

**AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
HILLCREST BAY MOBILE MANOR**

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS HILLCREST BAY MOBILE MANOR (the "Declaration") is made this _____ day of _____, 20__ by Hillcrest Bay, Inc., an Arizona nonprofit corporation (the "Association").

WITNESSETH

WHEREAS, a Declaration of Restrictions was recorded on November 19, 1970 at Docket 627, Page 356, in the official records of La Paz County, Arizona, an Amended Declaration of Restrictions was recorded on April 20, 1987 at Document No. 1987-02238, in the official records of La Paz County, Arizona, a revised Declaration of Restrictions was recorded on October 28, 2004 at Document No. 2004-05453, and re-recorded on September 11, 2014 at Document No. 2014-03009, in the official records of La Paz County, Arizona (collectively referred to as the "Original Declaration");

WHEREAS, the Association, by and through its Members, wishes to amend and restate the Original Declaration, as amended, in its entirety as set forth herein;

WHEREAS, the Original Declaration may be modified or amended by the vote or written assent of the owners of not less than three-fourths (3/4) of the lots in the subdivision;

WHEREAS, this Declaration has been approved by the vote or written assent of the owners of not less than three-fourths (3/4) of the lots in the subdivision;

NOW THEREFORE, the Original Declaration is hereby amended and restated in its entirety to provide as follows:

NOW THEREFORE, the Association hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is being recorded to establish a general plan for the development and use of the Project and in order to protect and enhance the value and desirability of the Project. All of the Property shall be held, sold and conveyed subject to this Declaration.

ARTICLE 1 DEFINITIONS

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

1.2 “**Architectural Committee**” means the architectural committee of the Association created pursuant to Section 5.9 of this Declaration.

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

1.4 “**Areas of Association Responsibility**” means (i) all Common Area, including the Improvements and landscaping situated thereon, (ii) any portion of the Improvements situated on 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, and (iii) the Streets and the improvements situated thereon, as shown on the Plat with respect to which any governmental entity has not accepted responsibility for the maintenance.

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

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

1.7 “**Association**” means Hillcrest Bay, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.8 “**Association Lien**” means the lien created and imposed by Section 6.1 of this Declaration.

1.9 “**Association Property**” means any personal property owned or leased by the Association.

1.10 “**Association Rules**” means the restrictions, limitations, rules, and regulations adopted by the Association pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

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

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

1.13 “**Common Area**” means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. “Common Area” shall include Lots 57, 272 and 273 for so long as said Lots are owned by the Association. “Common Area” shall not include any real property, improvements or personal property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action.

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

1.15 “**Declarant**” means Transamerica Title Insurance Company of Arizona, an Arizona corporation, its successors and assigns.

1.16 “**Declaration**” means this Amended and Restated Declaration of Restrictions Hillcrest Bay Mobile Manor, as it may be amended from time to time.

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

1.18 “**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.

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

1.20 “**Improvement**” means any mobile or manufactured home, building, fence, wall or other structure or any swimming pool, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

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

1.22 “**Lot**” means each parcel of real property designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot; provided, however, “Lot” shall not include Lots 57, 272 and 273 for so long as said Lots are owned by the Association. As used herein, “Lot” shall also include any portion of a Lot.

1.23 “**Maintenance Standard**” means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

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

1.25 “**Owner**” means the record owner, whether one or more Persons, of legal,

beneficial or equitable title to the fee simple interest of a Lot or portion of a Lot. "Owner" shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the "Owner." "Owner" shall also include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. Section 33-741, *et seq.* "Owner" shall not include purchasers under purchase contracts and receipts, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to such executory contracts pending the closing of a sale or purchase transaction.

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

1.27 “**Plat**” means the plat of Hillcrest Bay Mobile Manor recorded in Book 5 of Plats, page 106, records of La Paz County, Arizona, and all amendments, supplements, and corrections thereto.

1.28 “**Property**” or “**Project**” means the following real property:

Lots 2-273 inclusive HILLCREST BAY MOBILE MANOR, according to the plat of record in the office of the County Recorder of La Paz (formerly known as Yuma) County, Arizona, in Book 5 of Plats, Page 106 thereof.

1.29 “**Project Documents**” or “**Governing Documents**” means this Declaration, the Articles, the Bylaws, the Association Rules, and the Architectural Committee Rules.

1.30 “**Purchaser**” means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

1.31 “**Recording**” means placing an instrument of public record in the office of the County Recorder of La Paz County, Arizona, and “**Recorded**” means having been so placed of public record.

1.32 “**Resident**” means each individual occupying or residing in any Residential Unit.

1.33 “**Residential Unit**” means any single-family dwelling, mobile or manufactured home or building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.34 “**Single Family**” means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than six (6) persons not all so related, who maintain a common household in a Residential Unit.

1.35 “**Special Assessment**” means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.36 “Streets” means the following private streets located within Hillcrest Bay Mobile Manor as shown on the Plat: Manor View Drive, Max View Drive, Noble View Drive, Dunlap Drive, Otis Court, Linger Drive, Crystal View Drive, Swan Drive, Bay View Drive, Hillcrest Drive and Bay Shore Drive (now known as Hillcrest Drive).

ARTICLE 2 PLAN OF DEVELOPMENT

2.1 **Binding Effect.** By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners. Each Owner 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 in the instrument of conveyance or encumbrance may refer only to the Lot.

ARTICLE 3 USE RESTRICTIONS

3.1 **Architectural Control.** In addition to any requirements imposed by La Paz County or any applicable municipality:

3.1.1 Not more than one (1) Residential Unit shall be erected or maintained on any Lot. Mobile or manufactured home Residential Units moved onto a Lot shall not be older than four (4) years.

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

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

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

3.1.5 Any Owner desiring approval of the Architectural Committee for any Exterior Alteration shall submit to the Architectural Committee a written request for approval

specifying in detail the nature and extent of the Exterior Alteration that the Owner desires to make or perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans, and specifications which the Architectural Committee may request.

3.1.6 The Architectural Committee shall have the right to refuse to approve any plans or specifications which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans or specifications, without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring Property. The approval by the Architectural Committee of any Exterior Alteration pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Exterior Alteration subsequently submitted for approval.

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

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

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

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

3.1.11 The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay to the Association a deposit in an amount determined by the Architectural Committee to be used by the Association to repair any damage to Areas of Association Responsibility. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit, will be nonrefundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements and the repair of any damage to the Areas of Association Responsibility occasioned by such construction.

3.1.12 Front and rear setbacks for all Lots shall be five (5) feet and side setbacks for all Lots shall be three (3) feet. Lots are also subject to La Paz County setback requirements, which may require Owners to obtain a setback variance from La Paz County.

3.1.13 The maximum height of any shrub, tree or Residential Unit on a Lot shall not to exceed fifteen (15) feet in height from Lot grade, regardless of the number of Lot splits or Lot combinations. For the purposes of these height restrictions, any Lot resulting from Lot splits or combinations shall be treated as if the resulting Lot had not be split or combined. The maximum height measurement is to be taken as follows:

3.1.13.1 On down-hill side of street: The fifteen (15) foot measurement shall be taken from highest point of the Lot on the up-hill street corner.

3.1.13.2 On up-hill side of street: The fifteen (15) foot measurement shall be taken from the highest point of the Lot on the up-hill side of the building site. Building site is defined as the area inside of setbacks on a Lot.

3.1.13.3 Lots with frontage on Hillcrest Drive, Manor View Drive, Otis Court, and Dunlap Drive: The fifteen (15) foot measurement shall be taken from the center of Lot at the edge of the street.

3.1.13.4 On Lots where boundaries are above graded areas: The fifteen (15) foot measurement shall be taken on the Lot from the highest graded uphill corner.

3.1.14 Any Residential Unit constructed on a Lot shall contain at least 500 square feet of living area under roof, exclusive of garages, carports, basements, patios, breezeways, and porches.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, incomplete building, tent, shack, garage, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Exterior Alterations approved by the Architectural Committee, interior remodeling, reroofing or other work shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of one month without the prior written approval of the Architectural Committee.

3.3 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

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

3.5 **Repair of Building.** No Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building, and structure shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. In the event that any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

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

3.7 **Public Utility Easements.** No structure, landscaping or other Improvement shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities.

3.8 **Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot or other property 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 twelve (12) feet without the prior approval of the Architectural Committee.

3.9 **Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Lot, (iii) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Owners or other residents in the Property, and (iv) the business activity is consistent with the residential character of the Project 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 shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part-time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity.

3.10 **Restriction on Further Subdivision; Lot Combinations.** No Lot shall be further subdivided, separated or split into smaller lots or parcels by any Owner without the prior written approval of the Architectural Committee. Notwithstanding anything herein to the

contrary, an Owner may own more than one Lot which, if contiguous, may be combined into a single home site with the written consent of La Paz County and the Architectural Committee; provided, however, that any such combination of Lots shall not reduce the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount which would have been assessed against the Owner of such Lots pursuant to the terms hereof in the absence of combination. Notwithstanding the foregoing, any whole Lots combined and replatted prior to the date of the recording of this Declaration shall be considered combined for the purposes of this Section 3.10 but any such combination of Lots shall not reduce the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount which would have been assessed against the Owner of such Lots pursuant to the terms hereof in the absence of combination. Notwithstanding the foregoing, any portion of a Lot combined and replatted with another Lot or portion of a Lot prior to the date of the recording of this Declaration shall be considered combined for the purposes of this Section 3.10 and the fractional portion of the Lot shall have fractional voting rights and fractional assessment obligations as provided in Sections 5.7 and 6.4.

3.11 Property Restrictions and Rezoning. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.12 Leasing. An Owner may lease his Lot and the Residential Unit thereon only to a Single Family. No Owner may lease less than the Owner's entire Lot and the Residential Unit thereon. Any lease or rental agreement must be in writing and shall be subject to the Declaration. If the Board creates and/or adopts a "rental registration form," the Owner shall submit such form to the Association for every rental. Any agreement for the lease of a Lot and Residential Unit thereon must be expressly subject to this Declaration, the Articles, the Bylaws, the Association Rules, Architectural Committee Rules, and any other documents governing the Association. The lease must contain a provision that any violation of the Declaration, the Articles, the Bylaws, Association Rules, Architectural Committee Rules, or any other documents governing the Association shall be a default under the lease and is grounds for eviction. The Owner of the leased Lot and Residential Unit thereon shall remain responsible for compliance with the Project Documents and shall be responsible for any violations thereof by his Lessee or his Lessee's family or guests.

3.13 Signs. No signs shall be displayed on any Lot except the following:

(a) a "For Sale" sign no larger than eighteen by twenty-four inches (18" x 24") and a sign rider no larger than six by twenty-four inches (6" x 24"), while the Lot is for sale;

(b) a "For Lease" sign no larger than eighteen by twenty-four inches (18" x 24") and a sign rider no larger than six by twenty-four inches (6" x 24"), while the Lot is for lease;

(c) temporary open house signs displayed as permitted by A.R.S. §33-1808, as amended, and by any successor statute thereto;

(d) cautionary signs regarding children displayed as permitted by A.R.S. §33-1808, as amended, and by any successor statute thereto;

(e) up to seventy-one (71) days before an election and up to three (3) days after an election, political signs as permitted by La Paz County and/or any applicable municipality may be placed on the Lot (or, if no such laws exist, the maximum aggregate total dimensions of all political signs placed on a Lot shall not exceed nine (9) square feet);

(f) such signs as may be required by law;

(g) one residential identification sign with a total face area of eighty square inches or less; and

(h) signs approved by the Architectural Committee.

3.14 **Antennas.** Unless governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors within the Property, whether attached to a building or structure or otherwise, unless approved by the Board. Any device covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, shall comply with any applicable antenna installation rules of the Association. The devices governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule) as of the date of the recording of this Declaration are as follows: (i) Direct Broadcast Satellite ("DBS") antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite; (ii) Multi-point Distribution Service ("MDS") antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (iii) Antennas designed to receive local television broadcast signals ("TVBS"); and (iv) Antennas designed to receive and/or transmit data services, including Internet access. If the FCC expands the types of antennas that fall under the FCC Rule, this Section 3.14 shall encompass those antennas as well.

3.15 **Animals.** No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No Owner or any lessee or guest of an Owner shall permit any dog or other pet being kept on a Lot to defecate on another Owner's Lot, the Common Area or Areas of Association Responsibility. It shall be the responsibility of such Owner, lessee or guest to immediately remove any pet excrement. No dog or other pet shall be permitted to run at large and such dog or other pet shall be confined entirely to an Owner's Lot except that a dog or other pet shall be permitted to leave an Owner's Lot if such dog or other pet is at all times kept on a leash not to exceed six (6) feet in length and is under the direct control of the Owner.

3.16 **Parking.**

3.16.1 All motor vehicles, commercial vehicles, recreational vehicles, boats, boat trailers, utility trailers, trailers, mounted or unmounted campers, motorhomes, travel trailers or similar vehicle or equipment of Owners and of their Lessees or other Residents shall be parked in garages or carports, on the residential driveway of a Lot, or on areas on a Lot or on Areas of Association Responsibility as may be designated by the Board. Notwithstanding the above, the temporary parking of recreational vehicles and boats on Streets for the purpose of loading, unloading, and cleaning is permitted.

3.16.2 Except for emergency vehicle repair, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot, Street or other Property in the Project except wholly inside a garage, and no inoperable vehicle or equipment may be stored or parked on a Lot, Street, or other Property in the Project except wholly inside a garage. For purposes of this Section, a vehicle is inoperable if it is not running, has a flat tire for ten (10) or more days, is up on blocks, or is not properly licensed and registered.

3.16.3 The Board shall have the right to adopt Association Rules governing and further restricting the parking of vehicles on Lots, Streets, Common Area or Areas of Association Responsibility and implementing the provisions of this Section 3.16.

3.16.4 The Board shall have the right to have any truck, motorhome, travel trailer, tent trailer, utility, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner or Lessee, then any amounts payable to the Association shall be secured by the Association Lien against the Owner's Lot, and the Association may enforce collection of such amounts in the same manner provided for in the Declaration for the collection of Assessments.

3.17 **Tanks.** Tanks of any kind (including tanks for the storage of fuel) erected, placed or maintained on any Lot must be appropriately screened and such screening must be submitted to and approved by the Architectural Committee. Notwithstanding the foregoing, an above ground propane or similar fuel tank with a capacity of ten (10) gallons or less which is used in connection with a normal residential gas barbecue, grill or fireplace or a spa or "hot tub" shall not require screening or prior approval by the Architectural Committee.

3.18 **Exterior Lighting.** No decorative lighting, security lighting, spotlights, floodlights or high-intensity lighting shall be placed or utilized upon any Lot which, in any manner, will allow light to be directed or reflected on any other Lot, except as may be expressly permitted by the Architectural Committee. It is a Lot Owner's responsibility to reduce wattage, re-direct, or shield any light that illuminates any adjoining Lot.

3.19 **Garbage.** No trash, rubbish, garbage, refuse pile or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on any Lot and all rubbish, garbage or trash shall be removed from each Lot on a regular basis.

3.20 **Firearms.** The discharge of firearms, explosives or fireworks is prohibited within the Project.

3.21 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or repair of a Residential Unit, appurtenant structures, or other Improvements approved by the Architectural Committee.

3.22 **Drainage.** No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the normal drainage of the land or within any area designated on the Plat or other duly recorded instrument as a drainage easement.

3.23 **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article 3, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance is not materially detrimental, as determined by the Board in the Board's sole discretion, to the purposes of the Declaration. Variance of a restriction, limitation, rule or regulation shall not compel the Board to grant a subsequent variance with respect to the same condition or a similar condition on another Lot.

ARTICLE 4 EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Every Owner or Lessee, and any person residing with such Owner or Lessee, shall have a right and easement of enjoyment in and to the Common Area and Streets which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to grant easements or licenses over Common Area or the right to dedicate, convey, transfer or encumber the Common Area.

(ii) The right of the Association to regulate the use of the Common Area and the Streets through the Association Rules and to prohibit access to such portions of the Common Area not intended for use by the Owners or Lessees.

(iii) The right of the Association to suspend the right of an Owner or Lessee and such Owner's or Lessee's family, tenants and guests to use the Common Area if such Owner is more than thirty (30) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Lessee has violated any other provisions of the Project

Documents and has failed to cure such violation within thirty (30) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right, without the specific written consent of the Association, to use the Common Area until the termination or expiration of such lease.

4.2 **Drainage Easements.** No structure, landscaping or other Improvement shall be placed, erected or maintained upon any area designated on the Plat as a drainage easement which may change the direction or flow of drainage channels in such easement areas or which may obstruct or retard the flow of water through drainage channels in such easement areas. The drainage facilities or easement areas, and all Improvements located thereon, which are a part of a Lot shall be maintained, repaired and replaced by the Owner of the Lot on which the drainage facility or easement is located.

4.3 **Easement in Favor of Association.** The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees, and independent contractors:

4.3.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.3.2 For inspection, maintenance, repair and replacement of the Common Area, Streets or Areas of Association Responsibility accessible only from such Lots;

4.3.3 For correction of emergency conditions in one or more Lots;

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

4.3.5 For inspection of the Lots (i) in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot, or (ii) to satisfy the disclosure requirements, if any, of applicable law.

ARTICLE 5 THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

5.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws.

5.3 **The Association Rules.** The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility and Streets, (iii) the Common Areas including, but not limited to, any Improvements situated upon the Common Areas, or (iv) the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner. Except as limited herein, the Association Rules may be adopted, amended and repealed by a majority of the members of the Board. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of 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 manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 **Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the 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.

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

5.7 **Voting Rights of Members.** The Association shall have Members, who shall be all Owners of Lots. The general rule shall be that each Member shall be entitled to one (1) vote for each whole Lot owned by such Member; provided, that if a Member owns a percentage interest in a Lot (less than 100%), such Member shall be entitled to a fractional vote equal to the percentage interest the Member owns in such Lot. By way of example only, if a Member owns one and one-half Lots, such Member shall be entitled to cast one and one-half votes. Notwithstanding anything to the contrary contained in this Section 5.7, the total number of votes that may be cast by the Members shall not exceed the total number of Lots. The number of votes that may be cast by a Member shall be determined each year based upon the number of Lots or portions of Lots owned by such Member on the record date used for determining the Members

entitled to vote at the annual meeting of the Members for such year.

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

5.9 Architectural Committee. The Board may establish an Architectural Committee consisting of not less than three (3) members appointed by the Board to regulate the external design, appearance, and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board. The right to appoint and remove all members of the Architectural Committee at any time shall be and is hereby vested solely in the Board. All members of the Architectural Committee must be Members of the Association but shall not be required to be an architect or to meet any other particular qualifications for membership. Membership of the Architectural Committee shall include at least one member of the Board who shall serve as chairperson of the Architectural Committee. If the Board does not establish an Architectural Committee, the Board may act as the Architectural Committee. The Board may, from time to time and in its sole and absolute discretion, adopt, amend and repeal rules and regulations, to be known as "Architectural Committee Rules." The Architectural Committee Rules shall set forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use within the Property.

5.10 Suspension of Voting Rights. If an Owner otherwise entitled to vote is more than thirty (30) days delinquent in the payment of Assessments or other amounts due to the Association or is violation of the terms of the Project Documents and has failed to cure such violation within thirty (30) days after the Association notifies the Owner of the violation, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

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

6.1 Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines, and Penalties. Each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and

penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, together with interest, late charges and all costs, including but not limited to all attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee or charge is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to all attorneys' fees, incurred by the Association in enforcing the Project Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2 **Annual Assessments.**

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot. The Board shall not levy an Annual Assessment that is more than ten percent (10%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of a majority of the Members of the Association.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may, subject to the ten percent (10%) limit set forth in Section 6.2.1 above, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

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

6.4 **Rate of Assessment.** Except as otherwise provided in this Declaration, the amount of the Annual Assessment for each Lot (the "Base Annual Assessment") other than Lots owned by the Declarant or the Association shall be the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual assessment is being levied by the total number of Lots. The general rule shall be that one Base Annual Assessment shall be levied as to each Lot; provided, that if a Lot has been conveyed to separate Owners such that each Owner owns less than 100% of such Lot, the Base Annual Assessment for such Lot shall be divided and levied against each fractional portion of the Lot based upon the respective percentage interests of the Lot owned by such Owners. By way of example only, if 75% of a Lot is owned by one Owner and the remaining 25% of such Lot is

owned by another Owner, three-fourths of the Base Annual Assessment for such Lot shall be levied against the portion of the Lot comprising 75% thereof and one-fourth of the Base Annual Assessment for such Lot shall be levied against the portion of the Lot comprising the remaining 25% thereof. Notwithstanding anything to the contrary contained in this section 6.4, the total amount of the Annual Assessment levied against a Lot shall not exceed the Base Annual Assessment. The allocations of the Base Annual Assessment for the Lots shall be determined each year based upon the ownership of a Lot on the date the Board levies the Annual Assessment for such year.

6.5 Special Assessments. The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area or Streets, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have the assent of fifty-one percent (51%) of the votes entitled to be cast by Members who are voting in person or by absentee ballot at a meeting duly called for such purpose. Special Assessments shall be allocated and levied and in the same manner as the Annual Assessments under Section 6.4 of this Declaration.

6.6 Lot Specific Assessments. Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Project Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

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

6.8 Exemption of Owner. No Owner of a Lot may 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 and facilities or by the abandonment of his Lot.

6.9 Purposes for which Association's Funds may be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners 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 and the Owners.

6.10 Subordination of the Lien to Mortgages. The lien of the Association for delinquent Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

6.11 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on an annual basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.12 Transfer and Disclosure Fees. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

6.13 Fines and Penalties. In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

6.14 Costs of Enforcement. Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, all attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 6.1.

6.15 Effect of Nonpayment of Assessments, Fees, Charges, Fines, and Penalties; Remedies of the Association.

6.15.1 Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within thirty (30) days after the Assessment, fee, charge, fine or penalty, or the installment thereof, first became due shall bear interest from

the due date at the rate of 12% per annum. In addition, the Board may establish a late fee, not to exceed the greater of \$15.00 or ten percent (10%) of the amount of the unpaid Assessment, to be charged to any Owner who has not paid any Assessment within thirty (30) days after such payment was due.

6.15.2 As set forth in Section 6.1, the Association shall have a lien on each Lot for all Assessments, fees, charges, together with interest and late charges, costs of collecting and all attorneys' fees levied against or charged to a Lot or the Owner thereof. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, attorneys' fees and the costs of preparing the Notice of Lien.

6.15.3 Subject to applicable statutes, the Lien created by Section 6.1 shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.

6.15.4 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, all attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, the following procedures (and the exercise of one remedy shall not prevent the Association from thereafter exercising any other remedy available): (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving any lien securing any such delinquent Assessments or (ii) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage or Deed of Trust. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any and all Lots purchases at such sale.

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

ARTICLE 7 MAINTENANCE

7.1 Areas of Association Responsibility.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace (i) the Common Area, and all Improvements located thereon, (ii) the Association Property and (iii) the Areas of Association Responsibility.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Common Area, Association Property, Areas of Association Responsibility and any other property maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.2 **Lots.** Each Owner shall be responsible for maintaining his or her Lot. Each Owner shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, landscaping or other Improvements situated on his or her Lot. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines, and plants of any type on a Lot that are the responsibility of the Owner thereof shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants, and grass which die shall be promptly removed.

7.3 **Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

7.4 **Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within sixty (60) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said sixty (60) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Association Lien.

ARTICLE 8 INSURANCE

8.1 **Scope of Coverage.** The Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance

shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

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

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

8.1.4 Directors and officers liability insurance in an amount to be determined by the Board;

8.1.5 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

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

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

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

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or

cancellation of the policy.

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

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

8.4 **Payment of Insurance Proceeds.** With respect to any loss to any Areas of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust.

8.5 **Insurance Obtained by Owners.** Each Owner shall be responsible for obtaining property insurance for his own benefit and at his own expense covering his Lot, and all Improvements and personal property located therein and thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.

ARTICLE 9 GENERAL PROVISIONS

9.1 **Enforcement.** These covenants, restrictions, reservations, and conditions may be enforced by the Owner of any Lot in the Property and by the Association in any manner provided for in this Declaration or at law or in equity including, but not limited to, an action to obtain an injunction to compel removal of any improvements constructed in violation of this Declaration or to otherwise compel compliance with this Declaration, or to recover damages for violations of this Declaration. Without limiting the generality of the foregoing, the Association shall have the right to record a notice of non-compliance against an Owner's Lot based on non-compliance by any Owner, resident, or lessee of the Lot of any provision of this Declaration, which the Association shall not be obligated to release until the violation has been corrected. Failure by the Association or any Owner to enforce any of the covenants, restrictions, rights, reservations, and limitations contained herein shall not, in any event, be construed and held to be a waiver thereof or consent to any further or succeeding breach or violation thereof, or a waiver of the right of the Association or any Owner to enforce and or all violations of this Declaration in the future. In the event of any litigation or administrative proceeding by or against the Association, the prevailing party in such litigation or administrative proceeding shall be entitled to recover from the nonprevailing party all attorneys' fees, costs, and expert witness fees incurred by the prevailing party.

9.2 **Method of Termination.** This Declaration shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes of in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of La Paz County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 **Amendments.** This Declaration may be amended at any time by the affirmative vote or written consent, or any combination thereof, of Owners of not less than sixty-seven percent (67%) of the votes of in the Association. Any amendment approved pursuant to this Section shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of La Paz County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

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

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

9.6 **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

9.7 **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.

9.8 **Laws, Ordinances and Regulations.**

9.8.1 The covenants, conditions, and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances, and regulations.

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

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

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

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

9.12 **Notices.** Any written notice or other document relating to or required by this Declaration may be delivered personally, by mail or by electronic means as permitted by statute. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association or the Architectural Committee at the address of the Association on file with the Arizona Corporation Commission; if to an Owner, to the address of his Lot or to any other address last furnished by the Owner. Each Owner of a Lot shall file the correct mailing address of such Owner with association, and shall promptly notify the Association in writing of any subsequent change of address.

9.13 **Survival of Liability.** The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any obligations incident thereto.

9.14 **Joint and Several Liability.** In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Declaration have been approved by the required percentage of the Owners as of the day and year first above written.

By: _____

Name: _____

Its: President

State of Arizona)
) ss.
County of)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____ day of _____, 20____, by _____, the President of Hillcrest Bay, Inc., an Arizona nonprofit corporation, for and on behalf of the corporation.

Notary Public

My Commission Expires: