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***AMENDED AND RESTATED***  
**DECLARATIONS OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS FOR**  
**NORTH POINTE**

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FOR  
NORTH POINTE**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**NORTH POINTE**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for North Pointe is made this 6th day of February, 2006, by Fidence Development, LLC, an Arizona Limited Liability Company (the "Declarant").

**INTRODUCTION**

A. Declarant is the Owner of fee title to real property located in Mohave County, Arizona, and, Declarant is attorney in fact under a power of attorney to include an additional parcel in and subject such parcel to this Declaration. The Property owned by Declarant and over which Declarant holds power as attorney in fact are described in Exhibit A hereto and are hereby subjected to this Declaration.

B. The real property described in Exhibit A will be developed to contain single family dwelling units. As part of the development of the Property, certain landscaping and drainage, roadway, access and other easements will be created over portions of the Property which will benefit all portions of the Property.

C. Declarant has deemed it desirable to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Areas of Association Responsibility (as defined in Section 1.3 of this Declaration) 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 and replacement and administration of the Common Area.

D. By this Declaration the Declarant intends to create equitable servitudes and covenants appurtenant to and running with the Property and any other person or entity acquiring any right, title or interest in or any portion of the Property.

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

**ARTICLE 1**

**DEFINITIONS**

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



1.1 "Additional Property" means: (a) the real property described in Exhibit B hereto, together with all Improvements located thereon, owned by Declarant's Affiliate; and (b) any other real property, together with the Improvements located thereon, located not more than one-half mile from the real property described in Exhibit A.

1.2 "Affiliate" means any Limited Liability Company, Corporation or business trust which is substantially owned and is controlled by the same principles who own and control Declarant.

1.3 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 7.2 of this Declaration.

1.4 "Architectural Committee" means the committee created pursuant to Section 3.10 of this Declaration.

1.5 "Areas of Association Responsibility" means (i) all Common Area; and (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association.

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

1.7 "Assessable Lot" means each Lot other than Lots owned by the Declarant or Declarant's Affiliate.

1.8. "Assessment" means an Annual Assessment or Special Assessment.

1.9 "Assessment Lien" means a lien created and imposed by Article 7 of this Declaration, but excepting those referred to as "Other Liens" created under Section 7.8.2.1.

1.10 "Assessment Period" means the period set forth in Section 7.4 of this Declaration.

1.11 "Association" means an Arizona nonprofit corporation, and its successors and assigns.

1.12 "Association Documents" means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules and Design Guidelines, all as amended from time to time.

1.13 "Association Rules" means the rules adopted by the Board pursuant to Section 6.3 of this Declaration, as amended from time to time.

1.14 "Board" means the Board of Directors of the Association.

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

1.16 "Common Area" means (i) all areas designated as Common Areas according to the

preliminary approved by Mohave County, which are thereafter confirmed as so designated in final plats approved by Mohave County and thereafter Recorded in the Records of Mohave County, Arizona; (ii) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest; (iii) all land and the Improvements thereon which is designated as Common Area in Additional Property annexed to this Declaration; and (iv) for purposes of maintenance and assessments, all real property and Improvements situated thereon, which is dedicated to the local state or federal government, but which such government has not accepted all duties for maintenance thereto and then only until such governmental entity accepts all maintenance duties thereon.

1.17 "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.

1.18 "Declarant" means Fidence Development, LLC, any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.19 "Declaration" means this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, as amended or restated from time to time.

1.20 "Design Guidelines" means the procedures, standards and guidelines adopted by the Architectural committee pursuant to Section 3.10 of this Declaration, as amended or supplemented from time to time.

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

1.22 "Development Plan" means the NORTH POINTE preliminary plat, as that preliminary plat may be amended from time to time by final plats, amended plats and administrative adjustments or amendments thereto approved by Mohave County and Recorded by or allowed to be Recorded by Mohave County.

1.23 "Emergency Access" means a location on a roadway that contains a breakaway or locked entrance gate, cable, posted restriction or impediment that is designated in the Plat, by Mohave County or by Declarant (at any time Declarant owns a Lot in the Project) as an access for "Emergency Vehicles or Emergency Personnel" with Emergency Vehicles and Emergency Personnel being defined as including, but not limited to fire trucks and fire personnel; police vehicles and police personnel; ambulances and ambulance personnel.

1.24 "Emergency Access Route" means those portions of the common area roadways and Common Areas necessary to access such roadways within the Project, which are reasonably necessary for Emergency Personnel and Emergency Vehicles as access from an Emergency Access to

any portion of the Project or to Additional Property located within one-half mile of the Project for which Declarant has provided an easement at any time Declarant owns a Lot in the Project. Any such easement to Additional Property shall only be effective if it is in writing and Recorded in Mohave County, contains a description of its purpose, contains a legal description of real property benefitted and describes the Emergency Access Route and Emergency Access by street name or other sufficient designation.

1.25 "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.

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

1.27 "Improvement" means : (i) any Structure, Residential Unit, building, fence or wall; (ii) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (iii) any road, driveway or parking area; (iv) any trees, plants, shrubs, grass or other Landscaping improvements of any type and kind; (v) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (vi) any other structure of any type, kind or nature.

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

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

1.30 "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 Residential Unit, building, structure or other Improvements situated thereon.

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

1.32 "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.

1.33 "Member" means any Person who is a member of the Association as provided in Section 6.6 of this Declaration.

1.34 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall 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 Lots subject to a deed of trust pursuant to Arizona Revised Statutes, Section 33-801, et. seq., the Trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed the Owner.

1.35 "Parcel" means each area of real property in the Project, and all Improvements situated thereon, shown as a separate parcel of land on the Development Plan, provided, however, that in no event shall any Parcel be split in any manner into portions under separate ownership.

1.36 "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, Limited Liability Company, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.37 "Plat" means the preliminary plat of NORTH POINTE and all amendments, supplements and corrections thereto and shall be superceded by Recordation of final plats, amendments, supplements and corrections thereto as to phases referenced in such final plat(s). The first phase of the Project is subject to a final plat Recorded as reception/instrument number 2005111505, Records of Mohave County, Arizona as it may hereafter be amended, supplemented or approved.

1.38 "Property" or "Project" means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon and all real property together with all Improvements thereon located, or which is annexed and subject to this Declaration pursuant to Section 10.19 below, but excluding any Property together with all Improvements thereon which is withdrawn or deannexed from the Property or Project.

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

1.40 "Recording or Record" 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.

1.41 "Resident" means each person occupying or residing in any Residential Unit.

1.42 "Residential Unit" 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.

1.43 "Special Assessment" means any assessment levied and assessed pursuant to Section 7.3 of this Declaration.

1.44 "Visible from Neighboring Property" means, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any non-improved part of any Lot, the Common Area or any public street within or adjacent to the Project.

## ARTICLE 2

### PROPERTY AND PERSONS BOUND BY DECLARATION

2.1 General Declaration. Declarant is the record owner of fee title to the Property except as to one parcel as described in Exhibit A as to which Declarant holds a power of attorney and the express power and right as attorney in fact to subject the same to this Declaration. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions in furtherance of the general plan for the development, sale and use of the Property and 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 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. By acceptance of a deed or by acquiring any interest in any of the Property, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns: (i) to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof; (ii) that by so doing they acknowledge that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, lessees and transferees thereof; and (iii) that Additional Property may be annexed and become a portion of the Property. This Declaration shall also be binding upon and shall be for the benefit of and enforceable by the Association.

2.2 Disclaimer of Implied Covenants. Nothing contained in this Declaration and nothing which may be represented to a purchaser of a Lot by real estate brokers or salesmen or other person 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 Effect of Declaration. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of the provisions with public laws, ordinances and regulations applicable thereto.

2.4 Emergency Access. The Property may be served by one or more Emergency Accesses

and may be subject to or hereafter subjected to an Emergency Access Route for real property located within one-half mile of the Property. Each Owner and Resident acknowledges and agrees for themselves, their families, and guests that: (i) there are or there may hereafter be established easements for Emergency Access and Emergency Access Routes into, over and across the Common Area Roadways and Common Areas to obtain access to such Roadways; (ii) the Emergency Access and Emergency Access Routes may be utilized by Emergency Vehicles and Emergency Personnel for training and to respond to calls, emergencies and incidents within the Project or to other real property for which such Emergency Access(es) and Emergency Access Routes are designated under Sections 1.23 and 1.24; (iii) the owner or owners of real property designated under Sections 1.23 and 1.24 being benefitted by such Emergency Access and Emergency Access Routes are not responsible for any portion of the maintenance of such Emergency Accesses or Emergency Access Routes except those portions of the Emergency Access Routes, which provide access for such Owners to the Common Area Roadways; and (iv) they agree that they have no rights to utilize such Emergency Accesses unless they are directed to utilize them or are transported through them by Emergency Personnel or they utilize the same during an actual emergency which threatens their lives or physical well being.

2.5 Entry Gate. The Declarant may construct a card activated or electronically activated entry gate at one or more entrances to the Project or portions of the Project in order to limit access and provide more privacy for the Owners and Residents and Declarant or the Association may thereafter deactivate and/or remove the same. Each Owner and Resident acknowledges and agrees for themselves and their families and guests that: (i) the entry gates do not guarantee the safety or security of the Owners and Residents or their families and guests; (ii) the entry gates do not guarantee that any unauthorized Person will not gain access to the Project; (iii) the Declarant and the Association and their respective directors, officers, agents and employees do not represent or warrant that the entry gates may not be compromised or circumvented or that the entry gates will present loss by burglary, theft or other criminal act; and (iv) neither the Declarant nor the Association nor their respective directors, officers, agents and employees shall be liable for any loss or damage resulting from unauthorized persons gaining entry into the Project. Any entry gate that is installed shall be installed in such a manner as to allow for access for emergency vehicles and personnel.

### ARTICLE 3

#### ARCHITECTURAL CONTROL

3.1 Approval Required. Unless performed by Declarant, Declarant's Affiliates or their Contractors or Agents: no devegetation, excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee; no Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee; no addition, alteration, repair, change, landscaping or other work which in any way alters the appearance of any part of a Lot, or the exterior appearance of any Improvements located thereon, shall be made or done without the prior approval of the Architectural Committee. Any Owner other than Declarant and Declarant's Affiliates desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any other work which requires the prior written approval of the Architectural Committee shall submit to the Architectural

Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or other work 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 Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with any fee payable pursuant to Section 3.5 of this Declaration and all supporting information, plans and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, then the applicant may provide the Architectural Committee ten (10) days written Notice requesting approval and, if the Architectural Committee fails to disapprove such application within ten (10) days after Notice is complete, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.2 Review of Plans. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Article 3 if the Architectural Committee determines, in its sole and absolute discretion, that the proposed work violates any provision of this Declaration or the Design Guidelines. In addition, the Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Article 3 even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that the proposed addition, alteration, repair, change or other work, or some aspect or portion thereof, is unsatisfactory or aesthetically unacceptable. In reviewing the proposed plans and specifications, the Architectural Committee may consider any and all factors which the Architectural Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (i) the harmony of the proposed Improvements with existing Improvements in the Project, Design Guidelines or with Improvements previously approved by the Architectural Committee but not yet constructed; (ii) the proposed location of the proposed Improvements in relations to existing topography, finished grade elevations, roads, Common Areas and other structures; and (iii) the exterior design, finish materials and the color of the proposed Improvements. The Architectural Committee may approve plans and specifications which fail in some material way to comply with the requirements of this Declaration or the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that some particular feature of the Lot or the proposed Improvements allows the objectives of the violated requirements of this Declaration or the Design Guidelines to be substantially achieved. Also, the Architectural Committee may approve plans and specifications which fail to comply with the requirements of this Declaration or the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that the failure is not material. The provisions of this Article do not apply

to, and approval of the Architectural Committee shall not be required for the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements or any other work made by, or on behalf of, the Declarant or an Affiliate of Declarant. The approval required of the Architectural Committee pursuant to this Article 3 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.

3.3 Construction of Improvements. Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.4 No Changes Without Approval. Any construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee must be done or performed in accordance with the plans and specifications approved by the Architectural Committee. No change, deletion or addition to the plans and specifications approved by the Architectural Committee may be made without the prior written approval of the Architectural Committee.

3.5 Review Fee. The Architectural Committee shall have the right to charge a reasonable fee for reviewing requests for approval of any construction, installation, addition, alteration, repair, change or other work pursuant to this Article 3, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee. The fee charged by the Architectural Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Architectural Committee in consulting with an architect or engineer with respect to the plans submitted.

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

3.7. No Warranty. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Article 3 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.8 Conditional Approval. The Architectural 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 Architectural Committee in an amount determined by the Architectural Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy and nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement,



and (ii) 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 or any nuisance or unsightly condition created by the Owner or its agents or contractors, any such bond shall be released or security shall be fully refundable to the Owner upon: (i) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee; and (ii) the Owner's written request to the Architectural Committee.

3.9 Improvements to Areas of Association Responsibility. If the plans and specifications 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 Architectural Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work 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.

3.10 Architectural Committee. So long as the Declarant owns any Lot, the Declarant shall have the sole right to determine the number of members on the Architectural Committee and to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the Board shall determine the number of members on the Architectural Committee, and the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee (except Declarant may still do so through proper action of the Board of Directors for the Association), and in that event the Declarant may require, for so long as the Declarant owns any Lot, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size and height of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and appearance. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove the construction, installation or alteration of Improvements within a specified portion of the Project.

#### ARTICLE 4

##### USE RESTRICTION

4.1 Residential Use. All Residential Units 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

Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; (iv) the use of the Residential Unit for trade or business in no way destroys or is incompatible with the residential character of the Residential Unit or the surrounding neighborhood; (v) the trade or business is conducted only inside the Residential Unit or inside an accessory building or garage, and does not involve the viewing, purchasing or taking delivery of good or merchandise at, to, from or in any Residential Unit; (vi) the trade or business is conducted by a Resident or Residents of the Residential Unit with no employee working in or from such Residential Unit who is not a Resident thereof; (vii) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood or result in on street parking; (viii) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (ix) the use of the Residential Unit for trade or business does not violate any other provision of the Association Documents. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residential Unit by Owner thereof shall not be considered a trade or business within the meaning of this Section. The terms of this Section 4.1 are subject to applicable statutes or rules which supercede the limitations herein by requiring that a specific use which may otherwise be defined as a prohibited non-residential use under this Declaration must be allowed, but any such requirement shall be applied to allow uses that are no more expansive than are actually required by such statutes or rules and by retaining such limitations under this Section 4.1 as may be enforced. Declarant and Declarant's Affiliates shall not be subject to the terms of this Section 4.1 or the following Section 4.2 and shall specifically be allowed to maintain one or more model homes or sales offices within the Project and one or more construction offices and storage sites within the Project.

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, except for housing a Guard during development, as may be determined appropriate in Declarant's sole discretion. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural 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 Architectural Committee. This Section 4.2 shall not apply to Improvements and trailers utilized by Declarant or Affiliate's of Declarant.

4.3 Nuisances: Construction Activities. No rubbish or debris of any kind shall be placed

or permitted to accumulate upon or adjacent to any Lot, and no odors 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 occupants of such other property. No condition shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. 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, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant.

4.4 Diseases and Insects. 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.

4.5 Antenna. The installation, use or maintenance of any antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed on any Lot in accordance with the Design Guidelines. Except to the extent that the Federal Communications Act and the Regulations adopted pursuant to such Act (collectively, the "FCC Rules") prohibit prior approval for certain devices, no antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed, installed, used or maintained on any Lot without the prior written approval of the Architectural Committee. If any FCC Rules modify or override a portion of the Design Guidelines, the remaining Design Guidelines shall remain in full force and effect.

4.6 Mineral Exploration. 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.

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

4.8 Clothes Drying Facilities. 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.

4.9 Utility Service. No lines, wires, or other devices for the communication or transmission of election current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in

conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural 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 by the Architectural Committee.

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

4.11 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that dogs, cats not to exceed a total of one of each or two in total and, parakeets or similar household birds not to exceed a total of two (2) may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock 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 animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. The Board may adopt rules and regulations further restricting and governing animals within the Property, which rules may include, without limitation rules providing for the removal from the Property of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Occupants.

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

4.13 Signs – General. No emblem, logo, sign or billboard of any kind whatsoever (including, but not limited to, commercial, "for sale," "for rent" and similar signs) which are Visible from Neighboring Property shall be erected or maintained on any Lot except: (i) signs required by legal proceedings or by applicable law; (ii) certain "political signs" as described in Section 4.13.1

below; (iii) certain flagpoles and flags as described in Section 3.17.3 below; (iv) Residential Dwelling identification signs not exceeding 6 x 12 inches in size; (v) Project identification signs and other marketing signs installed by Declarant or the Association; (vi) one small alarm company sign located near the front door of a Residential Dwelling; (vii) one standard 20" x 24" "for sale" sign; and (viii) such other signs as are originally installed by Declarant and/or its Affiliates and/or approved by the Board. "For lease" and "for rent" signs are expressly prohibited on any Lot.

4.13.1 Political Signs. The foregoing limitation on signs shall not preclude the placement of a "political sign" on a Lot as defined in A.R.S. §33-1808; provided, further, to the fullest extent allowed by law, that there may not be more than one political sign on a Lot at any one time, the dimensions of such sign shall not exceed 24 inches by 24 inches, and the political sign may not be displayed on the Lot more than forty-five (45) days prior to or seven (7) days after the election proceeding to which it applies. If the applicable political sign ordinance of the County, as amended from time to time, is at any time less restrictive than the limitations contained in this Section 3.17, then the restrictions of the County ordinance on political signs shall apply in lieu of this Section 3.17 and this Section 3.17 shall be deemed automatically amended as necessary to comply with such County ordinance.

4.13.2 Display of Flag. As further provided in A.R.S. §33-1808, a Member may display an American flag on his Lot consistent with the federal flag display laws codified in the United States Code. The Association shall adopt Rules regarding the display of the American flag, including regulating the size and location of flagpoles, as long as such Rules do not result in the prohibition of the installation of the flagpole or unduly limit displaying the American flag. In no event may a flagpole be installed on a Lot until the height and location of the pole and the flag to be displayed thereon have been approved by the Board.

4.13.3 Common Area For Sale/For Rent Sign. After Declarant has conveyed all of the Lots in the Project to Purchasers, the Association may erect, at its sole cost and expense, a single "for sale/rent" sign listing available properties in the Project. If such sign is erected, the Association shall install the sign on the Common Area at or near the entrance to the Project or at or near the clubhouse with the particular location to be as determined by the Board. The signage location shall include an adjoining area or box to contain marketing brochures applicable to the available properties prepared at the sole cost and expense of the Owners marketing their properties, as they may desire to make available to the public. The Association shall have no responsibility for the content of any marketing brochures prepared by Owners or their agents. If such sign is erected then the Board may prohibit the placement of "for sale" signs on Lots. For rent or for lease signs shall not be placed on any Lot or in the window of any home at any time nor shall the Board approve any such signs.

4.14 Further Subdivision, Property Restrictions, Rezoning and Timeshares. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Architectural Committee. Notwithstanding the forgoing, the Architectural Committee and/or the Board shall not unreasonably withhold consent to Lot line adjustments which are reasonably appropriate and do not alter the overall character of the

Lots or the size of the Lots at issue by more than five percent (5%) in total size per Lot. 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 Architectural Committee. 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 Architectural Committee and the proposed use otherwise complies with this Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly or any other type or revolving or periodic Occupancy by multiple owners, cooperators, licensees or timesharing participants.

4.15 Vehicles and Parking.

4.15.1 As used in this Section 4.15, the term "Motor Vehicle" means a car, van, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, pickup truck, boat, personal water craft, other water craft or other motor vehicle.

4.15.2 No mobile home, travel trailer, tent trailer, trailer, camper shell, boat, boat trailer or other similar equipment or vehicle may be parked, kept or stored on any Lot where it is visible or on the Common Area without the prior written approval of the Architectural Committee.

4.15.3 Except as permitted by Subsection 4.15.4 or 4.15.5, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area without the prior written approval of the Architectural Committee.

4.15.4 Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage of the Residential Unit unless there is insufficient space within the garage for the parking of all such Motor Vehicles, in which case such Motor Vehicles may be parked in the driveway situated on the Lot provided such Motor Vehicles do not exceed 7 feet in height and do not exceed 18 feet in length, are not used for commercial purposes and do not display any commercial name, phone number or message of any kind. No Motor Vehicle of any kind may be stored in a Lot except in a garage, and no Motor Vehicle of any kind may be stored if it is covered by a car cover, tarp or other material. Recreational vehicles, motor home and similar vehicles owned or leased by an Owner, Lessee or Resident which exceed 7 feet in height and/or exceed 18 feet in length may be parked in the driveway on a Lot for the purpose of loading or unloading, but in no event shall such recreational vehicle, motor home or similar vehicle be parked in the driveway for more than twenty-four (24) or for more than seventy-two (72) hours within any seven (7) day period.

4.15.5 Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on a public or private street for a period not to exceed 72 hours within any seven (7) day period.

4.15.6 The Board of Directors shall have the right and power to adopt rules and regulations governing the parking of Motor Vehicles on Lots and the Common Area and implementing and enforcing the provisions of this Section 4.15, including but not limited to, enforcement via fines or the towing of motor vehicles at the owner's expense. In the event of any

conflict or inconsistency between the provisions of this Section 4.15 and the rules and regulations adopted by the Board of Directors, the provisions of this Section 4.15 shall control.

4.15.7 No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot or Common Area in such a manner as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked on any Lot or Common Area in such a manner as to be Visible From Neighboring Property.

4.15.8 The Board shall have the right to have any Motor Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Association Documents towed away at the sole cost and expense of the owner of the Motor Vehicle. Any expense incurred by the Association in connection with the towing of any Motor Vehicle shall be paid to the Association upon demand by the owner of the Motor Vehicle or, where applicable to secure its release, to the party who towed and holds the vehicle. If the Motor Vehicle is owned by an Owner, any amounts payable to the Association may be enforced by civil litigation and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of other liens under Section 7.8.2.1.

4.15.9 The restrictions and limitations of Section 4.15 and any rules and regulations adopted by the Board are expressly subject to the provisions of ARS § 13-1809 or its successor statute(s), as amended or added from time to time.

4.16 Variances. The Architectural Committee may, with the approval of the Board, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) the activity permitted under the variance will not have any material adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

4.17 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvements 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 drainage plans on file with the county in which the Project is located.

4.18 Garages and Driveways. No garage shall be converted to living space or altered or used for purposes which would prevent the use of the garage for the parking of the number of vehicles for which it was designed. The interior of all garages shall be maintained in a neat, clean and sightly condition.

4.19 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 Residential Unit or other buildings so as to be Visible From Neighboring Property.

4.20 Basketball Goals and Backboards. NO basketball goal or backboard should be attached to a Residential Unit or other building. Basketball goals and backboards attached to a free-standing pole may be installed on a Lot provided the location, design and appearance of the basketball goal and backboard is approved in writing by the Architectural Committee.

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

4.22 Rental of Lots. No Owner may lease less than his entire Lot and the Residential Unit situated thereon or enter into a lease or rental agreement for a rental or lease term of less than six (6) months in duration. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of this Declaration and the Association Rules 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. There shall be no subleasing of Residential Units or assignments of leases. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (i) the commencement date and expiration date of the lease term; (ii) the names of each of the Lessees and each other person who will reside in the Residential Unit during the lease term; (iii) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (iv) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot and the Residential Unit situated thereon must provide the Lessee with copies of this Declaration and the Association Rules. The Owner shall be liable for any violation of this Declaration or the Association Rules by the Lessees or other persons residing in the Residential Unit and their guest 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.

4.23 Occupancy Use Restrictions. Except as specifically required by applicable State, local or Federal law, rule or regulation: (a) multi-family use in excess of two families (a family being defined as a man and/or woman, married or unmarried or adult couple, and/or their children and their relatives including those by blood, marriage, adoption or foster child or parent) is prohibited to the fullest extent allowed by law; and, in any event no Residential Dwelling unit shall be Occupied by more than the Lessor of a total of (i) two (2) Occupants per bedroom (a bedroom being defined as a room originally built as a bedroom or combination bedroom/guestroom/office or other space, but not a garage, in a home thereafter remodeled or converted to be a bedroom with the remodeling being done with the approval of the Architectural Committee) or (ii) ten (10) Occupants. Each and every Owner and Occupant agrees that such Occupancy in excess of the applicable limits (including any time or other criteria applicable under the definition of Occupant) as set forth below shall be enjoined in equity; that the damages suffered or which may be suffered due to such an injunction, preliminary injunction or temporary restraining order are difficult to determine and, thus, four dollars (\$4.00) per day per Occupant in excess of the number of Occupants allowed (to a maximum of ten dollars (\$10.00) per day for any number of Occupants) is the maximum damage from any temporary restraining order, preliminary injunction or injunction enjoining use or Occupancy in excess hereof and, thus, this figure shall be the maximum (but not the minimum) bond on any temporary or



preliminary injunction restricting use or Occupancy in excess thereof or compelling excess Occupants to move from the Residential Dwelling unit. For purposes of this Section 4.23, "Occupant" means any human being that resides, lives or stays in a Residential Unit or on or at a Lot: (i) for over seven consecutive days at any one time; (ii) for more than 30 cumulative days per year; or (iii), for more than 30 cumulative days per year a motor vehicle, trailer or camper or combination of the same located on or at a Lot.

## ARTICLE 5

### EASEMENTS

#### 5.1 Easements for Use of Common Area

5.1.1 Every Owner and Resident and their allowed 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:

(i) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.10 of this Declaration; provided, however, that if 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 guest and invitees.

(ii) 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.

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

(iv) The rights and easements granted to the Declarant and Declarant's Affiliates by this Declaration.

(v) 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 guest and invitees.

(vi) 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.

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

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

5.1.3 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.

5.1.4 Owners, residents and their guests shall be subject to and abide by any and all non-access easements set forth in the Recorded plat or other instrument Recorded with the Mohave County Recorder.

5.1.5 An Owner may not rent or lease the right to use Common Area amenities to any Lessee separate and apart from the Lot nor may a Lessee of a Lot use the Common Area amenities unless the Lessee resides on the Lot.

## 5.2 Utility, Development and Drainage Easements.

5.2.1 A non-exclusive, perpetual blanket easement is hereby granted over and through the Common Area and any public utility easements shown on the Plat for the purpose of: (i) 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 (ii) ingress and egress to install, construct, operate, maintain, repair and replace such equipment and (iii) storm water management, storm water drainage and water, as necessary or desirable for the orderly development of the Property and the adjacent property described in Exhibit B as provided in Section 5.10. Such easement is hereby granted to any Person providing the aforesaid utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Such easement for drainage is provided to any person installing, repairing, refurbishing, channeling or improving the drainage ditches and ways on the property for the Development of the Property or the Property described in Exhibit B as provided in Section 5.10. 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 (to the extent practical) as soon as possible.

5.2.2 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 Section 5.2.1 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 easement. Declarant reserves the right to grant and/or further describe the easements referenced in Sections and Sub Sections 1.23, 1.24, 2.4, 2.5, 4.13 and 5.2.

5.3 Easements to Facilitate Development.

5.3.1 The Declarant hereby reserves to itself, its Affiliates and its successors and assigns 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: (i) temporary construction easements; (ii) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (iii) easements for the construction, installation and Maintenance of Improvements on the Property or Improvements reasonably necessary to serve the Property.

5.3.2 The Declarant hereby reserves to itself, its Affiliates, its successors and assigns the right to: (i) use any Lots owned or leased by the Declarant or an Affiliate of 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 visitor's center, construction offices, customer service offices or sales office parking areas without compliance with Section 4.22; (ii) place and maintain in any location on the Common Area and each Lot within ten feet of any Lot boundary line abutting a public right-of-way or a private street or roadway, trails, paths and sidewalks, street lights, street and directional signs, temporary promotional signs, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features or remove all or any of the above from time to time at the Declarant's sole discretion. Any Improvements installed on Lots pursuant to (ii) above shall be Areas of Association Responsibility.

5.4 Dedications and Easements Required by Governmental Authority. The Declarant hereby reserves to itself, its Affiliates 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. Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. 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 further assurances of these reservations of rights and easements as may be requested.

5.6 Duration of Development Rights; Assignment. The rights and easements reserved by or granted to the Declarant and its Affiliates pursuant to this Section shall continue so long as the Declarant or its Affiliates own any Lot. 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 and Declarant's Affiliates and contractors working therefore shall be deemed to have received such assignments.

5.7 Association Powers and Rights. The Association's exercise of the rights, powers and easements granted in Sections 5.2.1 and 5.3 are not subject to the time limitations on duration applicable to the Declarant. If the Declarant or any Owner requests the Association to exercise its power under this Section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

5.8 Easement for Maintenance, Enforcement and Additional Property. The Association and its directors, officers, agents, contractors and employees, the Architectural 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 Residential Unit), for: (i) the exercise and discharge of their respective powers and responsibilities under the Association Documents; (ii) 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 Architectural Committee and that all Improvements are being properly maintained as required by the Association Documents; (iii) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (iv) correcting drainage; (v) performing installations or Maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance; or (vi) correcting any condition which violates the Association Documents. The Person developing the adjacent property described in Exhibit B, whether or not annexed to the Property, shall have an easement to utilize, maintain, alter, adjust and traverse any drainage located in a Common Area so long as the drainage area is restored to its prior condition or placed in a condition in which the future maintenance obligations and costs to the Association of the same are not materially altered.

5.9 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: (i) the original construction thereof; (ii) deviations within normal construction tolerances in the Maintenance of any Improvement; or (iii) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment not in violation of the County ordinances 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.

5.10 Drainage Easement. The Exhibit B Property shall have an easement across and through the Common Areas to allow water and storm water drainage from the real property described in Exhibit B to, into and through the Common Area drainage channels ("Drainage

Channels") depicted in the preliminary plat and as reflected and modified in final plats when Recorded. The Owner(s) and association(s) which hold title to the real property described in Exhibit B shall be responsible to construct and maintain any ditches, channels or culverts leading to the Drainage Channels and to alter or modify the Drainage Channels to accommodate any additional water flow in the Drainage Channels at their own expense. This easement shall be conditioned upon (i) the approval of such water flow/drainage by Mohave County and, as may be required, by other governmental regulatory bodies and agencies; (ii) plans which do not materially and adversely alter the aesthetics of the Drainage Channel; and (iii) use of Drainage Channels by the Exhibit B Property which does not materially increase the maintenance expense to the Association or an agreement to share a proportionate cost of maintaining the Drainage Channel(s) so utilized between the Association and the owner(s) of a homeowners association that is responsible for Common Areas in the Exhibit B Property. Neither Declarant, the Association or its Members, Residents or guests shall be responsible for or suffer any liability on account of the granting of such easement, for any alteration of the Drainage Channel or its design or for any costs associated with the same.

5.11 Access. The Property is served by two regular Access Roads: North View Drive and Savannah Way as reflected on the Plat. North View Drive is or will be a dedicated roadway and will provide access to an adjacent parcel titled in Declarants's Affiliate and described in Exhibit B hereto. Brody Lane, as depicted in the Plat recorded as instrument number 2005111505 official records of Mohave County and as the Plat may hereafter be amended, shall be subjected to an easement for ingress and egress to and for the benefit of the property described in Exhibit B. The Exhibit B Property shall have an easement to construct and maintain Access Roadway from the property described in Exhibit B through the Common Areas, including across or through the Drainage Channels to Brody Lane and shall bear all costs of constructing this "Access Roadway" to Brody Lane, any modifications or improvements required to be made for access onto Brody Lane and repairing any damage to Brody Lane or the Common Areas caused by the construction of the roadway. As a further condition to use of Brody Lane, the owner(s) or any homeowners association hereafter established and holding title to the Common Areas established in the Exhibit B Property, upon completion of the Access Roadway, shall: record a document describing such Access Road easement, and be subject to and shall accept one-half of the responsibility for the cost of maintenance of that portion of Brody Lane from the southwesterly curb line of any such access constructed to Brody Lane to the point Brody Lane intersects North View Drive. Notwithstanding the forgoing, Declarant reserves the right to Record further documents as Declarant deems appropriate to describe and limit the particular location of access point for such easement, the location of such easement and to establish an additional easement 5 feet in width allowing each side of the Access Road to allow for maintenance of the Access Road constructed in such easement. Further, should the easement described above in this Section 5.11 leading to Brody Lane be limited for use only as an Emergency Access Route, then the Persons which hold title to any or all of the Exhibit B Property and any homeowners association formed to be responsible for common areas in the Exhibit B Property shall have no duty to maintain or contribute to the maintenance of Brody Lane, but shall have the duty to maintain the Emergency Access leading thereto on or from the Exhibit B Property. The Exhibit B Property shall also have an easement to utilize any other emergency accesses available to the Association and Common Area Roadways leading to the same, including an emergency access easement over and across the Property designated as Parcel E on the Plat recorded in Mohave County, Arizona as instrument number 2005111505 and to facilitate use of that easement, an

emergency ingress and egress easement over and across Savannah Drive and Savannah Way. Each Owner, Lessee and Resident acknowledges and agrees for themselves, their families and guests that: (i) they accept the burden upon the Common Area Roadways and other Common Areas established hereby and as further described in instruments, if any, hereafter Recorded by Declarant or Declarant's Affiliates and (ii) neither Declarant nor the Association nor their respective Directors, officers, agents and employees shall be responsible for any damage or liability resulting from construction on or use of the easements to be established under this Section 5.11.

## ARTICLE 6

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

6.1 Formation of Association. The Association is a nonprofit Arizona corporation named NORTH POINTE HOMEOWNERS ASSOCIATION, INC. and is charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control.

6.2 Board of Director 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. So long as the Declarant owns any Lot, the Declarant shall have the right to appoint and remove the members of the Board. After the Declarant no longer owns any Lot, the Board shall be elected or appointed as provided in the Bylaws. Unless the Association Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

6.3 The Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) 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; (ii) minimum standards for the Maintenance of Lots; or (iii) 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. Except in event of such conflict, 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 Architectural 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, 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 Association Documents provide such person in good faith.

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

6.6 Identity of Members. Membership in the Association shall be limited to Owners of Lots which shall include the Declarant so long as the Declarant owns any 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 his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Notwithstanding the forgoing, certain rights and duties of any Affiliate of Declarant may be altered by the terms of this Declaration and Declarant may also, for purposes of voting, be treated as the Owner or proxy of the Owner of Affiliate Lot(s) as specifically provided in Section 6.7 below.

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

(i) Class A. Class A Members are all Owners of Lots, excluding Declarant and Declarant's Affiliates until the termination of the Class B membership, but this shall not impair Declarant and Declarant's Affiliates from voting where an issue, if any, is one which may, for any reason, be voted on by Owners as Members holding only one (1) vote per Lot. Each Class A Member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant shall be a Class A Member so long as the Declarant owns any Lot.

(ii) Class B. The Class B Member is the Declarant, which will have nine (9) votes for each Lot owned by Declarant and for those owned by Declarant's Affiliate(s) subject to the following: Declarant will have and retain Class B voting rights to any Lot transferred to an Affiliate where voting rights are reserved in writing upon such transfer to Declarant or are assigned by Affiliate to Declarant within one hundred twenty (120) days of the transfer or where Declarant receives Declarant's Affiliate(s) proxy which proxy shall be and is hereby agreed and deemed to be coupled with an interest. The class B membership and the Class B voting rights will cease and be converted to Class A membership and Class A voting rights upon the earlier to occur of the following events:

- (1) when Declarant and Declarant's Affiliates own in total less than ten (10) of the Lots located within the Property;
- (2) on December 31, 2018; or
- (3) upon written Notice from the Class B Member, including the Declarant and to the Association specifically relinquishing Class B membership except that such a Notice shall only be effective if executed by all lenders of Declarant.

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 questions. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant or Affiliates of Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to a 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 have the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of fee 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 his purchase within ten (10) days after he become the Owner of a Lot.

6.10 Conveyance, Lease or Encumbrance of Common Area.

6.10.1 Except for mortgages and deeds of trust obtained by Declarant for the Development of the Project, the posting of the Property or a portion thereof to Mohave County or other governmental entity as part of an assurance for completion of subdivision improvements, easements specifically provided or allowed by this Declaration, easements of record at the recording hereof and easements included in any Plat of the Property the Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B member of the Association and the affirmative vote or written consent of the Owners representing two-thirds (2/3) of the Membership votes entitled to be cast.

6.10.2 The Association may dedicate parts of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as the Board may determine to be in the best interests of the Association. 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. The Association may lease all or any part of the Common Area for such purposes and on such terms and conditions as are approved by vote of fifty percent (50%) of the membership votes represented in person, by absentee ballot or by proxy at an annual or special meeting of the Members at which the lease is submitted to the Members for approval.

6.11 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Association Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Association Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board shall have the right to suspend such Owner's right to vote until such time as all



payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Association Documents are corrected.

## ARTICLE 7

### COVENANT FOR ASSESSMENT AND CREATION OF LIENS

7.1 Creation of Lien and Personal Obligations of Assessments. Each Owner, other than the Declarant and Declarant's Affiliates, 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, and reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. 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 Architectural Committee to take some action or perform some function required of it.

#### 7.2 Annual Assessments.

7.2.1 For each Assessment Period and subject to limitations on increases in Annual Assessments as provided by law, the Board shall prepare and adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes will be required during the applicable Assessment Period which shall serve as the basis for determining the Annual Assessments for that Assessment Period. The budget shall contain the estimated Common Expense for the applicable Assessment Period and the estimated income to the Association other than from Assessments and reflect the amount reasonably estimated by the Board to be required in order for the Association to be able to pay all Common Expenses during the Assessment Period which included reserves for Common Expenses which are not expected to be expended in that year. Based upon the applicable budget adopted by the Board, the Board, for each Assessment Period, shall assess against each Assessable Lot and Annual Assessment which shall be set at an equal amount for each Assessable Lot.

7.2.2 The Board shall give Notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board fails to adopt a budget for any

Assessment Period, then until and unless such budget is adopted and an Annual Assessment is levied by the Board for such Assessment Period, the amount of the Annual Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Annual Assessment for any Assessment Period is required by law, neither the budget nor the Annual Assessment shall be required to be ratified or approved by the members. If the Board determines during any Assessment Period that 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 Annual Assessment for that Assessment Period and the revised Annual 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 defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of fifty one percent (51%) of the votes entitled to be cast by Members who are voting in person or by proxy or by absentee ballot 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 and excluding Lots owned by Declarant or Declarant's Affiliates.

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

7.5 Commencement Date of Assessment Obligation. All Assessable Lots shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

7.6 No Obligation of Declarant for Deficiencies. So long as there is a Class B membership in the Association, Declarant and Declarant's Affiliates that own Lots within the property shall not be subject to paying Assessments on Lots so owned, but Declarant may, in Declarant's sole discretion, contribute sums to the Association so that the Association can meet its financial obligations. The fact that Declarant may so contribute funds and the fact that it may, from time to time have contributed funds, shall not obligate Declarant to thereafter contribute or contribute additional funds, however, any contribution so made shall be deemed made in furtherance of Declarant's development and business purposes and not as a gift or charitable contribution.

7.7 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for 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 therefore shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any 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.

**7.8 Effect of Nonpayment of Assessments, Fines and Penalties; Remedies of the Association.**

7.8.1 Any Assessment, or any installment of an Assessment not paid within fifteen (15) days after the Assessment, shall bear interest from the due date at the rate of interest set from time to time by the Board, such rate shall be ten percent (10%) per annum if no other rate is set by the Board. In addition, the Board may establish a late charge not to exceed that allowed by Arizona law to be charged to any Owner who has not paid any Assessment or any installment of an Assessment within fifteen (15) days after such payment was due.

7.8.2 The Association shall have an "Assessment Lien" on each Lot for: (i) all Assessments levied against the Lot from the date the Assessment is due and, even though an Assessment is payable in installments, the full amount of the Assessment shall be a lien on the Lot from the date the first installment is due; (ii) all interest and late charges for late payments of Assessment assessed against the Lot or payable by the Owner of the Lot; and (iii) all reasonable attorney fees and other costs of collection with respect to the Assessments such as: court costs, title report fees and 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 whether or not suit is filed by the Association. The Recording of this Declaration constitutes Record notice and perfection of the Assessment Lien. In aid of collection of Assessments Liens the Association may, at its option, Record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including late charges, interest, lien Recording fees, reasonable attorneys' fees and other costs associated with the assessment. 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 and collection costs, if any, and all other amounts secured by the Assessment Lien and each default shall constitute a separate basis for demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within fifteen (15) 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 a lien fee in a reasonable amount.

7.8.2.1 In addition to the Assessment Liens set forth in Section 7.8.2. and not in duplication thereof, upon the entry of a judgment, in a civil suit and the recordation of such judgment the Association shall have a lien on each Lot (known as "Other Liens") for the sums awarded for amounts payable to the Association pursuant to Section 8.3, 8.4, 8.6.2 or 10.9 of this Declaration

regarding such Lot and other fees, charges, monetary penalties and late payment charges/penalties or interest levied under this Declaration against the Owner of a Lot. These Other Liens in favor of the Association may not be foreclosed on, but are effective only upon conveyance of the Lot. The fact that the lien may not be foreclosed or is not then effective as a lien on the Lot except in case of conveyance of the Lot shall not prohibit the Association from other civil collection efforts against the judgment debtor as allowed by law.

7.8.3 The Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recordation of the Declaration; (ii) tax liens for real property taxes; (iii) liens for assessments in favor of any municipal or other governmental body; and (iv) a Recorded First Mortgage lien or a first contract for sale as described in ARS § 33-1807. Any First Mortgagee or seller on a first contract for sale of the type described in ARS § 33-1807 or any other Person acquiring title or coming into possession of a Lot through: foreclosure of such First Mortgage or foreclosure or forfeiture of such first contract for sale, or purchase 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 accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

7.8.4 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.

7.8.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interests, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien and/or (ii) bringing an action to foreclosure the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage as may be allowed by law. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

7.9 Purposes for which Association's Funds May Be Used. The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purposes of (i) discharging and performing the Association's duties and obligations under the Association Documents; (ii) exercising the right and powers granted to the Association by the Association Documents; and (iii) the common good and benefit of the Project and the Owners, Lessees and Residents. In furtherance of such purposes, the Association may use funds and property of the Association for, among other things, the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners,

Lessees and Residents.

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

7.11 Transfer Fee. Each Person who purchases a Lot from a Person other than the Declarant 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 costs incurred in the preparation of the statement which the Association is required to mail 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.

## ARTICLE 8

### MAINTENANCE

8.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall be responsible for the management and Maintenance of the Common Area, and all Improvements located thereon, except for any part of the Common Area which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate Maintenance of all Areas of Association Responsibility, but the Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. 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 Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Responsibility, and the Improvements located thereon.

8.2 Lots. Each Owner of a Lot shall be responsible for the Maintenance of his Lot, and all buildings, Residential Units, 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, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All landscaping including 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 Architectural 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 Residential Units, building 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 an Owner, his family, tenants, guest 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 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 materially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Association 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 and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

8.5 Boundary Walls.

8.5.1 Each wall or fence which is located on or at the Lot line between two or more Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 8.5, the general rules of law regarding boundary walls shall apply.

8.5.2 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.

8.5.3 Except as provided in Subsection 8.5.4 below, the Owners of contiguous Lots who share a boundary wall shall each pay one-half (1/2) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (1/2) of such costs.

8.5.4 In the event that any boundary wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guest 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.

8.5.5 Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any boundary wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

8.5.6 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.

8.5.7 In addition to meeting to 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.

8.5.8 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.

8.6.1 Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

8.6.2 Any wall which is placed on the boundary line between a Lot and the Common Area 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 Common Area.

8.6.3 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 Association, except that the Owner of the Lot shall be responsible for the repair and replacement of the surface of the wall which faces the Lot.

**ARTICLE 9**

**INSURANCE**

9.1 Scope of Coverage. Unless otherwise stated hereinafter in this Section, 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:

9.1.1 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 automobiles coverages with liability endorsements to cover liabilities of the Owners as a group and as an Owner.

9.1.2 Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

9.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

9.1.4 Such other insurances as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.

9.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available; contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of 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 pro-rata with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least twenty (20) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

9.2 Certificate of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until at least twenty (20) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

9.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 9.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

9.4 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 9.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

9.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least seventy-five percent (75%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements; or (iii) where insurance proceeds, reserves or other funds available or reasonably obtainable (as determined in the Board's discretion) are insufficient to substantially repair or replace the damaged or destroyed Improvements except that in this event said funds shall be utilized to repair or replace so much of the damaged or destroyed Improvements as is feasible. The cost of repair or replacement in excess of insurance proceeds and reserves shall, to the extent funds are available or may be reasonably obtained, be paid by the Association. If all of the Areas of Association



Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

## ARTICLE 10

### GENERAL PROVISIONS

10.1 Enforcement. Subject to the provisions of Article 11, the Association or any Owner shall have the right to enforce the Association Documents in any manner provided for in the Association Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Association Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Association Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Association Documents in the future. If the provisions of Article 11 are not applicable or allow for a lawsuit to be filed and if any lawsuit is filed by the Association or any Owner to enforce the provisions of the Association Documents or in any other manner arising out of the Association 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. In addition to any other rights or remedies available to the Association pursuant to the Association Documents, the Board shall have the power to levy reasonable monetary penalties against any Owner for a violation of the Association Documents by the Owner, a Lessee of the Owner to the extent allowed by law or, in the case of a provided the Owner and the Lessee if a penalty may be levied against a Lessee is given notice and an opportunity to be heard.

10.2 Duration; Termination. The covenants, conditions, restrictions and easements contained in this Declaration shall run with the land and bind the Property and be in full force and effect in perpetuity unless terminated pursuant to this Section or amended as provided in Section 10.3 of this Declaration. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing seventy-five percent (75%) or more of the votes in each class of membership. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

### 10.3 Amendments.

10.3.1 In addition to amendments made pursuant to Subsection 10.3.2 or 10.3.4 of

this Declaration, the Declaration may be amended at any time by the written approval or the affirmative vote, or any combination thereof, of Members holding sixty-seven percent (67%) of the votes of the Association and so long as Declarant, voting Declarants and Declarant's Affiliate's Class B membership, is entitled to cast sixty-seven percent (67%) of the votes in the Association, the Declarant may amend this Declaration without the consent or approval of any other Owner or Person.

10.3.2 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to requirements under applicable State or Federal statutes or rules, the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local government agency whose approval of the Project, the Plat or the Association Documents is required by law or requested by the Declarant or the Board.

10.3.3 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

10.3.4 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration without the consent of any other Owner for the purposes of correcting technical or clerical errors pursuant to 10.3.2, except for Amendments.

10.3.5 No Amendments may be made without Declarant's written consent so long as Declarant owns any Lot in the subdivision.

10.3.6 Any amendment approved pursuant to Subsection 10.3.1 of this Declaration or by the Board pursuant to Subsection 10.3.2 or 10.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 10.3.2 or 10.3.4 of this Declaration shall be signed by the Declarant and 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.

10.3.7 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.

#### 10.4 Rights of First Mortgagees.

10.4.1 Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours, excluding those protected from disclosure pursuant to Arizona law including A.R.S. § 33-1805 and any successor, amendment or revision to the same; (ii) receive within ninety (90) days following the end of any fiscal year of the

Association, an unaudited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings; and (iv) receive Notice of matters set forth in 10.4.2.

10.4.2 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned for which Notice has been timely received under Section 10.4.1) or Owners of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) Except as otherwise specifically provided herein, seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area and the granting of easements specifically referenced herein or in the Plat shall not be deemed a transfer within the meaning of this Subsection;

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(iii) Change, waive, or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Area, which substantially changes the nature of the Development;

(iv) Fail to maintain, to the extent reasonably available, fire and extended coverage insurance on common areas on a current replacement cost basis in an amount, excepting deductibles of at least 100 percent of insurable value;

(v) Use hazard insurance proceeds for losses to any Common Area, other than repair, replacement or reconstruction of such Common Area.

10.4.4 No provision of this Declaration gives or shall be construed as giving any owner or other Person priority over any rights of a First Mortgagee of a Lot for losses suffered to a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

10.4.5 Any First Mortgagee who receives notice of a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received notice of a negative response from such First Mortgagee within thirty (30) days of the date of receipt by mortgagee of the Association's Notice to the mortgagor.

10.4.6 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Association Documents, the provisions of this Section shall

prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Association Documents with respect to the number of percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Subsection 10.4.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local government agency whose approval of the Project, the Plat or the Association Documents is required or requested by the Declarant or the Board.

10.5 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 with the written consent or affirmative vote of Owners representing at seventy-five percent (75%) of the votes in the Association, 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. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction and to the extent the Association has sufficient proceeds from the condemnation, reserves and regular assessments to construct the same or similar Improvements, unless within sixty (60) days after such taking the owners having at least seventy-five percent (75%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area if the Owners representing more than seventy-five percent (75%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds shall be retained by the Association used for such purposes as may be determined by the Board.

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

10.7 Severability. Any determination by any court of competent jurisdiction that nay

provision of this Declaration is invalid or unenforceable shall not effect the validity or enforceability of any of the other provisions hereof and such remaining provisions shall, to the extent possible, be interpreted to give the fullest possible affect to this Declaration.

10.8 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.

10.9 Notice of Violation and Penalties. The Association shall have the right to Record a written notice of a violation by an Owner, Lessee or Resident of any restriction or other provision of the Association Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Association Documents, (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) if the notice is being or may be Recorded, a statement that the notice is being or may be Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation but the Association shall provide the Owner a copy of the notice of violation pursuant to the notice provisions set forth in Section 10.17. 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 Association Documents. After notice and opportunity to be heard, the Board may impose reasonable monetary penalties on Members for violations of the Declaration, Bylaws or Rules of the Association.

10.10 Laws, Ordinances and Regulations.

10.10.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligations of the Owners and other persons to comply with all applicable governmental 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 governmental laws, ordinances and regulations

10.10.2 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.

10.11 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or

instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

10.13 Captions and Titles. All captions, titles or headings of the Article 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.

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

10.15 No Absolute Liability. No provision of the Association Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or Lots caused by the Owners' or residents negligence or intentional acts.

10.16 References to VA and FHA. In various places throughout the Association Documents, references are made to the Department of Veterans Affairs ("VA") and the Federal Housing Administration ("FHA").

10.17 Notice. Any Notice to be given hereunder shall be given in writing reasonably describing the purposes thereof and, with regard to Notices for which the form is specified in an applicable section, as required by such section and such Notice shall be conclusively deemed received and complete on the earlier of (i) the day it is personally hand delivered to the party receiving Notice; or (ii) 48 hours after such Notice is deposited into the U.S. mail postage prepaid by first class mail or by certified mail return receipt requested to:

To Declarant:  
Fidence Development, LLC  
420 Stevens Ave., #230  
Solana Beach, CA 92075

To The Association:  
North Pointe Homeowners Association, Inc.  
14301 N. 87<sup>th</sup> Street, Suite 209  
Scottsdale, AZ 85260

With a copy to: Any Person (Management Company)  
hired to manage the Association/Common Areas at  
the address such Person provides notice of.

To Mortgagee:

At the address provided by Mortgagee pursuant to this Section 10.17 and if Mortgagee fails to provide Notice of its address, to the address provided in the Mortgage of record in Mohave County.

To Members other than Declarant :

At the address provided in the records of the association.

To Lessees and other Residents:

The Association may, but is not required, unless monetary penalties are sought against the Lessee or Resident, to provide a copy of an applicable Notice to any Lessee or other non-Owner Resident of a Lot pursuant to this Section 10.17 and if the Lot Owner has failed to provide to the Association the names and mailing address of a Resident or Lessee such Notice will be given by mailing the same to the Lot address.

Any of the above parties may change the address at which they are to receive Notice by written Notice to the applicable parties from whom Notice may thereafter be received.

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

**10.19 Annexation and Withdrawal of Property.**

10.19.1 At any time there are Class B voting rights, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person (other than Person who owns the property to be annexed, if other than the Declarant) (hereinafter the "annexed property"). The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording a written document(s) setting forth the legal description of the Additional Property being annexed and stating that such portion of the Additional Property is annexed and subjected to this Declaration. The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof.

Property annexed by the Declarant pursuant to this Section need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property. The Declarant makes no assurances as to which, if any, portion of the Additional Property will be annexed. Any Additional Property which is annexed may be developed by Declarant or Declarant's Affiliates and Declarant or Declarant's Affiliates may seek preliminary and final Plat approval on the annexed property and Declarant and Declarant's Affiliates will have all rights and duties provided in the Declaration including Class B voting rights with respect to the lots so platted and Owners, guests, Lessees and Residents of Lots within the annexed property shall have the same rights (including, for example, voting rights) and the same duties as Owners of the property described in Exhibit A and their guests, Lessees and Residents. Unless stated otherwise in the document(s) annexing the property which documents may provide: i) for restrictions on the owner's lots in the annexed property and their Residents, Lessees and guests, using certain amenities located in the Common Areas within Exhibit A and requiring a consequent and equitable adjustment to exclude Assessments to Owners of Lots in the annexed property attributable to the same, ii) for restrictions on the Owners of Lots within the Exhibit A property and their Residents, Lessees and guests, using certain amenities in the Common Areas of the Annexed Property and requiring a consequent and equitable adjustment in Assessments to Owners of Lots within the property described in Exhibit A attributable to the same.

10.19.2 At any time there are Class B voting rights, the Declarant shall have the right to withdraw (de-annex) property from the Project without the consent of any other Owner or Person (other than the Owner of such property, if other than the Declarant). The withdrawal of all or any portion of the Project shall be effected by the Declarant Recording written documents setting forth the legal description of the property being withdrawn and, easements granted in favor of the withdrawn property and easements granted in favor of the property not withdrawn. Upon the withdrawal of any property from the Project pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration and the following shall apply: i) the withdrawn property shall retain and receive easements in and across the Common Areas of the property not withdrawn which are reasonably necessary for: ingress and egress to the withdrawn property; drainage for the withdrawn property; and for access to connection to utilities for the withdrawn property and ii) the property not withdrawn shall receive easements in and across the withdrawn property which are reasonably necessary for: ingress and egress to the property not withdrawn; drainage for the property not withdrawn and access and connection to utilities for the property not withdrawn.

## ARTICLE 11

### **CONSTRUCTION DEFECT AND GENERAL DECLARANT PARTY CLAIMS AND DISPUTE RESOLUTION PROCEDURES**

11.1 Dispute Notification and Resolution Procedure. All actions or claims (i) by the



Association or (ii) by one or more Owner(s) against any Declarant, Declarant's Affiliates, or their general contractors, brokers, agents, employees, attorneys or representatives (collectively, the "Declarant Parties"), relating to or arising out of the Project, including but not limited to, (a) this Declaration or construction of or any condition on or affecting the Project including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, the Residential Dwellings), (b) the operations and financial records of the Association, or (c) disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition or operation of the Project or any Improvements therein (collectively, "Dispute(s)") shall be subject to the provisions of this Article 11. Declarant and each Owner acknowledge that the provisions set forth in this Article 11 shall be binding upon current and future Owners and the Association, whether acting for itself or on behalf of any Owner(s).

11.2 Alternative Dispute Resolution Where a Homeowners Warranty Policy is Provided. Where Declarant, Declarant's Affiliate or their contractor(s) provide a home buyer warranty or home buyers warranty policy (hereinafter a "Home Warranty Policy"), such as that offered by HBW Insurance Services, L.L.C.®, to the original buyer of the Lot with a home constructed thereon, then the Owner shall abide by any notices required and all dispute resolution procedures and process, including mediation and/or mandatory arbitration, provided in the contract under which the Lot and home was sold to the first Owner and any Home Warranty Policy provided thereunder. The provisions of A.R.S. § 12-1361 et seq., as hereafter amended or altered shall continue to apply to the extent not superceded by such procedures and process. In the event the forgoing provisions are unenforceable in whole or in part then any dispute or the portion of a dispute not subject to said alternative or other dispute resolution procedures and process shall be subject to the following provisions of this Article 11.

11.3 Notice. Any Person (including the Association) with a Dispute claim shall notify the Declarant Parties in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

11.4 Right to Inspect and Right to Corrective Action. If the Dispute relates to an alleged construction defect, the Declarant Parties and the claimant shall meet at a mutually acceptable place within the Project to discuss the claim within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days. At such meeting or at such other mutually agreeable time, the Declarant Parties and their representatives shall have full access to the property that is the subject of the Claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by the Declarant Parties (provided Declarant parties shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Article 11. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant Parties elect to take any corrective action, the Declarant Parties and their representatives and agents shall be provided full access as necessary to the Project and the property which is the subject of the Claim Notice to take and complete corrective action.

11.5 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article 11 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair or replace any item of the Project for which such Declarant Party is not otherwise obligated under applicable law or any limited warranty provided by such Declarant Party in connection with the sale of the Lot or the Residential Dwellings and other Improvements constructed thereon. The right of the Declarant Parties 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 Declarant.

11.6 Mediation. If the parties to the Dispute cannot resolve the Claim pursuant to the procedures described in Section 11.5 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Article 11) or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against any Declarant Party without complying with the procedures described in this Section 11.6.

11.7 Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the County of Declarant's place of business, Yavapai County, Arizona, or such other place as is mutually acceptable to the parties.

11.8 Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

11.9 Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications (but not including disclosure of items that are or would otherwise be evidentiary in nature and are presented with said communications, e.g. plans, photographs, tests and results, financial reports, and its records and the like) at the mediation shall be excluded in any subsequent dispute resolution forum.

11.10 Parties Permitted at Sessions. Persons other than the parties, the authorized representatives of such parties (including their attorneys), and the mediator may attend mediation sessions only with the permission of both parties and statements by such parties, representatives, mediator and other persons, or witnesses made in the course of the mediation while shall be confidential. There shall be no stenographic record of the mediation hearing/meeting.

11.11 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorney's fees and costs in connection with such mediation.

11.12 Arbitration. Should mediation pursuant to Section 11.5 above not be successful in resolving any Dispute which is the subject of a Claim Notice, such Dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Article 11. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this Article 11, the arbitrator shall have the authority to try all issues, whether of fact or law.

11.13 Place. The arbitration proceedings shall be heard in Yavapai County, Arizona, or such other location as is mutually acceptable to the parties.

11.14 Arbitrator. A single arbitrator shall be selected by agreement between the parties or, if they do not agree, in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after the service of the initial complaint on all defendants named therein.

11.15 Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all the facts and circumstances and shall conduct the proceeding without undue delay.

11.16 Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

11.17 Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; (vi) trial briefs; (vii) depositions of expert witnesses; and (viii) disclosure equivalent to that provided in Rule 26.1(a), Arizona Rules of Civil Procedure. The parties shall also be entitled to conduct further tests

and inspections as provided in Section 11.3 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

11.18 Limitation on Remedies/Prohibition on the Award of Punitive Damages. The arbitrator shall not have the power to award punitive or consequential damages. As further provided below, the right to punitive and consequential damages is waived by the parties. The arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages in the proceeding.

11.19 Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

11.20 Arbitration Award. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

**11.21 WAIVERS. NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH PERSON, FOR HIMSELF OR HERSELF, HIS OR HER HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 11. THE ASSOCIATION, EACH OWNER AND DECLARANT PARTY ACKNOWLEDGES THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT PARTY FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH OWNER, INDIVIDUALLY, COLLECTIVELY, AND BY OR THROUGH THE ASSOCIATION, HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.**

11.22 Statutes of Limitation. Nothing contained in this Article 11 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

11.23 Required Consent of Declarant to Modify. Neither this Section 11.23 nor Section 11.24 below may be amended except in accordance with Section 10.3 of this Declaration and with

the express written consent of the Declarant without regard to whether Declarant then owns any Lots or Parcels in the Project.

**11.24 Required Consent of Owners for Legal Action.** Notwithstanding anything to the contrary contained in this Declaration, any action or Claim instituted by the Association against any one or more Declarant Parties, relating to or arising out of the Project, this Declaration or any other Project Documents, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Residential Dwellings) or disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements thereon, shall have first been approved by Owners representing seventy percent (70%) of the votes in the Association who are voting by Absentee Ballot, or in person or by proxy at a meeting duly called for such purpose.

**11.25 Notice to Owners.** Prior to obtaining the consent of the Owners in accordance with Section 11.24 above, the Association must provide written notice to all Owners within the Project affected by the Dispute, which notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "Claim"), (2) a description of the attempts of the Declarant Party or Parties to correct such Claim and the opportunities provided to such Declarant Party or Parties to correct such Claim, (3) if the Claim relates to an alleged construction or engineering defect, a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association, as applicable, to pursue the Claim against such Declarant Party or Parties and a description of the relationship between such attorney and member(s) of the Board of Directors (if any), (6) a description of the fee arrangements between such attorney and the Association, as applicable, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against the Declarant Party or Parties and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against the Declarant Party or Parties, and (9) an affirmative statement from the Board of Directors that the action is, in the Board's opinion, in the best interest of the Association and its Members. In the event the Association recovers any funds from a Declarant Party (or any other Person) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the reserve funds of the Association.

**11.26 Notification to Prospective Purchasers.** In the event that the Association commences any action or Claim or has notified the appropriate Owners that it has delivered a Claim Notice of a Dispute to any of the Declarant Parties, all affected Owners must notify prospective purchasers of a Residential Unit from them of the existence of such action, Claim or Claim Notice of a Dispute and must provide such prospective purchasers with a copy of the notice received from the Association, in accordance with Section 11.25 above or any other notice so received from the Association.

**11.27 Arizona Statutory Compliance.** In the event a court of competent jurisdiction

invalidates all or part of this Article 11 regarding the resolution of Disputes and Claims relating to alleged construction defects and litigation unfortunately becomes necessary the Declarant Parties, the Association, and all Owners shall remain bound by and comply with those portions which are enforceable and shall also be bound by the applicable or applicable portions of Arizona statutes regarding Purchaser Dwelling actions and Homeowner's Association Dwelling actions presently respectively codified at A.R.S. §12-1361 et seq. and A.R.S. §33-2001 et seq.

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**SIGNATURES APPEAR ON FOLLOWING PAGES**

PAGE 54 OF 65  
BK 6109 PG 337 FEE#2006016023



**EXHIBIT A**

**DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION**



**EXHIBIT A**

All that portion HAVASU GARDEN ESTATES EAST, Tract No. 1122 recorded as Fee No. 72-8711, Mohave County Records, lying in the north half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona described as follows:

Commencing at the North Quarter Corner of said Section 17;  
Thence North 89°54'36" East along the north line of said Section 17, a distance of 145.02 feet (145.00 feet, Record) to the northwesterly corner of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, and the true POINT OF BEGINNING;

Thence continuing North 89°54'36" East along the north line of said Section 17 and the north line of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 1822.47 (1823.28 feet, Record) feet to the west line of London Bridge Road and the northeast corner of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 12°53'24" East (South 12°52'46" East, Record) along said west line of London Bridge Road, a distance of 718.54 feet to the northeasterly corner of Lot 825 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 76°57'09" West (South 77°07'14" West, Record) along the northerly line of said Lot 825 and the westerly extension thereof, a distance of 186.45 feet (186.85 feet, Record) to the northeasterly corner of Lot 102 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 89°57'57" West (South 89°59'27" West, Record) along the north line of Lots 86 through 102 and Lot 442 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 1152.31 feet to the northwest corner of said Lot 442;

Thence South 12°53'33" East (South 12°52'46" East, Record) along the westerly line of said Lots 442 and 515 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 268.99 feet to the southwest corner of said Lot 515;

Thence South 89°57'12" West (South 89°59'27" West, Record) along the north line of Lots 517 through 521 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 297.88 feet (298.50 feet, Record) to the northwest corner of said Lot 521;

Thence South 12°53'33" East (South 12°52'46" East, Record), a distance of 103.71 (103.86 feet, Record) feet to the southwest corner of said Lot 521;

Thence South 02°23'18" West, a distance of 60.05 feet to the northwest corner of Lot 549 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 12°53'33" East, (South 12°52'46" East, Record) along the westerly lines of Lots 549, 550, 585 and 586 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 482.41 feet to the southwest corner of said Lot 586;

**EXHIBIT A (Continued)**

Thence South 06°36'25" West, a distance of 60.40 feet to the northwest corner of Lot 621 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 00°00'33" East along the westerly lines of Lots 621, 623, and 658 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 366.39 feet (367.50 feet, Record) to the southwest corner of said Lot 658;

Thence North 89°59'27" East, a distance of 59.81 feet (59.80 feet, Record) to the southeast corner of said Lot 658 and the northwest corner of Lot 660 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 00°00'33" East along the west line of Lots 660, Lot 697 and Lot 698 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 367.43 feet (367.50 feet, Record) to the southwest corner of said Lot 698;

Thence South 02°11'05" East, a distance of 60.04 feet to the northwest corner of Lot 348 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 00°00'33" East along the westerly line of said Lot 348 and the southerly extension thereof, a distance of 147.52 feet (147.50 feet, Record) to the south line of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 89°59'27" West (South 89°59'26.68" West, Record), a distance of 2712.68 feet (2712.51 feet, Record) to the southwest corner of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence along the westerly line of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, the following six (6) courses:

- 1) North 00°00'26" West, 321.02 feet (North 00°00'26" West, 321.00 feet, Record);
- 2) North 46°25'42" West, 908.79 feet (North 46°25'42.10" East 440.00 feet, and North 46°25'42" East, 468.791 feet, Record);
- 3) North 57°51'17" East, 777.35 feet (North 57°51'17.13" East, 777.345 feet, Record);
- 4) North 40°15'44" East, 806.96 feet (North 40°15'44.25" East, 806.969 feet, Record);
- 5) North 17°22'03" East, 453.55 feet (North 17°22'02.77" East, 453.547 feet, Record);
- 6) North 32°35'59" East, 268.54 feet (North 32°35'59.46" East, 268.534 feet, Record) to the POINT OF BEGINNING.

Containing 118.52 Acres, more or less.

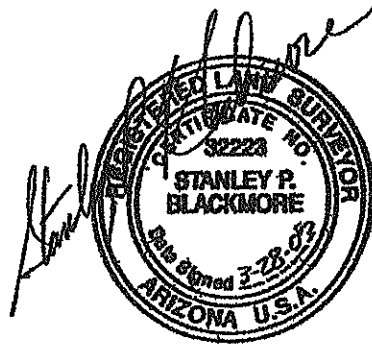


**EXHIBIT A (Continued)**

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BK 6109 PG 342 FEE#2006016023

All that portion HAVASU GARDEN ESTATES EAST, Tract No. 1122 recorded as Fee No. 72-8711, Mohave County Records, lying in the north half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona described as follows:

All that part of Parcel B lying westerly of the southerly extension of the west line of Lot 348 to the south line of said HAVASU GARDEN ESTATES EAST.



**EXHIBIT A (Continued)**

PAGE 60 OF 65  
BK 6109 PG 343 FEE#2006016023

All that portion HAVASU GARDEN ESTATES EAST, Tract No. 1122 recorded as Fee No. 72-8711, Mohave County Records, lying in the north half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona described as follows:

Parcel K of said HAVASU GARDEN ESTATES EAST.

**EXHIBIT A (Continued)**

**Parcel Being Conveyed:**

That portion of the North Half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona, being more particularly described as follows:

**Beginning at the North quarter corner of said Section 17, being a brass capped monument;**

**thence North 89°54'36" East, along the North line of the Northeast Quarter said Section, toward the Northeast corner of said Section, being a Mohave County brass capped monument, a distance of 145.02 feet to the Northwest corner of Havasu Garden Estates East, Tract No. 1122, according to the plat recorded May 1, 1972 as Fee No. 72-8711, records of Mohave County, Arizona; thence along the Northwesterly boundary of said Havasu Garden Estates East through the following courses and distances;**

**South 32°35'59" West, 268.54 feet; thence South 17°22'03" West, 453.55 feet; thence, South 40°15'44" West, 806.96 feet; thence South 57°51'17" West, 777.35 feet; thence South 46°25'42" West, 908.79 feet;**

**thence departing said Northwesterly line, North 00°00'26" West, along the Northerly extension of the West line of said Havasu Garden Estates East, 34.50 feet;**

**thence, parallel with and 25.00 feet Northwesterly of said Northwesterly line of Havasu Garden Estates East through the following courses and distances;**

**North 46°25'42" East, 887.51 feet; thence North 57°51'17" East, 775.98 feet; thence North 40°15'44" East, 794.28 feet;**

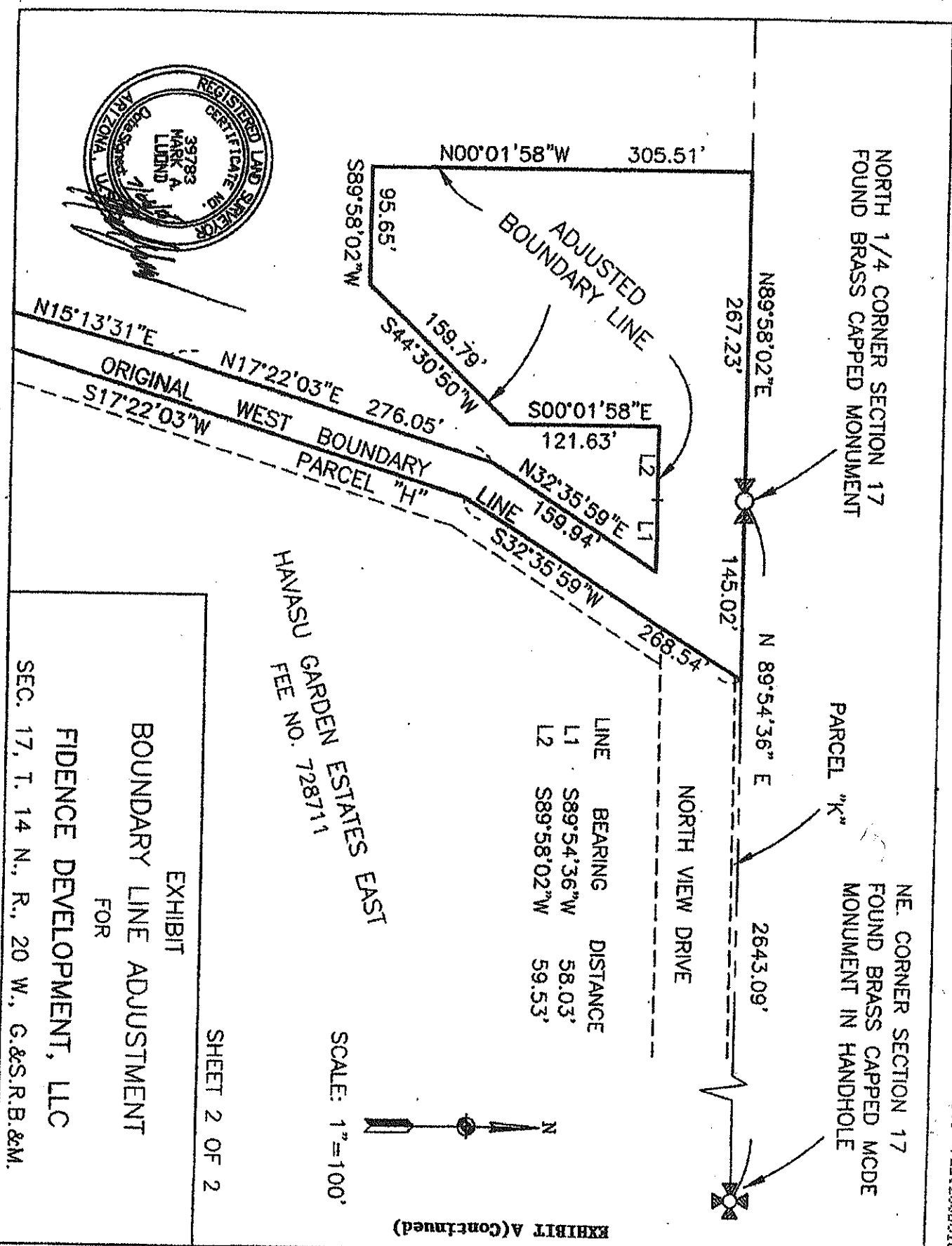
**thence departing said parallel course, North 15°13'31" East, 187.93 feet; thence North 17°22'03" East, 276.05 feet; thence North 32°35'59" East, 159.94 feet; thence South 89°54'36" West, parallel with and 70.00 feet South of said North line of the Northeast Quarter of Section 17, a distance of 58.03 feet; thence South 89°58'02" West, parallel with and 70.00 feet South of the North line of the Northwest Quarter of said Section 17, a distance of 59.53 feet; thence at a right angle, South 00°01'58" East, 121.63 feet; thence South 44°30'50" West, 159.79 feet; thence South 89°58'02" West, 95.65 feet; thence North 00°01'58" West, 305.51 feet to a point on said North line of the Northwest Quarter; thence North 89°58'02" East, along said North line, 267.23 feet to the Point of Beginning;**

(The above described parcel contains 3.50 acres, more or less).



NORTH 1/4 CORNER SECTION 17  
 FOUND BRASS CAPPED MONUMENT

NE CORNER SECTION 17  
 FOUND BRASS CAPPED MCDE  
 MONUMENT IN HANDHOLE



LINE	BEARING	DISTANCE
L1	S89°54'36"W	58.03'
L2	S89°58'02"W	59.53'

HANASU GARDEN ESTATES EAST  
 FEE NO. 728711

EXHIBIT  
 BOUNDARY LINE ADJUSTMENT  
 FOR  
 FIDENCE DEVELOPMENT, LLC  
 SEC. 17, T. 14 N., R. 20 W., G.&S.R.B.&M.

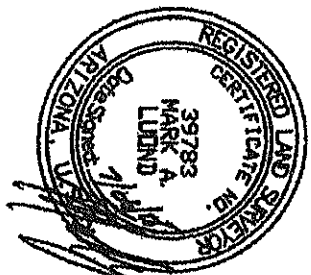


EXHIBIT A (Continued)

SHEET 2 OF 2

SCALE: 1"=100'

EXHIBIT A (Continued)

NORTH 1/4 CORNER  
SECTION 17

N89°54'36"E  
145.02'

N89°58'02"E

267.23'

SEE DETAIL ON  
SHEET 2 OF 2

N15°13'31"E  
187.93'

PARCEL AREA: 3.50 ACRES±



ADJUSTED  
BOUNDARY LINE

ORIGINAL  
BOUNDARY LINE



SCALE: 1"=300'

HAVASU GARDEN ESTATES EAST  
FEE NO. 728711

SHEET 1 OF 2

EXHIBIT  
BOUNDARY LINE ADJUSTMENT  
FOR  
FIDENCE DEVELOPMENT, LLC  
SEC. 17, T. 14 N., R., 20 W., G.&S.R.B.&M.

N0°00'26"W  
34.50'

N46°25'42"E  
908.79'

N57°51'17"E  
887.51'

S57°51'17"W  
777.35'

N75°51'17"E  
775.98'

N40°15'44"E  
794.28'

S40°15'44"W  
806.96'

S17°22'03"W  
453.55'

S32°35'59"W  
268.54'

**EXHIBIT B**

A portion of the North half of Section 17, Township 14 North, Range 20 West, of the Gila and Salt River Base and Meridian, Mohave County, Arizona, described as follows:

BEGINNING at the Northwest corner of said Section 17;  
THENCE North 89°58'57" East, along the North section line, 2,631.434 feet to a point;  
THENCE North 89°54'36" East, along the North section line, a distance of 145 feet to a point;  
THENCE South 32°35'59.46" West, a distance of 268.534 feet to a point;  
THENCE South 17°22'02.77" West, a distance of 453.547 feet to a point;  
THENCE South 40°15'44.25" West, a distance of 806.969 feet to a point;  
THENCE South 57°51'17.13" West, a distance of 777.345 feet to a point;  
THENCE South 46°25'42.10" West, a distance of 908.791 feet to a point;  
THENCE North 0°0'26" West, a distance of 337.769 feet to a point;  
THENCE South 89°59'19.28" West, a distance of 658.716 feet to a point;  
THENCE North 0°01'01" East, a distance of 1,976.175 feet to the TRUE POINT OF BEGINNING.

EXCEPT all oil, gas, coal and minerals as reserved in Deed recorded in Book 53 of Deeds, page 620, records of Mohave County, Arizona.

**Excepting Therefrom**

**The Property described on Exhibit B-1**



**EXHIBIT B-1**

**Parcel Being Conveyed:**

That portion of the North Half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona, being more particularly described as follows:

**Beginning at the North quarter corner of said Section 17, being a brass capped monument;**

**thence North 89°54'36" East, along the North line of the Northeast Quarter said Section, toward the Northeast corner of said Section, being a Mohave County brass capped monument, a distance of 145.02 feet to the Northwest corner of Havasu Garden Estates East, Tract No. 1122, according to the plat recorded May 1, 1972 as Fee No. 72-8711, records of Mohave County, Arizona; thence along the Northwesterly boundary of said Havasu Garden Estates East through the following courses and distances;**

**South 32°35'59" West, 268.54 feet; thence South 17°22'03" West, 453.55 feet; thence, South 40°15'44" West, 806.96 feet; thence South 57°51'17" West, 777.35 feet; thence South 46°25'42" West, 908.79 feet;**

**thence departing said Northwesterly line, North 00°00'26" West, along the Northerly extension of the West line of said Havasu Garden Estates East, 34.50 feet;**

**thence, parallel with and 25.00 feet Northwesterly of said Northwesterly line of Havasu Garden Estates East through the following courses and distances;**

**North 46°25'42" East, 887.51 feet; thence North 57°51'17" East, 775.98 feet; thence North 40°15'44" East, 794.28 feet;**

**thence departing said parallel course, North 15°13'31" East, 187.93 feet; thence North 17°22'03" East, 276.05 feet; thence North 32°35'59" East, 159.94 feet; thence South 89°54'36" West, parallel with and 70.00 feet South of said North line of the Northeast Quarter of Section 17, a distance of 58.03 feet; thence South 89°58'02" West, parallel with and 70.00 feet South of the North line of the Northwest Quarter of said Section 17, a distance of 59.53 feet; thence at a right angle, South 00°01'58" East, 121.63 feet; thence South 44°30'50" West, 159.79 feet; thence South 89°58'02" West, 95.65 feet; thence North 00°01'58" West, 305.51 feet to a point on said North line of the Northwest Quarter; thence North 89°58'02" East, along said North line, 267.23 feet to the Point of Beginning;**

(The above described parcel contains 3.50 acres, more or less).



When recorded, return to:

Thomas P. Kack, Esq.  
MUSGROVE, DRUTZ & KACK, P.C.  
1135 Iron Springs Road  
Prescott, Arizona 86305



PAGE: 1 of 5 FEE # 2006062947

**B:6320 P:855**

OFFICIAL RECORDS  
OF MOHAVE COUNTY  
JOAN MCCALL,  
COUNTY RECORDER



6/19/06 4:10 PM Fee: \$14.00  
DOC TYPE: AMCCR  
PAID BY:CHICAGO TITLE INS CO

**AMENDMENT TO  
AMENDED AND RESTATED  
DECLARATIONS OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
NORTH POINTE**

**COURTESY RECORDING  
NO LIABILITY**

956

**AMENDMENT TO  
AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
NORTH POINTE**

This AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for NORTH POINTE ("Amendment") made this 15<sup>th</sup> day of June, 2006, by Fidence Development, LLC an Arizona Limited Liability Company (the "Declarant").

**INTRODUCTION**

A. Declarant is the Owner of fee title to real property located in Mohave County, Arizona, and, Declarant is attorney in fact under a power of attorney to include an additional parcel in and subject such parcel to this Declaration. The Property owned by Declarant and over which Declarant holds power as attorney in fact are described in Exhibit A hereto and are hereby subjected to this Declaration.

B. All capitalized terms shall have the meaning as provided in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for North Pointe ("Declaration") recorded as Instrument # 2006016023 at Book 6109, Page 284, Official Records of Mohave County, Arizona.

C. This Amendment modifies and amends the Declaration only as provided herein and, specifically, replaces Sections 1.11 and 4.23 and adds new sections 7.3.1 and 7.3.2.

1. Declarant amends and modifies the Declaration as follows:

A. Section 1.11 of the Declaration is deleted and the following is inserted in its place and stead:

1.11 "Association" means North Pointe Havasu Home Owners Association, Inc. an Arizona nonprofit corporation, and its successors and assigns.

B. Section 4.23 of the Declaration is deleted and the following is inserted in its place and stead:

4.23 Occupancy Use Restrictions. Except as specifically required by applicable State, local or Federal law, rule or regulation: (a) multi-family use in excess of two families (a family being defined as a man and/or woman, married or unmarried or adult couple, and/or their children and their relatives including those by blood, marriage, adoption or foster child or parent) is prohibited to the fullest extent allowed by law; and, (b) in any event no Residential Dwelling unit shall be Occupied by more than the lesser

of a total of (i) two (2) Occupants per bedroom (a bedroom being defined as a room originally built as a bedroom or combination guestroom/office or a den, but (excluding a garage or living room) which is thereafter remodeled or converted to be a bedroom if it was/is done with the approval of the Architectural Committee) or (ii) ten (10) Occupants. Each and every Owner and Occupant agrees that such Occupancy in excess of the applicable limits (including any time or other criteria applicable under the definition of Occupant) as set forth below shall be enjoined in equity; that the damages suffered by Occupant(s) or which may be suffered due to the issuance of a preliminary injunction or temporary restraining order are difficult to determine and, thus, four dollars (\$4.00) per day per Occupant in excess of the number of Occupants allowed (to a maximum of ten dollars (\$10.00) per day for any number of such Occupants) is a reasonable estimate of the maximum damage from any temporary restraining order, preliminary injunction enjoining use or Occupancy in excess hereof and, thus, this figure shall be the maximum (but not the minimum) bond set for issuance of any temporary or preliminary injunction restricting use or Occupancy in excess thereof or compelling excess Occupants to move from the Residential Dwelling unit. For purposes of this Section 4.23, "Occupant" means any human being that resides, lives or stays in a Residential Unit or on or at a Lot, including time spent occupying a motor vehicle, trailer or camper or combination of the same located on or at a Lot: (i) for over ten consecutive days at any one time; or (ii) for more than 30 cumulative days per year.

2. The following sections are added to the Declaration:

7.3.1 Initial Capital Assessment. There shall be an assessment of \$200.00 paid by the initial or first Owner of any Lot (excluding Declarant and Declarant's Affiliates) sold by Declarant or Declarant's Affiliate. The funds raised by such "Initial Capital Assessment" may be deposited in the Association's general account(s) or, in the Board's sole discretion, in a special account designated by the Board for the deposit and expenditure of such funds. Such funds and interest accrued on such funds (as allocated by the Board or Treasurer, if the funds were deposited in the Association's general account(s)) to be used as a reserve account and, more particularly, are to be utilized for unforeseen repairs and maintenance to Common Area improvements or where there is a short fall in funds budgeted and available for scheduled repairs and maintenance due to increased costs for the same not included in said budget and which is not paid or fully paid by Special Assessment or Special Assessments. Such funds may not be used directly or indirectly to pay business, legal, accounting or regular maintenance expenses of the Association.

7.3.1 Rental Registration Assessment. Except for leases and rentals by or to Declarant or Declarant's Affiliates, the Owner of a Lot shall pay the sum of \$75.00 each time a Lot, with Residential Unit thereon, is rented or leased to a third party (the "Rental Assessment") with such sums due and payable at the time Owner provides Association the information required in Section 4.22 above, i.e. at least 10 days before commencement of the lease term. This Assessment may be deposited in the account(s) utilized for Annual Assessments and may be utilized for any Association purpose except that a portion thereof shall be utilized to pay the reasonable costs of producing a copy of

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the Declaration and Amendments thereto and, as determined by the Board, either the cost of mailing a copy thereof to the new Lessee/Renter or the cost of mailing a notice to the new Lessee/Renter that said copy of the Declaration and Amendments thereto is available for pickup without charge at the office of the Association during specified hours. The Board may increase the Rental Assessment within its reasonable discretion but, the total annual increase shall not exceed 10% of the Rental Assessment charged during the previous year.

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*SIGNATURE APPEARS ON FOLLOWING PAGE*





FEE# 2011039944

OFFICIAL RECORDS  
OF MOHAVE COUNTY  
CAROL MEIER,  
COUNTY RECORDER



07/29/2011 02:30 PM Fee: \$22.00

PAGE: 1 of 13

When recorded, please return to:

Melissa Noshay Petro, Esq.  
4801 East Broadway Boulevard, Suite 400,  
Tucson, Arizona 85711

**SECOND AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
NORTH POINTE  
Mohave County, Arizona**

This Second Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for North Pointe ("Amendment") is made as of July 13, 2011, by VRE NORTH POINTE, L.L.C., a Missouri limited liability company, hereinafter referred to as "Declarant", in recognition of the following facts and intentions:

**RECITALS:**

A. WHEREAS, that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for North Pointe dated February 6, 2006 was recorded on February 14, 2006, as Recording No. 2006016023 (Book 6109, Page 284), official records of Mohave County, Arizona ("Original Declaration") encumbering and affecting the real property legally described in Exhibit A attached hereto and made a part hereof.

B. WHEREAS, that certain first Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for North Pointe dated June 15, 2006 was recorded on June 19, 2006, as Recording No. 2006062947 (Book 6320, Page 855), official records of Mohave County, Arizona ("First Amendment") which modified and amended the Original Declaration. As so modified and amended, the Original Declaration is referred to herein as the "Declaration".

C. WHEREAS, Section 10.3.1 of the Declaration provides the Declaration may be amended at any time by the written approval, or the affirmative vote, or any combination thereof, of Members holding sixty-seven percent (67%) of the votes in the Association.

D. WHEREAS, the Declarant, as holder of more than sixty-seven percent (67%) of the votes in the Association, and with the

approval of the Board of Directors of the Association, desires to amend the Declaration as provided below.

NOW, THEREFORE, in accordance with the terms and provisions of, and the procedures required by, the Declaration, the undersigned hereby amends the Declaration as follows:

AMENDMENTS:

1. Recitals; Defined Terms. The Recitals above are incorporated herein and made a part hereof. All words with initial capital letters herein shall have the meanings ascribed thereto as set forth in the Declaration, unless otherwise defined herein.

2. Section 1.18, Declarant. Section 1.18 is hereby deleted in its entirety and replaced with the following:

"Declarant" means VRE NORTH POINTE, L.L.C., a Missouri limited liability company, its successors and assigns, or any Person to whom Declarant's rights hereunder are hereafter assigned in whole or in part by recorded instrument. An assignment by recorded instrument of all of Declarant's rights shall vest in the assignee all of Declarant's rights hereunder (including, but not limited to, all of Declarant's easements, rights of consent or approval and voting rights) on the same terms that they were held by Declarant hereunder. A recorded assignment of part of Declarant's rights shall vest in the assignee the specific Declarant's right(s) named in the instrument of assignment on the same terms they were held by Declarant. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Declarant's rights shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of Declarant's rights hereunder.

For purposes hereof, Declarant's address for Notices under the Declaration is as follows: 100 S. Brentwood Boulevard, Suite 240, Clayton, Missouri 63105.

3. Affirmation. Except as specifically amended by this Amendment, the Declaration shall continue and remain in full force and effect. In the event of a conflict between the terms and conditions of this Amendment and either the Declaration, the Articles, or the Bylaws, the terms and conditions of this Amendment shall govern and control. This Amendment shall be deemed effective as of the date it is recording notwithstanding the effect of the Arizona Court of Appeals decision in *Scholten v. Blackhawk Partners*, 184 Ariz. 326 (App. 1995).



IN WITNESS WHEREOF, the undersigned, as Declarant and the Owner of more than sixty-seven percent (67%) of the votes in the Association, has executed this Amendment to be effective as of the day and year first above written.

DECLARANT:

VRE NORTH POINTE, L.L.C., a Missouri limited liability company

By: 

Title: Manager

STATE OF Florida )  
 )  
County of Marion ) ss.

The foregoing instrument was acknowledged before me this day of July 13, 2011, by Mark O'Connell, acting as Manager of VRE NORTH POINTE, L.L.C., a Missouri limited liability company, on behalf of such company.

My commission expires:

Notary Public  
*[Handwritten Signature]*



APPROVAL OF BOARD OF DIRECTORS

The undersigned, who is the President of North Pointe Havasu Homeowners Association, Inc., an Arizona corporation, hereby confirms and certifies approval by the Board of Directors of the foregoing Amendment to the Declaration, as such terms are defined therein.

North Pointe Havasu Homeowners Association, Inc.

By: Mark O'Connell  
Mark O'Connell, President

STATE OF Florida )  
County of Marion ) ss.

The foregoing instrument was acknowledged before me this day of July 13, 2011, by Mark O'Connell as President of North Pointe Havasu Homeowners Association, Inc.



Josh Johnson  
Notary Public

My commission expires:

**EXHIBIT A**

**DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION**



EXHIBIT A

All that portion HAVASU GARDEN ESTATES EAST, Tract No. 1122 recorded as Fee No. 72-8711, Mohave County Records, lying in the north half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona described as follows:

Commencing at the North Quarter Corner of said Section 17;

Thence North  $89^{\circ}54'36''$  East along the north line of said Section 17, a distance of 145.02 feet (145.00 feet, Record) to the northwesterly corner of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, and the true POINT OF BEGINNING;

Thence continuing North  $89^{\circ}54'36''$  East along the north line of said Section 17 and the north line of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 1822.47 (1823.28 feet, Record) feet to the west line of London Bridge Road and the northeast corner of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South  $12^{\circ}53'24''$  East (South  $12^{\circ}52'46''$  East, Record) along said west line of London Bridge Road, a distance of 718.54 feet to the northeasterly corner of Lot 825 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South  $76^{\circ}57'09''$  West (South  $77^{\circ}07'14''$  West, Record) along the northerly line of said Lot 825 and the westerly extension thereof, a distance of 186.45 feet (186.85 feet, Record) to the northeasterly corner of Lot 102 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South  $89^{\circ}57'57''$  West (South  $89^{\circ}59'27''$  West, Record) along the north line of Lots 86 through 102 and Lot 442 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 1152.31 feet to the northwest corner of said Lot 442;

Thence South  $12^{\circ}53'33''$  East (South  $12^{\circ}52'46''$  East, Record) along the westerly line of said Lots 442 and 515 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 268.99 feet to the southwest corner of said Lot 515;

Thence South  $89^{\circ}57'12''$  West (South  $89^{\circ}59'27''$  West, Record) along the north line of Lots 517 through 521 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 297.88 feet (298.50 feet, Record) to the northwest corner of said Lot 521;

Thence South  $12^{\circ}53'33''$  East (South  $12^{\circ}52'46''$  East, Record), a distance of 103.71 (103.86 feet, Record) feet to the southwest corner of said Lot 521;

Thence South  $02^{\circ}23'18''$  West, a distance of 60.05 feet to the northwest corner of Lot 549 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South  $12^{\circ}53'33''$  East (South  $12^{\circ}52'46''$  East, Record) along the westerly lines of Lots 549, 550, 585 and 586 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 482.41 feet to the southwest corner of said Lot 586;

EXHIBIT A (Continued)

Thence South 06°36'25" West, a distance of 60.40 feet to the northwest corner of Lot 621 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 00°00'33" East along the westerly lines of Lots 621, 623, and 658 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 366.39 feet (367.50 feet, Record) to the southwest corner of said Lot 658;

Thence North 89°59'27" East, a distance of 59.81 feet (59.80 feet, Record) to the southeast corner of said Lot 658 and the northwest corner of Lot 660 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 00°00'33" East along the west line of Lots 660, Lot 697 and Lot 698 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, a distance of 367.43 feet (367.50 feet, Record) to the southwest corner of said Lot 698;

Thence South 02°11'05" East, a distance of 60.04 feet to the northwest corner of Lot 348 of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 00°00'33" East along the westerly line of said Lot 348 and the southerly extension thereof, a distance of 147.52 feet (147.50 feet, Record) to the south line of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence South 89°59'27" West (South 89°59'26.68" West, Record), a distance of 2712.68 feet (2712.51 feet, Record) to the southwest corner of said HAVASU GARDEN ESTATES EAST, Tract No. 1122;

Thence along the westerly line of said HAVASU GARDEN ESTATES EAST, Tract No. 1122, the following six (6) courses:

- 1) North 00°00'26" West, 321.02 feet (North 00°00'26" West, 321.00 feet, Record);
- 2) North 46°25'42" West, 908.79 feet (North 46°25'42.10" East 440.00 feet, and North 46°25'42" East, 468.791 feet, Record);
- 3) North 57°51'17" East, 777.35 feet (North 57°51'17.13" East, 777.345 feet, Record);
- 4) North 40°15'44" East, 806.96 feet (North 40°15'44.25" East, 806.969 feet, Record);
- 5) North 17°22'03" East, 453.55 feet (North 17°22'02.77" East, 453.547 feet, Record);
- 6) North 32°35'59" East, 268.54 feet (North 32°35'59.46" East, 268.534 feet, Record) to the POINT OF BEGINNING.

Containing 118.52 Acres, more or less.

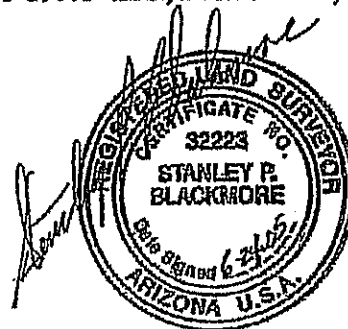
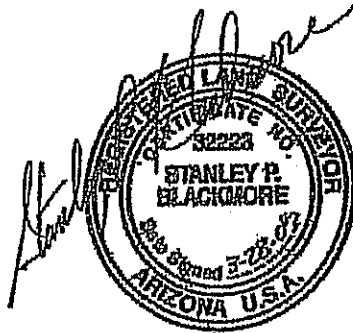


EXHIBIT A (Continued)

All that portion HAVASU GARDEN ESTATES EAST, Tract No. 1122 recorded as Fee No. 72-8711, Mohave County Records, lying in the north half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona described as follows:

All that part of Parcel B lying westerly of the southerly extension of the west line of Lot 348 to the south line of said HAVASU GARDEN ESTATES EAST.



**EXHIBIT A (Continued)**

All that portion HAVASU GARDEN ESTATES EAST, Tract No. 1122 recorded as Fee No. 72-8711, Mohave County Records, lying in the north half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona described as follows:

Parcel K of said HAVASU GARDEN ESTATES EAST.



**EXHIBIT A (Continued)**

**Parcel Being Conveyed:**

That portion of the North Half of Section 17, Township 14 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona, being more particularly described as follows:

Beginning at the North quarter corner of said Section 17, being a brass capped monument;

thence North  $89^{\circ}54'36''$  East, along the North line of the Northeast Quarter said Section, toward the Northeast corner of said Section, being a Mohave County brass capped monument, a distance of 145.02 feet to the Northwest corner of Havasu Garden Estates East, Tract No. 1122, according to the plat recorded May 1, 1972 as Fee No. 72-8711, records of Mohave County, Arizona; thence along the Northwesterly boundary of said Havasu Garden Estates East through the following courses and distances;

South  $32^{\circ}35'59''$  West, 268.54 feet; thence South  $17^{\circ}22'03''$  West, 453.55 feet; thence, South  $40^{\circ}15'44''$  West, 806.96 feet; thence South  $57^{\circ}51'17''$  West, 777.35 feet; thence South  $46^{\circ}25'42''$  West, 908.79 feet;

thence departing said Northwesterly line, North  $00^{\circ}00'26''$  West, along the Northerly extension of the West line of said Havasu Garden Estates East, 34.50 feet;

thence, parallel with and 25.00 feet Northwesterly of said Northwesterly line of Havasu Garden Estates East through the following courses and distances;

North  $46^{\circ}25'42''$  East, 887.51 feet; thence North  $57^{\circ}51'17''$  East, 775.98 feet; thence North  $40^{\circ}15'44''$  East, 794.28 feet;

thence departing said parallel course, North  $15^{\circ}13'31''$  East, 187.93 feet; thence North  $17^{\circ}22'03''$  East, 276.05 feet; thence North  $32^{\circ}35'59''$  East, 159.94 feet; thence South  $89^{\circ}54'36''$  West, parallel with and 70.00 feet South of said North line of the Northeast Quarter of Section 17, a distance of 58.03 feet; thence South  $89^{\circ}58'02''$  West, parallel with and 70.00 feet South of the North line of the Northwest Quarter of said Section 17, a distance of 59.53 feet; thence at a right angle, South  $00^{\circ}01'58''$  East, 121.63 feet; thence South  $44^{\circ}30'50''$  West, 159.79 feet; thence South  $89^{\circ}58'02''$  West, 95.65 feet; thence North  $00^{\circ}01'58''$  West, 305.51 feet to a point on said North line of the Northwest Quarter; thence North  $89^{\circ}58'02''$  East, along said North line, 267.23 feet to the Point of Beginning;

(The above described parcel contains 3.50 acres, more or less).



RECORDER'S MEMO: Legibility  
Questionable For Good Reproduction

EXHIBIT A(Continued)

NE. CORNER SECTION 17  
 FOUND BRASS CAPPED MCDE  
 MONUMENT IN HANDHOLE

PARCEL "K"

NORTH 1/4 CORNER SECTION 17  
 FOUND BRASS CAPPED MONUMENT

N 89°54'36" E 2643.09'  
 145.02'  
 N 89°58'02" E 267.23'

NORTH VIEW DRIVE

LINE	BEARING	DISTANCE
L1	S89°54'36"W	58.03'
L2	S89°58'02"W	59.53'



SCALE: 1"=100'

HAWAIIAN GARDEN ESTATES EAST  
 FEE NO. 728711

SHEET 2 OF 2

EXHIBIT  
 BOUNDARY LINE ADJUSTMENT  
 FOR  
 FIDENCE DEVELOPMENT, LLC

SEC. 17, T. 14 N., R. 20 W., G.&S.R.B.&M.

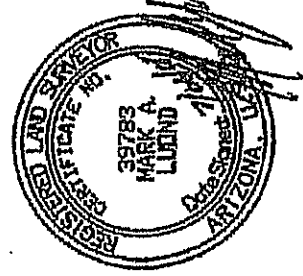
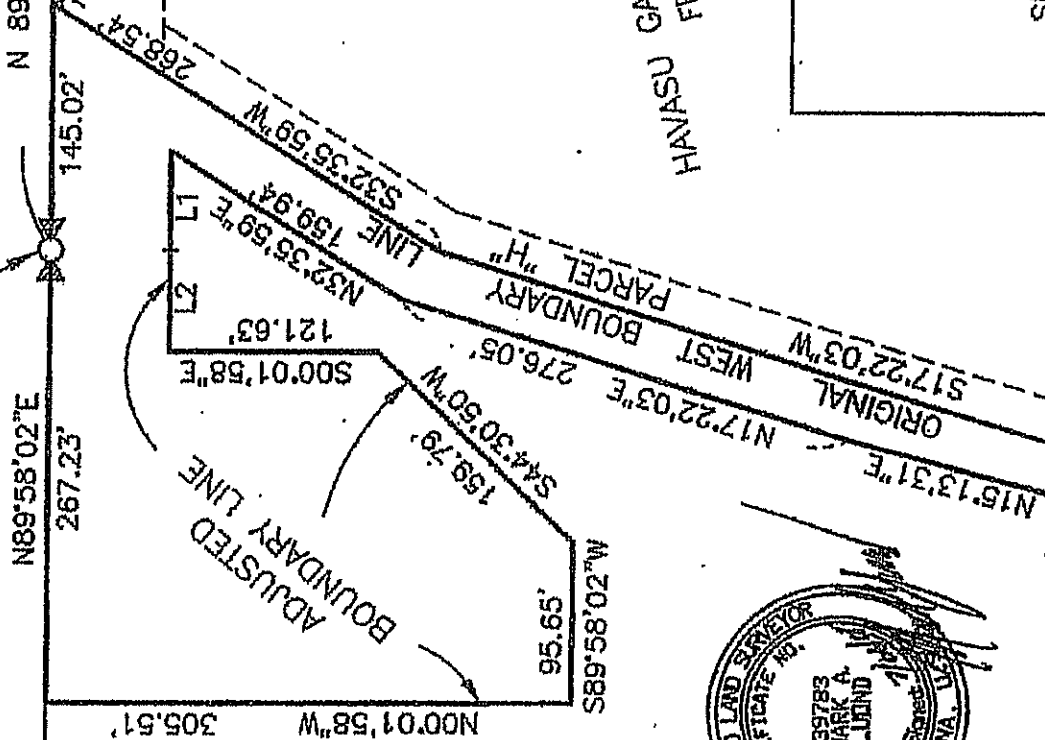


EXHIBIT A (Continued)

NORTH 1/4 CORNER  
SECTION 17

N89°54'36"E  
145.02'

N89°58'02"E

267.23'

SEE DETAIL ON  
SHEET 2 OF 2

N15°13'31"E  
187.93'

PARCEL AREA: 3.50 ACRES±



ADJUSTED  
BOUNDARY LINE

794.28'

N40°15'44"E  
S40°15'44"W  
806.96'

ORIGINAL  
BOUNDARY LINE

HAVASU GARDEN ESTATES EAST  
FEE NO. 728711



SCALE: 1"=300'

SHEET 1 OF 2

EXHIBIT  
BOUNDARY LINE ADJUSTMENT  
FOR  
FIDENCE DEVELOPMENT, LLC  
SEC. 17, T. 14 N., R.; 20 W., G.&S.R.B.&M.

N0°00'26"W

34.50'  
N46°25'42"E  
S46°25'42"W

887.51'  
908.79'

N57°51'17"E 775.98'  
S57°51'17"W 777.35'

S32°35'59"W  
268.54'

S17°22'03"W  
453.55'

3F

FEE# 2017012195

OFFICIAL RECORDS OF MOHAVE COUNTY KRISTI BLAIR, COUNTY RECORDER



03/15/2017 11:40 AM Fee: \$16.00

PAGE: 1 of 3

When Recorded, Return to:

Penny L. Koepke Maxwell & Morgan, P.C. 4854 E. Baseline Road, Suite 104 Mesa, Arizona 85260

THIRD AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR NORTH POINTE Mohave County, Arizona

This Third Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for North Pointe ("Third Amendment") is made as of this 2nd day of MARCH, 2017, by VRE North Pointe, L.L.C., a Missouri limited liability company, hereinafter referred to as Declarant, in recognition of the following:

Recitals:

- A. WHEREAS that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for North Pointe dated February 6, 2006 was recorded on February 14, 2006, as Recording No. 2006016023 (Book 6109, Page 284), official records of Mohave County Arizona ("Original Declaration"), encumbering and affecting the real property as set forth in Exhibit "A" attached to the Second Amendment to Amended and Restated Declaration;
B. WHEREAS that certain First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restriction for North Pointe dated June 15, 2006 was recorded on June 19, 2006, as Recording No. 2006062947 (Book 6320, Page 855), official records of Mohave County, Arizona ("First Amendment") which modified and amended the Original Declaration.
C. WHEREAS that certain Second Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for North Pointe, dated July 13, 2011 was recorded on July 29, 2011, as Recording No. 2011039944, official records of Mohave County, Arizona ("Second Amendment"). As so modified and amended, the Original Declaration, First Amendment and Second Amendment are referred to herein as the "Declaration";
D. WHEREAS, Section 10.3.1 of the Declaration provides the Declaration may be amended at any time by the written approval, or the affirmative vote, or any combination thereof, of Members holding sixty-seven percent (67%) of the votes in the Association.
E. WHEREAS, Section 10.3.1 of the Declaration further provides that so long as Declarant, as holder of more than sixty-seven percent (67%) of the votes in the Association, the Declarant may amend the Declaration without the consent or approval of any other Owner or Person.
F. WHEREAS, the Declarant, with the approval of the Board of Directors of the Association, desires to amend the Declaration as provided below.

G. WHEREAS, this Amendment amends the Declaration only as provided herein, and specifically, adds Article 10.20, Enforcement Rights.

NOW, THEREFORE, in accordance with the terms and provisions of, and the procedure required by the Declaration, the undersigned hereby amends the Declaration, as follows:

**AMENDMENTS:**

- 1. Recitals/Defined Terms: The Recitals above are incorporated herein and made a part hereof. All words with initial capital letter shall have the meanings ascribed as set forth in the Declaration, unless otherwise defined herein.
- 2. Declarant amends and modifies the Declaration as follows by adding the following provision:

10.20 Enforcement Expenses. If the Association takes enforcement action as per its rights set forth in this Declaration, whether or not suit is filed, its costs in doing so, including but not limited to, reasonable attorneys' fees, court costs, out of pocket expenses, costs of investigation, and other expenses related to the enforcement, together with interest thereon from the date the costs are expended at a rate equal to twelve percent (12%) per annum, shall constitute a lien on all Lot(s) owned by the Owner or Owners against whom action is taken (or against whose occupants the action is taken), which lien shall have the priority and be enforced in the manner described in Article VII, Sections 7.1 and 7.8. In addition to being secured by a lien, said costs including but not limited to, reasonable attorneys' fees, court costs, out pocket expenses, costs of investigation, and other expenses related to the enforcement, shall also be the personal obligation of the Owner or Owners against whom such action is taken (or against whose occupants the action is taken). If the Association is the prevailing party in an action to enforce the Declaration, and in addition to its ability to recover attorneys' fees as per Article 10.1, said amounts once awarded are not only the personal obligation of the Owner or Owners against whom such action is taken (or against whose occupants the action is taken), but also secured by a lien against the Lot(s) owned by the Owner or Owner(s) against whom the action is taken (or against whose occupants the action is taken), being treated in the same manner described in Article VII, Section 7.1 and 7.8.

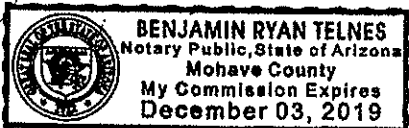
IN WITNESS WHEREOF, the undersigned, as Declarant with more than sixty-seven percent (67%) of the votes in the Association, has executed this Amendment to be effective as of the date adopted.

DECLARANT: VRE NORTH POINTE, L.L.C., a Missouri limited liability company

By: [Signature]  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

STATE OF Arizona )  
 ) ss.  
 County of Mohave )

On this 2nd day of March, 2017, before me personally appeared William M. Spresser, whose identity proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.



[Signature]  
 Notary Public

APPROVAL OF BOARD OF DIRECTORS  
OF THIRD AMENDMENT TO AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

The undersigned, who is the President of the North Pointe Havasu Homeowners Association, Inc., an Arizona corporation, hereby confirms and certifies that on the 2<sup>nd</sup> day of March, 2017, approval by the Board of Directors of the Third Amendment to the Declaration was given.

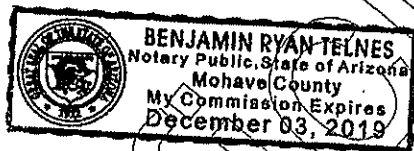
North Pointe Havasu Homeowners Association, Inc.

By: [Signature]  
Name, \_\_\_\_\_ President

STATE OF Arizona )  
 ) ss.  
County of Mohave )

On this 2<sup>nd</sup> day of March, 2017, before me personally appeared William M. Spesser, whose identity proved to me on the basis of Satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

[Signature]  
Notary Public



UNOFFICIAL COPY

Corporate Resolution

**NORTH POINTE HAVASU HOMEOWNERS ASSOCIATION, INC.**

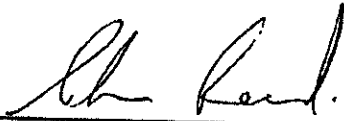
**WHEREAS**, North Pointe Havasu Homeowners Association, Inc. is duly established and incorporated under the laws of Arizona as a nonprofit corporation;

**RESOLVED THAT:**

effective November 1, 2009, pursuant to Arizona Revised Statutes §§ 10-3302(16) and 10-3613, and in furtherance of the objectives established by Section 7.3.1 of Article 7 of [the Amendment to] the Amended and Restated Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for North Pointe, there shall be a *Capital Assessment* in the amount of two hundred dollars (\$200.00) per Lot, payable to the Association upon the conveyance of a Lot from an owner/member to a new owner/member. Said assessment shall be used in accordance with Section 7.3.1.

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This action is taken without a meeting by unanimous consent of all the Directors pursuant to Section 10-3821, Arizona Revised Statutes, and Article 3, Section 3.5 of the Amended Bylaws of North Pointe Havasu Homeowners Association, Inc.



Chris Read, President

10-27-09

Date



Aaron Read, Secretary

10-27-09

Date