any event to promptly repair or rebuild, any structures, landscaping or other improvements situated on the Common Area that are damaged or destroyed through the act of any Owner or an Owner's Agent in connection with or related to construction activities by or for the benefit of such Owner, whether or not such act is negligent or otherwise culpable.

## ARTICLE 9

### INSURANCE

#### 9.1 Scope of Coverage.

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

- (a) Comprehensive General Liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. 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 Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;
- (b) Property insurance on all Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.
- (c) Worker's Compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;
- (d) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, against Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) the name of the insured shall be the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

The premiums for any insurance obtained by the Association pursuant to this Section shall be included in the budget of the Association and shall be paid by the Association.

### **9.2 Certificates of Insurance.**

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

### **9.3 Payment of Insurance Proceeds.**

With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility. The Association is irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board shall have full and complete power to act for the Association in this regard and may, in its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the Trustee shall have authority to negotiate losses under any policy purchased by the Association.

### **9.4 Repair and Replacement of Damaged or Destroyed Property.**

Any portion of the Common Areas which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (1) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or, (2) Owners representing at least eighty



percent (80%) of the Class A votes, and the Declarant, vote not to repair or replace the damaged or destroyed Improvements. Any cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association.

If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance, and the remainder of the proceeds shall be retained by the Association as an additional capital reserve.

**9.5 Insurance to be obtained by Lot Owners.**

Each Owner shall be responsible for obtaining and maintaining in full force and effect (a) property insurance on the Residence and all other Improvements situated on the Owner's Lot and on all personal property of the Owner; and (b) public liability insurance providing coverage for liability arising out of the death, personal injury or property damage arising out of the ownership or use of the Owner's Lot.

**ARTICLE 10**

**DISPUTE RESOLUTION**

**10.1 Defined Terms.** As used in this Article 10, the following terms shall have the meaning set forth below:

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

(b) **"Bound Parties"** means: (i) the Declarant; (ii) the Association (including its officers and directors and employees); (iii) all Owners, Lessees and Residents; (iv) the entity which platted the Project if different from but affiliated with Declarant; (v) the general contractor for the Project; and (vi) the subcontractors, material suppliers, labor suppliers, architects, engineers and consultants of any of the said contractors, including but not limited to their respective members, managers, directors, officers, partners, employees, agents and independent contractors.

(c) **"Claim"** means: (i) any claim or cause of action arising out of or related in any way to an Alleged Defect, including, without limitation, any claim or cause of action for

breach of express or implied warranties; (ii) any claim that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development of the Project; or (iii) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The term "Claim" shall not include any claim or cause of action by the Association against an Owner (other than the Declarant), Lessee or Resident relating to any Construction or Modification made by or on behalf of such Owner, Lessee or Resident in violation of the Community Documents.

**10.2 Agreement to Resolve Certain Disputes Without Litigation.**

All Bound Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 10.

**10.3 Notice of Claim.**

Any Bound Party having or alleging 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"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim.

If the Claimant is the Association, the Association must provide written notice to all Members prior to submitting the Claim to mediation pursuant to Section 10.4, which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of 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 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 attorneys' fees and expert fees and costs necessary to pursue the claim against 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 the 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 to all members must be accompanied by an

affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

#### **10.4 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) additional days within which to submit the Claim to mediation under the auspices of an American Arbitration Association ("AAA") or such other independent mediator or mediation service selected by mutual agreement of the Claimant and the Respondent.

If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

If the Parties do not settle the Claim within ninety (90) 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.

#### **10.5 Binding Arbitration.**

In the event a Claim is not resolved by mediation, the Claimant shall have sixty (60) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration. If the Claimant fails to timely submit the Claim to binding arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by binding arbitration conducted in accordance with this Section. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration, the arbitration shall be conducted in accordance with the following rules:

(a) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other AAA rules as may be applicable to the arbitration (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 10.5, the provisions of this Section 10.5 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 (c) is referred to in this Section 10.5 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 (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 witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

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

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

(j) **Hearings.** Hearings may be held at any place within 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.

#### **10.6 Right to Enter, Inspect, Repair and/or Replace.**

Within a reasonable time after the receipt by the Declarant of a Claim Notice, the Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residence

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 deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot, or any Improvement constructed on the Common Area or a Lot which is the basis for the Claim (the "Alleged Defect"). In conducting such inspection, testing, repairs and/or replacement, Declarant 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 the Declarant to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant is not otherwise obligated under applicable law or any limited warranty provided by the Declarant in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the 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 the Declarant. In no event shall any statutes of limitations be tolled during the period in which the Declarant conducts any inspection or testing of any Alleged Defects.

**10.7 Use of Funds.**

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

**10.8 Approval of Claim Notice; Legal Action; Arbitration; Expenses.**

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 over seventy-five percent (75%) of the votes entitled to be cast by Class A Members, 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 such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice to all Members received from the Association in accordance with Section 10.3.

**10.9 Conflicts.** In the event of any conflict between this Article 10 and any other provision of the Community Documents, this Article 10 shall control. In the event of any conflict between the provisions of this Article 10 and the terms of any express warranty provided to a Purchaser by the Declarant or any third party home warranty company in connection with the purchase of a Lot from the Declarant, the provisions of the express warranty shall control; provided, however, that if the Claim is being asserted by the Association, the approval of the

Members of the Association required by Section 10.8 must be obtained prior to the Association demanding arbitration of the Claim or filing any legal action with respect to the Claim.

**NOTICE:**

**BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 10 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 10. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 10, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A COURT OR JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A COURT OR JURY RELATING TO A CLAIM.**

**IF AN OWNER, THE ASSOCIATION, OR ANY OTHER BOUND PARTY FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT OR ANY OTHER BOUND PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 10 (OR ANY OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM PURSUANT TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.**

**ARTICLE 11**

**GENERAL PROVISIONS**

**11.1 Enforcement.**

The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:

- (a) imposing reasonable monetary fines after notice and an opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot, or against any guest or invitee of the Owner or any Lessee or Resident;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;
- (d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association;
- (e) exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;
- (f) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed; and any such action shall not be deemed a trespass;
- (g) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in the Project;
- (h) towing vehicles which are parked in violation of this Declaration or the Association Rules; and
- (i) filing a suit at law or in equity, subject to Article 10, to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled.



(j) recording a written notice of violation by any Owner, Lessee or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot, or constitute a waiver of any right of the Association to enforce the Community Documents.

The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

Any Owner shall also have the right, but not the obligation, to enforce this Declaration in any manner available at law or in equity, subject to Article 10. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

#### **11.2 Duration; Termination.**

This Declaration, as it may be amended pursuant to Section 11.3, shall run with the land and bind the Property and be in full force and effect in perpetuity unless terminated as provided in this Section. 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 at least ninety percent (90%) of the votes entitled to be cast by Class A Members, and by the Declarant. 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. Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. So long as the Declarant owns one or more Lots, no termination of this Declaration shall be effective unless approved in writing by the Declarant.

### **11.3 Amendments.**

This Declaration may be amended at any time by the affirmative vote of at least two-thirds (2/3) of the votes entitled to be cast by Class A Members, and by the Declarant. So long as the Declarant owns one or more Lots, any amendment to this Declaration must be approved in writing by the Declarant. In addition, the provisions of Article 10 shall not be amended without the prior written consent of the Declarant even if the Declarant no longer owns any Lot at the time the amendment is adopted. So long as the Declarant owns one or more Lots, the Declarant may unilaterally amend this Declaration to comply with the requirements or guidelines of the United States Department of Veterans Affairs, the United States Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Any amendment pursuant to this Section shall be signed by the President or Vice President of the Association and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

Any challenge to an amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment.

### **11.4 Condemnation of Common Area.**

If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association and used for such purposes as may be determined by the Board.

### **11.5 Interpretation.**

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

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

**11.6 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.

**11.7 Change of Circumstances.**

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

**11.8 Laws, Ordinances and Regulations.**

The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Declarant, the Board or the Design Review Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**11.9 References to this Declaration in Deeds.**

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

**11.10 Gender and Number.**

Wherever the context of this Declaration so requires, words used in the masculine, feminine, or neuter genders, or the singular or plural number, shall include the others.

**11.11 Captions and Titles.**

All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or

otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof. Unless otherwise specified, all references in this Declaration to Articles or Sections refer to Articles and Sections of this Declaration.

**LEWTON OPERATING COMPANY, a  
Wyoming Limited Partnership**

By: [Signature]

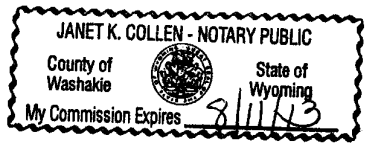
Its: [Signature]

State of Wyo )  
                  ) ss.  
County of Washakie

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of Aug, 2010, by Charles Lewton, the Partner of Lewton Operating Company, a Wyoming Limited Partnership, on behalf of the company.

Janet K Collier  
Notary Public

My Commission Expires:  
8/11/13



**APPROVAL OF DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR MESQUITE BAY AT SAILING HAWKS**


The Architectural Committee for Sailing Hawks and Diane M. Wildfang FKA Diane M. Komick, Trustee of the Diane M. Komick Trust dated December 15, 1992, as the Declarant under the Declaration of Covenants, Conditions, Restrictions and Easement for Sailing Hawks recorded in Book 4846, Page 546, in the records of the County Recorder of Mohave County, Arizona, hereby approves the foregoing Declaration of Covenants, Conditions and Restrictions for Mesquite Bay at Sailing Hawks.

Dated this 13 day of January, 2010.

**ARCHITECTURAL COMMITTEE  
FOR SAILING HAWKS**

By:  \_\_\_\_\_

Its: Authorized Representative

 \_\_\_\_\_  
Diane M. Wildfang FKA Diane M. Komick,  
Trustee of The Diane M. Komick Trust Dated  
December 15, 1992

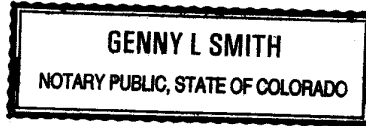
STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ of the Architectural Committee for Sailing Hawks.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF Colorado )  
 ) ss.  
County of La Plata )



The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of January, 2010, by Diane M. Wildfang FKA Diane M. Komick, the Trustee of Diane M. Wildfang FKA Diane M. Komick, Trustee of the Diane M. Komick Trust dated December 15, 1992.

Genny L Smith  
Notary Public

My Commission Expires:

7-24-13