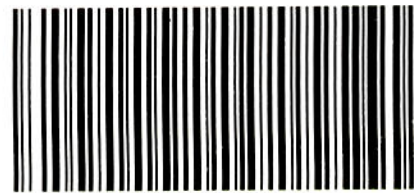


When Recorded Return To:

SHAW & LINES, LLC
4523 East Broadway Road
Phoenix, AZ 85040



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MARICOPA COUNTY RECORDER
HELEN PURCELL

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CANYON CREST ASSOCIATION, INC.**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (herein CC&Rs) FOR CANYON CREST ASSOCIATION, INC. (herein the "Declaration") is made this 14th day of March, 2011 by Canyon Crest Association, Inc., an Arizona non-profit corporation (the "Association").

WITNESSETH

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions was recorded at Docket 10192, Page 789, records of Maricopa County, AZ, as amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions recorded at Docket 11236, Page 563, records of Maricopa County, AZ, as amended by that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions recorded at Docket 13110, Page 1514, records of Maricopa County, AZ, as amended by that certain Third Amendment to Declaration of Covenants, Conditions and Restrictions recorded at recording number 85-497676, records of Maricopa County, AZ, as amended by that certain Fourth Amendment to Declaration of Covenants, Conditions and Restrictions recorded at recording number 89-311224, records of Maricopa County, AZ, as amended by that certain Fifth Amendment to Declaration of Covenants, Conditions and Restrictions recorded at recording number 89-311223, records of Maricopa County, AZ (together, the "Original CC&Rs"); and

WHEREAS, pursuant to the Original CC&Rs, the Original CC&Rs may be amended by a recorded instrument signed by Owners representing not less than fifty-one percent (51%) of the Lots; and

WHEREAS, pursuant to the Original CC&Rs, seventy-five percent (75%) of the first mortgagees must approve of the Declaration; and

WHEREAS, in order to increase the clarity of the Original CC&Rs and to amend and restate the Original CC&Rs to bring into legal compliance and update the CC&Rs, this Declaration was created and approved and signed by Owners representing not less

than fifty-one percent (51%) of the Lots and seventy-five percent (75%) of the first mortgagees.

NOW, THEREFORE, the Original CC&Rs are of no further effect and are hereby deleted, amended and restated by this Declaration as follows:

ARTICLE 1 DEFINITIONS

1.1 **“Annual Assessment”** means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.2 **“Architectural Committee”** means the Architectural Committee of the Association to be created pursuant to Section 5.9 of this Declaration and the Bylaws.

1.3 **“Architectural Committee Rules”** means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.9 of this Declaration and the Bylaws, as they may from time to time be amended or supplemented.

1.4 **“Areas of Association Responsibility”** means (i) all Common Area, including the Improvements and landscaping situated thereon, and (ii) any portion of the Improvements situated surrounding, but not including, the Exterior of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association. If an Owner places an item or plant on the Common Area near or on the Owner's Lot, with or without an approved variance from the Architectural Committee or the Board, the Owner must maintain or remove such item or plant. This maintenance responsibility will transfer automatically to subsequent Owners of that Lot in perpetuity.

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

1.6 **“Assessment”** means an Annual Assessment, Special Assessment or Lot Specific Assessment.

1.7 **“Assessment Period”** means the Association's fiscal year, currently January 1 through December 31 each year. Assessments may be paid annually or in equal monthly installments by the fifteenth (15) of the month due.

1.8 **“Association”** means Canyon Crest Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.9 **“Association Insurance”** means the insurance coverage required and maintained by the Association as differentiated by “Owner Insurance”. See Section 8.

1.10 **"Association Lien"** means the lien created and imposed by Section 6.1 of this Declaration.

1.11 **"Association Property"** means any personal property owned or leased by the Association, such as furniture in the Association Clubhouse and Pool area.

1.12 **"Association Rules"** means the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 5.3 of this Declaration, as they may from time to time be amended. By a majority vote of the Board of Directors, the Board may also adopt, change or repeal written policies and Resolutions created and approved by the majority of the Board as an adjunct to the Community Documents for day-to-day operations for the common good and enjoyment of the Owners.

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

1.14 **"Bylaws"** means the Amended and Restated Bylaws of the Association, as amended from time to time.

1.15 **"Common Area"** means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. "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.

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

1.17 **"Common Area Insurance"** shall be further discussed in Article 8 herein.

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

1.19 **"Exterior (of Residence)"** means the portion of a Residential Unit that consists of the exterior surfaces of the Residential Unit and any fencing or walls located on the Residential Unit.

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

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

1.22 **"Improvement"** means any building, fence, wall or other structure or any swimming pool, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind, except for the Owner's patio walled area, and patio roof covers, which must be maintained by the Owner in accordance with general workmanship standards and in harmony with community landscaping.

1.23 **"Interior (of Residence)"** means that portion of the Residential Unit between the exterior walls of the Residential Unit horizontally and the unfinished floor to the roof vertically.

1.24 **"Lessee"** means a third-party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein a "third party" is any Person who is not an Owner.

1.25 **"Lot"** means each parcel of real property designated as a lot on the Property and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.26 **"Maintenance Standard"** means the workmanship standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Community. Workmanship standard is generally defined as work performed by a licensed, bonded contractor or tradesperson according to current good industry and safety practices.

1.27 **"Member"** means any Person who owns a Lot within the Association.

1.28 **"Owner"** means the record owner, whether one or more Persons, of legal, beneficial or equitable title to the fee simple interest of 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. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the "Owner." "Owner" shall also include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. Section 33-741, *et seq.* "Owner" shall not include purchasers under purchase contracts and receipts, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to such executory contracts pending the closing of a sale or purchase transaction.

1.29 **"Owner's Insurance"** means the insurance required pursuant to pursuant to Section 8.6.

1.30 **"Patio (of Residence)"** the block-walled area outside the back and/or side of the Owner's residence as specified by the plat of the Community available from the Association. The Architectural Committee or the Board must approve any variance. The

Patio, cover and area within shall be maintained at the Owner's expense and must conform to the Association general plan, workmanship standards, and zoning ordinances.

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

1.32 **"Property" or "Community"** shall mean and refer to Lots 1 through 141, inclusive, CANYON CREST UNIT ONE, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in book 161 of Maps at page 46, together with Tracts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O and P in addition to the Common Area, personal or mixed property herein before described which is subject to this Declaration, and such additions hereto as may hereafter be brought within the jurisdiction of the Association.

1.33 **"Community Documents or Governing Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules, and the Architectural Committee Rules.

1.34 **"Purchaser"** means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

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

1.36 **"Resident"** means each individual occupying or residing in any Residential Unit.

1.37 **"Residential Unit"** means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence, including, but not limited to the interior space, the walls from the drywall inward, roof, including interior plumbing, heating ducts, air conditioning as well as fixtures such as cabinetry and lighting.

1.38 **"Single Family"** means a group of one 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.

1.39 **"Special Assessment"** means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.40 **"Visible From Neighboring Property"** means, with respect to any given object, that the object is or would be visible to a person six feet tall, standing at ground level on any part of the neighboring property.

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 Community and in order to protect and enhance the value and desirability of the Community. All of the Property within the Community 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 representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto.

2.2 Owner Acknowledgement 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 Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners.

ARTICLE 3 USE RESTRICTIONS

3.1 Architectural Control. In addition to any requirements imposed by Maricopa County or the City of Phoenix:

3.1.1 All Improvements constructed on Lots shall be of new construction, in accordance with good industry and safety practices and in compliance with any agency permitting process; 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 Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

3.1.4 No Exterior Alteration shall be made or done without the prior written approval of the Architectural Committee.

3.1.5 Any Owner desiring approval of the Architectural Committee for any Exterior Alteration shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Exterior Alteration that the Owner desires to make or perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove, in writing, an application for approval within forty-five (45) days after receipt of the application and any supporting information, plans and specifications requested by the Architectural Committee (the application shall not be deemed received until all supporting information, plans and specifications have been received), approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans.

3.1.6 The approval by the Architectural Committee of any Exterior Alteration pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Exterior Alteration subsequently submitted for approval.

3.1.7 Upon receipt of approval from the Architectural Committee for any Exterior Alteration, the Owner who requested such approval shall proceed to perform, construct or make the Exterior Alteration approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.8 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 to and approved in writing by the Architectural Committee. 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 charge a fee for reviewing requests for approval of any Exterior Alteration pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.10 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.

3.1.11 The Architectural Committee Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation.

3.1.12 The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay to the Association a deposit in an amount determined by the Architectural Committee to be used by the Association to remove any construction debris from a Lot that is allowed to accumulate in violation of Section 3.3 of this Declaration or to repair any damage to the Common Area. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit will be nonrefundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements, the removal of all construction debris from the Lot, and the repair of any damage to the Common Area occasioned by such construction.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, incomplete building, tent, shack, garage, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Exterior Alterations approved by the Architectural Committee, interior remodeling, re-roofing or other work shall 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.

3.2.1 RV Storage Lot: The Association maintains a RV storage lot next to the Tennis Courts for the convenience of Owners wishing short-term storage of operational recreational vehicles, boats, and trailers, excluding automobiles. Space is on a first- come first-use basis and the Owner, who will abide by the storage policy of the Association, must purchase a key for the RV storage lot gate. The Association is not liable for any damage to stored items, which are placed there at the Owner's sole risk.

3.3 Nuisances. No rubbish, debris or unsightly personal property such as furniture, play pools, and unlicensed vehicles 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 so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Quiet hours to be observed in the Common Area and pool are 10:00pm to 7:00am daily.

3.4 Diseases, Insects and Pests. No Person shall permit any thing or condition to exist upon any Lot or other property, which shall induce, breed or harbor infectious plant diseases or noxious insects, or pests such as pigeons or wild animals. No person shall feed or in any way solicit wild birds or animals to inhabit the Community.

3.5 Repair of Building. No Owner of a Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall, at all times, be kept in good condition

and repair and adequately painted or otherwise finished in accordance with good industry and safety standards. In the event that any Residential Unit, building or structure is damaged or destroyed in any manner, including Acts of God, fire, flood, microburst, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

3.6 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

3.7 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 an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity legally conforms to all applicable zoning ordinances of the City of Phoenix, and (iii) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Community, as may be determined from time to time in the sole discretion of the Board. 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.

3.8 Leasing of Lots. The Leasing of Lots shall be permitted within the Association. The Board of Directors, from time to time, shall establish rules and regulations concerning the leasing of Lots within the Association. Such rules and regulations shall be binding on Owners and their tenants and shall be established in the sole and absolute discretion of the Board.

3.9 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof

having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.10 Other Uses, Activities and Facilities. The Association Rules may contain restrictions, limitations, rules and regulations governing any additional uses, activities, Improvements or facilities on a Lot or within the Community that are (i) Visible From Neighboring Property, (ii) visible from any Common Area or street, or (iii) that are deemed by the Association to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents. The following are some, but not all of the uses, activities, Improvements or facilities that may be governed by the Association Rules: animals; construction and maintenance activity; antennas; trash containers and collection; clothes drying facilities; signs; outside furniture, flags and flagpoles; basketball, tetherball and volleyball standards; motor vehicles; parking; trucks, trailers, campers and boats; towing of vehicles; carports and driveways; rooftop air conditioners or swampers; solar energy devices; sport courts; lighting; use of Common Area; amplifiers; window treatments; garage sales; and noise. The foregoing list is not intended to be exhaustive. The Association Rules are intended to be responsive to the changing needs of the Community and the desires of the Association's Members. Limitations will comply with Federal and State Laws and Regulations.

3.11 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article 3, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other Owners or Lessees or the Community and is consistent with the high quality of life intended for residents of the Community.

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

3.13 Animals. No animals, birds, fowl, poultry or livestock, other than a reasonable number, as determined by the Board of Directors, of generally recognized house or yard pets, shall be maintained on any portion of the Property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise, or to become a nuisance. Upon the written request of any Owner, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, fowl,

poultry, or livestock is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any portion of the Property is reasonable. Any decision rendered by an Architectural Committee shall be enforceable as other restrictions contained herein. All Owners shall observe the City of Phoenix leash law within the Community and immediately pick up and dispose of their animals' waste at all times. Any damage done by the Owner's pet(s) will be the Owner's responsibility to bring into compliance.

3.14 General Restrictions Regarding Parking of Vehicles. The Association, from time to time, shall develop and issue reasonable rules and regulations concerning the parking of vehicles within the Association.

3.15 Signs. No signs whatever shall be erected or maintained on the exterior of any Lot, except (1) such signs as may be required by legal proceedings, (2) not more than one residential address identification sign. (3) during the time of construction of any Improvement one job identification sign not larger than eighteen by twenty-four inches in height and width, having a face area not larger than three square feet, (4) such other signs which have been approved in advance by the Architectural Committee, (5) other signs as allowed by A.R.S. § 33-1808.

3.16 Antennas and Satellite Dishes. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be installed, used or maintained on any portion of the Lot whether attached to the Building or otherwise without the prior written approval of the Architectural Committee, unless applicable law prohibits the Architectural Committee from requiring prior approval. Even if applicable law prohibits the Architectural Committee from requiring prior approval for the installation or use of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with such rules and regulations as the Architectural Committee may adopt.

3.17 Parking. Shall be limited to Owner's driveways and marked spaces provided. There shall be no on-street parking without the prior written approval and authorization of the Board of Directors. Violators will be tagged and vehicles towed at the Owner's expenses. There shall not be parking on any landscaping at any time. No Owner should park more vehicles than they have space for in their driveway, nor should they at any time obstruct the driveway or access of another Owner. One-car garage units are allowed one car in the garage and another in their driveway. Two car garage units are allowed two cars in the garage and two cars in their driveway.

3.18 Pool Safety Rules and Regulations. The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to the Association's pool and pool area. Such rules and regulations are attached hereto as "Exhibit A," and are also subject to change in accordance with this provision.

ARTICLE 4

RIGHT-OF-WAY AREA AND EASEMENTS

4.1 **Easements.** There are hereby created blanket and perpetual easements upon, across, over and under the Common Areas, including all rights of ingress and egress, for the purposes of (a) installation, replacement, repair and maintenance of all utility and services lines and systems including, but not limited to water, sewers, gas, telephone, electricity, television cable and communication lines and systems, roadways and drainage facilities on; (b) construction of any recreational facilities on, and maintenance of, the Commons Areas, and (c) the exercise of all rights granted to, and performance of all obligations imposed upon, Declaration or the Association by this Declaration or pursuant to law. In addition, the Common Areas shall be subject to such easements for minor encroachments, overhangs, fences and walls on adjacent property as may be constructed in accordance with the plans and specifications of the Declarant. The foregoing easements are for the benefit of the Owners of the Lots and the persons performing the required or permitted functions and shall be in addition to, and not in limitation of, easements shown on the recorded plat of the Common Areas or in any other instrument recorded prior to the recordation of this Declaration, as the same may be amended.

4.2 **Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

4.2.1 The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.10 of this Declaration.

4.2.2 The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

4.2.3 The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, including but not limited to landscaped areas, not indeed for use by the Owners or Lessees.

4.2.4 The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner or Lessee and such Owner's or Lessee's family, tenants and guests to use the recreational facilities for any period during which any assessment against his Lot remains unpaid, or if the Owner or Lessee has violated any other provisions of the Community Documents and has failed to cure such violation within thirty (30) days after the Association notifies the Owner of the violation in writing.

4.2.5 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 shall have no right, without the specific written consent of the Association, to use the Common Area

until the termination or expiration of such lease. However, only the Owner may rent the Association Clubhouse per the written Clubhouse rental agreement and the Owner must be present for the full extent of the event for which the Clubhouse rental was intended. Such events may not be of a commercial or illegal nature, nor is alcohol consumption permitted in accordance with the Association's insurability.

ARTICLE 5 THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Community Documents. 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 of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws.

5.3 The Association Rules. The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility, (iii) the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, or (iv) any other subject within the jurisdiction of the Association.

5.3.1 Except as limited herein, the Association Rules may be adopted, amended and repealed by Resolution or policy approved 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, 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 shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Community Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Community Documents or reasonably necessary to effectuate any such right or privilege.

5.6 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

5.7 Classes of Members. The Association shall have Members who shall be Owners of Lots. A Member shall be entitled to one (1) vote for each Lot owned. In the event of multiple owners of a Lot, only one Member may have a whole vote for that Lot, providing that all Members of that Lot must be in good standing pursuant to Section 5.11.

5.8 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 an Owner's Lot, and then only to the transferee of ownership to 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 attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

5.9 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The members of the Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The members of the Architectural Committee shall be appointed by the Board. The Architectural Committee shall issue architectural guidelines and standards to be used in rendering its decisions (the "Architectural Committee Rules"), which shall include submittal of photographs, construction plans or dimensional drawings and written data to support any submittal. Any decisions of the Architectural Committee shall be rendered within forty-five (45) days and may be appealed to the Board of Directors. 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. In the event that an Architectural Committee cannot be formed by the Board due to lack of qualified

applicant volunteers, the Board may act as the Architectural Committee and perform such duties.

5.10 Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent of the affirmative vote of Owners representing at seventy-five percent (75%) of the votes entitled to be cast by the members of the Association.

5.11 Suspension of Voting Rights. If an Owner otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Community Documents, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

ARTICLE 6 COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIEN THEREFORE

6.1 Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties. Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, 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 attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record 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 attorneys' fees, incurred by the Association in enforcing the Community Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or 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 or penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2 Annual Assessments.

6.2.1 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 Community Documents, including the

establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot. The Board of Directors, without the express authorization of the Members, may increase the Annual Assessment up to twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment. Any increase in the Annual Assessment above twenty percent (20%) must be approved by a majority of the Membership.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board 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 in Section 6.2.1 above, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year.

6.4 **Rate of Assessment.** The amount of the Annual Assessment for each Lot 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.

6.5 **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, improvement, repair or replacement of an Improvement upon the Common Area or any other area as approved by the Board of Directors, including fixtures and personal property related thereto. Said assessment may be levied by the Board of Directors in its sole and absolute discretion.

6.6 **Lot Specific Assessments.** Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing 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.

6.7 **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