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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR SHADOW MOUNTAIN VILLAGE**

**COCONINO COUNTY, ARIZONA**

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
SHADOW MOUNTAIN VILLAGE**

This Declaration of Covenants, Conditions, Restrictions and Easements for Shadow Mountain Village Community Association LLC (the “**Declaration**”) is made this day by Finesse Properties West LLC, an Arizona limited liability company as “**Declarant**.”

**RECITALS**

- A.** Declarant is the Owner of that certain parcel of real property consisting of platted lots situated in Coconino County, Arizona, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference, which, coupled with the Common Area Tracts described on said **Exhibit A**, comprise the “**Project**.” The Project also includes all Improvements (as defined below) and all easements, rights and privileges appurtenant thereto.
- B.** The Project is a planned residential community, which will include common facilities for the benefit of the community.
- C.** Declarant desires to reserve to the Declarant the right to expand the real property initially subject to this Declaration by annexing and subjecting to this Declaration and adding to the Project all or any part of the Additional Property and any Improvements thereon as provided in Section 2.3 herein.
- D.** By executing and recording this Declaration with the County Recorder of Coconino County, Arizona, Declarant intends to impose upon the Project (as it may be expanded as provided herein) mutually beneficial covenants, conditions, restrictions and easements to establish a flexible and reasonable procedure for the overall development, administration, maintenance, use, and preservation of the Property. Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Property and which will be binding upon all future Owners of all or any portion of the Project and any other Person acquiring any right, title, or interest in or to all of any portion of the Project.
- E.** Declarant intends to form a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair, and replace the Areas of Association Responsibility, and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair, and replacement and administration of the Areas of Association Responsibility, and the enforcement of the covenants, conditions, and restrictions contained in this Declaration.

## **DECLARATIONS**

**NOW, THEREFORE,** Declarant, for the purposes set forth above, declares as follows:

### **ARTICLE 1 DEFINITIONS**

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

**1.1 “Additional Property”** means any real property, together with all Improvements situated thereon, within a mile radius of the initial Project, including, without limitation, that certain real property described on **Exhibit B** attached hereto and incorporated herein by this reference, that may be added to the Project and subjected to this Declaration pursuant to a Declaration of Annexation Recorded in accordance with the provisions of Article 2 hereof.

**1.2 “Administrative Records Fee”** is defined in Section 6.15.1 below.

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

**1.4 “Applicable Laws”** means the Arizona Planned Communities statutes, A.R.S. 33-1801 et seq. and all other laws, statutes, ordinances, rules and regulations of all federal, state, county, city and other governmental agencies having jurisdiction over the Project.

**1.5 “Architectural Committee”** means any committee of the Association as may be created as a separate committee of the Board pursuant to the provisions of Section 5.10 of this Declaration. If so created, the Architectural Committee shall exercise the duties of the Board under Section 3.1 of this Declaration and other similar duties or obligations as may be delegated to said Committee.

**1.6 “Architectural Rules”** means any rules, design guidelines, standards and procedures adopted by the Architectural Committee or the Board pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

**1.7 “Architectural Submission Notice”** is defined in Section 3.1.3 below.

**1.8 “Area(s) of Association Responsibility”** means (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association (other than Special Service Areas); and (iii) all real property, and the Improvements situated thereon, within the Project, or adjacent thereto, located within dedicated rights-of-way with respect to which the State of Arizona, Coconino County or the city has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona, Coconino County, or the City has accepted all responsibility for the maintenance, repair and replacement of such areas.

1.9 “**Article**” is defined in Section 11.14 below.

1.10 “**Articles**” means the Articles of Incorporation of the Association, as amended from time to time.

1.11 “**Assessable Lot**” means a Lot owned by any Person other than Declarant during the Declarant Control Period but does not include Lots with Residential Dwellings leased to Declarant for model home purposes. After the termination or express written waiver of the Declarant Control Period or ten (10) years after the Recording of this Declaration, all Lots shall automatically become Assessable Lots as further provided in Section 6.8 below.

1.12 “**Assessment**” means an Annual Assessment, Special Assessment, Enforcement Assessment, or any other charge that may be levied against a Lot by the Association pursuant to this Declaration or Applicable Laws, including, without limitation, late charges, interest, monetary penalties for infractions of the Project Documents, and Collection Costs incurred in the collection of Assessments and enforcement of the Project Documents and the like.

1.13 “**Assessment Lien**” means the lien created and imposed by Article 6 of this Declaration and granted to the Association by A.R.S. 33-1807 to secure payment of Annual and Special Assessments levied by the Association and certain other charges owed to the Association by an Owner, including certain Enforcement Assessments and Collection Costs, to the extent permitted by Applicable Laws.

1.14 “**Assessment Period**” means the period set forth in Section 6.7 of this Declaration.

1.15 “**Association**” means the Arizona nonprofit corporation organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant shall cause the Association to be incorporated under the name “Shadow Mountain Village at Bellemont” or such similar name as Declarant shall elect. All references to the Association, acting by and through its Board, in this Declaration shall also mean and refer to any professional management company or managing agent to the extent any duties of the Board may be so delegated to such agent, and as the context may so require (the “**Managing Agent**”). The Association shall Record such contact notice information as is required by A.R.S. 33-1807(J) regarding the Managing Agent or any other relevant contacts in the event the Project is self-managed.

1.16 “**Association Rules**” or “**Rules**” means any rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.

1.17 “**Available**” is defined in Section 11.10.1 below.

1.18 “**Award**” is defined in Section 11.11 below.

1.19 “**Board of Directors**” or “**Board**” means the Board of Directors of the Association, except that references to “**Board**” in Section 3.1 and elsewhere in this Declaration referring to matters of architectural control and design approval shall mean and refer to the Architectural Committee if one is

designated by the Board pursuant to Section 5.10 below. Each member of the Board is referred to as a **“Director.”**

1.20 **“Boundary Wall”** is defined in Section 7.5 below.

1.21 **“Bylaws”** means the Bylaws of the Association, as amended from time to time.

1.22 **“Certificate of Termination”** means a certificate of termination Recorded pursuant to Section 11.1 below.

1.23 **“County”** means Coconino County, Arizona.

1.24 **“Claim”** is defined in Section 10.24 below.

1.25 **“Claim Notice”** is defined in Section 10.2 below.

1.26 **“Collection Costs”** means all costs, fees, charges and expenditures (including, without limitation, attorney’s fees, court filing fees, lien fees, demand letter fees, Recording fees, title report fees, and fees and costs charged by any collection agent), monetary penalties, late charges, or interest incurred or lawfully charged by the Association in collecting and/or enforcing payment of Assessments or other charges payable to the Association or incurred by the Association in enforcing the Project Documents, without regard to whether a lawsuit is filed or legal action otherwise undertaken by or on behalf of the Association.

1.27 **“Commercial/Recreational Vehicles”** is defined in Section 3.19.1 below.

1.28 **“Committee”** means any committee of the Board (including the Architectural Committee, where indicated by context) established pursuant to the provisions of said Section 5.10.

1.29 **“Common Area”** means (i) Tracts A through E inclusive, and any other parcel labeled as a “Tract” on the Plat; (ii) any other tracts or parcels that are specifically identified as Common Area on any Plat of the Additional Property subsequently added to the Project and as further set forth in the Declaration of Annexation therefor; and (iii) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure. Improvements on the Common Area include, but are not limited to, landscaping, drainage and retention facilities and basins, open space and recreation areas, cluster mailboxes, if any, entry monument sign and other permanent signage.

1.30 **“Common Expense(s)”** means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

1.31 “**County**” means Coconino County, Arizona and “**County Recorder**” means the Office, and the Official Records, of the Coconino County, Arizona Recorder.

1.32 “**Declarant**” means *Finesse Properties West LLC*, an Arizona Limited liability company, its successors at law, and any Person to whom it may expressly assign any or all of its rights under this Declaration by an instrument Recorded with the Coconino County Recorder. Any assignment of Declarant’s rights hereunder shall not deprive the assigner of any rights, privileges or immunities granted or reserved under this Declaration. Without limiting the foregoing Finesse Properties West LLC as ‘Declarant’ shall be the Class B Member as to all Lots owned by it pursuant to Section 5.7.2 of the Declaration.

1.33 “**Declarant Control Period**” means the period commencing upon the Recording of this Declaration and ending on (i) the date Declarant no longer owns any Lot in the Project or any portion of the Additional Property; or (ii) such earlier date as determined by Declarant in its sole discretion in a written notice delivered to the Association.

1.34 “**Declarant Parties**” is defined in Section 10.1 below.

1.35 “**Declaration**” means this *Declaration of Covenants, Conditions, Restrictions and Easements for Shadow Mountain Village*, as it may be amended from time to time.

1.36 “**Declaration of Annexation**” means a declaration of annexation Recorded pursuant to Section 2.3 below.

1.37 “**Design Approval Meeting**” is defined in Section 3.1.3 below and shall include, as the context may require, any design approval meeting as may be mandated pursuant to A.R.S. 33-1817(4) or other Applicable Laws or any such meeting held according to the Architectural Rules.

1.38 “**Dispute**” is defined in Section 10.1 below.

1.39 “**Director**” is defined in Section 1.19 above.

1.40 “**Enforcement Assessment**” means an Assessment levied pursuant to Section 6.6 of this Declaration.

1.41 “**Family Vehicle**” is defined in Section 3.19.1 below.

1.42 “**FCC Rules**” is defined in Section 3.15 below.

1.43 “**FHA**” is defined in Section 11.18 below.

1.44 “**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.

1.45 “**First Mortgagee**” means the holder or beneficiary of any First Mortgage.

1.46 “**Hazardous Materials**” means any materials, substances or wastes, regardless of physical form or concentration, which may now or hereafter be defined as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” “pollutants,” or words of similar import or meaning under any applicable federal, state or local environmental law.

1.47 “**Improvement**” means any Residential Dwelling, building, fence, gate, sidewalk, wall, equipment, swimming pool, spa, road, driveway, parking area (paved or unpaved), mailbox, permanent signage, statuary, flagpole, artistic work or ornamentation of any kind, lighting fixture, basketball pole/hoop, play structure, patio cover or balcony, and trees, plants, shrubs, grass or other landscaping of every type and kind and any other structure of any type, kind or nature. For purpose of Section 3.1, “Improvement” shall not include swing sets without play platforms covered by neutral colored awnings or other recreational equipment or structures placed within Private Yards which in totality do not exceed a height of six (6) feet from ground level and are placed a minimum of one (1) foot away from all Boundary Walls between neighboring Lots regardless of where the Boundary Wall is located.

1.48 “**Initial Capital Contribution**” is defined in Section 6.14 below.

1.49 “**Invitee**” means any Person whose temporary or periodic presence within the Project, including within any Residential Dwelling, had been solicited, approved by or arranged for by a particular Owner, Lessee, or Residents, including without limitation, his guests, employees, licensees, business invitees, contractors and agents.

1.50 “**Lessee**” means the lessee or tenant under a lease, oral or written, of any Residential Dwelling on a Lot, including an assignee of a lease to the extent that the lease is permitted under the provisions of Section 3.12 below and any Rules as may be adopted by the Association.

1.51 “**Lot**” means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat and, where the context indicated or requires, shall include any Residential Dwelling or other Improvements situated on the Lot.

1.52 “**Managing Agent**” shall have the meaning defined in Section 1.15 above.

1.53 “**Member**” means any Person who is a member of the Association as provided in Section 5.6 below.

1.54 “**Modification**” is defined in Section 3.1.3 below.

1.55 “**New Tenancy Records Fee**” is defined in Section 3.12.2 below.

1.56 “**Notice of Compliance**” is defined in Section 11.8 below.

1.57 “**Notice of Lien**” is defined in Section 6.10.2 below.



1.58 “**Notice of Modification Approval**” is defined in Section 3.1.3 below and shall include, as the context may require, any written acknowledgement mandated pursuant to A.R.S. 33-1817(4) or other Applicable Laws.

1.59 “**Notice of Violation**” is defined in Section 11.8 below.

1.60 “**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 sample title interest of a Lot. An 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. An Owner shall not include (i) Person having an interest in a Lot merely as security for the performance of an obligation or a Lessee or (ii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which are intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Lots the fee sample title to which is vested in a trustee pursuant to A.R.S. 33-801 et seq., the trustor shall be deemed to be the Owner. In the case of Lots, the fee sample title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.61 “**Permitted Pets**” is defined in Section 3.13 below.

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

1.63 “**Plat**” means the “*Final Plat for Shadow Mountain Village*” with the Coconino County Recorder, and any Plat of the Additional Property as may be added to the Project pursuant to a Declaration of Annexation as described in Article 2 below, and all amendments, supplements and corrections thereto, if any, from time to time.

1.64 “**Project**” means the real property described on Exhibit A attached to this Declaration, together with all Improvements located thereon and all easements, rights and privileges, appurtenant thereto, and any real property annexed pursuant to the provisions of Section 2.3 below.

1.65 “**Project Documents**” means this Declaration, the Articles, the Bylaws, and the Association Rules and Architectural Rules, if any.

1.66 “**Purchaser**” means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot. A Purchaser shall not include (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model home; or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant’s rights under this Declaration.

1.67 “**Recording**” means placing an instrument of public record with the Coconino County Recorder and “**Recorded**” means having been so placed on record.

1.68 “**Reserve Account**” is defined in Section 6.18.3 below.

1.69 “**Reserve Contribution**” is defined in Section 6.18.1 below.

1.70 “**Resident**” means each individual occupying or residing in any Residential Dwelling, including, without limitation, an Owner’s or Lessee’s family members and other members of their household residing with them on a regular basis.

1.71 “**Residential Dwelling**” means any building, or portion of a building, situated on a Lot and designed and intended for independent ownership and for use and occupancy as a Single-Family residence. Declarant intends to conduct one Residential Dwelling on each Lot, provided, however, the Residential Dwellings shall be constructed so as to appear visually connected to an adjacent Single-Family structure and shall share a common roof system.

1.72 “**Section**” is defined in Section 11.14 below.

1.73 “**Sewer Facilities**” is defined in Section 7.1.7 below.

1.74 “**Single Family**” means a group maintaining a common household in a Residential Dwelling consisting of one or more persons each related to the other by blood, marriage or legal adoption or such a group that includes a maximum of three (3) persons within the group who are unrelated to each other by blood, marriage or legal adoption.

1.75 “**Special Assessment**” means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.76 “**Special Service Area**” shall mean any part of a Lot as an area within which certain services may be provided by the Association after the Declarant Control Period expires or terminates pursuant to private agreement for the sole or primary benefit of the Owner of that Lot including, without limitation, maintenance of all Public Yard landscaping and sprinkler or irrigation facilities on that Lot.

1.77 “**Special Service Area Charges**” shall mean all fees and charges to be paid to the Association as are independently agreed upon between the Association and the Owners of each Lot containing a Special Service Area if any such area is established on a Lot by written agreement between the Association and the Owner.

1.78 “**Tract**” means any tract labeled on the Plat and designated for use as Common Area.

1.79 “**VA**” is defined in Section 11.18 below.

1.80 “**Vehicles**” is defined in Section 3.19.1 below.

**1.81 “Visible from Neighboring Property”** means, with respect to any given object or Improvement, that such object or Improvement is or would be visible to a person six feet tall standing at ground level on any part of a Lot, the Common Area or any public street within or adjacent to the Project; provided, however, that an object shall not be considered as being Visible from Neighboring Property if the object is visible only through a wrought iron fence or gate and would not be Visible from Neighboring Property if the wrought iron fence or gate were a solid fence or gate.

**1.82 “Water Facilities”** is defined in Section 7.1.7 below.

**1.83 “Yard”** means the portion devoted to Improvements other than the Residential Dwelling. **“Private Yard”** means that portion of a Yard which is enclosed or shielded from view by walls, fences, hedges or the like so that it is not generally Visible from Neighboring Property and is accessible only by a Resident of a Residential Dwelling and/or his Invitees. **“Public Yard”** means that portion of a Yard which is generally Visible from Neighboring Property, whether or not it is located in front of, besides, or behind the Residential Dwelling and includes any private courtyard area or gated entry area on the Public Yard.

## **ARTICLE 2 PROJECT PLAN**

**2.1 Project General Plan; Binding Effect.** This Declaration is being Recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Project. Declarant declares that the Project shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring an interest in any portion of the Project, each Person, binds himself, his heirs, personal representatives, successors, transferees and assigns, and all Residents of his Lot, to all of the provisions, restrictions, covenants, conditions, and Rules now or hereafter imposed by this Declaration, without regard to whether the Declaration is referenced in the instrument of conveyance or encumbrance. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme or plan for the development, sale, lease and use of the Project and hereby evidences his interest that all restrictions, conditions and covenants contained in this Declaration shall run with the land and be binding on all subsequent and future Owners and their Lessees, transferees and assigns. 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 hereby covenants and agrees that the Lots and the membership in the Association and the other rights created by this 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 may refer only to the Lot.

**2.2 Disclaimer of Representations.** Declarant makes no representations or warranties whatsoever about (i) completion of the Project in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) commitment or development of any portion of the Project for a particular use or for any use, except that all such uses shall be consistent with the development of the

Project for Single Family residential purpose; or (iii) the City's right, plan or intent to amend the zoning or development plan for the Project or adjacent properties in the future.

### **2.3 Annexation of Additional Property.**

**2.3.1** While Declarant owns any Lot or any other part of the Additional Property, and/or for a period of fifteen (10) years after the Recording of this Declaration, Declarant shall have the right, but not the obligation, to annex and subject all or any portion of the Additional Property to this Declaration or Declarant may develop the Additional Property as a separate subdivision or development or may convey the Additional Property to a third party developer for any purpose permitted by Applicable Laws. The annexation of all or any portions of the Additional Property shall be effected by the Declarant Recording a Declaration of Annexation setting forth the legal description of the Additional Property being annexed and affirmatively stating that such portion of the Additional Property being annexed and subjected to this Declaration. If the portion of the Additional Property being annexed is not owned by the Declarant, the Declaration of Annexation must be signed by the Owner of fee title to the portion of the Additional Property being annexed.

**2.3.2** The Additional Property may be annexed as a whole at one time or in one or more portions at different times or it may never be annexed and there are no limitations upon the order of annexation or the boundaries thereof. The property being annexed by the Declarant pursuant to this Section 2.3 need not be contiguous with other property already subject to this Declaration and the exercise of the right of annexation as to any other portion of the Additional Property.

**2.3.3** Declarant shall have the right to impose such additional covenants, conditions, restrictions and easements upon any portion of the Additional Property described in any Declaration of Annexation in recognition of any differences between the initial Project and the Additional Property or inherent uniqueness of the Additional Property and to create additional Common Area within the portion of the Additional Property being annexed. Declarant makes no assurances as to which, if any, part of the Additional Property will be annexed, the number of any additional Lots annexed to the Project, the amount, size, location or configuration of Common Area within the Additional Property being annexed or the amenities thereon.

**2.3.4** Declarant reserves the right to withdraw any portion if the Additional Property previously added to the Project by the Recording of a Declaration of Annexation at any time prior to the date that the first Lot within the Additional Property so added is conveyed to a Purchaser and without the consent of any Owner or the Association. The withdrawal of all or any part of the Additional Property shall be effected by the Declarant recording a Declaration of Withdrawal setting forth the legal description of the real property being withdrawn. If Declarant does not own the property to be withdrawn, the Declaration of Withdrawal must be signed by the Owners of fee title to the property to be withdrawn. Upon the withdrawal, such property shall no longer be subject to the covenants, conditions and restrictions of this Declaration or bound by any of the Project Documents.

**2.3.5** Subject to the further provisions of Section 5.7.2, the voting rights of the Owners of Lots annexed pursuant to this Section 2.3 shall be effective as of the date the Declaration of Annexation is Recorded.

### **ARTICLE 3 ARCHITECTURAL CONTROL AND USE RESTRICTIONS**

#### **3.1 Architectural Control.**

**3.1.1** All references to the Board in this Section 3.1 and elsewhere in this Declaration referring to matters of architectural control and design approval shall mean and refer to the Architectural Committee if one is designated by the Board pursuant to Section 5.10 below. As further provided herein, this Section 3.1 shall not apply to Declarant or any Declarant Parties with regard to any Improvements installed, erected, or maintained by them while Declarant owns any Lots, is developing the Project, or is making any Modifications (including in connection with warranty work). Declarant and the Declarant Parties are expressly exempt from the requirements of this Section 3.1 irrespective of whether directly stated in any subsection hereof or any related section of this Declaration.

**3.1.2** No excavation, grading, digging or trenching work shall be performed on any Lot without the prior written approval of the Board, except as is reasonably necessary for Private Yard Improvements, including installation of a pool, spa and landscaping, and except for Board approved Public Yard landscaping. All such excavation and grading, whether for landscaping or any other purpose, shall be consistent at all times with the drainage plans on file with the City and good engineering practices.

**3.1.3** No construction, installation, addition, alteration, repair, change or other work of Improvement which is Visible from Neighboring Property or in any way alters the exterior appearance of any part of a Lot and/or Improvements located thereon from its/their appearance on the date the City first issues a certificate of occupancy for the Residential Dwelling on the Lot ( a “**Modification**”), shall be made or done without the prior written approval of the Board. Any Owner desiring approval of the Board for such Modification shall submit to the Board a written request for approval specifying in detail the nature and extent of the Modification which the Owner desires to perform. Any Owner requesting the approval of the Board shall also submit to the Board any additional information, plans and specifications which the Board may request. No request for approval of a Modification shall be deemed complete until the Owner requesting the approval has received a written notice (the “**Architectural Submission Notice**”) from the Board stating that all supporting information, plans and specifications requested or required by the Board, have been submitted to the Board and all fees required, if any, pursuant to Section 3.1.7 of the Declaration have been paid. Within thirty (30) days after the Architectural Submission Notice has been delivered to the Owner, the Board shall schedule a final design approval meeting (the “**Design Approval Meeting**”) if required to be held pursuant to A.R.S. 33-1817(4) or pursuant to its own internal Architectural Rules. If the Board fails to approve or disapprove an application for Modification approval within sixty (60) days after the Board has delivered its Architectural Submission Notice to the Owner if no Design Approval Meeting is required to be held under Applicable Laws or pursuant to any Architectural Rules, or within thirty (30) days after any Design Approval Meeting is so held, Board approval of the requested Modification will not be required and this Section 3.1 will have been deemed to

have been complied with by the Owner who had requested approval of such Modification. In the case of any requested Modification by an Owner subject to the provisions of A.R.S. 33-1817, any Modification approval (“**Notice of Modification Approval**”) if the Board has approved the Owner’s request. The Notice of Modification Approval issued by the Board or any deemed approval pursuant to this Section 3.1 shall not be deemed a waiver of the Board’s right to withhold approval of any similar Modification subsequently submitted for approval.

**3.1.4** The Board may disapprove plans and specifications for any Modification which must be submitted to the Board for approval pursuant to this Section 3.1 if the Board determines, in its sole and absolute discretion, that the proposed Modification (i) would violate any provision of this Declaration; (ii) does not comply with any Architectural Rule; (iii) is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Board but not yet constructed; (iv) is not aesthetically acceptable; (v) would be detrimental to or adversely affect the appearance of the Project; or (vi) is not otherwise in accord with the general plan of development for the Project. The Board may disapprove a proposed Modification even though the plans and specifications may be in substantial compliance with this Declaration any Architectural Rules if the Board, in its sole and absolute discretion, determines that the proposed Modification, or some aspect or portion thereof, is undesirable or unattractive. Decisions of the Board may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are necessarily subjective in nature and that the decision of the Board shall be final on all matters submitted to it pursuant to this Article 3. Notwithstanding the foregoing, if a “disapproval” determination is made by an Architectural Committee appointed by the Board pursuant to Section 5.10 of this Declaration, the Owner may appeal the decision to the Board in accordance with Architectural Rules adopted by the Board, and, in such event, the Modification may be approved if a resolution is unanimously adopted by the Board within sixty (60) days after the appeal is taken to the Board. If the Board or any Committee disapproves plans for a Modification within sixty (60) days after the Architectural Submission Notice or any appeal to the Board, if applicable, the ruling body shall specify the reasons for such disapproval and advise the Owner, where feasible, of any corrections or changes that may be made to allow the submission to be approved.

**3.1.5** Upon receipt of a Notice of Modification Approval from the Board for any Modification, the Owner who had requested such approval shall proceed to perform or cause to be performed the Modification approved by the Board as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Board. During the course of construction, if the requested Modification is subject to the provisions of A.R.S. 33-1817, the Board shall conduct such onsite formal compliance reviews and issue such reports to the Owner in the manner provided in 33-1817 or as required by any other Applicable Laws.

**3.1.6** Any change, deletion or addition to the plans and specifications approved by the Board in the Notice of Modification Approval must be approved in writing by the Board following the procedures set forth in this Section 3.1 for approval of Modifications.

**3.1.7** The Board shall have the right to charge a fee for the services of any professional consultant or expert retained by the Board to review a request for Notice of Modification Approval

pursuant to this Section 3.1, which fee shall be payable by the Member making application at the time the request or application for Modification approval is submitted to the Board.

**3.1.8** All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations and placed on any Lot as part of the original construction of Improvements or as part of any Modification.

**3.1.9** Only a Lot Owner may request a Notice of Modification Approval. Notwithstanding anything to the contrary contained in this Article 33 or elsewhere in this Declaration, the provisions of this Section 3.1 do not apply to, a Notice of Modification Approval shall not be required for, any Modification made by, or on behalf of, Declarant.

**3.1.10** The approval required of the Board pursuant to this Section 3.1 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. Before commencing any Modification and, after receiving Board approval, the Owner shall provide the Board with a copy of any applicable permits required by law for the Modification.

**3.1.11** Any Notice of Modification Approval issued by the Board pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Board as to the quality of such Modification or that such Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

**3.1.12** The Board may condition its Notice of Modification Approval upon the agreement of the owner submitting such plans and specifications to (i) commence and complete the Modification within reasonable time frames established by the Board; (ii) obtain and maintain comprehensive general liability insurance; and (iii) furnish to the Association a security deposit or a bond on terms acceptable to the board in its discretion, but otherwise expressly subject to the provisions of Applicable Laws, including, without limitations, A.R.S. 33-1817, regarding maintenance of a trust account, allocations of costs of maintaining the account, treatment of abandoned, if such statute is applicable to any Modification requested by the owner. The security deposit shall be in an amount reasonably sufficient to (I) assure the completion of the proposed modification or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such modification, and (II) repair any damage which might be caused to an area of Association Responsibility as a result of such work. Any such bond shall be released or security deposit shall be fully refundable to the Owner upon the completion of the Modifications in accordance with the plans and specifications approved by the Board and the owners written request to the Board, provided that there is no damage caused to an Areas of Association Responsibility by the Owner or its agents or contractors. The Association may require as a condition of giving a Notice of Modification Approval that all third party contractors who intend to erect, install or construct a Modification subject to an Architectural Submission Notice shall be duly licensed by the Arizona Registrar of Contractors (if so required by Applicable laws) and carry a reasonable amount of commercial general liability or course of construction insurance. If requested by the Association and if not previously provided, the Lot Owner shall provide the

contractor's license number and the amount of insurance carried by the Lot Owner's contractor promptly upon request and after the Association's receipt of an Architectural Submission notice.

**3.1.13** If the plans and specifications pertain to a Modification which is within an Area of Association Responsibility so that the Association is responsible for maintenance, repair and replacement of such Modification, the Board may condition its Notice of Modification Approval on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Modification.

**3.1.14** No submittal to the Board pursuant to this Article 3 or elsewhere in this (setting forth in detail the matters included therein) has been personally signed for by both a member of the Board and date stamped and signed for by the Managing Agent ( or by two members of the Board if at any time the Board is self-managed). It is the submitting Owner's responsibility to ensure that the Board and the Managing Agent, as applicable, have received and signed the applicable submittal, that the Board Has issued the Architectural Submission Notice, and that the Board has either issued as Notice of Modification Approval or failed to disapprove the submittal within the applicable time period after the Architectural Submission Notice before proceeding with any Modification

**3.2 Temporary Occupancy and Temporary Structures.** No trailer, basement of an incomplete building, tent, shack, garage, barn and no temporary buildings or structures of any kind shall be used at any time as a Residential Dwelling, either temporarily or permanently. Temporary structures used during the construction of Improvements or Modifications approved by the Board shall be removed immediately after the completion of construction. In no event shall any such buildings, trailers or other structures (other than those installed, erected or maintained by Declarant is developing the Project or undertaking any Modifications, including warranty work, within the Project) be maintained or kept on any Lot or other property within the Project for a period in excess of twelve (12) months without the prior written consent of the Board.

**3.3 Nuisances; Construction Activities/Maintenance of Improvements.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other portion of the Project and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any portion of the Project or activities thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Project or the Owners or Residents. No nuisance shall be permitted to exist or operate upon any Lot or any other portion of the Project so as to be offensive or detrimental to any other portion of the Project or to its Owners or Residents. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary and customary security devices used exclusively for security purposes, shall be located, used or placed on any Lot or any other portion of the Project. Normal construction activities and parking in connection with the building of Improvements and or Modifications on a Lot or other portion of the Project shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and all other portions of the Project shall be kept in a neat and tidy condition during construction periods and trash and debris shall not be permitted to accumulate. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance. The provisions of this Section 3.3 shall not apply to construction activities of Declarant. No Improvement on any Lot shall be permitted to fall into disrepair, and each such Improvement shall at all



times be kept in good condition and repair and adequately painted, or otherwise finished. In the event any Improvement is damaged or destroyed, then, subject to the approvals required in Section 3.1 above, such Improvement shall be immediately repaired or rebuilt or shall be demolished. Any Improvement not so maintained as provided herein and in Article 7 below shall be deemed a nuisance and shall afford the Association and the Owners the remedies set forth in this Declaration.

**3.4 Diseases and Insects.** No Person shall permit anything or condition to exist upon any Lot or other portion of the Project which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

**3.5 Antennas.** Subject to the further provisions of Section 3.15 below regarding the placement of a protected class of satellite dishes under the FCC Rules, no antennas 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 without the prior written approval of the Board who may limit or restrict the placement of such antennas or other devices absent appropriate screening and architectural conformity.

**3.6 Mineral Exploration.** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. Neither the foregoing restriction nor any other provision in this Declaration shall prohibit or restrict, expressly or by implication, the exploration for or extraction of any minerals or other substances from any portion of the Property or a Lot pursuant to rights conveyed to or reserved by any Person including, without limitation Declarant or its affiliates, or their successors or assigns, pursuant to an instrument or instruments Recorded prior to the date responsible to repair or restore any portion of the Property or Lot affected by the exercise of the rights. This Section 3.6 may not be amended without the consent of all Persons holding any such rights.

**3.7 Environmental Restrictions.** All Owners and Residents in the Project shall be responsible for complying with all federal and state environmental and health laws and for causing their Invitees to comply. Without limiting the foregoing, no Person may dispose of, transport, or store Hazardous Materials on a Lot or on the Common Area other than small amounts of ordinary household non-combustible cleaning agents maintained by a Resident on his Lot or ordinary amounts of gasoline maintained to run lawn mowers and other gas powered Lot maintenance equipment. In no event may any Person dispose of any Hazardous Materials, including without limitation, motor oil, hydrocarbons, or other petroleum products, in or down a dry well within or adjacent to the Project.

**3.8 Trash and Recycling Collection.** Person shall place or keep garbage, trash, or other recyclable materials for collection by Contracted waste collection trucks except in covered canisters or barrels as may be supplied by the Contracted waste collection provided or otherwise designated by the Board. All rubbish, trash, garbage and recyclable materials shall be regularly be removed from Lots and other portions of the Project to prevent odors and the attraction of vermin or other pests. Each owner shall place his container at the collection point on the street adjacent to the Owner's Lot or other area designated by the Contracted waste collection provider or the Board within the Project and only for the shortest time reasonably necessary to effect such collection, not exceeding (12) hours before or after the

time of collection. The Association shall have the right to enact monetary fines as provided in the Project Documents for repeated violation of this section. No indoor or outdoor incinerators shall be kept or maintained on any Lot or other portion of the Project.

**3.9 Clothes Drying Facilities.** No outside clothes lines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on the Public Yard of a Lot or other portion of the Project (including Private Yards) so as to be visible from Neighboring Property.

**3.10 Utility Service.** Subject to the further provisions of section 3.15 below, no lines, wires, or 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 portion of the Project unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Improvements or Modifications constructed by Declarant and/or approved by the Board. No Provisions of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of improvements or Modifications by Declarant and/or approved by the Board.

**3.11 Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot or other portion of the Project 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 (8) feet without prior written approval of the Board.

**3.12 Residential Use/Leasing Restrictions/Political Activity and Door to Door Solicitation**

**3.12.1** Subject to the provisions of any applicable federal or state Fair Housing Acts, all Residential Dwellings shall be used, improved and devoted exclusively to residential use by a single family. Subject to such Fair Housing Acts, no trade or business may be conducted on any Lot or in or from any Residential Dwelling except that an Owner or other Resident of a Residential Dwelling may conduct a business activity within a Residential Dwelling so long as (i) the existence or operation of the business activity is not readily apparent or detectable by sight, sound or smell from outside the Residential Dwelling; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the project; (iii) the business activity only results in occasional or minimal time duration visits or contact with non-residents coming onto the Lot and does not involve the door-to-door solicitations of Residents. (iv) the trade or business conducted by the Resident does not require more than (1) employee working in or from such Residential Dwelling unless such additional employees are also lawful Residents of the Residential Dwelling; (v) the volume of vehicular or pedestrian traffic generated by such trade or business does not result in traffic congestion or parking violations; (vi) the trade or business does not use flammable liquids or Hazardous Materials in quantities not customary for residential use; and (vii) the business activity is consistent with the residential character of the Project, does not attract invitees during evening or non-standard local business hours and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, 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 3.12 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 such activity is engaged in full or part time; such activity is intended to or does generate a profit; or a license is required for such activity.

**3.12.2** The leasing of a Residential Dwelling by the Owner thereof shall not be considered a trade or business within the meaning of this Section 3.12 and the Owner of the Lot shall have the right to lease his Lot and the Residential Dwelling therein, provided that (i) the lease is in writing; (ii) all Residents occupying the Residential Dwelling under the lease, including the Lessee, are specifically made subject to the covenants, conditions, restrictions, easements, limitations and uses contained in this Declaration, the Bylaws and any Association Rules; and (iii) the lease shall not be for a period of less than six (6) months. Within fifteen (15) days after the postmarked request, and subject to the Applicable Laws, including A.R.S. 33-1806.01(D), the Owner or the Owner's designated agent must also provide the following information to the Association or its Managing Agent along with any fee established by the Association to update its records for any new tenancy, but not renewals (the "**New Tenancy Records Fee**"), (I) the commencement date and termination date of the lease and the names of each Lessee another adult Resident who will be occupying the Lot during the term of the lease; (II) The address and telephone number of the Owner or the Owners designated agent while the Lease is in effect; (III) the telephone number and contact information for the Lessee; and (IV) the description and license plate numbers of the Lessees' or Residents' Vehicles that will be kept or maintained within the Project during the term of the lease. The Board may give notice that a lease or proposed lease violates this section 3.12.2 and may pursue all remedies available to the Association to enforce such leasing restriction or the lease, including by any action for eviction, if allowed by Applicable Laws, but expressly subject to the limitations set forth in A.R.S 33-1806.01(E)(4). Home exchange programs and foreign student exchange programs shall not be construed as leasing as long as there is no or nominal consideration passing between the parties to such transaction and the Residents otherwise abide by the Project Documents. Nothing contained in this Section 3.12.2 shall be construed as applying to any leasing program maintained or operated by Declarant with regard to its Lots or Residential Dwellings.

**3.12.3** The Association may adopt reasonable anti-solicitation Rules in accordance with A.R.S. 33-1808(G). Without limitation, no solicitation of Residents for political activity, voting or general or special election (including ballot, proposition or initiative) matters or any other purposes shall be allowed at any time between the hours of sunset and sunrise and all Persons conducting solicitation activities on the Project shall prominently display an identification tag or other readily visible means of identification.

**3.13 Animals.** No animal, bird, fowl, reptile or livestock may be kept on a Lot temporarily or permanently, except for a reasonable number of dogs, cats, common domestic birds such as parakeets, cockatiels, and parrots, or similar commonly recognized household pets kept, bred or raised thereon solely as domestic pets and not for commercial purposes ("**Permitted Pets**"). All Permitted Pets shall be confined to their owners' Lots in which they are residing or visiting or confined in a cage or pet carrier when being taken to and from a Lot, except that dogs, cats or other pets capable of being walked on a leash may be permitted to leave their Lot without being confined in a cage or pet carrier if such animals are kept at all times on a leash not to exceed six (6) feet (6') in length or are otherwise under a Resident's control and are not permitted to enter upon any other Lot. It shall be the responsibility of the Residents of the Lot to immediately remove any droppings from their Permitted Pets. No Permitted Pet under this

Section 3.13 shall be allowed to make an unreasonable amount of noise or become a nuisance. No cage or other structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Resident, the Board shall conclusively determine, in its sole discretion, whether for the purposes of this Section 3.13, a particular animal constitutes a Permitted Pet pursuant to this Section 3.13 or whether such animal is a nuisance or is making an unreasonable amount of noise (including excessive dog barking). The Board may adopt Rules providing for the removal of a Permitted Pet that has bitten or attacked or has a propensity to bite or attack an individual or another animal or constitutes a threat to the safety of any Resident or Invitee. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. The right of Residents to maintain a reasonable number of Permitted Pets pursuant to this Section is expressly subject to the right of the Board to prospectively restrict the size and number of Permitted Pets and to further limit the category of Permitted Pets and are then living with Residents on Lots but do not satisfy the newly adopted Association Rules for as long as such pets continue living with Residents on Lots, if such pets otherwise conform to this Section 3.13 and are not a nuisance.

**3.14 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, or any other portion of the Project, except (i) such machinery or equipment used in connection with the initial construction of an Improvement or Modification; (ii) such machinery that is used solely within the interior of a Residential Dwelling (including an enclosed garage) and does not emit noise of a decibel level that would pose a nuisance to adjacent Lots; (iii) ordinary and customary machinery or equipment used in the regular or routine maintenance of a Residential Dwelling or Lot such as a lawn mower; or (iv) such machinery or equipment which Declarant or the Association may require for the improvement, operation and maintenance of the Project.

**3.15 Roof Structures and Equipment.** No solar units or panels, heating, air-conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof of a Residential Dwelling or other Improvement on a Lot except as expressly permitted herein and/or except as may be initially installed by Declarant. The Board shall grant a variance for roof-top or other solar panels or other solar equipment Visible from Neighboring Property if attractively screened in accordance with standards established by the Board, further subject to applicable federal or state energy conservation laws governing the installation of solar equipment on Residential Dwellings, including, without limitation, A.R.S. 33-1816. In addition, the Association may not prohibit or unduly or unreasonably restrict the placement of satellite dishes and antennas of the types covered by the Federal Communications Commission Rules promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time commonly known as the Over-the-Air Reception Devices or ***OTARD Rule*** ("**FCC Rules**"). However, nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics Rules which do not impede the Owner's ability to obtain solar power and or obtain adequate reception from a protected class of satellite dishes or antennas within the scope of the FCC Rules. Without limiting the foregoing, all satellite dishes or antennas within the scope of the FCC Rules shall not be placed on the front elevation of the home, or individual Resident fenced front yards. They are to be mounted on the sides, if applicable, or back of units unless, as a result of such placement, the Owner is not able to obtain a satisfactory signal as defined in the FCC Rules.

**3.16 Window Treatments.** Each Purchaser shall cause all windows within his Residential Dwelling facing Tracts A through D, or otherwise Visible from Neighboring Property to be covered with appropriate window treatments within thirty (30) days after first occupancy by a Resident. No reflective materials including but not limited to, aluminum foil, reflective screens or glass, mirrors or similar-type items or bed sheets shall be installed or placed on the outside or inside of any windows. The exterior of all drapes, curtains or other window coverings facing Tracts A through D, or otherwise Visible from Neighboring Property, must show white, off-white, beige, cream, solid earth tones, natural wood stain, or such other colors as permitted by the Board.

**3.17 Signs/Flagpoles; Flag Display.**

**3.17.1** No emblem, logo, sign or billboard of any kind whatsoever (including, but not limited to, commercial, “for sale,” “for rent” and similar signs) which are visible from Neighboring Property shall be erected or maintained on any Lot or the Common Area within the Project except (i) signs required by legal proceedings or by Applicable Laws; (ii) certain “political signs” as described in Section 3.17.2 below; (iii) certain flagpoles and flags as described in Section 3.17.3 below; (iv) professionally lettered Residential Dwelling identification signs affixed to the Residence not exceeding 6X12 inches in size; (v) temporary placement of “children at play” cautionary signs that do not exceed or violate the restrictions or limitations of A.R.S 33-1808 as to height, location, professional manufacture and duration of display; (vi) Project identification signs and other marketing signs installed by Declarant or the Association; (viii) one small alarm company sign located near the front door of a Residential Dwelling; and (ix) such other signs as are originally installed by Declarant and/or approved by the Board.

**3.17.2** The foregoing limitation on signs shall not preclude the placement of one or more “political signs” on a Lot as defined in A.R.S 33-1808; provided, further however, that the maximum aggregate total dimensions of all such signs on a Lot shall not exceed nine (9) square feet, and the political sign may not be displayed on the Lot more than seventy one (71) days prior to or three (3) days after the election proceeding to which it applies. If the applicable political sign ordinance of the County or the governing provisions of 33-1808 or other applicable Laws, as amended from time to time, are at any time more restrictive than the limitations contained in this section 3.17, then the restrictions of the County ordinance on political signs or other applicable Laws shall apply in lieu of this Section 3.17 and this Section 3.17 shall be deemed automatically amended as necessary to comply with such County ordinances or then Applicable Laws. The Association may also adopt reasonable Rules regulating circulation of political petitions, referendums and nominating forms in accordance with 33-1808.

**3.17.3** As further provided in A.R.S 33-1808 a Member may display a flag expressly referenced in and specifically allowed by A.R.S 33-1808(A) on his Lot consistent with the provisions of that statute and subject to any other Applicable Laws. The Association shall adopt reasonable Rules regarding the display of such flag, including regulating the size and location of flagpoles, as long as such Rules do not result in the prohibition of the installation of the flagpole or unduly limit displaying such flag. In no event may a flagpole be installed on a Lot until the height and location of the pole and the flag to be displayed thereon have been approved by the Board.

**3.17.4** A single “for rent,” “for sale” or “for lease” sign together with one standard industry “rider” in any combination may be placed on a lot at any time in conformity with the standard industry size for such sign and/or rider as further specified under Applicable Laws. The Association may not charge a fee for the use or placement of any sign specified under this Section 3.17.4 nor shall it prohibit an Owner from displaying a temporary open house sign on his Lot in connection with such sales and leasing activity as long as such open houses are advertised to take place and are conducted between the hours of 8:00 a.m. and 6:00 p.m. local time except designated builder model homes.

**3.18 Restriction on Further Subdivision, Property Restrictions, Rezoning and Timeshares.** Without the prior written approval of the Board, no Owners other than Declarant shall do any of the following (i) further subdivide a Lot or separate the Lot into smaller lots or parcels, (ii) convey or transfer less than all of a Lot, (iii) replat the Lot or combine the Lot with other Lots. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee or other Person other than Declarant against any Lot without the provisions therefore having been first approved in writing by the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than Declarant unless the application has been approved by the Board and the proposed use otherwise complies with the Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly or any other type of revolving or periodic occupancy by multiple owners, cooperators, licensees or time-sharing participants.

**3.19 Commercial/Recreational Vehicle Restrictions/Public and Municipal Service Type Vehicle Exemptions.**

**3.19.1** No truck (other than a Family Vehicle truck as defined below), mobile home, bus, travel trailer, or other similar equipment or vehicle (hereinafter “**Commercial/Recreational Vehicles**”) may be parked, maintained, constructed, reconstructed, or repaired on any Lot or Common Area Tract (including on any portion of a Public Yard or the private streets) so as to be Visible from Neighboring Property without the prior written approval of the Board, except for (i) the temporary parking of any Commercial/Recreational Vehicle on a Lot for loading and unloading for a period of not more than sixteen (16) consecutive hours; (ii) temporary construction trailers or facilities maintained during, and used, exclusively in connection with, the construction of any Improvement by the Declarant or any Improvement approved by the Board; and (iii) Commercial/Recreational Vehicles parked completely within enclosed Residential Dwelling garages. A “**Family Vehicle**” means any domestic or foreign car, station wagon, sport wagon, pick-up truck of one (1) ton or less capacity with camper shells not exceeding seven (7) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle and similar non-commercial and non-recreational vehicles that are used by a Resident for family and domestic purposes and which are used on a regular and recurring basis for basic transportation. The Board may, acting in good faith, designate a Commercial Vehicle as a Family Vehicle, if, prior to use, the Resident petitions the Board to classify the same as a Family Vehicle and the parking of such Vehicle on a Lot will not adversely affect the Project or the Residents. Family Vehicles and Commercial/Recreational Vehicles are collectively referred to in this Article 3 as “**Vehicles.**”

**3.19.2** Notwithstanding anything in this Article 3 or elsewhere in this Declaration to the contrary, the Association may not prohibit a Resident employed by a public service

corporation, public safety agency, or municipal utility from parking a Vehicle on Tract E or the guest parking spaces on Tract E, or Public Yard driveway of a Lot if the Resident and the Vehicle otherwise meet the condition of, and/or comply with, the provisions of A.R.S. 33-1809. If permitted by Applicable Laws, the Association Rules may require that such Resident park such Vehicle in the garage, the Public Yard driveway, or guest spaces on Tract E if such spaces are available and of sufficient size to accommodate the Vehicle used by the Resident for such employment purposes.

### **3.20 Further Vehicle and Parking Restrictions.**

**3.20.1** The streets are fire lanes. Except for emergency Vehicle repairs and except as specifically provided in Section 3.19 above, or this Section 3.20, no Vehicle shall be parked, stored, constructed, reconstructed or repaired on a Lot or any other portion of the Project except within the enclosed garage of a Residential Dwelling. Without limiting the foregoing, a Vehicle or other equipment shall be deemed to be stored, inoperable and/or under repair if it is covered by a car cover, tarp or other material, has a flat tire that is not immediately replaced, does not have current license tags, and/or is not driven or moved under its own power on a weekly basis by a Resident of the Lot.

**3.20.2** Designated Vehicle parking spaces (ie. Striped stalls) located on Common Area Tract E shall be available for “temporary parking” as defined in Section 3.19 above by Family Vehicles operated by Invitees of Project Residents. Unit Owners and other Residents may not park in the Common Area parking stalls except as provided herein. After the Declarant Control Period has expired or terminated, the Board shall have the right to adopt Association Rules permitting temporary parking by Residents and their family members on the Common Area on such conditions and terms as reasonably established by the Board or to grant waivers pursuant to Section 3.27 below. The Board shall also have the right to adopt such Association Rules or grant such waivers as necessary to accommodate disabled Persons entitled to protection under the Americans With Disabilities Act and Applicable Laws.

**3.20.3** The use of motorized mopeds, skateboards, go-peds, mini-bikes, scooters, miniature motorcycles or pocket bikes, and similar type devices of transportation that are not permitted to be driven or operated on City streets and/or on highways are expressly prohibited within this Project.

**3.20.4** If Applicable Laws (including County Code) require there shall be “no parking” or other obstructions in fire lanes designated by posted signage and/or red curb areas if any within SMY, the Board will enforce any such designated “no parking” areas and the Association shall install and maintain such signs as are required by pursuant to County Code or other Applicable Laws as part of the Common Area.

**3.21 Towing of Vehicles/Other Enforcement.** The Board shall have the right to have any Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents and this Article 3 towed away or to restrict its movement by attaching a “boot” device to the wheel of the Vehicle at the sole cost and expense of the owner of the Vehicle. If the owner of a towed or “booted” Vehicle is not a Lot Owner and the Association directly incurs any expense because such towing or booting charges were not collected from the Vehicle owner for any reason, the Association may seek reimbursement for such expenses from the Lot Owner whose Resident or Invitee

improperly parked the towed or booted Vehicle. Any expense incurred by the Association in connection with the towing or booting of any Vehicle shall be paid to the Association upon demand to the Lot Owner as an Enforcement Assessment pursuant to Section 6.6 below. In addition to levying an Enforcement Assessment for towing charges incurred by the Association and enforcing the Assessment in any manner permitted by law, the Board may pursue all other remedies set forth in Section 9.3 below, including, without limitation (i) imposing monetary fines against Lot Owners (and/or their Residents) who are causing recurrent violations of the Vehicle parking restrictions of this Declaration in accordance with Rules adopted by the Association for the imposition of monetary fines; (ii) suspending the voting rights of or Association services to an Owner whose Lot and/or the Residents and Invitees thereon are in violation of the parking restrictions of this Declaration; (iii) filing a civil suit against an Owner and/or Resident to enjoin actions or behavior relating to the parking of Vehicles violative of this Declaration; and (iv) Recording a Notice of Violation against a Lot pursuant to Section 11.8 below in the case of continuing Vehicle or parking violations pertaining to that Lot. The Association shall not be liable for any damage to Vehicles towed pursuant to this Section 3.21.

**3.22 Lighting.** Except as initially installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized on any Lot which will allow light to be directed or reflected in any manner on the Common Area or onto another Lot. All lighting or illumination sources shall be hooded or shielded in accordance with any applicable governmental light pollution, glare reduction and energy conservation standards.

**3.23 Drainage/Changes in Grade.** No Residential Dwelling or other Improvement or Modification thereto or on the Common Area Tracts shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in the Project as originally developed by Declarant including through any drainage easements set forth on the Plat, or for any Lot as shown on the drainage plans on file with the City. In addition, no Owner or other Person other than Declarant shall change the grade or elevation of a Lot in such a manner that would be so obstruct, interfere with or change the direction or flow of water in accordance with approved drainage plans for the Project. No Person shall at any time hereafter fill, block or obstruct any drainage easements, channels or structures on a Lot shall repair and maintain all drainage channels and structures located on the Owner's Lots. The Association may not make material elevation or topography changes to the Common Area in any manner that may reduce the drainage capabilities of the Common Area or any drainage or retention facilities or basins installed by Declarant in the Project without first consulting with a licensed engineer in the appropriate engineering disciplines and without the consent of the County and of Declarant, while Declarant owns any Lots. The provisions of this Section 3.23 and Section 7.1 shall be covenants running with the land and enforceable by the County as provided in Section 9.1 below.

**3.24 Garages.** No garage shall be converted to living space or altered or used for storage of material or other purposes that would prevent the use of the garage for parking of the number of Family Vehicles for which it was designed without the prior written approval of the Board, except that Declarant may use a garage in one or more model homes for a sales office and/or construction office. The interior of all garages shall be maintained and kept in a neat, clean and presentable condition, free of debris or unsightly objects. Garage doors shall be kept closed when the garage is unattended and except when opening of the door is necessary to permit ingress or egress.



**3.25 Basketball Goals; Backboards.** No permanent or portable basketball goals or backboards may be installed or used on the Public Yard of a Lot at any time.

**3.26 Planting and Landscaping/Installation and Maintenance.**

**3.26.1** Except for (i) such planting and landscaping as may be installed by Declarant in accordance with the initial construction of Residential Dwellings on a Lot or (ii) Private Yard plantings and landscaping, no planting or landscaping shall be done and no fences, hedges or walls shall be erected or maintained on any Lot without the prior written approval of the Board. The Board shall have the power to adopt an approved plant list or a list of prohibited plants and to amend this list from time to time. In the case of an approved plant list only plants identified on such list of prohibited plants may be planted on any Public Yard or Private Yard as identified on such list of prohibited plant list be planted within the Project. If Declarant does not install Public Yard landscaping in conjunction with the conveyance of a Lot and Residential Dwelling, then the Purchaser thereof (or any permitted transferee of the Purchaser) shall install grass, trees, plants and other landscaping Improvements (together with any sprinkler or drip irrigation system sufficient to water the same) within ninety (90) days after the date Declarant has originally conveyed the Lot to the Purchaser. All such landscaping must be installed in accordance with plans and specifications approved by the Board pursuant to Section 3.1 of this Declaration.

**3.26.2** Except in the case of a Special Service Area, each Owner of a Lot shall keep neatly trimmed all shrubs, trees, hedges, grass and plantings of every kind located on his Lot, planted public rights-of-way between sidewalks and street curb in front or to the side of his Lot, if any, any any other public or private right-of-way or easement area which abuts the Owner's Lot and is located between the boundary line of his Lot and the paved area of any street, sidewalk, or similar area. The Lot Owner shall also keep all such areas properly cultivated and maintained and free of trash, weeds and other unsightly material; provided however, that the Owner shall not be responsible for any Area of Association Responsibility or for any area maintained by the County. After the Declarant Control Period expires or terminated, the Board may, but is not obligated, to separately contract with an Owner to maintain the landscaping and other Improvements on the Public Yard of that Owner's Lot as a Special Service Area on such terms and for such Special Service Area Charges as the Board may elect, provided, that the Board shall not discriminate among Lot Owners regarding terms offered and the Association may not cease to maintain a Special Service Area without giving the Lot Owner at least sixty (60) days' prior written notice as long as the Lot Owner has paid and continues to pay all Special Service Charges attributable to the Special Service Area.

**3.27 Community Privacy Measures/Limitation of Liability.** Each Owner understands and agrees that neither the Association (not its officers, Directors, employees, and agents) nor Declarant (nor its officers, directors, employees and agents, including, without limitation, the Managing Agent) is responsible for the acts and omissions of any third parties or of any other Owner or Resident or their respective Invitees resulting in damages or injury to person or property. If, and to the extent, any common privacy measures, such as fencing, gating, or monitoring certain Project areas, are installed, undertaken or adopted by the Association after the date of Recording of this Declaration, the cost of installation and maintenance of such features of facilities will be paid by the Association as a Common

Expense Liability and no warranty is made with regard to the efficacy or effect of such features or devices if so installed. Each Owner understands that any privacy measures that are in effect at the time he becomes an Owner may be abandoned, removed and/or modified by a majority vote of the Board. The commencement of any such devices, features, measures or controls shall not be deemed to be an assumption of any duty on the part of the Association or Declarant with respect to the Project. **Neither Declarant, the Association, nor any Member, Director, officer, Board committee member, employee, or any Managing Agent thereof, shall be liable to any Owner, Resident or Invitee for any claims or damages resulting directly or indirectly, from the existence or maintenance of any community privacy measures, and shall have no liability for any claims or damage arising from the entry or trespass of any unauthorized or other Person onto the Project.**

**3.28 Variances.** The Board, may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Board determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Owners or Residents of the Project. Such variances must be evidenced in writing and must be signed by a unanimous vote of the Board. If such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision hereof covered by the variance, and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Owner's and/or Resident's obligation to comply with all governmental laws and regulations affecting the use of his Lot. The Board shall have the right to condition the granting of a variance in one instance or under certain circumstances, terms and conditions does not mandate the granting of a variance under similar or related circumstances, terms or conditions if the experiences of the Association and the Project as a whole or the differences in circumstances (however slight) of a variance request from a previously approved variance lead the Board, in good faith, to disapprove a variance request in such instance. In no event, may the Board grant or any variance that would create or cause the Association to be in violation of any County ordinance in favor of the Association and its Members.

**3.29 No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 3 or elsewhere in this Declaration are or may be invalid or enforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

**3.30 Savings Clause.** The provisions of this Declaration shall be constructed to be consistent with Applicable Laws, and should any provision violate Applicable Laws and be enforceable as a result thereof, then Applicable Laws shall govern.

**3.31 Address Signs.** Each Lot shall have an address sign showing street numbers on front and rear of home in numbers at least 4" in height and visible from the street.

#### ARTICLE 4 EASEMENTS

##### **4.1 Owner's Easements of Enjoyment in Common Area.**

**4.1.1** Subject to the rights and easements granted to the Declarant in Section 4.3 and 4.4 of this Declaration, every Owner, and any Resident, shall have a right and easement of enjoyment in and to the Common Area, including, but not limited to, the right to use Tract A through D for ingress and egress to the Owner's Lot which right shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions.

(i) The right of the Association to dedicate, convey, transfer, mortgage or encumber the Common Area as provided in Section 5.11 of this Declaration **(but in no event shall the Association convey the Common Area without the consent of Declarant, while Declarant owns any Lot and any such conveyance, dedication, transfer, mortgage or encumbrance shall always be subject to the Lot Owner's easement of ingress and egress on and over Tract E (private streets))**

(ii) The right of the Association to regulate the use of the Common Area through Association Rules and to prohibit access to such portions of the Common Area; such as landscaped areas, not intended for use by the Owner or Residents;

(iii) The right of the Association to suspend the right of an Owner and any Resident of the Owner's Residential Dwelling to use the Common Area (but not Tract E for ingress or egress) if such Owner is more than fifteen (15) days' delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Resident has violated any provision of the Project Documents and has failed to cure such violation within thirty (30) days after the Association notifies the Owner of the violation, subject to any notice requirements of A.R.S. 33-1803 or other Applicable Laws. However, the Association may not prevent ingress or egress to or from any Lot by an Owner or Resident of the Lot. Any suspension for failure to pay Assessments or any infraction of the Project Documents shall continue until such time as all payments, including all delinquent Assessments, late charges, interest and attorney's fees, and all other Collection Costs, are brought current and until the infractions or violations of the Project Documents are cured, as applicable.

(iv) The right of the Association to rent or lease any portion of the Common Area on a short term basis to an Owner or Resident or third parties who are not Owners or Residents for the exclusive use of such Persons and their Invitees during the rental period and to charge reasonable admission or use fees for the use of any recreational facility or amenity situated on the Common Area;

(v) An easement for ingress or egress over Tract E (private streets) for public and private utilities, U.S. mail delivery and collection, refuse collection and emergency access vehicles for purposes of providing such services as may be required by Applicable Laws or contracted for by the Association on behalf of the Owners.

(vi) The right of the Association to convey certain portions of the Common Areas to Owners of adjoining Lots in connection with the correction or adjustment of the boundary between the Common Areas and adjoining Lots on such terms as the Board shall determine in its sole discretion.

**4.1.2** Only current Residents and their Invitees accompanied by such Resident(s) shall have the right to use the Common Area.

**4.1.3** Declarant shall cause the Common Area conveyed to the Association to be free and clear of all liens and monetary encumbrances to the Association no later than the date which is the first to occur of (i) the date the last Lot in the Project is conveyed to a Purchaser; (ii) the date that is five (5) years after the Recording of this Declaration; and (iii) the date that is within a commercially reasonable period after all Improvements for the Common Area designed by Declarant and approved by the County have been substantially completed. If the Common Area Improvements are not complete at the time of the conveyance of the first Lot in the Project to a Purchaser, Declarant shall have satisfied and provided all financial assurances for completion thereof as required by the applicable Arizona subdivision laws under Title 32 of the Arizona Revised Statutes and the rules of the Arizona Department of Real Estate.

**4.2 Utility and Development Easements.** There is hereby created a blanket non-exclusive easement upon, across, over and under the Common Area for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, drainage and storm drainage and stormwater management, telephone, television and electrical service, whether public or private. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area but no sewer, electrical, water, or other utility or service lines or any apparatus or equipment necessary for the provision or monitoring of any such utility or services may be installed or located on the Common Area or elsewhere in the Project except as designed, approved and/or constructed by the Declarant or the Board. The person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide pr meter the utility as promptly and expeditiously as possible and shall restore the surface of the land and surrounding vegetation and Improvements to their original condition as soon as possible.

**4.3 Declarants Use for Sales and Leasing Purposes and Reserved Easements.** During the Declarant Control Period, Declarant reserves the right and shall have an easement to (i) place, erect, construct and/or maintain sales and construction trailers, model homes, visitors or customer service centers, parking facilities, management offices and sales and leasing offices or store building materials and supplies on any Lot owned by Declarant or on any portion of the Common Area in such number, of such size, and in such locations as Declarant deems appropriate; (ii) retain all personal property and equipment used in the sales, management, or development of the Project that has not been represented as property of the Association and to remove all such goods and Improvements used in marketing, whether or not they have become fixtures; (iii) designate spaces on the Common Area not otherwise previously assigned to Owners or Residents, for exclusive use by prospective Purchasers, Declarants employees, agents and others engaged in sales, leasing, maintenance, construction or management activities,

including, without limitations, the Managing Agent; and (iv) place, erect, construct and/or maintain advertising, identification or directional signs. In the event of any conflict or inconsistency between this section 4.3 and any other provisions of this Declaration, this section 4.3 shall control. Without limiting the foregoing, the rights of Declarant set forth in this Section 4.3 or elsewhere in this Article 4 or remainder of this Declaration, shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any other means provided in this Declaration.

**4.4 Declarant's Additional Easements and Easement Rights.** Declarant shall have the right and an easement on or over the Area of Association Responsibility to construct all Improvements or Modifications the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant for construction related purposes including the storage of tools, machinery, construction trailers, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. Irrespective of whether Declarant at any time is an Owner of Lots, 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 or exercising the rights granted to or reserved by the Declarant in this Declaration, including without limitations, warranty work. Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, right-of-way and licenses required by any government or governmental agency (or utility pursuant to section 4.2 above) over and through all or any portion of the Common Area or any Lots owned by a Declarant. Declarants may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or maintenance on any portion of the Project. The easements granted to and reservations made by Declarant and Declaration shall not terminate (except as expressly provided herein) or merge and shall continue to run with the land, notwithstanding the Common Law doctrine of merger and the Common ownership of any of the Project by Declarant. Upon a written request of Declarant, the Association and each Owner shall from time to time sign, acknowledge, and deliver to Declarant such documents or instruments deemed necessary by Declarant to evidence or confirm the reservation or grant of rights and easements to Declarant under the Declaration. In the event of any conflict or inconsistency between the Section 4.4 and any other provisions of this Declaration, this Section 4.4 shall control.

**4.5 Easements in Favor of Association.** The Lots are hereby made subject to Easements in favor of the Association and its Directors, Officers, Employees, Independent Contractors and agents, including, without limitation, the Managing Agent, for (i) inspection of the Lots (but not the interior Residential Dwellings) in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible and compliance by Owners and Residents with the Projects Documents; (ii) inspection, maintenance, repair and replacement of the Areas of the Association Responsibility accessible only from such Lots; (iii) correction of the emergency conditions on one or more Lots; and (iv) 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 Project Documents.

**4.6 Easements for Encroachments.** Each residential Dwelling and other Improvements on the Lot are hereby declared to have an easement over adjoining Lots and Common Area for the purpose of accommodating minor encroachments due to engineering errors, errors in original construction,

settlement or shifting of capital line improvements or any similar cause for as long as such encroachments shall exist; provided however, that in no event shall such easement exist for willful misconduct by any Owner or intentional encroachments, and provided, further that Declarant may remove and/or relocate any Boundary Wall ( other than a Boundary Wall comprising parts of a Residential Dwelling) or other encroachments onto Lots owned by Declarant at Declarant's sole expense ( unless such encroachment(s) were caused by the willful misconduct of an adjacent Owner or Resident); in which case the relocation shall be at the expense of the encroaching Owner.

## **ARTICLE 5 THE ASSOCIATION**

**5.1 Formation of Association.** The Association has been formed as a non-profit Arizona corporation charged with the duties and invested with the powers conferred upon nonprofit corporations by applicable common law and applicable statutes and as set forth in the Articles, Bylaws and this Declaration. The Association shall not be dissolved without the express written consent of Declarant during the Declarant Control Period except by judicial decree. After the Declarant Declarant Period has terminated the Association shall not be dissolved unless another entity or governmental authority or agency has agreed to assume the obligations of the Association under this Declaration with respect to the operation and maintenance of the Areas of Association Responsibility and/or unless a Certificate of Termination has been approved by the Members as further provided in the Project Documents or Applicable Laws.

**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. Until the termination of the Declarant Control Period, Declarant shall have the right to appoint and remove members of the Board. After the termination of the Declarant Control Period, the Board shall be elected by the Members as provided in the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, such as in the case of Section 10.23 below, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. Until the termination of the Declarant Control Period, Declarant shall have the right to appoint and remove members of the Board.

**5.3 Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal Rules pertaining to (i) the management, operation, and use of the Areas of Association Responsibility; (ii) minimum standards for maintenance of Lots; or (iii) the health, safety and welfare of the Owners and Residents. Without limiting the foregoing, the Board may adopt Association Rules reasonably limiting the periods of use of recreational Common Areas. Unless and until such Rules are adopted and published to the Members, no Person may use any recreational Common Areas after 10 p.m. local County time. This period may be further limited or expanded by Association Rule without the need to amend this Declaration.

**5.4 Personal Liability.** No member of the Board or of any Committee of the Association, no officer of the Association, and no Managing Agent, representative or employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any

damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, a Managing Agent, any representative or employee of the Association, or any Committee, Committee member or officer of the Association; provided, however, the limitations set forth in this Section 5.4 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 Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege, including, without limitation, the right to employ a Managing Agent or other independent contractor to perform all of the duties and responsibilities of the Association and the Board, subject to Section 5.13 hereof, the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.

**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 until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership and the voting rights described below are appurtenant to, and inseparable from, ownership of the Lot.

**5.7 Classes of Membership and Voting Rights.** The Association shall have the following two classes of voting membership:

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

**5.7.2 Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned during the Declarant Control Period. After the Declarant Control Period terminates, Declarant's Class B Membership, if any, shall be converted to Class A Membership and Declarant shall be entitled to one (1) vote for each Lot owned by Declarant if Declarant is then the Owner of any Lots.

**5.8 Voting Procedures and Written Consents.** 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 Lot must be cast as a unit and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes cast for that Lot shall be counted and all of the votes so cast for that Lot shall be deemed void. Any reference in this Declaration to a vote of a specified percentage or fraction of Members or Owners means the percentage or fraction of the total votes entitled to be cast by such Members or Owners except as otherwise expressly provided in this

Declaration. Except as provided in Section 10.23 below, any action that requires Membership approval pursuant to a vote of the Members may also be approved by the Members without a meeting at which a vote is held if the action is approved by Members in a written consent signed by those Members holding the requisite percentage of votes necessary to approve the action under the Project Documents or otherwise pursuant to Applicable Laws. If a record date is not fixed pursuant to the Project Documents, the record date for determining Members entitled to take action without a meeting is the date the first Member signs the consent to action. The action is effective on the date that the consent is signed by the last Member whose signature results in the requisite amount of Member approvals. Any Member may revoke the Member's consent by delivering a signed revocation of his consent to the President or Secretary of the Association before the date that the consent or consents are signed by the last Member whose signature would otherwise result in the requisite amount of Member approvals.

**5.9 Transfer of Membership.** The rights and obligations of any Member other than Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be 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; provided, that any such transfer is subject to the limitations and provisions of Section 6.15 below. 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 or other Person who becomes an Owner of a Lot shall notify the Association within ten (10) days after he becomes an Owner. A transfer of ownership of a Lot may be subject to an Administrative Records Fee pursuant to the provisions of Section 6.15 below.

**5.10 Architectural Control.** The Board may establish an Architectural Committee to perform the architectural design review and related functions of the Board set forth in this Declaration. If established, the Architectural Committee shall be a committee of the Board and shall consist of such a number of regular members and alternate members as may be provided for in the Bylaws. Without limiting the foregoing, at least one Director shall serve on the Architectural Committee as the chairperson thereof. The Board, and/or Architectural Committee, if any, may promulgate Architectural Rules to be followed in rendering its decisions. Such Architectural Rules may include, without limitation, provisions regarding (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) requirements concerning exterior Improvements; and (iii) signage. The decision of the Architectural Committee on all matters submitted to it pursuant to this Declaration may be appealed to the Board subject to the right of appeal as determined by the Board in accordance with any Architectural Rules. The Board may establish such other Committees as the Board may determine in its sole discretion and may establish Association Rules governing such Committee, including the number of Board members and alternate members as shall serve on such Committee and the function and delegated duties of such Committee.

**5.11 Conveyance of Encumbrance of Common Area.** The Common Area shall not be mortgaged, conveyed, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Declarant during the Declarant Control Period, and the affirmative vote or written consent of the Owners representing at least two-thirds ( $\frac{2}{3}$ ) of the votes entitled to be cast by Class A



Members (including Declarant, if Declarant is then a Class A Member). Without limiting the foregoing, no portion of the Common Area providing ingress and egress to any Lots may be mortgaged, conveyed, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Owners of the affected Lots and all First Mortgages whose First Mortgages encumber those Lots.

**5.12 Suspension of Voting Rights.** If any Owner fails to pay any Assessments or any other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner or a Resident violates any other provision of the Project Documents and such violation is not cured within thirty (30) days after the Association notifies the Owner of the violation, the Board shall have the right to suspend such Owner's right to vote. Any such suspension of voting rights for failure to pay Assessments or for any infraction of the Project Documents shall continue until such time as all payments, including all delinquent Assessments, late charges, interest, attorney's fees, and all other Collection Costs, are brought current and until the infractions or violations of the Project Documents are cured, as applicable. The Board shall have the right to change the time periods in this Section 5.12 from time to time, and, in any event, such periods shall be subject to any requirements of Applicable Laws, including any required notices to an Owner, and as may be further provided in the Bylaws. All Members shall have the authority to vote at a special meeting held to remove a Director from office regardless of whether such Member's voting rights have been suspended pursuant to this Section 5.12 or the Bylaws.

**5.13 Association Contracts.**

**5.13.1** During the Declarant Control Period, any Association contract or agreement with a Managing Agent for professional management of the Project executed by Declarant, or any member, agent or representative of Declarant or any Association contract or agreement providing for services of, or lease or other contract with, the Declarant and/or its affiliates on behalf of the Association, may not exceed three (3) years. Any such agreements, contracts or leases referenced in this Section 5.13.1 must also provide for termination by either party without cause and without payment of a termination fee upon ninety (90) days' or less written notice.

**5.13.2** The Declarant, and/or the Board, acting on behalf of the Association, shall have the right, power and authority to enter into (i) one or more bulk or long term service agreements with service providers for such duration, at such rate(s) and on such other terms and conditions as the Declarant and/or the Board deems appropriate, including, but not limited to, trash removal, cable and satellite television and communications services, utility services, pest control, and monitoring or maintenance services as may be in the best interests of the Project and fair and equitable when executed and (ii) Special Service Area agreements with Lot Owners designating the Public Yard of the Lot as a Special Service Area for landscaping maintenance and related services and for Special Service Area Charges and on such terms as are reasonably determined by the Board, subject to the limitations of Section 3.26.2 above and Section 6.21 below. In the case of such service agreements executed by Declarant, the contract may contain an automatic assignment provision to the Association at such time as the Declarant Control Period expires or terminates but nothing shall preclude the Declarant from assigning the same to the Association prior thereto. The cost of any such service agreements shall be a Common Expense and included within the budget for the Annual Assessment. Otherwise, all such

services shall be the individual responsibility of the Owners who benefit from such services and shall be subject to Special Service Area Charges for the cost of such services.

## **ARTICLE 6 ASSESSMENTS**

**6.1 Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it, hereby covenants and agrees, and all other Owners, by becoming the Owner of an Assessable Lot, are deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, Collection Costs, and all other fees, costs and charges permitted under the Project Documents, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made to the fullest extent permitted by A.R.S. 33-1807 and/or Applicable Laws, and, to the extent that the Assessment Lien provisions of this Declaration are or may be broader and more expansive than applicable laws, the provisions of this Declaration shall govern and control except to the extent applicable laws expressly supersede. Each such Assessment shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

### **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 Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Assessable Lot.

**6.2.2** The Board shall give notice of the Annual Assessment to each Owner of an Assessable Lot 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 obligations to pay the Annual Assessment. If the Board determined during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period (except as expressly limited in Section 6.2.3 below and by Applicable Laws) and the revised Annual Assessment for that Assessment Period shall commence on the date designated by the Board.

**6.2.3** The Association may not impose an Annual Assessment for any Assessment Period that is more than twenty percent (20%) greater than the Annual Assessment established for the most recent Assessment Period prior to the current Assessment Period without the approval of a majority of the Members of the Association or, if less, the number of Members or votes as may be required to approve such an Assessment increase pursuant to Applicable Laws.

**6.3 Rate of Assessment.** The Owners of all Assessable Lots shall each pay an equal amount of each Annual or Special Assessments. The equal rate of Assessment for Assessable Lots set forth in this Section 6.3 shall not include or apply to any Initial Capital Contribution, the Reserve Contribution, the Administrative Records Fee, or any other fee, contribution, assessment or charge that is charged or is due upon sale, lease, or transfer of an Assessable Lot and/or to which such Lots may be subject from time to time and the imposition of and obligation to pay any such fees shall not be deemed or construed to violate the requirement for an equal assessment of Annual or Special Assessments to all Assessable Lots. At such time as a Declarant owned or leased Lot becomes an Assessable Lot because the Lot has been conveyed to a Purchaser and/or is no longer leased by the Declarant for model home purposes, the Annual Assessment for that Lot shall be prorated on the basis of the number of days in the Assessment Period as a whole and the number of days during that Assessment Period that the Lot was an Assessable Lot.

**6.4 Obligation of Declarant for Deficiencies.** Except as provided in this Section 6.4, during the Declarant Control Period, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be reasonably requested by the Board, such funds as may be necessary (when added to the Annual Assessments levied by the Association) to pay all current operating expenses of the Association as they become due. Regardless of whether the Declarant Control Period has expired or terminated, Declarant's obligation to fund any shortfall in Association revenues under this Section 6.4 shall cease at any time Declarant elects to pay Annual Assessments at the full rate of assessment for all Lots owned by Declarant or leased by Declarant for model home purposes. Any such voluntary election may be made either by Declarant's giving written notice to the Association or, without the necessity of giving written notice, by Declarant's paying the Association each month an amount equivalent to the amount of the monthly installment of the Annual Assessment's attributable to Declarant's then owned or leased Lots at the full or one hundred percent (100%) rate of assessment assessed to all non-Declarant owned or leased Lots.

**6.5 Special Assessments.** In any Assessment Period, the Association may levy a Special Assessment against each Assessable Lot, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement on the Common Area or in an Area of Association Responsibility, including fixtures and personal property related thereto. Any Special Assessment must have (i) the assent of Declarant, while Declarant owns any Lots, and (ii) the consent of Members holding two-thirds ( $\frac{2}{3}$ ) of the votes entitled to be cast by Members (other than Declarant) who are voting in person, by proxy, or by absentee or some other form of written or electronic ballot (as permitted by Applicable Laws) at a meeting duly called for this purpose or as evidenced by written agreement of Members holding two-thirds ( $\frac{2}{3}$ ) of the votes in the Association pursuant to A.R.S. 10-3704. Notwithstanding the foregoing, Special Assessments made pursuant to Section 8.7 below shall only require the consent of the Board and fifty percent (50%) of the total votes in the Association.

**6.6 Enforcement Assessments.** The Association may assess against a Lot an Enforcement Assessment any of the following expenses: (i) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner of the Lot; (ii) any Collection Costs, including attorney's fees (whether or not a lawsuit is filed), incurred by the Association with respect to any violation of the Project Documents by the Owner, his Lessee or any other

Resident of his Lot and their respective Invitees; (iii) any monetary penalties levied against the Owner for infractions of the Project Documents in accordance with procedures set forth in the Bylaws of Association Rules; or (iv) late charges and any other amounts (other than Annual Assessments or Special Assessments) which become due and payable to the Association by the Owner, his Lessee or any other Resident of his Lot pursuant to the Project Documents. The Association may assess late charges and impose delinquent interest charges accruing against a specific Lot for non-payment of Assessments as provided for in this Declaration and/or adopted by Association Rule as an Enforcement Assessment, subject to the notice and hearing requirements of A.R.S. 33-1803. To the extent any Enforcement Assessment is not secured by an Assessment Lien as may be provided by Applicable Laws consistent with the provisions of Section 6.1 above, the Association may seek a civil judgement for the amounts so assessed against the applicable Owner or Lot. If the Association is prevailing party in such a civil action, the Association may record the judgement lien against the Lot in the amount so awarded by the applicable court; provided, further, however, in no event may the Association bring an action to foreclosure such civil judgement against the Lot so encumbered thereby, but such civil judgement shall be paid no later than at such time as a conveyance of the encumbered Lot occurs as further provided in A.R.S. 33-1807.

**6.7 Assessment Period.** The period for which the Annual Assessment is to be levied shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners of Assessable Lots to pay an Annual Assessment shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

**6.8 Commencement Date of Assessment Obligation.** Except as expressly provided in this Section 6.8, a Lot shall become an Assessable Lot upon the date that Lot is first conveyed to a Purchaser. Declarant and the applicable Lots owned or leased by Declarant shall be automatically exempt from the Annual Assessment for all Lots owned by Declarant or Lots with Residential Dwellings leased by Declarant for Declarant's model home purposes. Notwithstanding the foregoing, all Lots shall automatically become Assessable Lots on the earlier of the date that is five (5) years following the Recording of this Declaration or the termination or express written waiver of the Declarant Control Period. During the Declarant Control Period, Declarants shall have the obligation to fund shortfalls or deficiencies in Association revenue to meet current operating expenses (but not reserves or Reserve Contributions) as more specifically provided in Section 6.4 above during the stated period of obligation therein. Such funding of shortfalls or deficiencies for any fiscal year (or partial fiscal year) of the Association shall not exceed the total amount of the Annual Assessment that would have accrued for each Lot owned or leased by Declarant during that time period as if such Lots were then Assessable Lots.

**6.9 Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board (but no less frequently than quarterly). Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Rules setting forth procedures for levying Assessments and for the billing and collection thereof provided that the procedures are not inconsistent with the provisions of this Declaration, the Articles or Bylaws. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration or the Project Documents, but, to the extent those Assessments or charges are secured by the Assessment Lien, the Assessment Lien

therefor shall not be foreclosed until the Member has been given not less than thirty (30) days' written notice prior to initiation of such foreclosure action that the Assessment or any installment thereof is due and of the amount owing. Any notice given to a Member pursuant to Section 6.10.2 below shall suffice if given at least thirty (30) days before commencement of a civil foreclosure action. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots may be given credit for prepayments, on a prorated basis, made by prior Owners. The provisions of this Section 6.9 shall also be subject to any applicable limitations of Applicable Laws.

#### **6.10 Effect of Nonpayment of Assessments; Association Remedies.**

**6.10.1** Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment or any installment thereof first became due shall be deemed delinquent as of the original due date for the missed Assessment and shall bear interest from the date such payment was due at the rate of eighteen percent (18%) per annum. In addition to or in lieu of delinquent interest, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment or installment thereof or any other charges payable to the Association pursuant to the Project Documents. In said event, the late charge shall automatically attach to the Assessment within fifteen (15) days after such Assessment was first due in amount not to exceed the limitations of A.R.S. 33-1803, as amended from time to time.

**6.10.2** To the fullest extent permitted by this Declaration and Applicable Laws, the Association shall have a lien on each Lot for (i) all Annual and Special Assessments levied against the Lot; (ii) late charges accruing on Annual and Special Assessments; and (iii) all other reasonable Collection Costs and other fees and charges due to the Association, including, without limitation, monetary penalties and fines. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. In case any Owner is delinquent in the payment of Assessments or other amounts secured by the Assessment Lien, the Association may, at its option, record a notice of lien ("**Notice of Lien**") setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is Recorded. If the Association or the Managing Agent Records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount to be set from time to time by the Board.

**6.10.3** Except as may be otherwise provided by Applicable Laws, the Assessment Lien shall have priority over all liens or claims except for (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. Any First Mortgagee or other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

**6.10.4** Except as may be otherwise provided by Applicable Laws or in this Declaration, the Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, including, without limitation, late charges, reasonable attorneys' fees, and any Collection Costs and other sums lawfully secured by the Assessment Lien have been paid in full.

**6.10.5** Subject to the applicable limitations of Applicable Laws, including, without limitation, the provisions of A.R.S. 33-1807(A) regarding the amount and duration of a delinquency, the Association shall have the right, as its option, to enforce collection of any delinquent charges and all other sums due to the Association in any manner allowed by law, including, but not limited to (i) bringing an action at law against the Owner personally obligated to pay the delinquent charges and such action may be brought without waiving the Assessment Lien to the extent the Assessment Lien secures such charges or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

**6.11 Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or other Person, and within the time periods provided by Applicable Laws (or otherwise within a reasonable time period), the Association shall issue to such Member or other Person a written certificate stating that all Assessments, interest, late charges, lien fees, fines, penalties, and other fees and costs have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments or other charges have not been paid, the amount of such Assessments or other charges due and payable as of such date. The Association may charge for the cost of the preparation and issuance of such certificates incurred by the Association (including any applicable and permitted "rush" charges. Such charges shall be paid at the time the request for any such certificate is made if permitted by Applicable Laws or otherwise shall be paid no later than the close of any pending Escrow if the certificate is delivered in connection with the transfer of a Lot (including any charges relating to prior certificates prepared for previously terminated or cancelled escrows). Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein states as against the Association, every Owner, and the bona fide Purchaser or Person acquiring the Lot in question, and any First Mortgage thereof, if the statement is requested by an escrow agency that is licensed pursuant to Title 6, Chapter 7 of the Arizona Revised Statutes. The Association may also deliver such information and statements to or for the benefit of prospective Purchasers as may be reasonably requested by a Member who intends to convey that Lot or as the Association is required to provide to such prospective Purchasers for purposes of complying with A.R.S. 33-1806, as amended from time to time.

**6.12 Uses of Association Funds.** The Association shall apply all funds and property collected and received by it (including Assessments, fees, loan proceeds, surplus funds and property from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and Residents. In addition, 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 the Residents, maintenance of landscaping in Areas of Association Responsibility, recreation, insurance, communication, education, transportation, health, utilities, public services, safety and indemnification of officers and Directors of the Association. The Association may also expend its funds for any purpose for which a nonprofit corporation may expend funds under the laws of the State of Arizona, but fees obtained pursuant to the provisions of Section 6.14 and Section 6.18 shall only be expended for the purposes therein contained.

**6.13 Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments (including any Special Assessments) and other sums received by it in such a year or to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year. Instead, 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 and/or the Board may deposit any such surplus funds in the Association's Reserve Account.

**6.14 Working Capital Fund.** To insure that the Association shall have adequate funds to meet its expenses to maintain, repair and replace Improvements within the Project (including recreational facilities), each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the lot a sum equal to one-sixth (1/6<sup>th</sup>) of the current Annual Assessment for the Lot (the "**Initial Capital Contribution**"). Payments made pursuant to this Section 6.14 shall be nonrefundable, shall be deemed a contribution to the capital of the Association to the extent permitted by Applicable Laws, and shall not be considered as an advance payment of any Assessments levied by the Applicable Laws. Initial Capital Contributions shall be expended by the Association, as the party designated to manage the Project, for the maintenance, repair and replacement of recreational and other Improvements on or within the Common Areas and the Project as a whole and thereby touch and concern the land. To the extent of any limitations imposed pursuant to Applicable Laws, working capital contributions pursuant to this Section 6.14 shall be expended by the Association, as the party designated to manage the Project, for the maintenance, repair and replacement of recreational and other Improvements on or within the Common Areas and the Project as a whole and thereby touch and concern the land.

**6.15 Transfer Fee.**

**6.15.1** Except as expressly provided in Section 6.15.2 below, (i) each Purchaser, immediately upon becoming the Owner of a Lot, shall pay to the Association a transfer fee (the "**Administrative Records Fee**") and in such amount as is established from time to time by the Board to compensate the Association for the administrative costs incurred resulting from the transfer of the Lot. The Administrative Records Fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver pursuant to A.R.S. 33-1806(A), and, therefore, subject to Applicable Laws, the Administrative Records Fee shall be in addition to the fee which the Association or the Managing Agent is entitled to charge pursuant to A.R.S. 33-1806(C). Notwithstanding the foregoing, nothing contained in the Declaration shall preclude the Association from adopting an administrative records charge for the request and delivery of leasing information to the Association as further provided in an subject to the limitations of A.R.S. 33-1806.01(D), as such statute may be amended from time to time.

**6.15.2** No Administrative Records Fee shall be payable with respect to (a) the transfer of a Lot by Declarant to a Purchaser except to the extent approved by Declarant; (b) the transfer or conveyance of a Lot by devise or intestate succession; (c) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (d) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest; (e) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; (f) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. 33-741 *et seq.*; (g) the conveyance of a Lot to a mortgage pursuant to the deed in lieu of foreclosure executed by the mortgagor Owner; (h) the conveyance by an Owner of a Lot who acquired title by trustee's deed, foreclosure of a realty mortgage, forfeiture or foreclosure of a Recorded contract pursuant to A.R.S. 33-741 *et seq.*, or deed in lieu of foreclosure to a Purchaser; (i) any other transfer or conveyance that is expressly exempt from the Affidavit of Property Value pursuant to A.R.S. 11-1134. If the Board determines, in its sole discretion, that a material purpose of a transfer or conveyance was to avoid payment of the Administrative Records Fee (or any other fee due that would otherwise be due to the Association), the Board may choose to charge an Administrative Records Fee for that transfer or conveyance despite an apparent exemption. Notwithstanding the exemption of any transfer or conveyance from the Administrative Records Fee, each Owner of a Lot who becomes an Owner as a result of a transfer or conveyance, including exempt transfers or conveyances, shall be obligated to notify the Association of the new Member's legal name, billing address and contact information.

**6.16 No Offsets.** All Assessments and Collection Costs and other fees and charges payable to the Association shall be in accordance with the provisions of the Project Documents, and no offsets against such Assessments, Collection Costs, or other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

**6.17 No Exemption of Owners.** Except for Declarant as provided in Section 6.3 above, no Owner of a Lot may partially or fully exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area facilities or by abandonment of his Lot.

**6.18 Reserve Contribution Amount.**

**6.18.1** Except as otherwise provided in Section 6.18.1 below, each Purchaser shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution (the "**Reserve Contribution**") to the reserves in an amount not less than (1/6<sup>th</sup>) of the Annual Assessment. The amount of the initial Reserve Contribution shall be set by the Board of Directors, provided, however, that if the Board does not enter into a contrary resolution prior to the sale of the first Lot, the initial Reserve Contribution shall be automatically set a sum equal to one-sixth (1/6<sup>th</sup>) of the current Annual Assessment for the Lot. The amount of the Reserve Contribution established for transfers occurring after the Declarant Control Period has expired or terminated shall be based upon the recommendations contained in any professionally prepared reserve study obtained by the Board from time as to the amount of reserved



required for the Project after taking into considerations the amount of Reserves then held by the Board in the segregated Reserve Account and the remaining useful life of the major components of the Areas of Association Responsibility. The Board of Directors may, from time to time, increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board by more than twenty percent (20%) during any Assessment Period without the approval of the Members holding more than fifty percent (50%) of the votes in the Association. Reserve Contributions are non-refundable and shall not be considered as an advance payment of the Annual Assessment or any Special Assessment. To the extent of any limitations imposed pursuant to Arizona law, Reserve Contributions shall be reserved for an expended by the Association, as the party designated to manage the Project, for the maintenance, repair and replacement of recreational and other Improvements on or within the Common Areas and the Project as a whole and thereby touch and concern the land.

**6.18.2** No Reserve Contribution shall be payable with respect to any transfer of a Lot exempt from the Administrative Records Fee pursuant to Section 6.15.2 above. To the extent of any limitations imposed pursuant to Applicable Laws, Reserve Contributions shall be reserved for and expended by the Association, as the party designated to manage the Project, for the maintenance, repair and replacement of recreational and other Improvements on or within the Common Areas and the Project as a whole and thereby touch and concern the Land.

**6.18.3** The Annual Assessments shall include a reasonable amount for reserves as determined by the Board of Directors for the future periodic maintenance, repair or replacement of all or a portion of the Common Area and other Areas of Association Responsibility and Improvements thereon, or any other reasonable purpose as determined by the Board of Directors. The reserves may be funded from Annual Assessments, remaining balances from unused Special Assessments, Reserve Contributions and from any other revenues of the Association. All amounts collected as reserves, whether pursuant to this Section 6.18 or otherwise, shall be deposited by the Board of Directors in a separate bank account (the "**Reserve Account**") commencing no later than the expiration or termination of the Declarant Control Period. All funds in the Reserve Account shall be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with other Association funds. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds from the Reserve Account for any other purpose other than those purposes for which they are collected. Withdrawal or funds from the Reserve Account shall require the signatures of two members of the Board of Directors or one member of the Board and an officer of the Association who is not also a Board member. After the termination or expiration of the Declaration Control Period, the Board of Directors shall periodically obtain a reserve study in accordance with good management practice and shall present such findings to the Members no later than the next annual meeting of the Members. The reserve study shall at a minimum include (i) identification of the major components of the Common Area or other Areas of Association Responsibility having a remaining useful life; (ii) an estimate of the cost of maintenance, repair, replacement, restoration of such Common Area or other Areas of Association Responsibility during and at the end of their useful life; (iii) an estimate of the annual contribution to the Reserve Account necessary to defray such costs, after subtracting the funds in the Reserve Account as of the date of the study. The Board of Directors shall modify the budget in accordance with the findings of the reserve study.

**6.18.4** Unless the Association is exempt from federal or state income taxes, and to the extent permitted by Applicable Laws, all reserves shall be accounted for as contribution to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association.

**6.19 Notice and Quorum for any Action Under Section 6.5.** Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Section 6.5 of this Declaration shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members voting in person, by proxy, or by absentee or some other form of written or electronic ballot (as permitted by Applicable Laws) entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required meeting at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting without the quorum requirements reverting back to the original level.

**6.20 Unallocated Taxes.** In the event that any taxes are assessed against the Common Area or the personal property of the Association rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of this Article 6, and, if necessary, a Special Assessment may be levied on a pro rata basis to each of the Lots.

**6.21 Special Service Area Charges.** A Lot Owner shall pay Special Service Charges to the Association for any Special Service Area maintenance provided to his Lot, if any, on such terms as may be agreed to between the Lot Owner and the Association for such service after the Declarant Control Period expires or terminates. All such contracts and agreements, if any, shall be available for inspection by the Members of the Association and there shall be no discrimination or preferences except on terms that are available for all Lot Owners to elect. Special Service Charges are not Annual or Special Assessments and are not subject to the limitations on Assessments set forth in the Arizona Planned Communities statutes, A.R.S. 33-1801 et seq., but the Lot Owners shall agree and permit a contractual lien right in the nature of an Assessment Lien for any and all unpaid Service Area Charges for a period exceeding thirty (30) days.

## **ARTICLE 7 MAINTENANCE**

**7.1 Maintenance of Areas of Association Responsibility.** The Association, or its duly designated representatives, without any approval of the Owners or First Mortgagees being required, shall undertake all of the following for the benefit of the Project and its Owners and Residents:

**7.1.1** Maintain, reconstruct, repair, replace, or refinish any improvements on the Common Area or in an Area of Association Responsibility (including, without limitations, any drainage facilities and all retention and detention areas and basins serving the Project located on Common Area

Tracts A through E in accordance with the standards of the Project and community as a whole to the extent that such work is not being done by a governmental entity, if any, responsible for such maintenance or upkeep. Without limiting the foregoing, the Association shall have the sole responsibility and bear the sole cost of all maintenance, repair and replacement of any bleed-off pipes, emergency flow chutes and all other drainage facilities constructed in accordance with the approved improvement plans on file with the County.

**7.1.2** Maintain, repair, refinish or resurface, including periodic street sweeping as necessary, any portion of the Common Area used as a road, street, walk, and/or parking area and all sidewalks, curbs and gutters adjacent thereto and maintain and repair all light bollards, installed by Declarant on Tracts A through E, if any, except to the extent maintained by the applicable utility and enforce the County fire lane restrictions of Section 3.20.4 above in connection therein.

**7.1.3** Maintain and replace all landscaping and planting in the Common Area, in public rights-of-way (adjacent to Shadow Mountain Drive) and public utility easement areas to the extent the Board deems reasonably necessary for aesthetic purposes and for the construction of water and soil, and replace damaged or injured plants and trees, provided, however, that the Board shall not vary the landscape plan installed by the Declarant and approved by the County without the prior written approval of the County.

**7.1.4** Maintain and replace as necessary all landscaping and plantings within a Special Service Area on a Lot (and all sprinkler systems or irrigation drip systems and/or decorative or walkway lighting systems). However, the Association shall not be responsible for any damage to pipes, sidewalks or other improvements within a Special Service Area caused by tree roots and branches.

**7.1.5** Place and maintain upon the Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

**7.1.6** Paint, maintain and repair the exteriors and roofs of the Residential Dwellings (but not including maintenance and repair of exterior doors, window or garage doors and not including any damage or alleged damage to the interior of Residential Dwellings from roof leaks or other causes which shall be the sole responsibility of the Lot Owner). The Association shall paint front doors and garage doors, however, if necessary, to cause those doors to match the approved color scheme of the Residential Dwelling. No Owner, Resident or other Person may paint the exterior surfaces of any Residential Dwelling (including front and garage doors) or make any Modifications or changes to the exterior color scheme of any Residential Dwelling without the prior written approval of the Board as provided in Article 3 above. The type of paint to be used in painting the exterior surfaces of the Residential Dwellings and the timing and frequency of such painting of exterior surfaces shall be at the sole discretion of the Board.

**7.1.7** Maintain the sewer Facilities and Water Facilities. As used in this Section 7.1.7, the term “**Sewer Facilities**” means all sewer lines and appurtenant facilities (including, but not limited to storm drains) within the boundaries of the Project except for a) any sewer lines and appurtenant facilities which serve only one Residential Dwelling and which are located within the Residential Dwelling; and

(b) any sewer lines and appurtenant facilities which have been accepted by and are the responsibility of a government or private utility company. As used in the Section 7.1.7, the term **“Water Facility”** means all water lines and appurtenant facilities (including but not limited to fire lines) within the boundaries of the Project except for (a) any water lines and appurtenant facilities which serve only one Residential Dwelling and which are located within the Residential Dwelling; and (b) any sewer lines and appurtenant facilities which have been accepted by and are the responsibility of a government or private utility company.

**7.1.8** Provide for periodic inspections, fumigation and control of pest infestations on Common Area and other Areas of Association Responsibility. Notwithstanding the foregoing, in no event shall such pest control obligations extend to the interiors of Residential Dwellings and in no event shall the Association have responsibility or obligation whatsoever for the treatment or control of termite infestations on any location on or within a Lot (including the exterior or interior of any Residential Dwelling or other Improvements on the Lot), which shall be the sole responsibility of Owners.

**7.1.9** Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and other Areas of Association Responsibility and the appearance thereof, in accordance with the Project Documents. The Board shall be the sole judge as to the appropriate maintenance of all Common Area and other Areas of Association Responsibility, but the Common Areas and areas of Association Responsibility and the Improvements located thereon, shall be maintained in good condition and repair at all times.

## **7.2 Maintenance of Lots by Owners.**

**7.2.1** Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and/or all Improvements thereon, as applicable, including his Residential Dwelling (but subject to Section 7.1.6 above and except for any Areas of Association Responsibility or Special Service Areas established in accordance with this Declaration or pursuant to written agreement with the Association). All such Improvements shall be kept in good condition and repair. Without limitation, each Owner shall maintain, repair and replace in good and workmanlike condition: (i) the interior of his Residential Dwelling; (ii) air conditioning, heating and other equipment and appliances servicing his Residential Dwelling; (iii) exterior windows and doors and (iv) all landscaping or other Improvements, installed by the Owner in his Private Yard and (v) the Public Yard landscaping and any Improvements thereon as further described in Section 7.2.2 below.

**7.2.2** Unless part of a Special Service Area, each Owner shall also irrigate, mow, trim and/or cut, as appropriate, all Public Yard landscaping at regular intervals so as to be maintained in a neat and attractive manner. Any such landscaping which dies shall be promptly removed and replaced with living foliage of like kind unless different foliage is approved in writing by the Board. No yard equipment, wood piles or storage areas may be maintained so as to be Visible from Neighboring Property and add landscape and maintenance and snow removal of adjacent sidewalks and parking areas adjacent to individual Lots are the responsibility of the homeowner. Any Lots without Residential Dwellings thereon shall be maintained in a weed free manner.

**7.2.3** In the event that any portion of a Residential Dwelling is damaged or destroyed through the act or neglect of an Owner or Resident of a Lot, or their contractors, agents, guests, invitees, licensees or animals, including failure to treat termites and other noxious pests emanating on or from his Lot, the Lot Owner shall be responsible for all damage and other costs incurred by the adjacent Lot Owner to the extent permitted by Applicable Laws and the adjacent Lot Owner shall have all other rights and remedies available under Applicable Laws.

**7.3 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance, repair or replacement of Common Area or other Area of Association Responsibility is caused through the willful or negligent act of any Owner or Resident of a Lot, or their Invitees or animals for whom the Owner or Resident is legally responsible under Applicable Laws, the Association shall cause the maintenance, repairs or replacement to be performed and the cost of such work shall be paid by the Owner of the Lot to the Association upon demand as an Enforcement Assessment to the extent the Owner is liable under Applicable Laws.

**7.4 Improper Maintenance and Use of Lots.** In the event any portion of a Lot is so maintained as to present a public or present nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in any manner which violates the Project Documents, or in the event an Owner or any Resident in any Owner's Lot is failing to perform any obligations under the Project Documents, the Board may make a finding to that effect. The Board shall specify the particular condition or conditions which exist, and pursuant thereto, give notice of such findings to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such actions to be taken at said Owner's expense. Such notice shall comply with the provisions of A.R.S. 33-1803 or other Applicable Laws. If, at the expiration of said fifteen (15) day period or any longer period mandated by Applicable Laws, the requisite action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand as an Enforcement Assessment regardless of such Owner to the Association upon demand as an Enforcement Assessment regardless of whether such costs were caused by the Owner directly or any other Resident of the Lot.

**7.5 Boundary Walls.** Each wall or fence which is located between two Lots (including any walls that is located on or adjacent to a Lot line and separates two Residential Dwellings) shall constitute a boundary wall ("**Boundary Wall**") and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding Boundary or "party" Walls shall apply. The Owners or Residents of contiguous Lots who share a Boundary Wall shall both equally have the right to use such wall provided that such use by one Owner or Resident does not interfere with the use and enjoyment of the same by the other Owner or Resident. In the event that any Boundary Wall is damaged or destroyed through the act or neglect of an Owner or Resident of a Lot, or their contractors, agents, guests, invitees, licensees or animals, including failure to treat termites and other noxious pests emanating on or from his Lot, it shall be the obligation of the Lot Owner to rebuild and repair the Boundary Wall without cost to the other Owner of the adjoining Lot sharing the Boundary Wall. In the event any such Boundary Wall is damaged or destroyed by some other cause (including ordinary wear and tear and deterioration through lapse of time), then, in such event, both adjoining Owners shall proceed forthwith to rebuild or repair the same to

as good condition as formerly existed at their joint and equal expense. The right of an Owner to contribution from any other Owner under this Section 7.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Boundary Wall shall first obtain the written consent of the Board. In the event any Boundary Wall encroaches upon a Lot, pursuant to the provisions of Section 4.6 hereof, a valid easement for such encroachment and for the maintenance of the Boundary Wall shall and does exist in favor of the Owners of the Lots which share the Boundary Wall. To the extent necessary for an Owner to construct Improvements in the Private Yard of his Lot, an Owner may improve all or part of a Boundary Wall comprising part of a Residential Dwelling, provided the Owner gives reasonable notice to the adjoining Owners and Residents that all or part of the Boundary Wall will be removed and the Owner desiring to temporarily remove a portion of the wall makes appropriate arrangements (including the erection of a temporary fence or barrier) or pays appropriate compensation for the protection of children and pets on the adjoining Lot. Any Owner removing all or part of a Boundary Wall pursuant to this Section 7.5 shall rebuild and restore the Boundary Wall to its prior condition at such Owner's sole cost and expense within a reasonable time after entry through the Boundary Wall is no longer necessary in connection with the construction of Improvements.

**7.6 Maintenance of Walls Other than Boundary Walls (Including Project Theme Walls).** Walls or fences (other than Boundary Walls as described in Section 7.5 above) located on a Lot shall be maintained, repaired and replaced by an Owner of the Lot. Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side surface of the wall which faces the Common Area. In the encroachment shall exist in favor of the Association or the Owner as the case may be, pursuant to right-of-way or adjacent to the Project entrance shall be maintained, repaired and replaced by the Association, except that the Owner of the Lot shall be responsible for the repair and painting of the surface of the wall which faces the Private Yard or interior of the Lot and is not visible from Neighboring Property. To the extent necessary for an Owner to construct Improvements in the Private Yard of his Lot, an Owner may remove all or part of a wall separating his Lot from Common Area or public right-of-way with the prior written consent of the Board and the County, as applicable. Such condition may be conditioned on the erection of a temporary fence or barrier.

**7.7 Payment of Utility Charges.** Each Residential Dwelling shall be separately metered for water, sewer, electrical, trash and cable TV/Internet service, and all charges for such service to the Residential Dwellings shall be the sole obligation and responsibility of the Owner of each Lot, any such agreement a Common Expense pursuant to Section 5.13.2 above. All bills for water, sewer and electrical service to the Common Area shall be billed to the Association, and the Association shall be responsible for the payment of such charges as a Common Expense to be included in the budget of the Association. Water, electric or other metered services used to maintain an Area of Association Responsibility on a Lot shall be charged to the Lot Owner of the Lot on which the Area of Association Responsibility and applicable utility meter is located. A Lot Owner shall be responsible to promptly notify the Association of any leaks or breaks in the water lines or sprinkler systems serving the landscaping in an Area of Association Responsibility.

**7.8 No Responsibility of the County.** The County is not responsible for and will not accept maintenance of any private utilities, private streets, drainage and retention/detention facilities and basins, or landscaped areas within this project or within the right-of-way adjacent to Shadow Mountain Drive.

## **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** Commercial General Liability insurance, including medical payments insurance, in an amount reasonably determined by the Board. 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 Areas of Association Responsibility.

**8.1.2** Property insurance for all Areas of Association Responsibility (but expressly not including the Residential Dwellings) insuring against all risk of direct physical loss, in an amount equal to the maximum insurable replacement value of the insured property, 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. If the Common Area is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, the Association shall also maintain a "blanket" policy of flood insurance on those areas. Such policy shall be in form and amount as determined by the Board, but, in any event, shall always satisfy the requirements of Fannie Mae and Freddie Mac, as amended from time to time.

**8.1.3** Workmen's compensation insurance to the extent necessary to meet the requirements of Applicable Laws.

**8.1.4** Such other insurances as the Association shall determine from time to time to be appropriate to protect the Association, the Board, or the Owners and Residents or as is required by Fannie Mae or Freddie Mac, including, without limitations, Directors' and officers' errors and omissions coverage and fidelity coverage against dishonest acts by directors, Managing Agents, officers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity insurance shall name the association as the insured and shall provide coverage in an amount not less than one and one-half times the Association's estimated annual operating expenses and reserves.

**8.2 Contents of Policies.** The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there will be no subrogation with respect to the Association, its agents, servant, and employees, with respect to Owners and Residents; (ii) no act or omission by any Owner or Resident, unless acting within the scope of his authority on behalf of

the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or Residents, their First Mortgagees, or other mortgagees or beneficiaries; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) a statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify all First Mortgagees named in the policy at least ten (10) days in advance of the effective date of any substantial modifications, reduction or cancellation of the policy.

**8.3 Limitation of Liability.** Neither the Declarant nor the Association, or any member, Director, officer, shareholder, employee, or agent thereof, shall be liable to any Owner or Resident or any other Person if any risk or hazard is not covered by insurance or the amount thereof is inadequate. Without limiting the foregoing, each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense insuring his Lot and the Improvements thereon (including his Residential Dwelling) against loss and providing personal liability coverage. In addition, each Owner is responsible for ascertaining the Association's coverage and for procuring such additional coverage as such Owner deems necessary. First Mortgages may pay overdue premiums and may secure new insurance coverage upon the laps of any policy with respect to any insurance required to be maintained by the Association or any Owner under this Declaration, and any First Mortgage making such expenditure shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

**8.4 Certificate of Insurance.** An insurer that has issued an insurance policy under this Article 8 to the Association shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, First Mortgage or other mortgagee or beneficiary of a deed of trust; provided, however, that if the insurer charges a fee to the Association for the issuance of such a certificate or memorandum, any reasonable fee so charged shall be paid to the Association by the requesting party in advance. Any insurance obtained pursuant to this article 8 may not be canceled until (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each First Mortgagee or other mortgagee or beneficiary of a deed of trust to whom certificates of insurance have been issued.

**8.5 Payment of Premiums/Deductibles/Annual Review.** Premiums for all insurance obtained by the Association pursuant to this Article and all deductible thereunder shall be Common Expenses and shall be paid for by the Association; provided, however, the Association may assess to an Owner any deductible amount expended as a result of the negligence, misuse or neglect for which such Owner is legally responsible under this Declaration and Applicable Laws as further provided in Section 6.6 and Section 7.3 above. The Board of Directors may select deductibles in reasonable amounts applicable to the insurance coverage maintained by the Association pursuant to Section 8.1 above to reduce the payments payable for such insurance. The Board shall determine annually whether the amounts and types of insurance the Association has obtained provide adequate coverage in light of increased construction costs, inflation, the custom in the area in which the Project is located, or any other factors which leads to a reasonable determination that additional policies or coverage amounts are necessary or desirable to protect the interest of the Owners, First Mortgagees and/or the Association



**8.6 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 8, 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 8.7 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**8.7 Repair and Replacement of Damaged or Destroyed Property.**

**8.7.1** Any portion of an Area of Association Responsibility which is damaged or destroyed shall be required 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 elect not to rebuild by vote, proxy, or by absentee or some other form of written or electronic ballot (as permitted by Applicable Laws) cast at a duly held meeting or by written agreement pursuant to A.R.S. 10-3704 executed by said Members holding eighty percent (80%) of the total authorized votes. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association and may be obtained by Special Assessment of the Members as further provided in Section 6.5 above for purposes of obtaining sufficient funds to complete restoration of any such damaged or destroyed areas of the Project. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas shall be used to restore the damaged Areas 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 Owners representing more than fifty percent (50%) of the votes in the Association.

**8.7.2** Subject to other provisions of this Declaration, in the event of damage to or destruction of any part of a Residential Dwelling or Lot, the Owner of each Lot shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the plans and specifications therefor or shall remove all debris from the Lot such that the Lot does not have an unsightly appearance or otherwise constitute a nuisance. Each Owner shall have an easement of reasonable access into any adjacent Lot for purposes of repair or reconstruction of his Residential Dwelling as provided in this Section 8.7.

## **ARTICLE 9 ENFORCEMENT**

**9.1 General Right of Enforcement/Rights of City.**

**9.1.1** Subject to the limitations of Article 10 below, the Association shall have the exclusive right to enforce the Project Documents (and all restrictions, conditions, covenants, reservations, liens or charges contained therein) and any other documents applicable to the Project that indicate that their terms are intended to be enforced by or to benefit the Association by any proceeding at law or in equity. If the Board fails or refuses to enforce any such document for an unreasonable period of time

after receiving a written request from an Owner to do so, then the Owner (at the Owner's expense) may enforce them on behalf of the Association by any appropriate action, whether at law or in equity. Failure by the Association or by any Owner to enforce any covenant or restriction contained in the Project Documents shall in no event be deemed waiver of the right to do so thereafter. In the event of any inconsistency between the provisions of this Article 9 and the provisions of Article 10 with regard to a Claim, the provisions of Article 10 shall govern and prevail.

**9.1.2** In the event the Association fails to maintain the drainage and retention or detention Improvements in the Common Area Tracts in good condition and repair and/or if any Person shall fail to comply with the covenants set forth in Section 3.23 and Section 7.1 above for which it is responsible, the City shall have the right, but not the obligation, to give written notice to the Association of the required maintenance, repair or replacement to enforce the foregoing covenants and to bring proceedings at law or in equity against the Person or Persons violating or threatening to violate such covenants to prevent them from doing so and to recover damages for any such violations. Any Person or Persons or the City prosecuting such proceedings at law or in equity shall have the right to recover a reasonable sum for attorney's fees and costs in addition to any damages awarded in the action.

**9.2 Items of Construction/Equitable Relief.** As provided in Section 9.3 below, Declarant, the Association, and/or any Owner shall have the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, provided, however, a judicial decree authorizing such action must be obtained before any items of construction or any Modification can be altered or demolished by any Person other than the Owner or other Person who caused the Modification to be made.

**9.3 Enforcement by Association.** The Association may enforce the Project Documents in any manner provided for in the Project Documents or by Applicable Laws or in equity, including, but not limited to:

**9.3.1** imposing reasonable monetary penalties after notice and hearing as provided in the Bylaws and as required by Applicable Laws. An Owner shall be responsible for payment of any fine levied or imposed against an Owner as a result of the actions or omissions of the Owner, his Lessee or Resident or their respective Invitees;

**9.3.2** suspending an Owner's right to vote for violations of any provision of the Project Documents as further provided in Section 5.12 above and in the Bylaws.

**9.3.3** suspending any Person's right to vote to use any facilities within the Common Area, as further provided in Section 4.1 above, provided, however, that nothing shall authorize the Board to prevent or limit ingress or egress to or from a Lot by its Owner.

**9.3.4** suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than fifteen (15) days' delinquent in paying any Assessment or other charge owed to the Association, subject to any further limitations and notice requirements of Applicable Laws.

**9.3.5** exercising self-help or taking action to abate any violation of the Project Documents or to remove any structure of Improvement further subject to any limitations and notice requirements of Applicable Laws and the provisions of Section 9.2 of this Declaration.

**9.3.6** without liability to any Person, prohibiting any Invitee of an Owner, Lessee or other Resident who fails to comply with the terms and provisions of the Project Documents from continuing or performing any further activities within the Project.

**9.3.7** towing or “booting” Vehicles which are parked in violation of this Declaration or the Rules as further provided in Section 3.21 of this Declaration.

**9.3.8** filing a suit at law or in equity to enjoin a violation of the Project Documents, to compel compliance with the Project Documents, to recover Assessments, monetary penalties, Collection Costs or damages or to obtain such other relief (including a civil monetary judgement) to which the Association may be entitled, including the remedies provided for in Section 6.10 of this Declaration, subject to any applicable notice requirements and limitations of Applicable Laws.

**9.3.9** Recording a Notice of Violation by any Owner of any restriction or provision of the Project Documents as further provided in Section 11.8 of this Declaration; and

**9.3.10** Recording a Notice of Lien against a Lot as provided in Section 6.10.2 of this Declaration relating to the Assessment Lien provided for in Article 6 of this Declaration and Applicable Laws.

**9.4** **Limited Enforcement Obligation.** The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that, because of the strength of the Association’s possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association. Declarant shall have no obligation to undertake any such enforcement obligations set forth in Section 9.3 or elsewhere in this Declaration.

## **ARTICLE 10 CONSTRUCTION DEFECT AND GENERAL DECLARANT PARTY CLAIMS AND DISPUTE RESOLUTION PROCEDURES**

**10.1** **Dispute Notification and Resolution Procedure.** All actions or claims (i) by the Association or (ii) by one or more Owner(s) against any Person acting as Declarant, or their general contractors, brokers, agents, employees or representatives (collectively, the “**Declarant Parties**”), relating to or arising out of the Project, including but not limited to, (a) this Declaration or construction of or any condition on or affecting the Project including, but not limited to, construction defects, surveys, soils conditions, grading specifications, installation of Improvements (including, but not limited to, the Residential Dwellings), (b) the operations and financial records of the Association, or (c) disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition or operation of the Project or any Improvements therein (collectively, “**Dispute(s)**”)

shall be subject to the provisions of this Article 10. Declarant and each Owner acknowledge that the provisions set forth in this Article 10 shall be binding upon current and future Owners and the Association, whether acting for itself on behalf of any Owner(s).

**10.2 Notice.** Any person (including the Association) with a Dispute claim shall notify the Declarant Parties in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the “**Claim Notice**”).

**10.3 Right to Inspect and Right to Corrective Action.** If the dispute relates to an alleged construction defect, the Declarant Parties and the claimant shall meet at a mutually acceptable place within the Project to discuss the claim within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days. At such meeting or at such other mutually agreeable time, the Declarant Parties and their representatives shall have full access to the property that is the subject of the claimant shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by the Declarant Parties (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Article 10. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant Parties select to take any corrective action, the Declarant Parties and their representatives and agents shall be provided full access as necessary to the Project and the property which is the subject of the Claim Notice to take and complete corrective action.

**10.4 No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this Article 10 shall be constructed to impose any obligation on any Declarant Party to inspect, test, repair or replace any item of the Project for which such Declarant Party is not otherwise obligated under Applicable Laws or any limited warranty provided by such Declarant Party in connection with the sale of the Lot or the Residential Dwellings and other Improvements constructed thereon. The right of the Declarant Parties to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form executed and Recorded by Declarant.

**10.5 Mediation.** If the parties to the Dispute cannot resolve the Claim pursuant to the procedures described in Section 10.3 above, the matter shall be submitted to mediation pursuant to the mediation adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Article 10) or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against any Declarant Party without complying with the procedures described in this Section 10.5

**10.6 Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation

conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the remediation period. The mediation shall be held within the County or other such place as is mutually acceptable to the parties.

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

**10.8 Exclusion Agreement.** Any admissions offer of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

**10.9 Parties Permitted at Sessions.** Other than the parties to the Dispute, their attorneys and authorized representatives, and the mediator, no Persons may attend mediation sessions without the prior express written permission of the parties; provided, however, witnesses called by any party may attend the mediation sessions. Testimony of witnesses in the course of the mediation shall be confidential and shall not be used in any dispute resolution proceedings outside the mediation where such testimony was given. There shall be no stenographic record of the mediation process.

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

**10.11 Arbitration.** Should mediation pursuant to Section 10.5 above not be successful in resolving any Dispute which is the subject of a Claim Notice, such Dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in Article 10. 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 Article 10, the arbitrator shall have the authority to try all issues, whether of fact or law.

**10.12 Place.** The arbitration proceedings shall be heard in the County of Declarant's place of business, Coconino County, Arizona, or such other location as is mutually acceptable to the parties.

**10.13 Arbitrator.** 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 Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after the service of the initial complaint on all defendants named therein.

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

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

**10.16 Discovery.** The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Section 10.3 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

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

**10.18 Motions.** The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgement on the pleadings and summary judgement 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.

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

**10.20 WAIVERS.** NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH PERSON, FOR HIMSELF OR HERSELF, HIS OR HER HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 10 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 10. THE ASSOCIATION, EACH OWNER AND DECLARANT PARTY ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE 10, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH

**DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT PARTY FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH OWNER, INDIVIDUALLY, COLLECTIVELY, AND BY OR THROUGH THE ASSOCIATION, HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.**

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

**IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROJECT HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO**

**DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.**

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

**10.22 Required Consent of Declarant to Modify.** Neither this Section 10.22 nor Section 10.23 below may be amended except in accordance with Section 11.2 of this Declaration **and** with the express written consent of the Declarant without regard to whether Declarant then owns any Lots or Parcels in the Project.

**10.23 Required Consent of Owners for Legal Action.** Notwithstanding anything to the contrary contained in this Declaration, any action or claim instituted by the Association, including action or Claim against any one or more Declarant Parties, relating to or arising out of the Project, this Declaration or any other Project Documents, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Residential Dwellings) or disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements thereon, and for which the claimed or alleged damages or the current economic value of other available remedies would exceed \$25,000 in the aggregate shall have first been approved by Owners representing seventy-five (75%) of the votes in the Association (other than votes allocated to Lots owned by Declarant or any other Owner who would be a defendant in such proceedings) who are voting in person, by proxy, or by absentee or some other form of written or electronic ballot cast (as permitted by Applicable Laws) at a meeting duly called for such purpose. The provisions of A.R.S. 10-3704 allowing for a written agreement of the Members without a meeting shall not supersede the requirements of this Section 10.23 requiring a meeting of the Association Members and the obtaining of the requisite consents thereat to authorize the commencement of litigation by the Association or in the name of the Association. The foregoing restriction shall not apply to (i) actions to enforce the collection of Assessments (including Collection Costs) or an Assessment Lien; (ii) actions to challenge ad valorem taxation or condemnation proceedings; (iii) actions to defend claims filed against the Association or to assert mandatory counterclaims therein; (iv) actions to enforce any specific covenant hereunder; or (v) or claims brought by an Owner in his individual capacity concerning his Lot and Improvements located solely within his Lot; provided, further that each Owner shall be bound by the mandatory arbitration provisions set forth herein and in any contract of purchase. In the event of any conflict between the arbitration provisions of this Article 10 and any applicable contract of purchase, the arbitration provisions of the contract of purchase, if any, shall prevail. Otherwise, all provisions of this Article 10 shall be binding upon the Owner. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies that are collected for specific Association obligations other than legal fees.

**10.24 Notice to Owners.** Prior to obtaining the consent of the Owners in accordance with Section 10.23 above relating to any Dispute against any one or more Declarant Parties, the Association must provide written notice to all Owners within the Project affected by the Dispute, which notice shall (at a minimum) include (i) a description of the nature of any action or claim (the “**Claim**”); (ii) a description of the attempts of the Declarant Party or Parties to correct such Claim; (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, if the Claim relates to an alleged construction or engineering defect; (iv) the estimated cost to repair such Claim; (v) the name and professional background of the attorney proposed to be retained by the Association, as applicable, to pursue the Claim such Declarant Party or Parties and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (vi) a description of the fee arrangements between such attorney and the Association, as applicable; (vii) the estimated attorney’s fees and expert fees and costs necessary to pursue the Claim against the Declarant Party or Parties and the source of the funds which will be used to pay such fees and expenses; (viii) the estimated time necessary to conclude



the action against the Declarant Party or Parties; and (ix) an affirmative statement from the Board of Directors that the action is in the best interest of the Association of its Members. In the event the Association recovers any funds from a Declarant Party (or any other Person) to repair any portion of the Project relating to a Claim, any excess funds remaining after repair of such Claim shall be paid into the reserve funds of the Association.

**10.25 Notification to Prospective Purchasers.** In the event that the Association commences any action or Claim or has notified the appropriate Owners that it has delivered a Claim Notice of a Dispute to any of the Declarant Parties, all affected Owners must notify prospective purchasers of a Residential Dwelling from them of the existence of such action, Claim or Claim Notice of a Dispute and must provide such prospective purchasers with a copy of the notice received from the Association, in accordance with Section 10.24 above or any other notice so received from the Association.

**10.26 Arizona Statutory Compliance.** In the event a court of competent jurisdiction invalidates all or part of this Article 10 regarding the resolution of Disputes and Claims relating to alleged construction defects and litigation unfortunately becomes necessary, the Declarant Parties, the Association, and all Owners shall be bound by the applicable Arizona construction defect statute presently codified at A.R.S. 12-1361 et seq. and A.R.S. 33-2001 et seq.

**10.27 Federal Arbitration Act.** Because many of the materials and products incorporated into the Project are manufactured in other states, the development and conveyance of the Lots and the Common Area evidenced a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. 1, et seq.) now in effect or as it may hereafter be amended, will govern the interpretation and enforcement of the arbitration provisions of the Declaration.

## **ARTICLE 11 GENERAL AND MORTGAGE PROVISIONS**

**11.1 Perpetual Duration; Method of Termination.** This Declaration shall continue in full force and effect and shall run with the land in perpetuity unless terminated as provided in this Section. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in the Association and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause a certificate of termination ("**Certificate of Termination**") of this Declaration to be Recorded, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. After the Recording of the Certificate of Termination, this Declaration shall have no further force or effect and the Association shall be dissolved pursuant to the provisions set forth in the Articles. As long as Declarant owns any Lot, no Certificate or Termination shall be effective unless the termination has been approved in writing by Declarant.

**11.2 Amendments.**

**11.2.1** Except for amendments made pursuant to Section 11.2.2 of this Declaration, and subject to the further limitations of Sections 11.2.3, 11.2.4 and 11.2.6, this Declaration may be amended at any time by the written approval or the affirmative vote, or any combination thereof, of the Owners holding not less than sixty-seven percent (67%) of the votes in the Association. Any such amendment may be made without regard to whether such amendment is of uniform effect or applicable to all of the Owners or Lots as long as such amendment otherwise complies with any additional consent requirements set forth in A.R.S. 33-1817 or other Applicable Laws.

**11.2.2** During the Declarant Control Period, Declarant may unilaterally amend this Declaration or the Plat to (i) correct any error or inconsistency in the Declaration; (ii) conform this Declaration or the Plat to the requirements or guidelines of the Fannie Mae, Freddie Mac, or any federal, state, or local government agency or quasi-governmental agency whose approval of the Project is required by law or requested by the Declarant; or (iii) alter the size of and boundaries between any Lots (including an increase or reduction of the total number of Lots) so long as (I) all such altered Lots are owned by Declarant, (II) all First Mortgages then encumbering the Lots to be altered consent in writing, (III) such alterations do not modify or change the size or the boundaries of any other Lot or materially modify the size or boundaries of the Common Area; (IV) such alterations do not result in the removal or abandonment of any common use or recreational facilities shown on the Improvement plans on file with the County or described in any Subdivision Disclosure Report on file with the State of Arizona Department of Real Estate; and (V) such alterations do not materially increase the share of Common Expenses payable by Owners.

**11.2.3** During the Declarant Control Period (but not later than fifteen (15) years after the Recording of this Declaration), any amendment to this Declaration must be approved in writing by the Declarant. Article 10 of this Declaration may not be amended without the consent of Declarant during the time period that is within fifteen (15) years after the Recording of this Declaration without regard to whether the Declarant Control Period has expired or terminated; Declarant's interest being deemed coupled with an interest. However, if the Declarant is deemed by any court of applicable jurisdiction not to have such an interest, then, in no event may Article 10 of this Declaration be amended without the consent of one hundred percent (100%) of the then Owners of Lots.

**11.2.4** An amendment to this Declaration may require the prior written approval of the Veterans Administration or the Federal Housing Administration as further provided in Section 11.16 below.

**11.2.5** During the Declarant Control Period, any amendments to this Declaration shall be signed by Declarant and Recorded with the County Recorder. After the Declarant Control Period expires or terminates, any amendment made pursuant to Section 11.2.1 shall be signed by the President or Vice President of the Association and shall be Recorded with the County Recorder, and shall certify that the amendment has been approved by the Board as well as by the requisite number of Owners, if any, as may be required by this Section 11.2. Any amendment to this Declaration shall be effective upon the Recording of the instruments.

**11.2.6** All amendments to Section 7.1.5 of this Declaration or otherwise affecting or amending any provisions which have been required by the County in its stipulations for development of the Project shall be approved in advance by the County and the consent of an authorized representative of the County shall appear on any amendment so Recorded.

**11.2.7** Any challenge to an amendment to the Declaration on the basis that the amendment was not adopted by the requisite number of Owners or was not adopted by the procedures required by this declaration or Applicable Laws must be made within one year after the Recording of the amendment.

### **11.3 Certain Mortgagee Rights.**

**11.3.1** Any First Mortgagee will, upon written request identifying the name and address of the First Mortgagee for any Lot and the Lot number or address, shall be entitled to receive timely written notice of (i) all meetings of the Members and be permitted to designate a representative to attend all such meetings; (ii) any condemnation loss or any casualty loss which affects a material portion of the Project or the Lot subject to the First Mortgage; (iii) any delinquency in the payment of Assessments or other charges owed or any other default in the performances of obligations under the Project Documents by the Owner of the Lot subject to the First Mortgage which remains uncured for a period of sixty (60) days; and (iv) any lapse, cancellation or material modifications of any insurance policy or fidelity bond maintained by the Association.

**11.3.2** No Lot shall be partitioned or subdivided without the prior written approval of the First Mortgagee of any such Lot subject to a First Mortgage.

**11.3.3** Unless at least two-thirds ( $\frac{2}{3}$ ) of the First Mortgagees (based upon one vote for each First Mortgage owned by the First Mortgagee in the Project) or the Owners (other than Declarant) of at least two-thirds ( $\frac{2}{3}$ ) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association. The granting of easements for public or private utilities or for other public or private purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Section 11.3.3

(ii) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner.

(iii) change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Lots or the maintenance of Common Area.

(iv) fail to maintain fire and extended insurance coverage on a current replacement cost basis for the Common Area in an amount of at least one hundred percent (100%) of insurable value.

(v) use hazard insurance proceeds for losses to Project Improvements other than for the repair, replacement or reconstruction of such Project Improvements.

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

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

**11.3.6** No breach of any of the covenants, conditions and restrictions contained in this Declaration, and no enforcement of any lien provision herein shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

**11.3.7** All amenities pertaining to the Project and located thereon (such as parking, recreational and/or service areas) are a part of the Project and shall be covered by and subject to a First Mortgage on a Lot to the same extent as is in the Common Area.

**11.3.8** An action to abate the breach of any of these covenants, conditions and restrictions may be brought against their First Mortgagee or other Person who has acquired title through foreclosure of a First Mortgage and subsequent sheriff's sale (or through any equivalent proceedings) and the successor in interest to said First Mortgagee or other Person, if the breach continues to exist after the time said First Mortgagee or other Person acquires an interest in such Lot.

**11.3.9** During the pendency (including any period of redemption) of any proceedings to foreclose a First Mortgage (or from the time a trustee under a first deed of trust has given notice of sale pursuant to the power of sale conferred under the deed of trust and pursuant to law), the First Mortgagee, or a receiver appointed in any such action, may, but need not, exercise any or all of the rights and privileges of the Owner of the Lot in default, including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner, irrespective of whether the member's voting rights have been suspended for nonpayment of Assessments.

**11.3.10** Notwithstanding anything contained herein to the contrary, at such time as the First Mortgagee shall become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligations to pay all Assessments and charges accruing thereafter in the same manner as any other Owner.

**11.3.11** The right of any Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association and no such right of first refusal or similar restriction shall be hereinafter imposed by amendment of this Section 11.3.11 without the prior written consent of all First Mortgagees of record at the time the requested amendment is proposed.

**11.4 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 and interpretation of the provisions herein shall be final, conclusive and binding as to all Persons and property benefited or bound by this declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control. In the event of any conflicts between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Rules, the Bylaws shall control.

**11.5 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.

**11.6 Rule Against Perpetuities.** If any interest, privilege, covenant or right created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such interest, privilege, covenant or right shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is Recorded.

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

**11.8 Notice of Violation.** The Association shall have the right, but not the obligation, to record a written notice of a violation ("**Notice of Violation**") by any Owner or Resident of any restriction or other provision of the Project Documents, subject to compliance with A.R.S. 33-1803(C), as amended, if applicable. The Notice of Violation shall be executed by an Officer of the Association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or Resident to cure the violation. Recordation of a Notice of Violation shall serve as notice to the Owner or Resident, and any subsequent Purchaser or other Person who may acquire the Lot, that there is such a violation; provided, further, however, that such Notice of Violation shall not constitute an Assessment Lien unless otherwise expressly permitted by this Declaration or the provisions of Arizona's Planned Communities statutes or other Applicable Laws. If, after the recordation of such Notice, it is determined by the Association that the violation referred to in the Notice does not exist or that the violation referred to in the Notice has been cured, the Association

shall Record a “**Notice of Compliance**” upon written request of the Owner of the Lot to which the Notice of Violation pertains. The Notice of Compliance shall state the legal description of the Lot against which the Notice of Violation was Recorded, and the Recording data of the Notice of Violation, and shall state that the violation referred to in the Notice of Violation has been cured or is no longer applicable to the Lot. Failure by the Association to record a Notice of Violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

**11.9 Laws, Ordinances and Regulations.** The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Architectural Committee, as applicable, 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. Compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all Applicable Laws, ordinances and regulations. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**11.10 Right to Inspect Documents: Association Financial Statements.**

**11.10.1** The Association shall make current copies of the Project Documents and the books, records and financial statements of the Association available to Owners, mortgagees, and insurers or guarantors of First Mortgagees and all other Persons designated by the Owner as the Owner’s a representative in accordance with Applicable Laws, but subject to the right of the Association to withhold records from disclosure in accordance therewith. “**Available**” means available for inspection with the timer period specified in Applicable Laws or otherwise within ten (10) business days after a written request. The requesting party shall pay all reasonable copying costs of the Association subject to any limitations contained in Applicable Laws. All inspections shall take place during normal business hours or under other reasonable circumstances.

**11.10.2** Subject to Applicable Laws, the Association shall obtain at least annually an audit, review or compilation of the Association’s finances to be completed within one hundred eighty (180) days after the end of the Association’s fiscal year. Without limiting the foregoing, any First Mortgage or any holder or insurer of any First Mortgage shall be entitled to receive, upon written request, an audited financial statement for the immediately preceding fiscal year from a certified public account or other acceptable fiscal statement preparer. Such audit shall be at the expense of the requesting party if an audited fiscal statement has not previously been prepared by the Association. The audited financial statement shall be furnished within a reasonable time following receipt by the Association of the request and the payment of the cost of the audit to the preparer of the statement.

**11.11 Condemnation of Common Area.** Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Common Area or other Area of Association Responsibility is to be taken by any governmental body or exercise of the power of condemnation or eminent domain, all Owners shall be immediately notified by the Association thereof. The entire award made as

compensation for such taking, including, but not limited to, any amount awarded as severance damages or the entire amount received and paid in anticipation and settlement for such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but not limited to, attorneys' fees, appraisers' fees and court costs (which net amount shall hereinafter be referred to as the "**Award**"), shall be paid to the Association. The Association shall, as soon as and to the extent it is practicable, cause the Award to be utilized for the purpose of repairing and restoring the Project, including, if the Association deems it necessary or desirable, the replacement of any Improvements so taken or conveyed unless, within sixty (60) days after such taking the Owners holding at least eighty percent (80%) of the votes in the Association instruct the Board not to build replacement Improvements. Any net funds from the Award remaining after the Association has satisfied any obligation to rebuild or repair Improvements shall be retained by the Association and used for such purposes as may be determined by the Board including as a contribution to Reserves.

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

**11.13 Gender and Number.** Wherever the context of this Declaration so requires, the 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.

**11.14 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 hereof. The use of the term "**Section**" in this Declaration shall also mean all subsections grouped under that Section unless the context otherwise requires. The use of the term "**Article**" in this Declaration shall mean any Article of this Declaration and all of its Sections.

**11.15 Notices.** If notice of any action or proposed action by the Board or any committee thereof or of any meeting is required by Applicable Laws, this Declaration or resolution of the Board, to be given to any Owner or Resident, then, unless otherwise specified in the Project Documents, or unless otherwise required by Applicable Laws or by resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published in any newspaper of general circulation within the County or three (3) days after the date the notice is mailed via regular mail or posted on the Association web site if the Association or the Managing Agent operates such a site. This Section 11.16 shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

**11.16 FHA/VA Approval.** If this Declaration has been approved by the Federal Housing Administration or the Veterans Administration in connection with loan programs made available by

HUD/FHA or VA and during the Declarant Control Period, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication, mortgaging or conveyance of Common Area, and amendment of this Declaration.

**11.17 No Absolute Liability.** No provisions of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or Lots caused by the negligence or intentional acts of the Owners or Residents of the Lots or their Invitees or pets.

**11.18 References to VA and FHA.** In various places throughout the Project Documents, references are made to the Department of Veterans Affairs (“VA”) and the Federal Housing Administration (“FHA”) and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Project Documents to meet certain requirements of such agencies should Declarant, in its discretion, request approval of the Project by either or both of those agencies in accordance with any program guidelines requiring FHA or VA approval of the Project Documents. Unless and until FHA or VA have reviewed the Project Documents and approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust Recorded against a Lot to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals of consents of such agencies shall be deemed null and void and of no force and effect.

**11.19 Declarant’s Right to Use Similar Name.** The Association hereby irrevocably consents to the use by any other corporation or other entity which may be formed or incorporated by Declarant of an entity name which is the same or deceptively similar to the name of the Association, provided, however, one or more words are added to the name of such other entity to make the name of the Association distinguishable from the name of such other entity. Within five (5) days after being requested to do so by Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission or the Arizona Secretary of State in order for any other corporation or other entity formed or incorporated by the Declarant to use a name which is similar to the name of the Association.

**11.20 Attorney’s Fees.** In the event Declarant, the Association or any Owner consults with, retains, or employs an attorney or attorneys (i) to enforce an Assessment Lien; (ii) to collect any other amounts due from an Owner; (iii) to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents; or (iv) in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party shall be entitled to recover its Collection Costs (including reasonable attorneys’ fees) incurred in the action. In the event the Association employs attorneys’ fees) incurred in the action. In the event the Association employs an attorney for any of the actions referenced above and the Owner complies with the Association’s demands and the requirements of the Project Documents prior to a determination of the prevailing party, and regardless of whether an action is initiated at law or in equity or in any administrative proceeding, the



Association shall be entitled to and reserves the right to charge the Owner for all reasonable attorneys' fees and similar Collection Costs so incurred.

**11.21 Savings Clause.** The provisions of this Declaration shall be construed to be consistent with Applicable Laws, and should any provision violate Applicable Laws and be unenforceable as a result thereof, then Applicable Laws shall govern. For purposes of this Section 11.21 and elsewhere in this Declaration, the term '**Applicable Laws**' means the Arizona Planned Communities statutes, A.R.S. 33-1801 et seq. and all other laws, statutes, ordinances, rules and regulations of all federal, state, county, city and other governmental agencies having jurisdiction over the project.

[signature and acknowledgement pages and Exhibits follow]

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has hereunto set its hand to be effective as of the date first set forth above.

**DECLARANT:**

**FINESSE PROPERTIES  
WEST LLC,**

An Arizona limited liability company

By *Tim Campbell*  
Tim Campbell  
Its Member

STATE OF ARIZONA

COUNTY OF MARICOPA

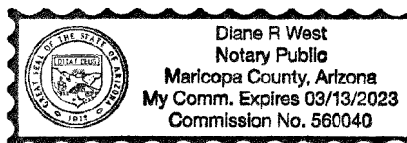
On this 18 day of Dec., 2020, before me, the undersigned notary public, in and for said said county and state, personally appeared Tim Campbell, the Member of Finesse Properties West LLC, an Arizona limited liability company, personally known (or proved) to me to be the person whose name is subscribed to the above instrument and who acknowledged that he executed the above instrument for and on behalf of the foregoing limited liability companies, in his capacity as a Member thereof.

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

*[Signature]*  
NOTARY PUBLIC

My Commission Expires

3/13/23



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROJECT**

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA THE PARCEL DESCRIBED IN INSTRUMENT #3370478 TOGETHER WITH A PORTION OF THE PARCEL DESCRIBED IN INSTRUMENT #3584133, R.C.C.

**EXHIBIT B**

**LEGAL DESCRIPTION OF ADDITIONAL PROPERTY**

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT A FOUND GLO BRASS CAP MARKING THE SOUTH QUARTER CORNER OF SECTION 36, LYING SOUTH 89 DEGREES 56 MINUTES 03 SECONDS EAST, A DISTANCE OF 2649.35 FEET FROM A FOUND ½" REBAR WITH PLASTIC CAP MARKED "RLS 19344" MARKING THE SOUTHWEST CORNER OF SAID SECTION 36;

THENCE NORTH 89 DEGREES 56 MINUTES 03 SECONDS WEST ALONG THE SOUTH LINE OF SAID SECTION 36 462.04 FEET;

THENCE NORTH 00 DEGREES 26 MINUTES 16 SECONDS EAST, 25.00' FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89°56'03" WEST A DISTANCE OF 409.80 FEET;

THENCE NORTH 19°21'56" WEST A DISTANCE OF 13.35 FEET;

THENCE NORTH 65°22'57" WEST A DISTANCE OF 38.26 FEET TO THE BEGINNING OF A 30.01 FOOT RADIUS NON-TANGENT CURVE,

CONCAVE TO THE NORTHEAST, A RADIAL TO SAID BEGINNING BEARS SOUTH 24°37'08" WEST;

THENCE NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 50°59'13" AN ARC DISTANCE OF 26.71 FEET;

THENCE NON-TANGENT TO SAID CURVE, NORTH 14°24'3" WEST A DISTANCE OF 39.92 FEET;

THENCE NORTH 20°07'47" WEST A DISTANCE OF 86.40 FEET;

THENCE NORTH 00°21'21" WEST A DISTANCE OF 71.79 FEET TO THE BEGINNING OF A 330.94 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE WEST, A RADIAL TO SAID

BEGINNING BEARS NORTH 89°38'54" EAST;

THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 39°39'22" AN ARC DISTANCE OF 229.05 FEET;

THENCE NON-TANGENT TO SAID CURVE, NORTH 40°00'14" WEST A DISTANCE OF 147.13 FEET TO THE BEGINNING OF A 215.95 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE

SOUTHWEST, A RADIAL TO SAID BEGINNING BEARS NORTH 50°00'05" EAST;

THENCE NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 43°13'40" AN ARC DISTANCE OF 162.93 FEET;

THENCE NON-TANGENT TO SAID CURVE, SOUTH 89°56'20" EAST A DISTANCE OF 820.73 FEET;

THENCE SOUTH 00°26'16" WEST A DISTANCE OF 637.78 FEET TO THE POINT OF BEGINNING;

HAVING AN AREA OF 350,008 SQUARE FEET, 8.1040 ACRES MORE OR LESS.