

at the request of Pioneer Title Agency, Inc.

When recorded mail to

**Richard B. Murphy**

**Murphy Cordier Casale Axel PLC**

**2025 N. 3<sup>rd</sup> Street, Suite 200**

**Phoenix, AZ 85004**

**FEE# 2022026491**

OFFICIAL RECORDS OF MOHAVE COUNTY

KRISTI BLAIR, COUNTY RECORDER

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**CAPTION HEADING: DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE HAVASU LIFE - SOUTH**

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**RECORDED AT THE REQUEST OF:**

Richard B. Murphy  
Murphy Cordier Casale Axel PLC  
2025 N. 3<sup>rd</sup> Street, Suite 200  
Phoenix, Arizona 85004

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE HAVASU LIFE - SOUTH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into as of the 19<sup>th</sup> day of APRIL, 2022 by SSD CLARKE DEVELOPMENT KEARSAGE, LLC, an Arizona limited liability company, its successors, and assigns (herein called "Declarant").

\*\*\*\*\*

THIS DECLARATION PROVIDES FOR AN EXTENSIVE DEGREE OF CONTROL IN THE DECLARANT, INCLUDING BUT NOT LIMITED TO: (I) CONTROL OF THE ASSOCIATION; (II) CONTROL OF THE USE, AND LIMITATIONS OF USE, OF THE COMMON AREAS; (III) THE RIGHT TO AMEND THIS DECLARATION; (IV) SUBSTANTIAL CONTROL IN DEVELOPING THE PROPERTY, WHICH CONTROL MAY, UNDER THE TERMS OF THIS DECLARATION, EXTEND UNTIL THE DECLARANT HAS SOLD ALL OF THE LOTS; AND (V) CONDITIONS RELATED TO THE RIGHTS OF MEMBERS TO LITIGATE CONSTRUCTION DEFECT-RELATED MATTERS. ARTICLE 10 HEREOF CONTAINS A LIMITATION ON THE LIABILITY OF THE DECLARANT. EACH OWNER, BY ACCEPTING TITLE TO A LOT, AND EACH MEMBER, BY ACCEPTING A MEMBERSHIP, ACKNOWLEDGES, AGREES TO AND ACCEPTS THE DECLARANT'S CONTROL OF THE PROPERTY, THE LIMITED LIABILITY OF THE DECLARANT AS PROVIDED IN THIS DECLARATION, AND THE PROCEDURE FOR RESOLVING DISPUTES. SUCH CONTROL AND CONDITIONS ON LITIGATION SET FORTH IN ARTICLE 10 ARE INTEGRAL PARTS OF THIS DECLARATION, THE GENERAL PLAN OF DEVELOPMENT OF THE HAVASU LIFE - SOUTH COMMUNITY AND THE MARKETING AND SALES OF THE LOTS. CAPITAL TERMS USED IN THIS PARAGRAPH ARE DEFINED IN THE DECLARATION.

\*\*\*\*\*

**WITNESSETH:**

WHEREAS, Declarant is the Owner of certain real property located in Mohave County, Arizona, as hereinafter described and commonly known as “The Havasu Life – South” a subdivision, the plat or map of which is on file and of record in the office of the Mohave County Recorder, Fee No. 2022022304; and

WHEREAS, Declarant is desirous of subjecting said real property to the covenants, conditions and restrictions hereinafter set forth, each of which is and are for the benefit of said property and for each owner thereof, and shall inure to the benefit of and pass with the said property, and each and every parcel thereof, and any owner thereof;

NOW THEREFORE, the Declarant hereby declares that the real property hereinafter described is and shall be held, transferred, sold, and conveyed subject to the covenants, conditions and restrictions hereinafter set forth.

**ARTICLE 1**  
**DEFINITIONS**

**1.1** **“Alleged Defect”** means an alleged defect(s) in the planning, design, engineering, grading, construction, or other development of any portion of the Common Area, Areas of Association Responsibility, any Lot and/or any Improvements constructed on or within The Havasu Life - South by Declarant, its agents, consultants, contractors, or subcontractors, or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in any manner in the planning, design, engineering, grading, construction or development thereof.

**1.2** **“Alleged Defect Costs”** means the costs of repairing or replacing any defective portion of the Common Area, Areas of Association Responsibility, any Lot and/or any Improvements constructed on or within The Havasu Life - South by Declarant, its agents, consultants, contractors, or subcontractors.

**1.3** **“Annual Assessment”** means the assessments levied against each Lot and the Owner thereof, pursuant to Section 6.3 of this Declaration.

**1.4** **“Architectural Committee”** means the committee of the Association created pursuant to Section 5.11 of this Declaration.

**1.5** **“Architectural Committee Rules”** means the rules, guidelines and procedures adopted by the Architectural Committee pursuant to Section 5.11 of this Declaration and the Bylaws, as they may, from time to time, be amended.

**1.6** **“Areas of Association Responsibility”** shall mean: (i) all Common Areas, Improvements, and landscaping situated thereon, including, without limitation, the private streets for the Project, if any; (ii) any other land, and the Improvements situated , situated within the

boundaries of a Lot which the Association acknowledges in this Declaration or in another recorded document is land which is to be maintained and repaired by the Association; (iii) all real property and the Improvements situated thereon, if any, within The Havasu Life - South located within and improved as dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or a county, city or town has accepted the responsibility for the maintenance, repair and replacement of such areas; and (iv) any entry features constructed within The Havasu Life - South (although, unless shown on the Plat, Declarant shall have no obligation to install any entry feature).

1.7 **“Articles”** means the Articles of Incorporation of the Association, as they may, from time to time, be amended.

1.8 **“Assessment”** means an Annual Assessment, Special Assessment, or Lot Specific Assessment pursuant to Article 6 of this Declaration.

1.9 **“Association”** means The Havasu Life - South Community Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.10 **“Association Lien”** means a lien created and imposed pursuant to Article 6 of this Declaration.

1.11 **“Association Rules”** means the rules, regulations, guidelines, procedures, and other requirements adopted by the Board pursuant to Section 5.3 of this Declaration, as they may, from time to time, be amended.

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

1.13 **“The Havasu Life - South”** means all real property and the Improvement(s) thereon, described on the Plat or otherwise subject to this Declaration.

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

1.15 **“Capital Reserves Payment”** means a payment or any portion of a payment that the Declarant receives that will be added to the reserves outlined in Section 6.10.7.

1.16 **“Collection Costs”** means all costs, fees, charges and expenditures (including, without limitation, attorneys’ fees, court costs, filing fees and recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, interest or other amounts payable to the Association pursuant to this Declaration or the Condominium Act.

1.17 **“Common Area”** means all land and the Improvements situated thereon owned by the Association, including all land and the Improvements situated thereon, within the Plat, Recorded Tract Declaration, or other Recorded instrument as indicated in this Declaration, including, but not limited to, Parcels “A,” “B,” and “C.” “Common Area” shall not include any

real property, improvements or personal property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action.

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

**1.19** **"Declarant"** means SSD Clarke Development Kearsage, LLC, an Arizona limited liability company, its successors and assigns, or any person to whom the Declarant's rights hereunder are assigned by Recorded instrument. Notwithstanding the foregoing, SSD Clarke Development Kearsage, LLC shall cease being Declarant at such time as it no longer owns any Lot.

**1.20** **"Declaration"** means this amended and restated Declaration of Covenants, Conditions and Restrictions, as it may, from time to time, be amended.

**1.21** **"Documents"** means the Architectural Committee Rules, the Articles, the Association Rules, the Bylaws, this Declaration, the Plat and/or any Tract Declaration, all as such may be amended from time to time.

**1.22** **"Exterior Alteration"** means any construction, installation, addition alteration, repair change, change of color, landscaping, removal, demolition, or other work that alters the exterior appearance of a Lot or the Improvements located thereon.

**1.23** **"First Mortgage"** means a Mortgage or deed of trust that is the first and most senior of all Mortgages and deeds of trust upon the same property.

**1.24** **"First Mortgagee"** means the holder or beneficiary of a First Mortgage.

**1.25** **"Improvement"** means any Residential Unit, building, fence, wall or other structure, or any swimming pool, tennis court, road, driveway, parking area, or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

**1.26** **"Lessee"** means the lessee, a third-party lessee, sublessee, tenant, or subtenant under a lease, whether oral or written, of any Lot, together with his, her or its respective family members, guests, and other invitees.

**1.27** **"Limited Common Element"** means an element that is shared by one or more Residential Units but fewer than all Residential Units.

**1.28** **"Lot"** means each of Lots 1 through 33, inclusive, as depicted on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure, or other Improvement situated on such Lots.

**1.29** **"Lot Purchase Price"** means the purchase price for the Lot paid pursuant to a Lot purchase agreement.

**1.30** **“Lot Specific Assessment”** means any assessment levied and assessed pursuant to Section 6.7 of this Declaration.

**1.31** **“Member”** means any Person who is a member of the Association.

**1.32** **“Membership”** means a membership in the Association.

**1.33** **“Mortgage”** means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration as security for performance of an obligation, including, without limitation, a deed of trust, but shall not include any instrument creating or evidencing solely a secured interest arising under the Uniform Commercial Code.

**1.34** **“Mortgagee”** means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

**1.35** **“Mortgagor”** means the party executing a Mortgage.

**1.36** **“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 in a Lot. Owner shall not include: (i) Persons having an interest in a Lot merely as security for the performance of an obligation; or (ii) a Lessee. Owner shall include a Purchaser under a 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, 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, the fee simple title to which is vested in a trustee pursuant to A.R.S. §33-801, et seq., the trustor shall be deemed the Owner.

**1.37** **“Parking Space”** means any designated parking spaces for motorized vehicles on the Property.

**1.38** **“Period of Declarant Control”** means the period commencing on the date of the Recording of this Declaration and ending on the earlier of: (a) December 31, 2030; (b) the date upon which Declarant ceases to own any of the Lots; or (c) the date the Declarant Records a written instrument terminating the Period of Declarant Control.

**1.39** **“Person”** means any natural person, corporation, partnership, trust, or other legal entity.

**1.40** **“Property”** means the plat of The Havasu Life - South recorded at Fee #2022022304 records of Mohave County, Arizona, and all amendments, supplements, and corrections.

**1.41** **“Property Transfer Payment”** means the fee created and imposed by Section 6.10 of this Declaration.

1.42 **“Purchaser”** means any Person who or which becomes the Owner of a Lot, whether by voluntary or involuntary transfer and whether for valuable consideration.

1.43 **“Recording” / “Recorded”** means placing an instrument of public record in the office of the County Recorder of Mohave County, Arizona, and **“Recorded”** means having been so filed in the public record.

1.44 **“Resident”** means an individual residing in any Residential Unit, together with his or her respective family members, guests, and other invitees.

1.45 **“Residential Unit”** means a structure that is devoted exclusively to residential use and occupancy, including all entryways, patios, garages and structures and other Improvements constructed thereon or in connection therewith, whether consisting of a wholly separate freestanding building or attached to an adjacent Residential Unit.

1.46 **“Rules”** means the rules and regulations adopted by the Association, as amended from time to time.

1.47 **“Single Family”** means one (1) person, or a group of two (2) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

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

1.49 **“Special Declarant Rights”** means the right or combination of rights which are hereby established, reserved by or granted to the Declarant in this Declaration, unless expressly provided otherwise elsewhere in this Declaration, Declarant shall have the right to do any of the following:

- (a) construct Improvements provided for in this Declaration or shown on the Plat;
- (b) exercise any Development Right;
- (c) maintain sales and management offices, models, signs and any other actions which Declarant believes to be reasonably necessary or desirable to market and sell the Residential Units;
- (d) use easements through the Common Elements for the purpose of making Improvements; and
- (e) appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

**1.50** **“Tract Declaration”** means a declaration referred to in Section 2.2 of this Declaration.

**1.51** **“Visible From Neighboring Property”** means, with respect to any given object, that such object is, or would be, visible to a person six feet tall, standing at ground level on any part of any neighboring property unless only by reason of being able to see the object through a view fence and such object would not be visible to such person if the view fence were a solid fence.

**1.52** **“Working Capital Payment”** means a payment or any portion of a payment that the Declarant receives that will be added to the working capital fund outlined in Section 6.10.8.

## **ARTICLE 2**

### **PLAN OF DEVELOPMENT**

#### **2.1** **Property Subject to the Declaration**

This Declaration is being Recorded to establish a general plan for the development and use of the property within The Havasu Life - South to protect and enhance its value and desirability. All property within The Havasu Life - South shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representative, successors, transferees and assigns, to all of the provisions, obligations, limitations, covenants, conditions and restrictions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of The Havasu Life - South and hereby evidences the Person’s interest that all the provisions, obligations, limitations, covenants, conditions, restrictions, rules, and regulations contained in this Declaration shall run with Property and be binding on all current, subsequent, and future Owners, grantees, Purchasers, assignees, Lessees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by his Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.”

#### **2.2** **Development Plan; Tract Declaration**

Notwithstanding any other provision of this Declaration to the contrary, Declarant, without obtaining consent of any other Owner or Person, shall have, the right to make changes or modifications to its development plans with respect to The Havasu Life - South in any way which the Declarant desires, including, but not limited to, changing the density of all or any portion of The Havasu Life - South or changing the nature or extent of the uses to which it may be devoted.

Declarant reserves the right to annex additional real property, if any, adjacent to The Havasu Life - South by recording a Tract Declaration that: (a) identifies the property to be annexed; and (b) uses for which the annexed property may be used. A Tract Declaration may designate Common Areas and impose such additional covenants, conditions and restrictions as may be appropriate for the property subject to the Tract Declaration. Each recorded Tract Declaration shall be construed as a supplement to this Declaration as if all the provisions of the Tract Declaration were set forth in this Declaration. A Tract Declaration may only be amended with the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than seventy-five percent (75%) of the votes entitled to be cast by the Owners subject to such Tract Declaration.

### **2.3 Disclaimer of Representations**

The Declarant makes no representations or warranties whatsoever that: (a) The Havasu Life - South will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded, (b) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (c) any property not now subject to this Declaration will be subjected to the provisions hereof; or (d) the use of any property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing that may be represented by brokers or salespeople representing the Declarant shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration.

### **2.4 Common Area Amenities**

The amenities to be constructed within the Common Area (the "Amenities") shall be a private facility for the exclusive use of the Residents and their guests and other invitees. The Association shall be solely responsible for the upkeep, maintenance, and repair of the Amenities. Each Resident hereby agrees to assume the risks associated with the use of the Amenities. Neither the Declarant, nor the Association or any director, officer, agent or employee of the Declarant or the Association shall be liable to any Resident, or any other Person, for any claims or damages resulting directly or indirectly from the construction, existence, maintenance or use of the Amenities.

### **2.5 Zoning and Development Plan**

Each Owner, by accepting title to a Residential Unit and becoming an Owner, acknowledges that the development of the Property may extend over many years, and agrees, so long as each is the Owner of the Residential Unit, not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Property; (b) subdivision, development or improvement of the adjacent property, or (c) changes in any conceptual or development plan; provided that, in all cases, said zoning, subdivision, improvement, density, or conceptual, development plan revision is or would be lawful (including without limitation lawful by special use permit, variance or the like). The provisions of this Section shall be enforceable to the fullest extent allowed by law.

**ARTICLE 3**  
**PERMITTED USES AND RESTRICTIONS**

**3.1 Architectural Control**

In addition to any requirements imposed by the State of Arizona, Mohave County, or Lake Havasu City:

**3.1.1** All Improvements constructed on the Lots within shall be of new construction, and no building or other structures shall be moved from other locations onto any lot.

**3.1.2** No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

**3.1.3** No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

**3.1.4** No addition, alteration, repair, change (including a change in paint color), replacement or other work on any Improvement which in any way alters the exterior appearance of any Lot shall be made or done without the prior written approval of the Architectural Committee. With respect to paint colors, an Owner may review a list of colors to be maintained by the Association and may request in writing that a color desired by such Owner be approved as being the same, similar or substantially similar to a color on such list. Such approval shall be subject to any other relevant factors and shall be at the sole discretion of the Architectural Committee or another person designated by the Board for such purpose. Any such approval shall constitute approval of the Architectural Committee. If such request is denied, the Owner may submit a written request for approval to the Board in accordance with Section 3.1.12.

**3.1.5** Any Owner desiring approval of the Architectural Committee for any construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his Lot, including the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of any construction, installation, addition, alteration, repair, change, replacement or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications and payment of any fees, charges and expenses pursuant to section 3.1.9, which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application within thirty (30) days after its receipt of such request and of all supporting information, plans, specifications and payment of fees, charges and expenses required by the Architectural Committee pursuant to Section 3.1.9, the date of such receipt to be determined in writing by the Architectural Committee, this Section shall be deemed to have been complied with and such plans shall be deemed to be approved.

**3.1.6** The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change, replacement or other work pursuant to this Section, including plans deemed approved as a result of the Architectural Committee's failure to act, shall

not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, replacement or other work subsequently submitted for approval by any Owner.

**3.1.7** Upon receipt of approval from the Architectural Committee for any Exterior Alteration or construction, installation, addition, alteration, repair, change, replacement or other work approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, the Owner who requested such approval 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.

**3.1.8** Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, must be submitted in writing to and approved in writing by the Architectural Committee in accordance with Section 3.1.5. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

**3.1.9** The Architectural Committee shall have the right to seek prepayment and/or reimbursement from an Owner of all third-party fees, charges and expenses incurred or to be incurred by the Architectural Committee in reviewing requests for approval of any construction, installation, alteration, addition, repair, change, replacement or other work pursuant to this Section. An estimate of such third-party fees, charges and expenses shall be provided to the Owner and shall, if requested, be payable prior to such fees, charges and expenses being incurred.

**3.1.10** The Architectural Committee may require an Owner, before commencing construction of any Improvements, to deposit monies to be used by the Association to remove any construction debris that is allowed to accumulate and/or repair any damage to the Common Area. The deposit will be refunded upon the completion of construction of the Improvements, less any expenses incurred by the Association, upon written request of the Owner.

**3.1.11** The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule or regulation.

**3.1.12** Any Owner shall have the right to appeal to the Board any decision made by the Architectural Committee in accordance with the rules, guidelines and procedures established by the Board.

**3.1.13** Any approval of plans or specifications and/or proposed work given by the Architectural Committee shall be only for the purpose of permitting the construction, installation, addition, alteration, repair, change, or replacement of such Improvements or proposed Improvements. Such approval shall not constitute an approval, ratification, or endorsement of the quality of architectural, their conformance with governmental requirements, or the engineering soundness of the proposed work or Improvements. The Architectural Committee and its members, the Board and its members, the Association and any officers and committees of the Association, any property manager and other employees of the Association shall not have any liability for any

design faults, defects or omissions in the plans, specifications, proposed work or proposed Improvements.

### **3.2 Limited Common Elements**

Limited Common Elements shall be subject to the exclusive use and enjoyment of the Owners of the Residential Unit to which the Limited Common Elements are appurtenant.

### **3.3 Vehicle/Equipment Control**

In addition to any requirements imposed by the State of Arizona, Mohave County or Lake Havasu City, the Board shall have the right to adopt rules and regulations, at a meeting duly called for such purpose, prohibiting, or restricting the parking, maintenance, construction, reconstruction, repair or use of any Vehicle/Equipment on the Lots, or in the Common Area. For purposes of this Section and Section 3.3, the term "Vehicle/Equipment" is to be interpreted in its broadest sense to include any vehicle, means of transport or item capable of being transported. By way of illustration but not limitation, such term shall include passenger cars, trucks, multi-purpose vehicles, vans, buses, motorcycles, motorbikes, dirt bikes, all-terrain vehicles, go-peds, snow mobiles, golf carts, electric carts, aircraft, boats, boat trailers, mobile homes, motor homes, horse trailers, travel trailers, tent trailers, camper shells, detached campers, recreational vehicles or other similar vehicles or equipment. Notice of such rules and regulations shall be provided to the Owners in a manner determined by the Board. The Board shall administer such rules and regulations. A violation of a rule regarding parking may subject the Vehicle/Equipment to towing at the Resident's expense.

**3.3.1** The Parking Spaces are unassigned and are used on a first come, first served basis.

**3.3.2** No Vehicle/Equipment, excluding standard cars and trucks, shall be allowed to park in any Parking Space or remain in a driveway of a Residential Unit for more than twenty-four (24) hours.

**3.3.3** Parking Spaces are for passenger vehicles that fit within the confines of the Parking Space itself. A passenger vehicle may not remain in a Parking Space for more than seventy-two (72) hours.

**3.3.4** Garages are for storing a Resident's Vehicle/Equipment only. A garage may store more than a Vehicle/Equipment only if there is room for at least one Vehicle/Equipment at all times. No garage may be used as a workshop, man cave, recreational room, or store hazardous materials.

**3.3.5** Any Vehicle/Equipment in a Parking Space must be currently licensed and registered with the appropriate government entity.

**3.3.6** Unsightly and inoperable Vehicles/Equipment may not be parked or stored in a driveway, carport, or Parking Space.

### **3.4 Towing of Vehicles/Equipment**

In the event compliance is not made with a written demand from the Association to move any Vehicle/Equipment as defined in Section 3.3, the Board shall have the right to have any such Vehicle/Equipment which is parked, maintained, constructed, reconstructed, repaired or used in violation of any Documents (including rules and regulations adopted pursuant to Section 3.3) towed or impounded. If an Owner, or an Owner's Lessee, or their respective families, guests or other invitees, own such Vehicle/Equipment, all expenses incurred by the Association in connection with such towing shall be levied as a Lot Specific Assessment, shall be paid by such Owner and shall be secured by an Association Lien established pursuant to Article 6.

### **3.5 Temporary Buildings Use**

No trailer, incomplete building, tent, shack, garage, or temporary building or structure of any kind shall be used as a residence. Temporary buildings, trailers or other structures used during the construction, installation, addition, alteration, repair, change or replacement of any Improvements or Exterior Alterations approved by the Architectural Committee, interior remodeling, reroofing or other work require the prior written approval of the Architectural Committee and will be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of one month without the prior written approval of the Architectural Committee.

### **3.6 Maintenance of Lawns and Plantings**

Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind on a Lot properly trimmed and cultivated and free of trash, weeds and other unsightly material. No Owner shall be responsible for maintenance of any area over which: (a) the Association assumes the responsibility in writing; (b) the Association has been given such responsibility by this Declaration or a Recorded Tract Declaration; or (c) Mohave County or Lake Havasu City assumes responsibility, for so long as the Association, Mohave County or Lake Havasu City assumes or has responsibility.

**3.6.1 Association's responsibilities.** The Association will be responsible for any plants, trees, hedges, shrubs, grass, and plantings in the front of any Lots. The Association will provide palm trees for the Property as outlined by the Architectural Committee.

**3.6.2 Residents' Responsibilities.** Each Resident will be responsible for any plants, trees, hedges, shrubs, grass and plantings in the back of any Lots.

**3.6.3 Restriction on Vegetation for Residents.** No Resident shall be allowed to have any non-native plant species in either the front or back of any Lots. No Resident shall plant any trees of any kind without prior written approval from the Board.

### **3.7 Nuisances**

No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property 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 and other property shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate. Supplies of brick, block, lumber, and other building materials shall be piled only in such areas as may be approved in writing by the Architectural Committee. The Board in its sole discretion shall have the right to determine the existence of any nuisance.

### **3.8 Diseases and Insects**

No Person shall permit anything or condition to exist upon any Lot or other property which may induce, breed or harbor infectious plant diseases or noxious insects.

### **3.9 Repair of Building**

No Improvement situated on any Lot or other property shall be permitted to fall into disrepair, and each Improvement shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. If any Improvement is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Improvement shall be immediately repaired or rebuilt or shall be demolished.

**3.9.1 Repair of Roofs.** The Association will be responsible for any and all repairs for all of the Residential Units' roofs.

### **3.10 Antennas**

Unless, and only to the extent, permitted by applicable law, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee.

### **3.11 Mineral Exploration**

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

### **3.12 Trash Containers and Collection**

No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style approved by the Architectural Committee. In no event shall such containers be located to be visible from the street adjacent to the Lot, except when placed at the curb for collection. Standard city issued trash containers may be placed at the curb for collection after 6:00 PM the day before pickup and must not be Visible From Neighboring Property more than twenty-four (24) hours after pickup. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property. In the event the Property uses a community trash receptacle in lieu of individual trash containers, Residents shall use such community trash receptable and no other.

### **3.13 Clothes Drying Facilities**

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

### **3.14 Utility Service**

No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures in a manner approved by the Architectural Committee. However, the foregoing restriction shall not prohibit service pedestals and aboveground switch cabinets and transformers, where required. Additionally, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with the requirement, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing meters, panels and other equipment on the outside wall of a Residential Unit facing the street running directly in front of such Residential Unit. This restriction shall also not prohibit temporary power or telephone structures approved by the Design Review Committee and which are incident to the construction of any Improvements.

### **3.15 Landscape Encroachments**

No tree, shrub, planting or other property of any kind on any Lot or Common Area 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 sixteen (16) feet.

### **3.16 Residential Use**

All Residential Units shall be used, improved, and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that a Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (a) the existence or operation of the business activity is not

apparent or detectable by sight, sound or smell from outside the Residential Unit; (b) the business activity conforms to all applicable zoning ordinances and Association requirements; (c) the business activity does not involve the door-to-door solicitation within The Havasu Life - South; and (d) the business activity is consistent with the residential character of The Havasu Life - South and does not constitute a nuisance or a hazardous or offensive use or threaten the security, health or safety of others within The Havasu Life - South. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof for periods of not less than thirty (30) consecutive days and with the consent of the Association shall not be considered a trade or business within the meaning of this Section.

### **3.17 Health, Safety and Welfare**

Without limiting any other provision in this Article 3, each Owner covenants and agrees to maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Residents of their respective Lots or the Common Areas. If additional uses, activities or facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of Residents, the Board may make rules restricting or regulating their presence in The Havasu Life - South as part of the Association Rules or may direct the Architectural Committee to propose rules for Board approval governing their presence on Lots or other property as part of the Architectural Committee Rules.

### **3.18 Animals**

No fowl, poultry or livestock may be kept on any Lot for any purpose. No animal, bird, or reptile may be kept on any Lot for commercial purposes. Domestic pets are permitted; however, in the case of dogs and cats, each Lot shall be limited to a cumulative total of three dogs and/or cats. All pets shall be trained and kept under safe and sanitary conditions so as not to become a nuisance, whether noise, odor or otherwise, to neighboring Residents. All pets shall be safely restrained when being walked throughout The Havasu Life - South and no person owning or in the custody of a pet shall allow the pet to stray or go upon another Lot. The person walking the pet shall be responsible for picking up their pet's fecal matter and disposing of it in a safe and sanitary manner. No pet shall be permitted to cause a nuisance upon any Lot or Common Area to be offensive or detrimental to such property or to any other property or in the vicinity thereof or to its occupants. Upon the written request of any Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this Section, and in accordance with Section 3.6, a particular animal is a nuisance or making an unreasonable amount of noise.

### **3.19 Machinery and Equipment**

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except (a) 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 (b) that which the Association may require for the operation and maintenance of The Havasu Life - South.

### **3.20 Signs**

No signs whatsoever which are Visible From Neighboring Property shall be erected or maintained on any Lot, except: (a) signs required by legal proceedings; (b) residence identification signs, provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee; (c) such construction job identification signs, business identification signs and subdivision identification signs which are in conformance with the requirements of Lake Havasu City, Mohave County or other governmental body having jurisdiction; temporary "Open House" signs indicating that a Residential Unit is available for inspection by interested parties, but such signs may only be erected or maintained during the hours of 10:00 A.M. through 5:00 P.M. on Saturdays, Sundays, or legal holiday weekends or as otherwise designated by the Board; (d) political signs allowed pursuant to A.R.S. §33-1808 and Architectural Committee Rules; and (e) "For Sale" signs, "cautionary signs" or any other sign allowed pursuant to A.R.S. §33-1808 and the Architectural Committee Rules.

### **3.21 Restriction on Subdivision and Property Restrictions**

No Lot shall be subdivided by any Owner and no portion less than all of any such Lot shall be conveyed or transferred by any Owner. No Owner shall record further covenants, conditions and or restrictions or easements against any Lot without the provisions thereof having been first approved in writing by the Board. No application for variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the Architectural Committee has approved the application and the proposed use otherwise complies with this Declaration and any applicable Tract Declaration.

### **3.22 Change of Use of Common Area**

Except as otherwise provided herein, upon: (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners; and (ii) the written approval or the affirmative vote, or any combination thereof, of such resolution by Owners representing more than fifty percent (50%) of the votes entitled to be cast in the Association and who are entitled to use such Common Area under the terms of this Declaration or any Tract Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any zoning ordinances and Association requirements.

### **3.23 Drainage**

No Improvement shall be constructed, installed, placed, or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the original Improvements to the Lots and/or the drainage plans for The Havasu Life - South, or any part thereof, as shown on any approved drainage plans on file with Lake Havasu City or Mohave County. The Association shall be responsible for maintaining all drainage improvements, including gutters and downspouts, to keep them properly functioning at all times.

### **3.24 Rooftop Air Conditioners**

No air conditioning units or appurtenant equipment may be mounted, installed, or maintained on the roof of any Residential Unit or other building or structure or other Improvement so as to be Visible From Neighboring Property.

### **3.25 Exterior Lights**

In order to provide street lighting, each Residential Unit must have two exterior lights on the front exterior wall of the Residential Unit, which lights must be on a photocell and must be approved by the Architectural Committee with respect to size, design, color, intensity and location.

### **3.26 Leases**

No Owner may lease less than the Owner's entire Lot and the Residential Unit situated thereon (together herein, the "Premises"). All leases must provide that the terms of the lease are subject in all respects to the provisions of the Documents and that any violation of any of the foregoing by the Lessee, any other person residing on the Premises, or their guests or invitees, during the lease term shall be a default under the lease, and, if such default is determined by the Board to constitute a nuisance or detract from the general welfare of The Havasu Life - South, the lease shall automatically terminate. No Premises may be rented or leased for a term of thirty (30) days or less and no Premises may be leased more than three (3) times during any consecutive twelve (12) month period without the prior written approval of the Board. Within seven (7) days following the execution and delivery of a lease of a Premises, the Owner shall provide the Association with a fully executed copy thereof (the monetary terms of which may be deleted) or warrant to the Association the terms thereof comply with this Section 3.26, and with the address and telephone number at which the Owner can be contacted by the Association during the lease term. The Owner shall also provide the Association with a fully executed copy of any amendment to a lease of a Premises or warrant to the Association the terms thereof comply with this Section 3.26, if any, within seven (7) days following the execution and delivery thereof, and such lease, as amended, must continue to comply with the provisions of this Section 3.26. The Owner shall notify the Association in writing within seven (7) days following the termination of a lease for any reason prior to the expiration of the lease. An Owner must provide the Lessee with copies of the Documents. The Owner shall be liable for any violation thereof by the Lessee, or any other person residing in the Premises, or their guests or invitees, during the lease term.

**3.26.1** Owner or Lessee shall pay a \$25.00 rental fee to the Association pursuant to any lease agreement entered into in accordance with this Section 3.26 and the Declaration.

**3.26.2** Within seven (7) days after taking occupancy of the Premises, the Lessee shall register with the Association and furnish all information reasonably requested by the Association. If the Lessee does not register within seven (7) days, Lessee shall pay a late fee of \$15.00.

**3.26.3** Any lease agreement must include an addendum that states that the Residential Unit may not be used for any criminal activity.

**3.26.4** The Association may lawfully enforce a provision in the Documents that restricts the residency of persons who are required to be registered under A.R.S. § 13-3821 and who are classified as level two or level three offenders.

**3.26.5** The Owner of a Residential Unit who leases the Residential Unit to a Lessee shall abate any and all criminal activity as authorized under A.R.S. § 12-991.

### **3.27 Variances**

The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Declaration or in any Tract Declaration if the Board 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 Recording of this Declaration has rendered such restriction obsolete; and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of The Havasu Life - South and is consistent with the high standards and quality of life intended for Residents, and (iii) the conditions justifying the variance are not unreasonably self-imposed.

## **ARTICLE 4** **EASEMENTS**

### **4.1 Owner's Easements of Enjoyment**

Every Resident 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 or rights under any lease, subject to the following provisions: (a) the right of the Association to dedicate, convey, transfer or encumber the Common Area; (b) the right of the Association to regulate the use of the Common Area through the Association Rules.

**4.1.1** If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his 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 (and such Owner's family, guests, or other invitees), shall have no right to use the Common Area until the expiration or other termination of such lease; and

**4.1.2** The Lessee and the members of their family residing with the Lessee, the guests and other invitees of any Owner or other person entitled to use the Common Area pursuant

to this Declaration may use any recreational facility located on the Common Area, provided they are accompanied by an Owner or other person entitled to use the Common Area pursuant to this Declaration. The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified days and times.

**4.1.3** Except for permitted rentals, no Member may delegate his right of use and enjoyment of the Common Areas to any Person, except to the members of his immediate family or to his guests as permitted by the Association Rules.

**4.1.4** No Member may exempt himself, and no Member shall be exempt, from personal liability for Assessments or release any Lot owned by him from the liens, charges and other provisions of the Documents, by voluntary waiver of or suspension or restriction of such Member's right to the use and enjoyment of the Common Areas, or the abandonment of such Member's Lot or Membership.

#### **4.2 Utility Easement**

There is hereby created an easement upon, across, over and under the Common Area and Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to reasonably erect and maintain the necessary equipment on the Common Area and Lots, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots, except as initially designed, approved and constructed, or as approved by the Board.

#### **4.3 Easement in Favor of the Association**

The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, committees, agents, employees, and independent contractors. With respect to 4.3.2, 4.3.3 and 4.3.4, reasonable notice shall be given by the Association unless the property is unoccupied, abandoned or otherwise vacant.

**4.3.1** For correction of emergency or health and safety conditions on one or more Lots;

**4.3.2** For Inspection of the Lots, including the exterior of any Improvement, in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

**4.3.3** For the inspection of the Lots and Common Area, including the exterior of any Residential Unit, in order to verify that the provisions of the Documents are being complied with by the Owners, Lessees, Residents and their respective families, guests or other invitees; and

**4.3.4** For the purpose of enabling the Association, the Board, the Architectural Committee, or any other committees appointed by the Board, to exercise and discharge their respective rights, powers, and duties under the Documents.

#### **4.4 Easements for Ingress and Egress**

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

#### **4.5 Encroachment Easement**

If any portion of the Common Areas or any Improvement constructed thereon shall actually encroach upon any Lot, or if any Improvement constructed upon any Lot shall actually encroach upon any portion of the Common Areas, or if any Improvement constructed upon any Lot shall actually encroach upon any other Lot, whether such encroachment results from the initial construction or from subsequent repair, reconstruction, settlement or shifting, there shall be deemed to be mutual easements in favor of the Association as owner of the Common Area and the respective Lot Owners affected to the extent of such encroachment so long as the same shall exist provided, however, that such easement shall not result from any alteration, addition or improvement made by an Owner, except Declarant, without the prior written approval of the Board. The Association shall have the right to maintain any Common Area now existing or hereafter constructed, regardless of any encroachment now or hereafter existing of any such Common Area on any Lot.

#### **4.6 Declarant's Use and Easement**

**4.6.1** Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout The Havasu Life - South and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots. The Declarant reserves the right to place models, management offices and sales and leasing offices on any of its Lots and on any portion of the Common Area in such number, of such size and in such locations as the Declarant deems appropriate.

**4.6.2** So long as Declarant is marketing Lots or other portions of The Havasu Life - South, Declarant shall have the right to restrict the use of the parking spaces on the Common Area, if any. Such right shall include reserving such spaces for use by prospective Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction, or management activities.

**4.6.3** The Declarant shall have the right and an easement on and over the Common Area to construct all Improvements the Declarant may deem necessary and to use the Common Area and any Lots and other property by the Declarant for construction or renovation – related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work within The Havasu Life - South.

**4.6.4** The Declarant shall have the right and an easement upon, over and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations exercising the rights granted to or reserved by the Declarant in this Declaration.

## **ARTICLE 5**

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

#### **5.1 Formation of the Association**

The Association is a non-profit Arizona corporation 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 Architectural Rules, this Declaration shall control.

#### **5.2 Board 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 Bylaws. Unless the Documents specifically require the vote or written approval of the Membership, approvals or actions given or taken by the Board shall be valid and binding.

#### **5.3 The Association Rules**

The Board may, from time to time, subject to the provisions of this Declaration, adopt, amend and repeal rules, regulations, guidelines, procedures and other requirements pertaining to all aspects of the Association's rights, activities and duties, including, but not limited to, the management, operation and use of all Common Area and in furtherance of rights and duties assigned to the Board pursuant to this Declaration (the "Association Rules"). Except as limited herein, the Association Rules may be adopted, amended and repealed by a majority of the members of the Board. In the event that the Association Rules establish restrictions or limitations on the use and maintenance of Lots as contemplated by Section 3.16 such rules and regulations may be adopted, amended or repealed by three-fourths (3/4ths) of the members of the Board. 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.

#### **5.4 Personal Liability**

No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association, when acting within his or her scope of authority, shall be personally liable to any Member, the Association or any other Person for any mistake of judgment or for any other acts or omissions of any nature whatsoever (including, without limitation, any mistake of judgment, negligence, malfeasance or nonfeasance) except for willful or intentional misconduct. The Association shall indemnify and hold harmless the members of the Board, members of committees of the Association, officers of the Association, and managers or other employees of the Association, and their respective heirs and legal representatives, for, from and against all contractual and other liabilities arising out of: (a) contracts made or entered into on behalf of the Association within the scope or course of performing their duties hereunder; (b) acts or omissions of such members; or (c) their status as members of the Board, members of committees of the Association, officers of the Association, or managers or other employees of the Association; provided, however, that such indemnification shall not be applicable where any such contract, act or omission constitutes willful or intentional misconduct or fraud. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, reasonable attorney's fees and disbursements, amounts of judgments paid and settlement amounts) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other. The foregoing indemnity shall not be operative with respect to: (i) any matter as to which members of the Board, members of committees of the Association, officers of the Association, or managers or other employees of the Association shall have been finally adjudged in such action, suit, or proceeding to be liable for willful or intentional misconduct or fraud in the performance of his or her duties; or (ii) any settlement or compromise resulting, in the opinion of independent counsel selected by the Board, from the intentional misconduct or fraud of members of the Board, members of committees of the Association, officers of the Association, or managers or other employees of the Association in the performance of their duties.

### **5.5 Implied Rights**

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

### **5.6 Membership and Votes in the Association**

The Association shall have two (2) classes of voting memberships:

**5.6.1** Class A - Class A Members shall be all Lot Owners except the Declarant until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned.

**5.6.2** Class B - The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Following expiration or termination of the Period of Declarant Control, or when the Declarant notifies the association in writing that it relinquishes Class B membership, the Association shall be deemed to have a single class of Membership.

Notwithstanding the foregoing, however, except as otherwise expressly provided in this Declaration or in any of the other Documents, any issue put to a vote at a meeting of Members at which a quorum is present shall be decided by a simple majority of all votes represented in person or by valid proxy at such meeting, regardless of whether such votes are deemed to be Class A votes or Class B votes.

#### **5.7 Assignment of Declarant's Voting Rights**

If any lender to whom the Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration, succeeds to the interests of the Declarant by virtue of said assignment, the absolute voting rights of the Declarant as provided in this Article V shall not be terminated thereby, and such lender shall hold the Declarant's membership and voting rights on the same terms as they were held by the Declarant pursuant hereto.

#### **5.8 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 more than one Person owns a Lot, and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he is 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 (1) vote is cast with respect to a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

#### **5.9 Transfer of Membership**

The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed, or alienated in any way, except upon transfer of ownership of a Lot and then only to the new Owner of the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any transfer of ownership of a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner. Each Person shall be subject to all the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of the Lot.

#### **5.10 Suspension of Voting Rights**

If a Member, otherwise entitled to vote, is delinquent in the payment of any Assessments, Property Transfer Payment or other fees, charges, fines and penalties, together with interest and late charges, costs of enforcement /collection, including attorney's fees, whether or not suit is filed, or other monies owed to the Association, or is otherwise not in compliance with the terms of the Documents, the Board may, in its sole discretion, certify that such Member is not in good standing

and such Member's right to vote shall, with respect to all Lots owned by such Member, be suspended until the delinquency, breach or violation is paid, cured or corrected.

#### **5.11 Architectural Committee**

**5.11.1** The Association shall have an Architectural Committee to perform the functions assigned to it as set forth in this Declaration. Until expiration or termination of the Period of Declarant Control, the Architectural Committee shall consist of at least two (2) regular members and at least one (1) alternate member, each of whom shall be appointed by, and serve at the pleasure of, the Declarant. After expiration or termination of the Period of Declarant Control, the Architectural Committee shall consist of such number of regular and alternate members as the Board may deem appropriate from time to time (but in no event less than three (3) nor more than five (5) regular members, nor less than one (1) nor more than three (3) alternate members), each of whom shall be appointed by the Board, shall serve for a term of one (1) year and may be reappointed. Notwithstanding the foregoing, the Declarant may at any time prior to expiration or termination of the Period of Declarant Control voluntarily surrender in a Recorded instrument its right, as the Declarant, to appoint and remove some or all of the members of the Architectural Committee pursuant to this Section and in that event the Declarant may require, for so long as Declarant owns any Lot or other property within The Havasu Life - South, 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, and may further provide in such Recorded instrument for the resumption by Declarant of its right to appoint all members of the Architectural Committee, on such terms and conditions as Declarant may provide in such Recorded instrument. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Committee Rules"). The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any request for approval submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

**5.11.2** A quorum of the Architectural Committee shall consist of a majority of the committee members, and the affirmative vote of a majority of such members shall be necessary for any decision of the Architectural Committee. The Architectural Committee shall keep and maintain a record of all actions taken at its meetings.

**5.11.3** The Architectural Committee may promulgate written architectural and design standards (including but not limited to, color palettes and plant materials) to be used in rendering its decisions, procedures to be followed by Owners in preparing and submitting plans, specifications to be used by the Architectural Committee in reviewing plans and specifications for proposed Improvements, and other rules contemplated in this Declaration or otherwise to assist it in rendering its decisions and otherwise performing its functions under this Declaration (the "Architectural Rules").

**5.11.4** Any Owner or Resident dissatisfied with a decision by the Architectural Committee may appeal the decision to the Board in accordance with the procedures to be established by the Board. If the Board overrules the decision of the Architectural Committee on

any issue, the prior decision of the Architectural Committee shall be deemed modified to the extent specified by the Board.

**5.11.5** As provided in Section 3.1.9, the Architectural Committee may establish a reasonable fee to defer the costs of considering requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted. The Architectural Committee may vary such fee from application to application if, in the reasonable discretion of the Architectural Committee, differences in the proposed Improvements, or other features relating to the respective applications for approval appear likely to lead to differences in the costs the Architectural Committee is likely to incur in reviewing the respective applications. In the event of any conflict between this Declaration and the guidelines adopted by the Architectural Committee, this Declaration shall control.

**5.11.6** No member of the Architectural Committee shall be personally liable to any Member, the Association or any other Person for any mistake of judgment or for any other acts or omissions of any nature whatsoever (including, without limitation, any mistake of judgment, negligence, malfeasance or nonfeasance) except for willful or intentional misconduct. The Association shall indemnify and hold harmless the members of the Architectural Committee and their respective heirs and legal representatives, for, from and against all contractual and other liabilities arising out of: (a) contracts made by the Architectural Committee, within the scope of course of performing its duties hereunder; (b) acts or omissions of such members of the Architectural Committee; or (c) their status as members of the Architectural Committee; provided, however, that such indemnification shall not be applicable where any such contract, act or omission constitutes willful or intentional misconduct or fraud. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, reasonable attorney's fees and disbursements, amounts of judgments paid and settlement amounts) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such member of the Architectural Committee may be involved by virtue of being or having been a member of the Architectural Committee. The foregoing indemnity shall not be operative with respect to: (i) any matter as to which the member of the Architectural Committee shall have been finally adjudged in such action, suit, or proceeding to be liable for willful or intentional misconduct or fraud in the performance of his or her duties as such member of the Architectural Committee; or (ii) any settlement or compromise resulting, in the opinion of independent counsel selected by the Board, from the intentional misconduct or fraud of a member of the Architectural Committee in the performance of his or her duties.

**5.11.7** Subject to the provisions of Section 5.11.6, neither the Association, the Board, nor the Architectural Committee, nor any of the members of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications for approval or to an Owner affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans and specifications. Further, the design and construction of an Improvement shall be the sole responsibility of the Owner and any recommendation, requirement or condition with respect to my plans and specifications or the means or method of construction made by the Architectural Committee or any member thereof shall not alter the Owner's responsibility for the safe and proper

design and construction of said Improvement, nor shall it give rise to any claim by anyone against the Association, the Board or the Architectural Committee or any member of any of them for any defect in design or of any Improvement. Approval by the Architectural Committee shall not be deemed to be a representation or warranty that the plans or specifications or the actual construction of the Improvement complies with applicable ordinances or regulations. It shall be the sole responsibility of the Owner, Member or other Person submitting plans or performing construction to comply with all such ordinances, regulations, and codes.

**5.11.8** Unless authorized by the Board, the members of the Architectural Committee shall not receive any compensation for services rendered, but all members thereof shall be entitled to reimbursement from the Association funds for reasonable expenses incurred in connection with the performance of any Committee function or duty. Professional consultants shall only be retained by the Architectural Committee as a whole and shall be paid such compensation as the Architectural Committee determines. The Architectural Committee may delegate its plan review responsibilities, except final plan approval, to one or more of its members or to the consultants retained by the Committee.

#### **5.12 Managing Agent**

The Association may employ the services of a managing agent.

### **ARTICLE 6**

#### **COVENANT FOR ASSESSMENTS, PROPERTY TRANSFER PAYMENT AND OTHER FEES, CHARGES, FINES AND/OR PENALTIES AND RELATED AMOUNTS; CREATION OF LIEN**

##### **6.1 Creation of Lien and Personal Obligation of Assessments**

The Declarant, for each Lot owned by it, and each Owner, by becoming the Owner of a Lot, is deemed to have covenanted and agreed to pay Assessments, fees, charges, fines, and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines, and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines and penalties whether or not suit is filed, shall be a charge on the Lot and shall be secured by a continuing Association Lien upon the Lot against which each such Assessment, fee, charge, fine and penalty is levied or made. Recording of this Declaration constitutes recorded notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines and penalties 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, fee, charge, fine and penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines and penalties shall not pass to the successors in title of the Owner unless expressly assumed by such successors, but the Association Lien upon the Lot shall continue to exist.

## **6.2 Purposes for Which Association's Funds May Be Used**

The Association shall apply all funds and property collected and received by it (including the Assessments, Property Transfer Payment and other fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Association and the Owners by devoting said funds and property, among other things, to the funding of reserves and to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within or without The Havasu Life - South, which may be necessary, desirable or beneficial to the general common interests of the Association and the Owners. The following are some but not all of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents; maintenance Common Areas, private rights-of-way and drainage areas within The Havasu Life - South; recreation and other liability insurance; communications; ownership and operation of maintenance storage areas; education; transportation; health; utilities; public services; safety; indemnification of officers and directors of the Association; and any other purposes permitted by applicable statutes or the Documents.

## **6.3 Annual Assessments**

In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment period, shall levy an Annual Assessment against each Lot, subject to applicable Arizona law. The Annual Assessment will start at \$100.00 to create a budget of no less than \$40,000.00. The Board shall not levy an Annual Assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of a majority of the Members of the Association. The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board, nor relieve any Owner from such Owner's obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment period are, or will, become inadequate to meet all common expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may, subject to the twenty percent (20%) limit set forth, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

## **6.4 Annual Assessment Period**

The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year. The Annual Assessment may be billed and paid monthly as determined by the Board.

## **6.5 Rate of Annual Assessment**

The amount of the Annual Assessment for each Lot other than Lots owned by the Declarant shall be the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots.

#### **6.6 Special Assessments**

The Association may levy against each Lot in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment is approved by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose.

#### **6.7 Lot Specific Assessments**

Lot Specific Assessments shall be levied by the Board against Lots with respect to which particular costs have been incurred by the Association, including, but not limited to, those Lot Specific Assessments levied pursuant to this Article 6 and Article 7. Further, in the event the Association undertakes to provide work, materials or services on or with respect to a Lot which are necessary to cure or remedy a breach or violation of the Documents that the Owner has refused to cure or remedy, such Owner, by refusing to undertake or complete the required cure or remedy, shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

#### **6.8 No Offsets**

All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or other area of Association responsibility, or that the Association is not enforcing the Documents.

#### **6.9 Rules Regarding Billing and Collection Procedures for Assessments**

Annual Assessments shall be collected monthly, or on such other basis as may be selected by the Board. Special Assessments and Lot Specific Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of such Assessments. 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. Successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

#### **6.10 Property Transfer Payment, Creation of Lien and Personal Obligation of Property Transfer Payment**

**6.10.1** To ensure that the Association shall have sufficient funds to establish adequate operating, capital improvement and reserve funds, and to meet its expenses or purchase necessary equipment or services, each Purchaser of a Lot shall, except as hereinafter provided, pay to the Association immediately upon becoming the Owner of the Lot, a Property Transfer Payment in a sum equal to \$500.00 for a Residential Unit.

**6.10.2** A Property Transfer Payment is due whenever a Lot is transferred to a Purchaser. This includes a transfer between the Declarant and a Purchaser and a transfer between a current Resident and a Purchaser. When a transfer occurs between the Declarant and a Purchaser, the Purchaser is responsible for the Property Transfer Payment. When a transfer occurs between a Resident and a Purchaser, the Resident and Purchaser may allocate the Property Transfer Payment to either party.

**6.10.3** All payments made to the Association pursuant to this Section 6.10 shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

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

**6.10.5** [Reserved.]

**6.10.6** [Reserved.]

**6.10.7 Reserves.** The budget adopted by the Board of Directors shall include reasonable amounts as determined by the Board of Directors for reserves for repair or replacement of all or a portion of the Common Elements or any other purpose as determined by the Board of Directors.

**6.10.8 Working Capital Fund.** To provide the Association with operating funds, each Purchaser of a Lot from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Lot, a sum equal to 25% of the then most recent Annual Assessment for the Residential Unit (representing three months of the Annual Assessment). Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**6.10.9 Surplus Funds.** Surplus funds of the Association remaining after payment of the provisions for Common Expenses and any prepayment of reserves may, in the sole discretion of the Board of Directors, either remain in the reserves or as working capital, be returned to the Owners, or be credited to the Owners to reduce each Owner's future Common Expense Assessments. In no event shall the Association be compelled or obligated to return any surplus funds to an Owner, and the Association shall have no liability in connection therewith.

**6.10.10** Notwithstanding the requirements of Section 9.3.1, this Section 6.10, including the amount of the Property Transfer Payment, may be amended at any time by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose. Any amendment pursuant to this Section 6.10 of this Declaration shall be signed by the President or Vice President of the Association and attested by the Secretary of the Association, with their signatures acknowledged, and shall be Recorded with the County Recorder of Mohave County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

**6.10.11** The Property Transfer Payment together with interest, late charges and all costs, including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Property Transfer Payment(s) whether or not suit is filed, shall be a charge on the Lot and shall be secured by a continuing Association Lien upon the Lot against which each such Property Transfer Payment is levied or made. Recording of this Declaration constitutes Recorded notice and perfection of the lien established hereby. Similar to the Association Lien created and imposed pursuant to Section 6.1, each Property Transfer Payment, together with interest and all costs including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Property Transfer Payment(s), whether or not suit is filed, shall also be the personal obligation of the person who was the Purchaser of the Lot at the time when the Property Transfer Payment became due. The personal obligation for delinquent Property Transfer Payment(s) shall not pass to the successors in title of the Purchaser unless expressly assumed by such successors, but the Association Lien upon the Lot shall continue to exist.

**6.10.12** In addition to a Property Transfer Payment, a Purchaser will be responsible for paying a fee that will be set by the Board for the Association's operation and maintenance.

**6.11 Fees for Disclosure Statements**

Any Owner of a Lot who sells or refinances his Lot and requires a disclosure statement shall pay to the Association a disclosure fee in such amount as is established from time to time by the Board. Fees for such disclosure statement charged pursuant hereto shall be secured by an Association Lien established pursuant to this Article 6.

**6.12 Charges, Fines and/or Penalties**

In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or other Documents,

the Association shall have the right, subject to applicable law, to levy reasonable charges, fines and/or penalties against an Owner for any violation of the Documents by an Owner (or its respective families, guests or other invitees), Lessee, or Resident. The Board shall have the right to adopt rules and procedures regarding notice of and opportunity to be heard on such violation. The amount of the charge, fine and/or penalty for each violation shall be levied pursuant to a Board-approved schedule of charges, fines and/or penalties. The Association Lien established pursuant to this Article 6 shall secure any charges, fines and/or penalties levied pursuant hereto.

**6.13 Costs of Enforcement/Collection**

Any costs incurred by the Association in enforcing this Declaration or the Documents shall be the obligation of the Owner against which enforcement is sought. Such costs of enforcement/collection shall include, but not be limited to, reasonable attorney's fees, whether any lawsuit is filed. The obligation to pay the costs of enforcement/collection shall be secured by the Association Lien established pursuant to this Article 6.

**6.14 Effect of Nonpayment of Assessments, Property Transfer Payment and Other Fees, Charges, Fines and/or Penalties; Remedies of the Association**

**6.14.1** Any Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, or any installment of an Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, not paid within fifteen (15) days after the Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate established, from time to time, by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, or any installment of an Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, within fifteen (15) days after such payment is due.

**6.14.2** As set forth in this Article 6, the Association shall have an Association Lien levied against or charged to a Lot or the Owner thereof for all Assessments, Property Transfer Payment or other fees, charges, fines and/or penalties, together with interest and late charges, and all costs of enforcement/collection, including reasonable attorney's fees, whether or not suit is filed. 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 and/or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, including late charges, interest, costs of enforcement/collection, lien Recording fees, lien release fees, reasonable attorney's fees and the cost of preparing the Notice of Lien.

**6.14.3** Subject to applicable Arizona law, an Association Lien created by this Article 6 shall have priority over all liens or claims, except for: (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body; and (iii) previously existing First Mortgage liens.

**6.14.4** The Board may suspend for the entire period during which any Assessments, Property Transfer Payment or other fees, charges, fines and/or penalties, together with interest and late charges, and costs of enforcement/ collection, including reasonable attorney's fees, whether or not suit is filed, remain delinquent, the obligated Owner's right, if any, to the use of the Common Area and the obligated Owner's right to vote on any matter at regular or special meetings of the association.

**6.14.5** The Board may enforce the Association Lien established pursuant to this Article 6 as provided by Arizona law.

### **6.15 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 Assessment Period, 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.

## **ARTICLE 7 MAINTENANCE**

### **7.1 Areas of Association Responsibility**

**7.1.1** The Association, or its duly delegated representative, shall manage, maintain, repair, and replace (i) the Common Areas and all Improvements located thereon, (ii) all Areas of Association Responsibility, (iii) front yards of the Lots, and (iv) all other Association property.

**7.1.2** The Board shall be the sole judge as to the appropriate maintenance of all areas of Association responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of such properties shall be taken by the Board or by its duly delegated representative(s).

### **7.2 Lots**

Each Owner shall be responsible for maintaining his or her Lot. Each Owner shall be responsible for maintaining, repairing or replacing and all buildings, Residential Units, landscaping or other Improvements situated on his or her Lot. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof 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, woodpiles or storage area may be maintained so as to be Visible From Neighboring Property.

### **7.3 Common Walls**

Each wall, including patio, terrace or carport and garage wall, which is constructed as part of the original construction of any Improvement any part of which is placed on or near the dividing line between separate Lots, masonry fencing, view fencing or any combination thereof lying between adjacent Lots or a Lot and the Common Area shall be deemed to be a "Common Wall." The rights and duties of an Owner of such a Lot, and the Association with respect to the Common Area, (Common Wall Party) relating to a Common Wall shall be as follows:

**7.3.1** With respect to any such Common Wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these covenants. In addition, to the extent not inconsistent herewith, the general rules of law regarding so-called "party walls" or "common walls" shall be applied.

**7.3.2** No Resident shall make or caused to be made any improvement, addition, deletion or alteration of any kind to the interior of a Residential Unit, which improvements, addition, deletion or alteration could in any manner affect the structural integrity, sound transfer characteristics, or other design and/or engineering characteristics of a Common Wall.

**7.3.3** If any Common Wall is damaged or destroyed through the act of the Resident(s) of one adjoining Residential Unit, or any of its guests, licensees, agents or members of his family or other Person for whom such Resident is responsible (whether or not such act is negligent or otherwise culpable) so as to deprive the Owner of the other adjoining Residential Unit of the full use and enjoyment of such Common Wall, then the Owner responsible for such Resident's damage shall forthwith at his sole expense proceed to rebuild or repair the same in as good condition as formerly existed.

**7.3.4** Any Owner who, by his negligent or willful act, or by the negligent or willful act of a Resident of its Lot, or their licensees, agents or family members, causes any Common Wall to be exposed to the elements shall at is expense promptly restore the Common Wall to its original condition and shall furnish all necessary protection against the elements until the Common Wall is restored.

**7.3.5** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the subject Lots and shall pass to the successors in title of each such Owner.

**7.3.6** In addition to satisfying the other requirements of this Declaration, any Owner proposing to modify, make additions to or rebuild a Residential Unit in any manner which requires the extension or other alteration of any Common Wall shall first obtain the written consent of the Board and any adjoining Owner, which consent cannot be unreasonably withheld, and shall complete such alterations in accordance with the provisions of the Documents and any building code or similar regulations or ordinances.

**7.3.7** In the event of a dispute between Owners with respect to the repair or rebuilding of a Common Wall or with respect to the sharing of the cost thereof, then upon written

request of one of such Owners addressed to the Association, the matter shall be decided by the Board, whose determination shall be final and binding on the Owners.

**7.3.8** Each Owner that shares a Common Wall Party shall notify the other Owner if it has any actual knowledge of any dangerous condition relating to the integrity of any Common Wall shared between them.

**7.3.9** The boundaries of the Common Wall shall be the interior unfinished surfaces of the Common Wall. A Common Wall shall not include any lath, furring, wallboard, plasterboard, plaster, paint, wallpaper, paneling, or other material constituting any part of the finished surfaces of the Party Wall. The term "Common Wall" includes a demising wall.

**7.4 Assessment of Certain Costs of Maintenance and Repair**

If the need for maintenance or repair of an Area of Association Responsibility is caused by the willful or negligent act of any Owner, its Lessee, a Resident of the Owner's Lot, or their respective families, guests or other invitees, the cost of such maintenance or repair shall be levied as a Lot Specific Assessment and shall be secured by an Association Lien. Any charges or fees to be paid by the Owner of a Lot in connection with a contract entered into by the Association with an Owner for the performance of the Owner's maintenance responsibilities shall also be levied as a Lot Specific Assessment and shall be secured by an Association Lien established pursuant to Article 6.

**7.5 Improper Maintenance and Use of Lots**

In the event any: (a) exterior of a Residential Unit, including painting, roofing and other exterior surfaces and finishes, or any other buildings or structures or other Improvements situated in the front yards of the Lots, is damaged or falls into disrepair due to the act or omission of an Owner, its Lessee, a Resident of the Owner's Lot, or any of their respective guests, licensees, agents or members of their family or other person for whom such Owner is responsible (whether or not such act is negligent or otherwise culpable), or (b) portion of a 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 Havasu Life - South which are substantially affected thereby or related thereto; (c) portion of a Lot is used in a manner which violates this Declaration; or (d) in the event the Owner of any Lot fails to perform any of such Owner's obligations under the Documents, the Board may make a finding to that effect, specifying the particular condition or conditions which exist or exists, 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 such Owner's expense. If at the expiration of such fifteen (15) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be levied as a Lot Specific Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by an Association Lien established pursuant to Article 6.

**ARTICLE 8**  
**INSURANCE**

**8.1 Scope of Coverage**

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

**8.1.1** Comprehensive general liability insurance, including medical payment 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 Havasu Life - South which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

**8.1.2** Property insurance on all Areas of Association Responsibility (excepting therefrom Areas of Association Responsibility within the boundaries of a Lot) insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of such 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;

**8.1.3** Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona; and

**8.1.4** Such other insurance as the Association shall determine from time to time to be appropriate.

**8.2 Policy Provisions**

The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions;

**8.2.1** That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners, Lessees and members of their respective households;

**8.2.2** 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;

**8.2.3** That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their Mortgagees or beneficiaries under deeds of trust;

**8.2.4** 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 or Lessees or their respective households; and

**8.2.5** A statement that the name of the insured is the Association.

**8.3 Payment of Premiums**

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

**8.4 Payment of Insurance Proceeds**

With respect to any loss to any 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 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**8.5 Repair and Replacement of Damaged or Destroyed Common Area**

Any portion of the Common Area 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 eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

**8.6 Owner and Lessee Insurance**

Property of any Owner and/or Lessee shall be the responsibility of the Owner or Lessee to insure, including general liability coverage and any other coverage the Owner or Lessee deems necessary. The Association is not responsible for any insurance coverage relating to any Lot, any Owner or Lessee, and their private property, including general liability coverage.

**ARTICLE 9**  
**GENERAL PROVISIONS**

### **9.1 Enforcement**

The Association or any Owner shall have the right, but not the duty or obligation, to enforce the Documents and/or any and all covenants, conditions and restrictions, reservations, charges, servitudes, assessments, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration; or (ii) shall otherwise indicate that the provisions of such instrument were intended to be enforced by the Association or any Owner. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Documents in the future. All rights and remedies of the Association and the Owners under the Documents or at law or in equity are cumulative, including but not limited to the assessment of any monetary fine, and the exercise of one right or remedy shall not waive the right to exercise another right or remedy. If the Association retains or consults with an attorney with respect to any violation of the Documents by an Owner, the Lessees of an Owner or the Residents of the Owner's Lot, all attorney fees incurred by the Association shall be assessed against the Owner, whether or not a lawsuit is filed by the Association, and all such attorney fees shall be paid by the Owner to the Association on demand and shall be secured by the Lot Specific Assessment lien. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the non-prevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

### **9.2 Method of Termination**

This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded, after which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than eighty percent (80%) of the votes entitled to be cast in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Mohave County, Arizona, a Certificate of Termination, duly signed by the President or Vice President of the Association and attested by the 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. Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. No termination of this Declaration shall affect or diminish Declarant's Right to Cure Alleged Defects.

### **9.3 Amendments**

**9.3.1** This Declaration may be amended at any time by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose.

**9.3.2** Notwithstanding the requirements of Section 9.3.1, the Board may amend this Declaration or the Plat without obtaining the approval or consent of any Owner in order to conform the Declaration to changes in federal, state or local law or ordinance, to correct typographical errors in the Declaration, or to remove obsolete provisions from the Declaration. Notice of such changes shall be provided to the Owners in a manner that is decided by the Board.

**9.3.3** Any amendment pursuant to Section 6.10 and Subsections 9.3.1 and 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and attested by the Secretary of the Association, with their signatures acknowledged, and shall be Recorded with the County Recorder of Mohave County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

**9.3.4** Declarant reserves the right to amend the Plat without the consent of the Board or the Members at any time, provided, however, that no such amendment shall have the effect of changing the boundaries of any Owner's Lot without the consent of the Owner or allocating distribution of hazard insurance proceeds.

#### **9.4 Interpretation**

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

#### **9.5 Severability**

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

#### **9.6 Change of Circumstances**

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

#### **9.7 Laws, Ordinances and Regulations**

**9.7.1** 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 obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and

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

**9.7.2** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within The Havasu Life - South is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**9.8 References to this Declaration in Deeds**

Deeds to and instruments affecting any Lot or any part of The Havasu Life - South 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 such instrument and their respective heirs, executors, successors and assigns.

**9.9 Gender and Number**

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

**9.10 Captions and Titles**

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

**9.11 Notices**

If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or other Resident, then unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is either: (a) sent, via U.S. Mail, to the Member's address on record with the Association; (b) posted at established posting locations throughout the Association; (c) e-mailed to Members who have provided their e-mail address to the Association; and/or (d) published in an Association newsletter article. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

**ARTICLE 10**  
**CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS**

It is intended that the Common Area, Areas of Association Responsibility, and all Improvements constructed on the Property by or for Declarant will be constructed in substantial

compliance with all applicable building codes and ordinances and that such Improvements will be of a quality that is consistent with good construction and development practices in the area where the Property is located. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended, to the fullest extent permitted by law, that all disputes and claims regarding Alleged Defects will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, the Declarant, the Association, the Board, and all Owners shall be bound by the following claim resolution procedures.

### **10.1 Efforts to Resolve Certain Disputes Without Litigation**

As used in this Article 10, the term “Claim” shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Area or any Lot or any Improvements situated thereon, including, without limitation, any claim or cause of action that the Common Areas are defective or that the Declarant or its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; of (b) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for simple negligence. The Association, the Declarant, all Owners, Lessees, Residents and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Article (individually, a “Bound Party”, and collectively, the “Bound Parties”) agree that the dispute resolution procedures set forth in this Article shall apply to all Claims.

### **10.2 Notice of Claim**

Any Bound Party having or alleging to have a Claim (a “Claimant”) against any other Bound Party (a “Respondent”) shall notify each Respondent in writing of the Claim (the “Claim Notice”), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent’s role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect (as defined in Section 1.1), the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against a Bound Party which notice shall at a minimum include: (a) a description of the Claim, (b) a description of the attempts of the Declarant or other Bound Parties to correct such Alleged Defect and the opportunities provided to Declarant or other Bound Parties to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys’ fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or a Bound Party, and (i) an

affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a “Licensed Professional”), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602(B) of the Arizona Revised Statutes.

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

**10.3.1** After discovery of an Alleged Defect, and as a condition to any right of recovery against Declarant, the Claimant shall give a written notice of Alleged Defect (“Notice of Alleged Defect”) to Declarant as provided in Section 10.2.

**10.3.2** Within a reasonable time after the receipt by the Declarant or other Bound Party of a Claim Notice, the Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residential Unit constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant or other Bound Party, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot, or any Improvement constructed on the Common Area or a Lot which is the basis for the Claim (the “Alleged Defect”), In conducting such inspection, testing, repairs and/or replacement, Declarant or other Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

**10.3.3** Nothing set forth in this Section shall be construed to impose any obligation on the Declarant or other Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant or other Bound Party is not otherwise obligated under applicable law, or any limited warranty provided by the Declarant or other Bound Party in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the Declarant and other Bound 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 the Declarant or other Bound Party. In no event shall any statutes of limitations be tolled during the period in which the Declarant or other Bound Party conducts any inspection or testing of any Alleged Defects. The rights of the Declarant and other Bound Parties under this Section shall also extend to their respective employers, agents, contractors, subcontractors and suppliers.

### **10.4 Mediation**

If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties (“Termination of Negotiations”), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of the American Arbitration Association or such

other mediator or mediation service agreed upon by the Parties. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated. A Termination of Mediation Notice must be issued prior to the commencement of any arbitration proceeding under this Article 10. Any claim not resolved pursuant to this Section 10.4, or otherwise waived, is subject to binding arbitration pursuant to Section 10.6.

### **10.5 Use of Funds**

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

### **10.6 Approval of Arbitration; Arbitration Procedure**

**10.6.1** The Association shall not deliver a Claim Notice to any Bound Party, commence any arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. If the Association commences any arbitration involving a Claim, all Owners must notify prospective purchasers of such legal action and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.2.

**10.6.2** Should the parties not be successful in resolving any Dispute or Claim, within thirty (30) days after the date of the Claims Notice or such longer period as may be mutually agreed upon in writing by the parties, such Claim or 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 Section. 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 Section, the arbitrator shall have the authority to try all issues, whether of fact or law. If the Claim is not resolved by mutual agreement of the parties, and if such Claim and the parties are therefore subject to mandatory arbitration in accordance with this Section, the arbitration shall be conducted in accordance with the following rules:

(a) The proceedings shall be heard in Mohave County.

(b) A single arbitrator shall be selected 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 Condominium. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after the Claim or Dispute becomes subject to mandatory arbitration as provided in this Section.

(c) The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(d) The arbitrator may require one or more pre-hearing conferences.

(e) 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; and (vi) trial briefs. The parties shall also be entitled to conduct further tests and inspections as provided in this Section. 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.

(f) 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.

(g) 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.

(h) 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 the Arizona Courts.

**10.6.3 NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF SECTION 15.15 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN SECTION**

15.15. THE ASSOCIATION, EACH RESIDENTIAL UNIT OWNER, LESSEE, OCCUPANT AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN SECTION 15.15, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH RESIDENTIAL UNIT OWNER, LESSEE, OCCUPANT AND DECLARANT 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 CONDOMINIUM, EACH RESIDENTIAL UNIT OWNER, LESSEE, OCCUPANT HAVE VOLUNTARILY ACKNOWLEDGED THAT THEY ARE GIVING UP ANY RIGHTS THEY MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

**10.6.4** Nothing in this Article 10 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

**10.6.5** Neither this Article 10 may be amended at any time except in accordance with this Declaration and with the express written consent of the Declarant.

**10.7 No Additional Obligations or Extension of Warranty**

**10.7.1** Nothing set forth in this Article 10 shall be construed to impose any obligation on a Declarant to inspect, test, repair, or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law. The rights reserved to Declarant to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to Declarant except by a written document executed by Declarant and Recorded.

**10.7.2** The existence of the right to notice and an opportunity to inspect and/or cure shall not be deemed to extend any applicable warranty of any builder, contractor, subcontractor, materialman or Declarant that may be applicable to the Lots, Improvements, Areas of Association Responsibility or Common Area. Notwithstanding anything in this Declaration to the contrary, the provisions of this Section 10.7 may not be modified, amended, waived, or terminated in any manner.

**10.8 Legal Actions**

All legal actions initiated by a Claimant shall be brought in accordance with and subject to Article 10 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against Declarant alleging: (i) damages for Alleged Defect Costs, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after

repair of such Alleged Defect shall be paid into the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against Declarant which notice shall include at a minimum: (a) a description of the Alleged Defect; (b) a description of the attempts of the Declarant correct such Alleged Defect and the opportunities provided to the Declarant to correct such Alleged Defect; (c) a certification from an architect or engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (d) the estimated Alleged Defect Costs; (e) the name and professional background of the attorney retained by the Association to pursue the claim against the Declarant and a description of the relationship between such attorney and member(s) of the Board or the Association's management company, if any; (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Declarant and the source of the funds that will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action against the Declarant; and (i) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**



**Legal Description**

**Lots 1 through 32, inclusive, and Parcels A, B, C, Tract 2406 "The Havasu Life South", according to the plat recorded April 4, 2022, at Fee No. 2022022304, in the office of the County Recorder of Mohave County, Arizona.**