

How Box
↓

Unofficial Document

WHEN RECORDED, RETURN TO:

Donald E. Dyekman, Esq.
Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue
Suite 200
Phoenix, AZ 85012

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ELLSWORTH HEIGHTS**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS.....	1
ARTICLE 2 PROPERTY AND PERSONS BOUND BY DECLARATION	5
2.1 Purpose and Binding Effect.....	5
2.3 Disclaimer of Implied Covenants.....	5
ARTICLE 3 ARCHITECTURAL CONTROL	6
3.1 Approval Required.....	6
3.2 Review of Plans.....	6
3.3 Variances.....	7
3.4 Construction of Improvements	8
3.5 No Changes Without Approval.....	8
3.6 Review Fee.....	8
3.7 New Construction	8
3.8 No Warranty	8
3.9 Conditional Approval.....	9
3.10 Improvements to Areas of Association Responsibility.....	9
3.11 Design Review Committee	9
ARTICLE 4 USE RESTRICTION.....	10
4.1 Residential Use.....	10
4.2 Temporary Occupancy and Temporary Buildings	11
4.3 Nuisances; Construction Activities	11
4.4 Antennas.....	11
4.5 Trash Containers and Collection	12
4.6 Utility Service.....	12
4.7 Overhead Encroachments	12
4.8 Animals.....	12
4.9 Machinery and Equipment.....	13
4.10 Signs.....	13
4.11 Further Subdivision, Property Restrictions, Rezoning and Timeshares	13
4.12 Vehicles and Parking.....	14
4.13 Drainage	15
4.14 Garages.....	15
4.15 Rooftop HVAC Equipment Prohibited	15
4.16 Basketball Goals and Backboards	15
4.17 Playground Equipment.....	15
4.18 Rental of Lots.....	16
4.19 Screening Materials.....	16
4.20 Lights	16
4.21 Window Cover Materials.....	16

Unofficial Document

ARTICLE 5	EASEMENTS	17
5.1	Easements for Use of Common Area	17
5.2	Utility and Development Easements	18
5.3	Easements to Facilitate Development	19
5.4	Dedications and Easements Required by Governmental Authority	19
5.5	Further Assurances	19
5.6	Duration of Development Rights; Assignment	19
5.7	Association Powers and Rights	20
5.8	Easement for Maintenance and Enforcement	20
5.9	Easements for Encroachments	20
ARTICLE 6	THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS	20
6.1	Formation of Association	20
6.2	Board of Directors and Officers	21
6.3	The Association Rules	21
6.4	Personal Liability	21
6.5	Implied Rights	21
6.6	Identity of Members	22
6.7	Classes of Members and Voting Rights	22
6.8	Voting Procedures	22
6.9	Transfer of Membership	22
6.10	Conveyance or Encumbrance of Common Area	23
6.11	Suspension of Voting Rights	23
ARTICLE 7	COVENANT FOR ASSESSMENTS AND CREATION OF LIEN	23
7.1	Creation of Lien and Personal Obligation of Assessments	23
7.2	Regular Assessments	24
7.3	Special Assessments	24
7.4	Assessment Period	25
7.5	Obligation of Declarant for Deficiencies	25
7.6	Rules Regarding Billing and Collection Procedures	25
7.7	Effect of Nonpayment of Assessments; Remedies of the Association	25
7.8	Purposes for which Association's Funds May Be Used	27
7.9	Surplus Funds	27
7.10	Initial Capital Contribution	27
7.11	Transfer Fee	28
7.12	Reserve Contribution	28
7.13	Reserves	28
ARTICLE 8	MAINTENANCE	29
8.1	Areas of Association Responsibility	29
8.2	Lot Owner's Responsibility	30
8.3	Assessment of Certain Costs of Maintenance and Repair	30
8.4	Improper Maintenance and Use of Lots	30
8.5	Boundary Walls	31
8.6	Maintenance of Walls other than Boundary Walls	31

ARTICLE 9	INSURANCE	32
9.1	Scope of Coverage	32
9.2	Insurance to be obtained by Lot Owners	33
9.3	Certificates of Insurance	33
9.4	Payment of Insurance Proceeds	33
9.5	Repair and Replacement of Damaged or Destroyed Property	33
ARTICLE 10	DISPUTE RESOLUTION	34
10.1	Defined Terms	34
10.2	Agreement to Resolve Certain Disputes Without Litigation	35
10.3	Notice of Alleged Defect	35
10.4	Notice of Claim	35
10.5	Mediation	36
10.6	Binding Arbitration	36
10.7	Right to Enter, Inspect, Repair and/or Replace	39
10.8	Use of Funds	39
10.9	Approval of Litigation	39
10.10	Statute of Limitations	39
10.11	Federal Arbitration Act	39
10.12	Conflicts	40
ARTICLE 11	GENERAL PROVISIONS	41
11.1	Enforcement	41
11.2	Duration; Termination	43
11.3	Amendments	43
11.4	Condemnation of Common Area	44
11.5	Interpretation	44
11.6	Severability	45
11.7	Change of Circumstances	45
11.8	Laws, Ordinances and Regulations	45
11.9	References to this Declaration in Deeds	45
11.10	Gender and Number	45
11.11	Captions and Titles	45

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ELLSWORTH HEIGHTS**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Ellsworth Heights (the "Declaration") is made this 21st day of April, 2005, by Ellsworth Brown Development, LLC, an Arizona limited liability company (the "Declarant").

RECITALS

A. A Declaration of Covenants, Conditions and Restrictions for Ellsworth Heights was recorded on January 8, 2002, at Recording No. 2002-0024146, in the records of the County Recorder of Maricopa County, Arizona (the "Original Declaration") imposing certain covenants, conditions and restrictions upon the real property described in the Original Declaration in order to established a plan of development for the sale and use of the planned community known as Ellsworth Heights.

B. Section 9.3.1 of the Original Declaration provided that the Original Declaration could be amended by the Owners of not less than seventy-five percent (75%) of the Lots subject to the Original Declaration. Section 9.3.6 provided that so long as the Declarant owns the requisite number of Lots to effect to the ^{Unofficial Document} of the Declaration, any amendment to the Declaration shall be signed by Declarant and recorded in the records of the County Recorder of Maricopa County, Arizona.

C. The Declarant owns all of the Lots subject to the Original Declaration and is the successor to the rights of the Declarant under the Original Declaration, and the Declarant desires to amend and restate the Original Declaration.

D. This Amended and Restated Condominium Declaration is intended to supersede and replace the Original Declaration in its entirety. Upon the recording of this Amended and Restated Declaration in the official records of the County Recorder of Maricopa County, Arizona, the Original Declaration shall be of no further force and effect.

NOW, THEREFORE, the Original Declaration is hereby amended and restated as follows:

ARTICLE 1

DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration

1.1 "**Areas of Association Responsibility**" means: (a) all Common Area; and (b) all land, and the Improvements situated thereon, located within the boundaries of a public right-of-way which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded document executed by the Declarant or the Association.

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

1.3 "**Assessable Lot**" means, during the Declarant Control Period, a Lot owned by a Person other than the Declarant. After the expiration of the Declarant Control Period, all Lots shall be Assessable Lots.

1.4 "**Assessment**" means a Regular Assessment or Special Assessment.

1.5 "**Assessment Lien**" means the lien created and imposed by Article 7.

1.6 "**Assessment Period**" means the period set forth in Section 7.4.

1.7 "**Association**" means Ellsworth Heights Community Association, an Arizona nonprofit corporation, and its successors and assigns.

1.8 "**Association Rules**" means the rules adopted by the Board pursuant to Section 6.3.

Unofficial Document

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

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

1.11 "**Common Area**" means: (a) Tracts A through F, Ellsworth Heights, according to the plat recorded in Book 555 of Maps, Page 48, records of Maricopa County, Arizona; (b) 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.

1.12 "**Common Expenses**" means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

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

1.14 "**Declarant**" means Ellsworth Brown Development, LLC, an Arizona limited liability company, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.15 "**Declarant Control Period**" means the period commencing upon the Recording of this Declaration and ending on the earlier of (a) the date that the Declarant conveys its last Lot to a Purchaser so that the Declarant no longer owns any Lot in the Project or (b) the date on which the Declarant notifies the Association in writing that the Declarant is terminating the Declarant Control Period.

1.16 "**Declaration**" means this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Ellsworth Heights, as amended from time to time.

1.17 "**Design Guidelines**" means the procedures, standards and guidelines adopted by the Design Review Committee pursuant to Section 3.11, as amended or supplemented from time to time.

1.18 "**Design Review Committee**" means the committee created pursuant to Section 3.11.

1.19 "**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.

1.20 "**First Mortgagee**" means ~~the~~ ^{Unofficial Document} or beneficiary of any First Mortgage.

1.21 "**Improvement**" means: (a) any Residence, building, fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (c) any road, driveway or parking area; (d) any trees, plants, shrubs, grass or other landscaping improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (f) any other structure of any type, kind or nature.

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

1.23 "**Lot**" means a parcel of land within the Project, whether improved or unimproved, intended for independent ownership and use and designated as a "lot" on the Plat and any Residence, building, structure or other Improvement situated thereon.

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

1.25 "**Maintenance Standard**" means the standard of Maintenance of Improvements situated on Lots established from time to time by the Board or, in the absence of any standard

established by the Board, the standard of Maintenance of Improvements situated on Lots generally prevailing throughout the Project.

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

1.27 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. In the case of Lots subject to an option agreement, the optionor shall be considered the Owner. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 et. seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of a Lot subject to a deed of trust pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of a Lot the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

Unofficial Document

1.29 "Plat" means the plat of Ellsworth Heights recorded in Book 555 of Maps, Page 48, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.30 "Property" or "Project" means the real property described on Exhibit A attached to this Declaration, together with all Improvements located thereon.

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

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

1.33 "Regular Assessment" means the Assessments levied pursuant to Section 7.2.

1.34 "**Residence**" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.35 "**Resident**" means each person occupying or residing in any Residence.

1.36 "**Special Assessment**" means any assessment levied pursuant to Section 7.3.

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

ARTICLE 2

PROPERTY AND PERSONS BOUND BY DECLARATION

2.1 Purpose and Binding Effect.

Declarant is the record owner of fee title to the Property. Declarant intends by this Declaration to impose upon the Property covenants, conditions, restrictions and easements to create a general plan of development for the Property and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use and enjoyment of the Property. The Declarant declares that all of the Property ^{Unofficial Document} be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Property. Declarant further declares that all of easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Property, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents, or as to the compliance of any of the provisions of the Community Documents with public laws, ordinances and regulations applicable thereto.

2.2 Disclaimer of Representations and Warranties and Implied Covenants.

The Declarant makes no representation or warranty that the Project will be developed in accordance with the zoning and development plan for the Project as it exists as of the Recording of this Declaration. Each Owner, Lessee, Resident and other Person acquiring any Lot or other real property in the Project acknowledges that the zoning and development plan may be amended from time to time by the City of Mesa. The Declarant makes no warranties or representations,

express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to the Project. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration or any part of the Additional Property.

ARTICLE 3

ARCHITECTURAL CONTROL

3.1 Approval Required.

As used in this Article 3, "Construction" means any devegetation, excavation or grading work or the construction, erection or installation of an Improvement on a Lot, and "Modification" means an addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot. No Construction or Modification shall be made or done without the prior written approval of the Design Review Committee.

Any Owner desiring approval of the Design Review Committee for any Construction or Modification shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of Construction or Modification which the Owner desires to perform. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the Improvements and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request.

In the event that the Design Review Committee fails to approve or disapprove a complete application for approval within forty-five (45) days after the application, together with any fee payable pursuant to Section 3.6 and all supporting information, plans and specifications requested by the Design Review Committee, have been submitted to the Design Review Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

3.2 Review of Plans.

In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its

sole and absolute discretion, determines to be relevant including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Design Review Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (c) the exterior design, finish materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its sole and absolute discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.

Decisions of the Design Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

The provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required for, any Construction or Modification or any other work made by, or on behalf of, the Declarant. The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

Unofficial Document

The Design Review Committee, by resolution, may exempt certain Construction or Modifications from the application and approval requirements of this Article, provided such Construction or Modifications are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint or redecorate the interior of a Residence without approval so long as such activity does not affect the exterior appearance of the Residence.

3.3 Variances.

The Design Review Committee may authorize variances from compliance with any provision of the Design Guidelines in circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require, and the Design Review Committee determines, in its sole discretion, that the objective of the particular requirement can still be achieved. No variance shall be effective unless in writing and signed by an authorized representative of the Design Review Committee. No variance may be contrary to this Declaration or estop the Design Review Committee from denying a variance in other circumstances including, without limitation, circumstances similar or identical to circumstances under which the Design Review Committee previously granted a variance. For purpose of this Section, the inability to obtain approval of any governmental agency, issuance of any permit, or the terms of any financing shall not constitute hardships.

3.4 Construction of Improvements.

Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall commence the Construction or Modification approved by the Design Review Committee within ninety (90) days after the date the Construction or Modification was approved by the Design Review Committee and shall diligently pursue such Construction or Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee. If the Construction or Modification is not commenced within the time period prescribed by this Section, the Design Review Committee's approval of the Construction or Modification may be revoked by the Design Review Committee.

3.5 No Changes Without Approval.

Any Construction or Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.

3.6 Review Fee.

The Design Review Committee shall ^{Unofficial Document} have the right to charge a fee for reviewing requests for approval of any Construction or Modification, which fee shall be payable by the Owner or other person submitting the application for approval at the time the application for approval is submitted to the Design Review Committee. The fee charged by the Design Review Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Design Review Committee in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Association may retain architects, engineers or other persons as deemed necessary to review applications or otherwise assist the Design Review Committee.

3.7 New Construction.

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

3.8 No Warranty.

The approval by the Design Review Committee of any Construction or Modification shall not be deemed a warranty or representation by the Design Review Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.9 Conditional Approval.

The Design Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Design Review Committee in an amount determined by the Design Review Committee to be reasonably sufficient to: (a) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond shall be released or security shall be fully refundable to the Owner upon the completion of the Improvements in accordance with the plans and specifications approved by the Design Review Committee and the Owner's written request to the Design Review Committee.

3.10 Improvements to Areas of Association Responsibility.

If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification with respect to the Improvement on the execution by the Owner of an agreement in form and substance acceptable to the Design Review Committee and the Board which obligates the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement. Any such agreement shall be Recorded.

3.11 Design Review Committee.

So long as the Declarant owns one or more Lots, the Declarant shall have the sole right to determine the number of members on the Design Review Committee and to appoint and remove the members of the Design Review Committee. At such time as the Declarant no longer owns any Lot, the Board shall determine the number of members on the Design Review Committee, and the members of the Design Review Committee shall be appointed and may be removed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Design Review Committee, and in that event the Declarant may require, for so long as the Declarant own any Lot, that specified actions of the Design Review Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (a) the size and height of Residences; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (c) placement of Residences and other buildings; (d)

landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; (g) perimeter and screen wall design and appearance; (h) time periods for commencement and completion of any approved construction or modification; and (i) rules and regulations governing construction activities. Any adoption, amendment or repeal of the Design Guidelines after the Declarant no longer has the right to appoint the Design Review Committee must be approved by the Board.

The Design Review Committee may establish one or more subcommittees consisting of one or more members of the Design Review Committee and may delegate to such subcommittee or subcommittees the authority and power of the Design Review Committee to approve or disapprove any Construction or Modification within a specified portion of the Project.

ARTICLE 4

USE RESTRICTION

4.1 Residential Use.

All Residences shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that the Owner, Lessee or other Resident of a Residence may conduct a business activity within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (c) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Lessees or Residents in the Project; (d) the use of the Residence for trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (f) the trade or business is conducted by a Resident or Residents of the Residence with no employee working in or from such Residence who is not a Resident thereof; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) the use of the Residence for a trade or business does not violate any other provision of the Community Documents.

The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is

required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.2 Temporary Occupancy and Temporary Buildings.

No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Design Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee.

4.3 Nuisances; Construction Activities.

No rubbish or debris of any kind shall be placed or permitted to accumulate on 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 Residents of such other property. No condition 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 Residents. No Person shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. 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. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Design Review Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant.

4.4 Antennas.

To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be subject to the prior written approval of the Design Review Committee. Therefore, no antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed, installed, erected, used or maintained on any Lot without the prior written approval of the Design Review Committee.

unless applicable law prohibits the Design Review Committee from requiring such approval. Even if applicable law prohibits the Design Review Committee from requiring prior approval for the installation of certain antennas, any such antennas must still be installed in accordance with the Design Guidelines.

4.5 Trash Containers and Collection.

No garbage or trash shall be placed or kept on any Lot, except in covered containers provided by the City of Phoenix. Both garbage and trash containers and recycling containers must be kept in the garages, except when such containers are placed on the street to make the containers available for collection by the City of Phoenix and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

4.6 Utility Service.

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

4.7 Overhead Encroachments.

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

4.8 Animals.

For purposes of this Section, "Permitted Pet" means a dog, cat, parakeet or similar household bird or other customary household pet. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that a total of two Permitted Pets may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All Permitted Pets shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Lot on which the Permitted Pet is being kept, or be an

annoyance to a person of ordinary sensibilities. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular Permitted Pet is making an unreasonable amount of noise, causing an odor which is detectable outside the Lot on which the Permitted Pet is being kept, or being an annoyance to a person of ordinary sensibilities. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

The Board may adopt rules and regulations further restricting and governing animals within the Property, which rules may include, without limitation rules providing for the removal from the Property of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Occupants.

4.9 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 residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot.

4.10 Signs.

Unofficial Document

No signs whatsoever may be erected, posted or displayed on any Lot (including, but not limited to, the inside or outside surfaces of the windows of a Residence) in a location that is Visible From Neighboring Property without the prior written approval of the Design Review Committee, except for (a) signs constructed or erected by the Declarant or by the Association, and (b) the placement on the Common Area of signs advertising individual Lots for sale provided the location, size and design of such signs are approved by the Design Review Committee.

4.11 Further Subdivision, Property Restrictions, Rezoning and Timeshares.

Without the prior written approval of the Design Review Committee and the Board, no Owner other than the Declarant shall do any of the following: (a) further subdivide a Lot or separate the Lot into smaller lots or parcels; (b) convey or transfer less than all of a Lot; or (c) 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 the Declarant against any Lot without the provisions thereof having been first approved in writing by the Design Review Committee and 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 the Declarant unless the application has been approved by the Design Review Committee and the Board and the proposed use otherwise complies with this Declaration. No Lot shall be subjected

to or used for any timesharing, cooperative, weekly, monthly or any other type or revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

4.12 Vehicles and Parking.

As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) "Street" means the street shown on the Plat which are part of the Common Area to be owned by the Association.

No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property.

The Streets are fire lanes. Therefore, no Motor Vehicle shall be parked on a Street at any time. No Motor Vehicles designed or used for carrying merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for (a) the temporary parking on a driveway situated on a Lot or in designated parking spaces on the Common Area of Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents and (b) Motor Vehicles owned, leased or used by an Owner, Lessee or Resident and which are parked in accordance with the requirements of this Section.

Unofficial Document

Motor Vehicles owned, leased or used by an Owner, Lessee or Resident must be parked in the garage situated on the Lot, except for the temporary parking of such Motor Vehicles in the driveway of the Lot for the purpose of loading or unloading. No Motor Vehicle owned, leased or used by an Owner, Lessee or Resident shall be parked on the Common Area. Motor Vehicles of guests of an Owner, Lessee or other Resident must be parked in designated parking spaces on the Common Area.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is inoperable or is covered by a car cover, tarp or other material.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on the Streets or any other part of the Common Area. No inoperable Motor Vehicle may be stored or parked on the Streets or any other part of the Common Area.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the

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

4.13 Drainage.

No Residence, structure, building, landscaping, or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the municipality in which the Project is located. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans.

4.14 Garages.

No garage shall be converted to living spaces or altered or used for storage of material or other purposes which would prevent the use of the garage for the parking of the number of vehicles for which it was designed, except that the Declarant may use a garage in one or more model homes for a sales office and/or a construction office. Garage doors may not be removed except in connection with the replacement of the door. The interior of all garages shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

Unofficial Document

4.15 Rooftop HVAC Equipment Prohibited.

No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Residence or other building so as to be Visible From Neighboring Property.

4.16 Basketball Goals and Backboards.

No permanent basketball goals or backboards may be constructed, installed or kept on a Lot. Portable basketball goals may be kept on a Lot provided they are stored in the garage when not in use.

4.17 Playground Equipment.

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

4.18 Rental of Lots.

No Owner may lease less than his entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Community Documents and that any violation of this Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease. There shall be no subleasing of Residences or assignments of leases.

At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and each other person who will reside in the Residence during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot and the Residence situated thereon must provide the Lessee with copies of this Declaration, the Design Guidelines and the Association Rules.

Any lease of a Lot or Residence situated thereon must be for an initial term of at least one (1) year. The Owner shall be liable for any violation of this Declaration, the Design Guidelines or the Association Rules by the Lessees or other persons residing in the Residence and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

Unofficial Document

4.19 Screening Materials.

All screening materials, whether fences, hedges or walls, shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the original construction of such Improvements by the Declarant or as approved by the Design Review Committee pursuant to Article 3.

4.20 Lights.

Except as initially installed by the Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Design Review Committee.

4.21 Window Cover Materials.

Within sixty (60) days after becoming the Owner of a Lot, the Owner shall install permanent draperies or suitable window coverings on all windows facing the street. All such window coverings facing the street must show white or beige colors unless otherwise approved in writing by the Design Review Committee. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed

or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Board. No newspaper or other paper of any kind and no sheets or linens may be used as a window coverings on the outside or inside of any window.

ARTICLE 5

EASEMENTS

5.1 Easements for Use of Common Area.

Every Owner and Resident and their guests shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot, subject to:

(a) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.10; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.

(b) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area ^{Unofficial Document} including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area (such as landscaped areas) not intended for use by the Owners, Lessees or Residents.

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

(d) The rights and easements reserved by or granted to the Declarant by this Declaration.

(e) The right of the Association to rent or lease any portion of the Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees.

(f) The right of the Board to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area.

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

(h) The rights and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.

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

The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot to which such right is appurtenant.

5.2 Utility and Development Easements.

A non-exclusive, perpetual blanket easement is hereby granted over and through the Common Area for the purpose of: (a) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property or adjacent land any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; and (b) ingress and egress to install, construct, operate, maintain, repair and replace such equipment and (c) storm water management and storm water drainage, as necessary or desirable for the orderly development of the Property. Such easement is hereby granted to any Person providing the aforesaid utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the surrounding vegetation and improvements to their original condition as soon as possible.

The Declarant hereby reserve the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in this Section or for any other purpose necessary or desirable for the orderly development of the Property. If the Person installing the utility or providing a service requests a specific easement by separate recordable

documents, then the Declarant or the Association shall have the power to record a document locating such easements.

5.3 Easements to Facilitate Development.

The Declarant hereby reserves to itself and its successors and assigns a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, including without limitation: (a) temporary construction easements; (b) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (c) easements for the construction, installation and Maintenance of Improvements on the Property or Improvements reasonably necessary to serve the Property.

The Declarant hereby reserves to itself, its successors and assigns the right to: (a) use any Lots owned or leased by the Declarant, any other Lot with written consent of the Owner thereof or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; and (b) install and maintain on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant deems necessary for the development, sale or lease of the Property.

5.4 Dedications and Easements Required by Governmental Authority.

The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

5.5 Further Assurances.

Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements granted and reservations made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

5.6 Duration of Development Rights; Assignment.

The rights and easements reserved by or granted to the Declarant pursuant to this Article 5 shall continue so long as the Declarant owns one or more Lots or holds an option to purchase one or more Lots. The Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or Maintenance on any portion of the Property.

5.7 Association Powers and Rights.

The Association's exercise of the rights, powers and easements granted in this Article 5 are not subject to the time limitations on duration applicable to the Declarant. If the Declarant or any Owner requests the Association to exercise its powers under this Section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

5.8 Easement for Maintenance and Enforcement.

The Association and its directors, officers, agents, contractors and employees, the Design Review Committee and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residence), for: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Design Review Committee and that all Improvements are being properly maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance; or (e) correcting any condition which violates the Community Documents.

5.9 Easements for Encroachment Unofficial Document

If any Improvements on any Lot or portion of the Common Area now or hereafter encroach on any other portion of the Property by reason of: (a) the original construction thereof; (b) deviations within normal construction tolerances in the Maintenance of any Improvement; or (c) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

ARTICLE 6

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

6.1 Formation of Association.

The Association shall be a nonprofit Arizona corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona

law and all powers necessary or desirable to perform the Association's duties and obligations and to exercise the rights and powers of the Association set forth in the Community Documents. The Association shall not be dissolved unless another entity 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.

6.2 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. The initial directors of the Association shall be designated in the Articles. Until the termination of the Declarant Control Period, the Declarant shall have the right to appoint and remove the 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 Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

6.3 The Association Rules.

The Board may adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (b) minimum standards for the Maintenance of Lots; or (c) restrictions on the use of Lots. In the event of any conflict or inconsistency Unofficial Document the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

6.4 Personal Liability.

No director or officer of the Association, no member of the Design Review Committee or of any committee of the Association, and no other person acting on behalf of the Board shall be personally liable to any Member, or to any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such person's duties and responsibilities under the Community Documents provided such person acted in good faith.

6.5 Implied Rights.

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

6.6 Identity of Members.

The members of the Association shall be the Owners of the Lots. All Owners of Lots shall be mandatory members of the Association. 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.

6.7 Classes of Members and Voting Rights.

The Association shall have the following two classes of voting membership:

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

Class B. The Class B members shall be the Declarant. The Declarant shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall automatically terminate when the Declarant has conveyed all of the Lots to Purchasers.

6.8 Voting Procedures.

No change in the ownership of a ^{Unofficial Document} be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in 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 shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership.

The rights and obligations of any Member other than the Declarant 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 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 notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

6.10 Conveyance or Encumbrance of Common Area.

The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property. In addition, the Association may convey portions of the Common Areas to make adjustments in the boundary lines between the Common Areas and adjoining Lots or public rights-of-way. Except as expressly permitted by this Section, the Common Area shall not be mortgaged or conveyed without the prior written consent or affirmative vote of the Declarant and the total affirmative vote or written consent of the Owners holding at least two-thirds (2/3) of the votes in the Association.

6.11 Suspension of Voting Rights.

If any Owner fails to pay any Assessments or other amounts due to the Association under the Community Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Community Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board, in accordance with the procedures set forth in the Bylaws, shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Community Documents are corrected.

Unofficial Document

ARTICLE 7

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation of Assessments.

Each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs (including but not limited to reasonable attorneys' fees) incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. No Regular Assessment or Special Assessment shall be levied against any Lot owned by the Declarant.

Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Design Review Committee to take some action or perform some function required of it.

7.2 Regular Assessments.

At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments are the amount to be generated through Assessments against the Lots. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot a Regular Assessment. The Regular Assessment shall be the same for each Assessable Lot. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.

The Board shall give notice of the Regular 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 Regular Assessment established by the Board nor relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Regular Assessment for any Assessment Period is required by law, neither the budget nor the Regular Assessment shall be required to be ratified or approved by the Members.

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, the Board may amend the budget and increase the Regular Assessment for that Assessment Period and the revised Regular Assessment shall commence on the date designated by the Board.

7.3 Special Assessments.

The Association may levy against each Assessable Lot a Special Assessment for the purpose of obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area (including fixtures and personal property related thereto), or to pay unbudgeted expenses or expenses in excess of the amount budgeted. Any Special Assessment which exceeds \$5,000 per Lot must be approved by two-

thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. So long as the Declarant owns any Lot, any Special Assessment must be approved in writing by the Declarant. Any Special Assessment shall be levied in an equal amount for each Assessable Lot.

7.4 Assessment Period.

The period for which the Regular Assessment is to be levied shall be the calendar year, except that the first Assessment Period shall commence on the first day of the first month following conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

7.5 Obligation of Declarant for Deficiencies.

During the Declarant Control Period, the Declarant shall pay and contribute to the Association such funds as may be necessary, when added to the Regular Assessment levied by the Association, to pay all Common Expenses of the Association as they become due. The Board may require the payment of such funds by the Declarant from time to time as the Board deems necessary by giving written notice thereof to the Declarant. Each such notice shall state the total amount of funds required. In no event shall the Declarant be obligated to pay or contribute money to the Association in excess of the amount of Regular Assessments that would have been payable by the Declarant if the Lots owned by the Declarant had been assessed as Assessable Lots.

7.6 Rules Regarding Billing and Collection Procedures.

Unofficial Document

Regular Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

7.7 Effect of Nonpayment of Assessments; Remedies of the Association.

Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the

Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

The Association shall have a lien on each Lot for: (a) all Assessments levied against the Lot; (b) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) all fines levied against the Owner of the Lot; (d) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; (e) any amounts payable to the Association pursuant to Section 8.3 or 8.4; and (f) any other amounts payable to the Association pursuant to the Community Documents.

The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. 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 interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ^{Unofficial Document} (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

The Assessment Lien shall have priority over all liens or claims except for: (a) liens and encumbrances recorded before the Recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges against the Lot; and (c) a recorded first mortgage on the Lot, a seller's interest in a first contract for sale pursuant to Title 33, Chapter 6, Article 3 of the Arizona Revised Statutes Recorded prior to the Association's lien or a Recorded first deed of trust on the Lot. Any First Mortgagee or any 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.

The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

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

7.8 Purposes for which Association's Funds May Be Used.

The Association may use the 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 purpose of: (a) discharging and performing the Association's duties and obligations under the Community Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Community Documents or applicable law; (c) providing or promoting activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Project and the Owners, Lessees and Residents; (d) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owners, Lessees and Residents; and (e) taking such other action as the Board deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Project.

7.9 Surplus Funds.

Unofficial Document

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 Regular Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

7.10 Initial Capital Contribution.

Each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Regular Assessment for an Assessable Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Community Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this Section shall be deemed a contribution to the capital of the Association.

7.11 Transfer Fee.

Each Purchaser shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer 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 to deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C.

7.12 Reserve Contribution.

Except as provided in this Section 7.12, each Purchaser shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.12. The amount of the initial Reserve Contribution shall be set by the Board prior to the sale of the first Lot by the Declarant. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

No Reserve Contribution shall be payable with respect to: (i) the transfer or conveyance of a Lot by devise or intestate succession; (ii) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person ^{Unofficial Document} for estate planning purposes; (iii) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (iv) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (v) 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.

All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.13. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

7.13 Reserves.

The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of the Association Responsibility. The reserves may be funded from Regular Assessments, the initial capital contributions paid pursuant to Section 7.10, the Reserve Contributions paid pursuant to Section 7.12 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they

are collected and are to be segregated from and not commingled with any other funds of the Association. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board of Directors; or (b) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. The Board of Directors shall obtain a reserve study at least once every five years, which study shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

Unless the Association is exempt from Federal or State taxes, all reserves shall be accounted for as contributions 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.

Funds in the Reserve Account may only be used to pay costs and expenses related to the periodic maintenance, repair and replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the funds in the Reserve Account for other purposes is approved by the vote of Owners having two-thirds (2/3) of the votes entitled to be cast by Class A members of the Association and by the Class B member of the Association.

ARTICLE 8

MAINTENANCE

8.1 Areas of Association Responsibility.

The Association shall be responsible for the management and Maintenance of the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Association's obligation to maintain, repair and replace the Areas of Association Responsibility shall include, but not be limited to, the following: (a) construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of the Areas of Association Responsibility used as a road, street, driveway or parking area; (b) removal of debris from any portion of the Areas of Association Responsibility used as a road, street, driveway or parking area; (c) repair injured or diseased trees or the vegetation in the Areas of Association Responsibility; (d) reconstruct, repair, replace or refinish any building or other Improvement situated upon the Areas of Association Responsibility; and (e) take all other

actions which the Board deems necessary to preserve and protect the Areas of Association Responsibility.

No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Design Review Committee. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon.

8.2 Lot Owner's Responsibility.

Each Owner of a Lot shall be responsible for the Maintenance of his Lot, the Residence and the landscaping or other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, which is an Area of Association Responsibility. All Residences, 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 shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Design Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residences, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

Unofficial Document

8.3 Assessment of Certain Costs of Maintenance and Repair.

In the event that the need for Maintenance of an Area of Association Responsibility is caused through the intentional or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such Maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

8.4 Improper Maintenance and Use of Lots.

In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are 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 Community Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such

action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

8.5 Boundary Walls.

The Residences will be constructed so that the framed perimeter wall of the Residence will touch a masonry wall which will be constructed on or near the boundary line between Lots. The masonry wall which separates adjacent Residences and any wall which is located on or near the boundary line between two Lots to separate the yard areas of the two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section, the general rules of law regarding boundary walls shall apply.

The Owners of contiguous Lots who share a boundary wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. No Owner shall modify or penetrate a boundary wall that separates adjacent Residences. No Owner shall modify or alter a boundary wall that separates adjacent yard areas without obtaining the consent of the adjacent Owner.

Except as otherwise provided in this Section, the Owners of contiguous Lots who share a boundary wall shall each pay one-half ($\frac{1}{2}$) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half ($\frac{1}{2}$) of such cost. In the event that any boundary wall is damaged or destroyed ^{Unofficial Document} by the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners who share the boundary wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

In the event any boundary wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share such boundary wall.

8.6 Maintenance of Walls other than Boundary Walls.

Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for painting the exterior surface of the walls enclosing the patios. The gate in the walls enclosing the patios shall be maintained, repaired and replaced by the Owner of the Lot. Any wall which is placed on the boundary line between a Lot and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Area of Association Responsibility. In the event any such wall encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be. Any wall which is placed on the boundary line between a Lot and public

right-of-way shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and replacement of the surface of the wall which faces the public right-of-way.

ARTICLE 9

INSURANCE

9.1 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:

(a) 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 coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

Unofficial Document

(b) Property insurance on all Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the current replacement value of the Common Area, as determined by the Board, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(d) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

(e) 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;

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

9.2 Insurance to be obtained by Lot Owners.

Each Owner shall be responsible for obtaining and maintaining in full force and effect (a) property insurance on the Residence and all other Improvements situated on the Owner's Lot and on all personal property of the Owner; and (b) public liability insurance providing coverage for liability arising out of the death, personal injury or property damage arising out of the ownership or use of the Owner's Lot.

9.3 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 iUnofficial Document obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

9.4 Payment of Insurance Proceeds.

With respect to any loss to any Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

9.5 Repair and Replacement of Damaged or Destroyed Property.

Any portion of the Common Areas which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Areas are not repaired or replaced, insurance proceeds attributable to the damaged Common Areas shall be used to restore

the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either be retained by the Association as an additional capital reserve.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Defined Terms. As used in this Article 10, the following terms shall the meaning set forth below:

(a) **"Alleged Defect"** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the of the Common Area or any Lot, or the buildings, Residences and other structures or improvements located thereon, by a Declarant Party including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.

(b) **"Declarant Party"** means: (i) the Declarant and its members, managers, officers, Unofficial Document employees; (ii) the entity which platted the Project if different from but affiliated with Declarant; (iii) the general contractor for the Project; (iv) the subcontractors, material suppliers, labor suppliers, architects, engineers and consultants of any of the said contractors, including but not limited to their respective members, managers, directors, officers, partners, employees, agents and independent contractors; or (v) any employee or other representative of the Declarant who serves as a director or officer of the Association.

(c) **"Claim"** means: (i) any claim or cause of action by a Claimant against a Declarant Party arising out of or related in any way to an Alleged Defect, including, without limitation, any claim or cause of action for breach of express or implied warranties or that a Declarant Party was negligent in the planning, design, engineering, grading, construction or development of the Project; or (ii) any claim or cause of action against a Declarant Party arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

10.2 Agreement to Resolve Certain Disputes Without Litigation. The Association, all Owners and the Declarant Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 10.

10.3 Notice of Alleged Defect. The Association or any Owner who becomes aware of any Alleged Defect which could be the basis for a Claim against any Declarant Party shall give written notice (the "Notice of Alleged Defect") promptly to each Declarant Party who could be responsible for the Alleged Defect. The Notice of Alleged Defect shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Owner giving the Notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. Following the receipt by a Declarant Party of a Notice of Alleged Defect, the Declarant Party and any of its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Association or Owner giving the Notice of Alleged Defect to enter onto or into, as applicable, the Common Area or any Lot for the purposes of inspecting and/or conducting testing to determine the existence, nature and extent of the Alleged Defect and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Nothing set forth in this Section 10.3 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated under applicable law or any warranty provided by the Declarant or any other Declarant Party. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and replace under this Section shall be irrevocable and may not be waived or otherwise terminated, except by written document, in recordable form, executed and recorded by the Declarant Party. In no event shall any statute of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of the Alleged Defect. If the Alleged Defect is not repaired or replaced to the satisfaction of the Association or Owner giving the Notice of Alleged Defect within sixty (60) days after the Notice of Alleged Defect is given to the Declarant Party, then the Association or Owner may proceed with the preparation of the delivery of a Notice of Claim as provided in Section 10.4.

10.4 Notice of Claim. The Association or any Owner who contends or alleges to have a Claim (a "Claimant") against any Declarant Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Declarant Party or initiating any legal action, cause of action, proceeding, or arbitration against any Declarant Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Declarant Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Declarant Party to correct such Alleged Defect; (c) a certification from an engineer

licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

10.5 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant^{Unofficial Document} submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

10.6 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 10.6. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. The Association, the Owners and all Declarant Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 10.6. The Association, the Owners and all Declarant Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any

other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Declarant Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 10.6, the arbitration shall be conducted in accordance with the following rules:

(a) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other rules as the AAA may determine to be applicable (the "AAA Rules").

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 10.6, the provisions of this Section 10.6 shall govern.

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 10.6 as the "Arbitrator".

(d) **Qualifications of Arbitrator.** Unofficial Document The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 10.6 (c).

(f) **Compensation.** The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) **Preliminary Hearing.** Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) **Management of the Arbitration.** The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) **Confidentiality.** All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except ^{Unofficial Document} on prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) **Hearings.** Hearings may be held at any place within Maricopa County, Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) **Final Award.** The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

10.7 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Declarant Party of a Claim Notice with respect to an Alleged Defect, the Declarant Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area and any Lot for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 10.7 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Declarant Party. In no event shall any statutes of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

10.8 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Claimant receiving the judgment, award or settlement is the Association, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

10.9 Approval of Arbitration or Litigation. The Association shall not deliver a Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of their Lot of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.4.

10.10 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 11.6. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

10.11 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 evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et. seq.) now in effect or as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

10.12 Conflicts. In the event of any conflict between this Article 10 and any other provision of the Condominium Documents, this Article 10 shall control. In the event of any conflict between the provisions of this Article 10 and the terms of any express warranty provided to a Purchaser by the Declarant or any third party home warranty company in connection with the purchase of a Lot from the Declarant, the provisions of the express warranty shall control; provided, however, that if the Claim is being asserted by the Association, the approval of the members of the Association required by Section 10.8 must be obtained prior to the Association demanding arbitration of the Claim or filing any legal action with respect to the Claim.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 10 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 10. THE ASSOCIATION, EACH LOT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 10, THEY ARE GIVING Unofficial Document THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH LOT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH LOT OWNER VOLUNTARILY ACKNOWLEDGES 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 CLAIM.

IF AN OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 10 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE MARICOPA 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 10 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 IN THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY 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 TRIAL 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 THE RESPECTIVE SUCCESSORS AND ASSIGNS.

ARTICLE 11

GENERAL PROVISIONS

11.1 Enforcement.

The Association may enforce the C_{Unofficial Document} Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:

(a) imposing reasonable monetary fines after notice and an opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;

(b) suspending an Owner's right to vote;

(c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association;

(e) exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;

(f) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in the Project;

(h) towing vehicles which are parked in violation of this Declaration or the Association Rules; and

(i) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled.

(j) recording a written notice of violation by any Owner, Lessee or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community 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 this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. 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 Community Documents.

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 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.

Any Owner shall also have the right to enforce this Declaration in any manner available at law or in equity. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the

Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If the Association retains or consults with an attorney with respect to any violation of the Community Documents by an Owner, the Lessees of an Owner or the Residents of the Owner's Lot, all attorney fees incurred by the Association shall be assessed against the Owner, whether or not a lawsuit is filed by the Association, and all such attorney fees shall be paid by the Owner to the Association on demand and shall be secured by the Assessment Lien. In the event any lawsuit is filed by the Association, an Owner, a Lessee or Resident to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

11.2 Duration; Termination.

This Declaration, as it may be amended pursuant to Section 11.3, shall run with the land and bind the Property and be in full force and effect 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 holding ninety percent (90%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. ^{Unofficial Document} Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. So long as the Declarant owns one or more Lots or holds an option to purchase one or more Lots, no termination of this Declaration shall be effective unless approved in writing by the Declarant.

11.3 Amendments.

This Declaration may be amended at any time by the affirmative vote of Owners holding not less than two-thirds (2/3) of the total votes in the Association. So long as the Declarant owns one or more Lots, any amendment to this Declaration must be approved in writing by the Declarant. In addition, neither the provisions of Article 10 nor this sentence shall be amended without the prior written consent of the Declarant even if the Declarant no longer owns any Lot at the time the amendment is adopted by the Owner. So long as the Declarant or the Developer owns one or more Lots, the Declarant or the Developer may unilaterally amend this Declaration to comply with the requirements or guidelines of the United States Department of Veterans Affairs, the United States Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Any amendment approved by the Owners pursuant to this Section shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Unless a later

effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

Notwithstanding any other provision of this Declaration to the contrary, this Declaration may not be amended to conflict with the conditions of approval of the Plat by the City of Chandler unless the Plat is abandoned.

Any challenge to an amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment.

11.4 Condemnation of Common Area.

If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners holding at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, 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 Unofficial Document improvements.

If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners holding more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds shall be retained by the Association and used for such purposes as may be determined by the Board.

11.5 Interpretation.

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

11.6 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.

11.7 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 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 Declarant, the Board or the Design Review 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.

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 Unofficial Document all of the enforcement procedures set forth herein.

11.9 References to this Declaration in Deeds.

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

11.10 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.

11.11 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. Unless otherwise specified, all references in this Declaration to Articles or Sections refer to Articles and Section of this Declaration.

ELLSWORTH BROWN DEVELOPMENT, LLC,
an Arizona limited liability company

By: _____

Marvin M. Galts

Its: Manager

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 26th day of April, 2005, by Marvin M. Galts, the Manager of Ellsworth Brown Development, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

Jan 30, 2008

Unofficial Document

EXHIBIT A**LEGAL DESCRIPTION OF PROPERTY**

Lots 1 through 30, and Tracts A through F, inclusive, Ellsworth Heights, according to the plat recorded in Book 555, Page 48, in the records of the County Recorder of Maricopa County, Arizona.



Unofficial Document

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

20070968279 08/29/2007 11:34
ELECTRONIC RECORDING

RECORDING REQUESTED BY:

666607478-6-1-1--
Wadel

When recorded mail to:
Donald E. Dyekman, Esq.
2901 N. Central Ave, Suite 200
Phoenix, AZ 85012

SPACE ABOVE THIS LINE FOR RECORDER'S USE

66-66-07478-DE

CAPTION HEADING:

**First Amendment to Declaration of Covenants,
Conditions, and Restrictions for Ellsworth Heights**

DO NOT REMOVE

This is part of the official document.

When recorded, mail to:
Donald E. Dyekman, Esq.
Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ELLSWORTH HEIGHTS**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Ellsworth Heights (this "First Amendment") is made as of this 7th day of August, 2007, by Ellsworth Heights Community Association, an Arizona nonprofit corporation (the "Association").

RECITALS

A. A Declaration of Covenants, Conditions and Restrictions for Ellsworth Heights was recorded at Recording No. 2005-0606254 in the records of the County Recorder of Maricopa County, Arizona (the "Declaration") to establish a general plan for the development, construction, sale, lease and use of certain real property within the planned community known as Ellsworth Heights.

B. Unless otherwise defined in this First Amendment, each capitalized term used in this First Amendment shall have the meaning given to such term in the Declaration.

C. Section 11.3 of the Declaration provides that the Declaration may be amended at any time by the affirmative vote of the Owners holding not less than two-thirds (2/3) of the total votes in the Association. Section 11.3 further provides that so long as the Declarant owns one or more Lots, an amendment to the Declaration must be approved in writing by the Declarant. Section 11.3 further provides that any amendment approved by the Owners shall be signed by the President or Vice President of the Association and shall be Recorded.

D. The Declarant holds two-thirds (2/3) or more of the total votes in the Association. As evidenced by the Consent of Declarant attached hereto, the Declarant has voted for and approved this First Amendment.

AMENDMENT

NOW, THEREFORE, the Declaration is amended as follows:

1. Sections 4.12 of the Declaration is amended in its entirety to read as follows:

4.12 " Vehicles and Parking.

As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) "Street" means the street shown on the Plat which are part of the Common Area to be owned by the Association.

No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property, at street level.

The Streets are fire lanes. Therefore, no Motor Vehicle shall be parked on a Street except in the designated parking areas. No Motor Vehicles designed or used for carrying merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for (a) the temporary parking on a driveway situated on a Lot or in designated parking spaces on the Common Area of Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents and (b) Motor Vehicles owned, leased or used by an Owner, Lessee or Resident and which are parked in accordance with the requirements of this Section.

Motor Vehicles owned, leased or used by an Owner, Lessee or Resident must be parked in the garage situated on the Lot, or in the driveway of the Lot. No Motor Vehicle owned, leased or used by an Owner, Lessee or Resident shall be parked on the Common Area for more than 24 hours. Motor Vehicles of guests of an Owner, Lessee or other Resident must be parked in designated parking spaces on the Common Area.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is inoperable or is covered by a car cover, tarp or other material.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property (at street level), and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property.

Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on the Streets or any other part of the Common Area. No inoperable Motor Vehicle may be stored or parked on the Streets or any other part of the Common Area.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board of Directors, the provisions of this Section shall control.

2. The two references in Section 4.5 of the Declaration to the City of Phoenix are amended to refer to the City of Mesa.

3. The first sentence of Section 7.10 of the Declaration is amended in its entirety to read as follows:

Each Purchaser of a Lot shall pay to the Association, immediately upon becoming owner of the Lot, a sum equal to one-sixth (1/6th) the then current assessment for an assessable Lot.

4. The following sentence is added at the end of Section 8.2 of the Declaration:

Within six (6) months after becoming the Owner of a Lot, the Owner shall install landscaping in the front yard of the Lot in accordance with plans and specifications approved by the Architectural Committee in accordance with the provisions of Article 3 of this Declaration.

5. Except as expressly amended by this First Amendment, the Declaration shall remain in full force and effect. In the event of any conflict or inconsistency between this First Amendment and the Declaration, this First Amendment shall control. The Association certifies that this First Amendment was approved as required by Section 11.3 of the Declaration.

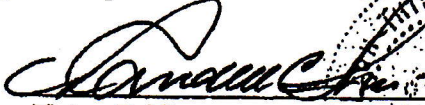
**ELLSWORTH HEIGHTS
COMMUNITY ASSOCIATION,**
an Arizona nonprofit corporation

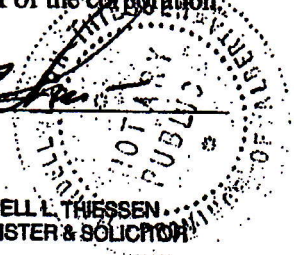
By: _____

Its: MANAGE, INC.

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 23 day of August, 2007, by MAURIN LUTS, the manager of Ellsworth Heights Community Association, an Arizona nonprofit corporation, on behalf of the corporation.


Notary Public


RANDELL L. THIESSEN
BARRISTER & SOLICITOR

My Commission Expires:
no longer

CONSENT OF DECLARANT

Ellsworth Brown Development LLC, an Arizona limited liability company, hereby approves, votes for and consents to the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions for Ellsworth Heights.

Dated this 23 day of August, 2007.

**ELLSWORTH BROWN
DEVELOPMENT, LLC**, an Arizona
limited liability company


By: 

Marvin M. Galts

Its: MANAGING MEMBER

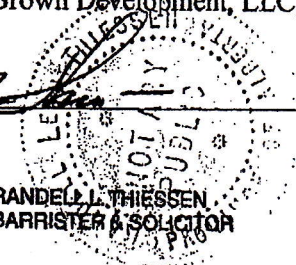
State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 23 day of Aug., 2007, by Marvin M. Galts, the Manager of Ellsworth Brown Development, LLC, an Arizona limited liability company, on behalf of the company.


Notary Public

My Commission Expires:

NO EXPIRY


RANDELL L. THIESSEN
BARRISTER & SOLICITOR

Capital Title Agency Inc.
2901 East Camelback Road
Phoenix, Arizona 85016

Builder Services

Unofficial
Document

1

2

1 OF 1

GARCIAO

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
ELLSWORTH HEIGHTS**

ARTICLE 1 - DEFINITIONS	6
ARTICLE 2 - PROJECT GENERAL PLAN; BINDING EFFECT	11
2.1 PROJECT GENERAL PLAN; BINDING EFFECT	11
2.2 DISCLAIMER OF REPRESENTATIONS	11
ARTICLE 3 - USE RESTRICTIONS	12
3.1 ARCHITECTURAL CONTROL	12
3.2 TEMPORARY OCCUPANCY AND TEMPORARY STRUCTURES	14
3.3 NUISANCES; CONSTRUCTION ACTIVITIES	14
3.4 DISEASES AND INSECTS	14
3.5 ANTENNAS	15
3.6 MINERAL EXPLORATION	15
3.7 ENVIRONMENTAL RESTRICTIONS	15
3.8 TRASH CONTAINERS AND COLLECTION	15
3.9 CLOTHES DRYING FACILITIES	15
3.10 UTILITY SERVICE	15
3.11 OVERHEAD ENCROACHMENTS	16
3.12 RESIDENTIAL USE	16
3.13 ANIMALS	17
3.14 MACHINERY AND EQUIPMENT	17
3.15 ROOF STRUCTURES AND EQUIPMENT	17
3.16 WINDOW TREATMENTS	17
3.17 SIGNS	18
3.18 RESTRICTION ON FURTHER SUBDIVISION, PROPERTY RESTRICTIONS AND REZONING	18
3.19 COMMERCIAL VEHICLES	18
3.20 GENERAL VEHICLE RESTRICTIONS AND GUEST PARKING	19
3.21 TOWING OF VEHICLES	19
3.22 LIGHTING	19
3.23 DRAINAGE	19

Unofficial Document

3.24	GARAGES / GARAGE SALES	20
3.25	BASKETBALL GOALS AND BACKBOARDS	20
3.26	PLANTING AND LANDSCAPING	20
3.27	VARIANCES	20
3.28	NO WARRANTY OF ENFORCEABILITY	21
 ARTICLE 4 - EASEMENTS		 22
4.1	OWNERS' EASEMENTS OF ENJOYMENT IN COMMON AREA/DECLARANT'S OBLIGATION TO CONVEY COMMON AREA	22
4.2	UTILITY EASEMENT	23
4.3	DECLARANT'S USE FOR SALES AND LEASING PURPOSES	23
4.4	DECLARANT'S EASEMENTS	23
4.5	EASEMENTS IN FAVOR OF ASSOCIATION	24
4.6	EASEMENTS FOR ENCROACHMENTS	24
 ARTICLE 5 - THE ASSOCIATION: ORGANIZATION, MEMBERSHIP, & VOTING RIGHTS		 25
5.1	FORMATION OF ASSOCIATION	25
5.2	BOARD OF DIRECTORS AND OFFICERS	25
5.3	ASSOCIATION RULES	25
5.4	PERSONAL LIABILITY	25
5.5	IMPLIED RIGHTS	25
5.6	IDENTITY OF MEMBERS	26
5.7	CLASSES OF MEMBERSHIP AND VOTING RIGHTS	26
5.8	VOTING PROCEDURES	26
5.9	TRANSFER OF MEMBERSHIP	27
5.10	ARCHITECTURAL CONTROL	27
5.11	CONVEYANCE OR ENCUMBRANCE OF COMMON AREA	27
5.12	SUSPENSION OF VOTING RIGHT	28
 ARTICLE 6 - COVENANT FOR ASSESSMENTS AND CREATION OF LIEN		 29
6.1	CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS	29

6.2	ANNUAL ASSESSMENTS	29
6.3	RATE OF ASSESSMENT	30
6.4	OBLIGATION OF DECLARANT FOR DEFICIENCIES	30
6.5	SPECIAL ASSESSMENTS	30
6.6	ASSESSMENT PERIOD	31
6.7	COMMENCEMENT DATE OF ASSESSMENT OBLIGATION	31
6.8	RULES REGARDING BILLING AND COLLECTION PROCEDURES	31
6.9	EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION	31
6.10	EVIDENCE OF PAYMENT OF ASSESSMENTS / RESALE UNIT INFORMATION	33
6.11	PURPOSES FOR WHICH ASSOCIATION'S FUNDS MAY BE USED	33
6.12	SURPLUS FUNDS	33
6.13	WORKING CAPITAL FUND	33
6.14	TRANSFER FEE	34
6.15	NO OFFSETS	34
6.16	NO EXEMPTION OF OWNERS	34
6.17	MAINTENANCE OF RESERVE FUND	34
6.18	NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 6.2 OR 6.5	34
6.19	UNALLOCATED TAXES	35
6.20	ASSESSMENTS ON LOTS SUBSEQUENTLY ANNEXED	35
	ARTICLE 7 - MAINTENANCE	36
7.1	MAINTENANCE OF COMMON AREA AND OTHER AREAS OF ASSOCIATION RESPONSIBILITY	36
7.2	MAINTENANCE OF LOTS BY OWNERS	36
7.3	ASSESSMENT OF CERTAIN COSTS OF MAINTENANCE AND REPAIR	37
7.4	IMPROPER MAINTENANCE AND USE OF LOTS	37
7.5	BOUNDARY WALLS	37
7.6	MAINTENANCE OF WALLS OTHER THAN BOUNDARY WALLS	38
	ARTICLE 8 - INSURANCE	39
8.1	SCOPE OF COVERAGE	39

8.2	CONTENTS OF POLICIES	40
8.3	LIMITATION OF LIABILITY	40
8.4	CERTIFICATES OF INSURANCE	40
8.5	PAYMENT OF PREMIUMS	40
8.6	PAYMENT OF INSURANCE PROCEEDS	40
8.7	REPAIR AND REPLACEMENT OF DAMAGED OR DESTROYED PROPERTY	41
	ARTICLE 9 - GENERAL PROVISIONS	42
9.1	ENFORCEMENT	42
9.2	TERM: METHOD OF TERMINATION	42
9.3	AMENDMENTS	42
9.4	ADDITIONAL REQUIREMENTS FOR AMENDMENT OF CERTAIN PROVISIONS	44
9.5	RIGHTS OF FIRST MORTGAGES, ELIGIBLE MORTGAGE HOLDERS, AND ELIGIBLE INSURERS OR GUARANTORS	45
9.6	INTERPRETATION	48
9.7	SEVERABILITY	48
9.8	RULE AGAINST PERPETUITIES	48
9.9	CHANGE OF CIRCUMSTANCES	48
9.10	NOTICE OF VIOLATION	49
9.11	LAWS, ORDINANCES, AND REGULATIONS	49
9.12	RIGHT TO INSPECT DOCUMENTS; AUDITED FINANCIAL STATEMENTS	49
9.13	CONDEMNATION	50
9.14	REFERENCES TO THIS DECLARATION IN DEEDS	50
9.15	GENDER AND NUMBER	51
9.16	CAPTIONS AND TITLES	51
9.17	NOTICES	51
9.18	FHA / VA APPROVAL	51
9.19	NO ABSOLUTE LIABILITY	51
9.20	REFERENCES TO VA AND FHA	51
9.21	DECLARANT'S RIGHT TO USE SIMILAR NAME	52

Unofficial Document

ARTICLE I

DEFINITIONS

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

1.1 "Annexable Property" means the real property located in Maricopa County, Arizona, which is described on Exhibit B attached to this Declaration, together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

1.2 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.3 "Architectural Committee" or "Committee" means the committee of the Association which may be created as a separate committee of the Board pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.4 "Architectural Committee Rules" Unofficial Document means any rules, guidelines, standards and procedures adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.5 "Areas 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; and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to the State of Arizona or any county of municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair, and replacement of such areas.

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

1.7 "Assessment" means an Annual Assessment or Special Assessment or any other charge property levied against a Lot by the Association pursuant to this Declaration or Arizona law.

1.8 "Assessment Lien" means the lien created and imposed by Article 6 of this Declaration and Arizona law.

- 1.9 "Assessment Period" means the period set forth in Section 6.6 of this Declaration.
- 1.10 "Association" means the Arizona nonprofit corporation to be 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 intends to incorporate the Association under the name "ELLSWORTH HEIGHTS HOMEOWNERS' ASSOCIATION" but if such name is not available, Declarant reserves the right to incorporate the Association under such other name as the Declarant deems appropriate.
- 1.11 "Association Rules" means any rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.
- 1.12 "Board" means the Board of Directors of the Association.
- 1.13 "Bylaws" means the Bylaws of the Association, as amended from time to time.
- 1.14 "Common Area" means: (i) Tracts A, B, C, D, E, and F according to the Plat, including the recreational Improvements thereon; and (ii) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which ^{Unofficial Document}ation has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest. Improvements on the common Area may include, but are not limited to, play areas, sidewalks, parking, cluster mailboxes, and permanent signage.
- 1.15 "Common Expense(s)" mean expenditures made by or financial liabilities incurred by the Association, together with allocations to reserves.
- 1.16 "Declarant" means Homes by Judi of Arizona, LLC., and any Person to whom it may expressly assign any or all of its rights under this Declaration by an instrument recorded with the County Recorder of Maricopa County, Arizona.
- 1.17 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements, as amended from time to time.
- 1.18 "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has filed a written request pursuant to Section 9.5.1 of this Declaration.
- 1.19 "Eligible Mortgage Holder" means any First Mortgagee who has filed a written request pursuant to Section 9.5.1 of this Declaration.

1.20 "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.

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

1.22 "Improvement" means any building, fence, gate, sidewalk, wall, other structures, road, driveway, parking area, cluster mailboxes, permanent signage, and lighting fixtures, and trees, plants, shrubs, grass or other landscaping of every type and kind.

1.23 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot, including an assignee of a lease.

1.24 "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 indicates or requires, shall include any Residential Dwelling or other improvements situated on the Lot.

1.25 "Member" means any Person who is a member of the Association.

Unofficial Document

1.26 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple 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) Persons 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 simple 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 simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.27 "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.

1.28 "Plat" means the plat of ELLSWORTH HEIGHTS recorded on February 28, 2001 in Book 555, page 48, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.29 "Project" means the real property described on Exhibit A attached to this Declaration and all real property subsequently annexed by the Declarant pursuant to Section 2.3 of the Declaration, together with all Improvements located thereon and all easements, rights and privileges appurtenant thereto.

1.30 "Project Documents" means this Declaration, the Articles, the Bylaws, and the Association rules and the Architectural Committee Rules, if any.

1.31 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model 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.

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

1.33 "Resident" means each individual ~~Unofficial Document~~ 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.

1.34 "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 residence.

1.35 "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Dwelling.

1.36 "Special Assessment" means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.37 "Yard" means the portion of the Lot 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. "Public Yard" means that portion of a Yard which is generally Visible from Neighboring Property, whether or not it is located in front of, beside, or behind the Residential Dwelling.

1.38 “Visible from Neighboring Property” means, with respect to any given object, that such object is or would be visible to a person six feet tall standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Unofficial Document

ARTICLE 2**PROJECT GENERAL PLAN AND BINDING EFFECT;
DISCLAIMER OF REPRESENTATIONS; RIGHT OF ANNEXATION****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. The 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, 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 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 in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Disclaimer of Representations

Declarant makes no representations or warranties whatsoever that: (i) the Project shall be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) any portion of the Project will be committed to or developed for a particular use or for any use, except that all such shall be consistent with the development of the project for Single Family Residential purpose; or (iii) the use of any portion of the Project will not be changed in the future.

ARTICLE 3

USE RESTRICTIONS

3.1 Architectural Control

3.1.1 No Improvement which would be Visible from Neighboring Property shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or work which in any way alters the exterior appearance of any part of a Lot and/or any Improvements located thereon, and which is Visible from Neighbor Property, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee. Accordingly, approval of the Architectural Committee is not required for the construction, installation, addition, alteration, or repair of any Improvement situated in the Private Yard of a Lot. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change, or replacement of any Improvement which is or would be Visible from Neighboring Property shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change, or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Committee any additional information, plans, and specifications which the Committee may request. In the event that the Architectural Committee fails to approve an application for approval within thirty (30) days after receipt of the application Unofficial Document with any fee payable pursuant to Section 3.1.5 of this Declaration and all supporting information, plans, and specifications requested by the Architectural Committee, have been submitted to the Committee, such application shall be deemed denied. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change, or other work pursuant to this Section 3.1 shall not be deemed a waiver of the Committee's right to withhold approval of any similar construction, installation, addition, repair, change, or other work subsequently submitted for approval.

3.1.2 The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change, or other work which must be approved by the Committee pursuant to this Section 3.1 if the Committee determines, in its sole and absolute discretion, that the proposed construction, installation, addition, alteration, repair, change, or other work; (i) would violate any provision of this Declaration; (ii) does not comply with any Architectural Committee Rule; (iii) is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (iv) is not aesthetically acceptable; (v) would be detrimental to or adversely affect appearance of the Project; or (vi) is not otherwise in accord with the general plan of development for the Project.

3.1.3 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change, or other work, the Owner who had requested such approval shall proceed to perform or cause to be performed the work approved by the 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 Committee.

3.1.4 Any changes, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Committee.

3.1.5 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Committee.

3.1.6 All Improvements constructed on Lots shall be of new construction, and non-buildings or other structures shall be removed from other locations and placed on any Lot.

3.1.7 The provisions of this Section 3.1 do not apply to, and approval of the Architectural Committee shall not be required for, the construction, installation, addition, alteration, repair, or change of any Improvements made by, or on behalf of Declarant.

3.1.8 The approval required of the Architectural Committee pursuant to this Section 3.1 shall be in addition to, and not in lieu of, any approvals or permits Unofficial Document may be required under any federal, state or local law, statute, ordinance, rule or regulation. Before commencing the work of the Improvement and, after receiving Architectural Committee approval, the Owner shall provide the Committee with a copy of any applicable permits required by law for the work.

3.1.9 The approval of the Architectural Committee of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such work or that such work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule, or regulation.

3.1.10 The Architectural Committee may condition its approval of plans and specifications upon the agreement of the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Committee in an amount to be determined by the Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvements, 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 shall be fully refundable to the Owner upon: (i) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee; and (ii) the

Owner's written request to the Architectural Committee, provided that there is no damage caused to an Area of Association Responsibility by the Owner or its agents or contractors.

3.1.11 If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that Association is responsible for maintenance, repair, and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed construction, installation, alteration, addition, repair, change, or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance, or replacement of such Improvement.

3.2 Temporary Occupancy and Temporary Structures

No trailer, basement of an incomplete building, tent, shack, garage or 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 approved by the Architectural Committee shall be removed immediately after the completion of construction.

3.3 Nuisances; Construction Activities

No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or any 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 activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Project or the 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 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 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 Architectural Committee, 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.

3.4 Diseases and Insects

No person shall permit any thing 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

No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee who may limit or restrict the placement of such antennas or other devices absent appropriate screening and architectural conformity consistent with FCC Rules as further described in Section 3.15 below.

3.6 Mineral Exploration

No Lot or other portion of the Project 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 Environmental Restrictions

All Owners and Residents in the Project shall be responsible for complying with all federal and state environmental and health laws. Without limiting the foregoing, no Resident may dispose of, transport, or store "hazardous materials" on his Lot or on the Common Area other than small amounts of ordinary household non-combustible cleaning agents maintained on his Lot and in no event may any Owner or Resident 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.

Unofficial Document

3.8 Trash Containers and Collection

No garbage or trash shall be placed or kept on any Lot or other portion of the Project, except in covered containers of a type, size and style which are approved by the Architectural Committee and/or supplied by the County of Maricopa. In no event shall such containers be maintained so as to be Visible from Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other Portions of the Project and shall not be allowed to accumulate thereon. No indoor incinerators shall be kept or maintained on any Lot or other portion of the Project.

3.9 Clothes Drying Facilities

No outside clotheslines or other facilities for drying or airing clothes shall be erected, placed, or maintained on any Lot or other portion of the Project so as to be Visible from Neighboring Property.

3.10 Utility Services

No lines, wires, or other devices for the communications 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 buildings or other structures approved by the Architectural Committee. No provision

of the Declaration shall be deemed to forbid the erection of temporary power or telephone structures incidents to the construction of buildings or structures approved by the Architectural Committee.

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 eight (8) feet.

3.12 Residential Use

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 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 does not involve persons coming onto the Lot or the door-to-door solicitation of Residents; (iv) the trade or business conducted by the Owner or Resident does not require more than one (1) employee working in or from such Residential Dwelling who is not a lawful Resident thereof; (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 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 Section 3.12 shall be construed to have ordinary, general accepted meanings, and shall include, without limitations, any occupation, work, or activity undertaken on any ongoing basis which involves the provision of goods or services to person other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity.

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 a Lot shall have the absolute right to lease his Lot and the Residential Dwelling thereon, provided that the Lease is in writing and 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 provided further that the lease shall not be for a period of less than thirty (30) days.

3.13 Animals

No animals, bird, fowl, poultry, reptile, or livestock may be kept on a Lot temporarily or permanently, except for dogs, cats, common domestic birds such as parakeets, cockatiels, and parrots, or similar household pets kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats, or other household pets permitted to be kept on a Lot under this Section 3.13 shall be confined to an Owner's Lot, except that a dog, cat, or other pet capable of being walked on a leash may be permitted to leave an Owner's Lot if such animal is kept at all times on a leash not to exceed six (6) feet in length and is not permitted to enter upon any other Lot. It shall be the responsibility of the Owner or Resident to immediately remove any droppings from pets. No household pet permitted on a Lot under this Section 3.13 shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing, or confinement of any permitted household pet shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner or Resident, the Architectural Committee shall conclusively determine, in its sole discretion, whether for the purposes of the Section 3.13, a particular animal constitutes a household pet pursuant to this Section 3.13 or whether such animal is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

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~~ ^{unofficial document} equipment used in connection with the maintenance or construction during the period of construction on an Improvement, or (ii) such machinery or equipment which Declarant or the Association may require for the 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. The Architectural Committee may grant a variance for solar panels or other solar equipment if attractively screened in accordance with standard established by the Committee, subject to applicable federal or state energy conservation laws governing the installation of solar equipment on Residential Units; and provided further, that the Association may not prohibit or unduly restrict satellite dishes and antennas of the types covered by the Federal Communication Commission rules promulgated to the Telecommunications Act of 1996, as amended from time to time; provided further, that nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics Rules which do not impede the Owner's ability to obtain adequate reception from a protected class of satellite dishes or antennas within the scope of the FCC rules.

3.16 Window Treatments

All windows within any Residential Dwelling on a Lot shall be covered with appropriate window treatments within ninety (90) 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 shall be installed or placed on the outside or inside of any windows. The exterior of all drapes, curtains, or other window coverings shall be white, off-white, beige or natural wood-toned color, or such other colors as permitted by the Architectural Committee.

3.17 Signs

No emblem, logo, sign, or billboard of any kind whatsoever (including, but not limited to, commercial, political, "for sale", "for rent", and similar signs) which are Visible from Neighboring Property shall be erected or maintained on any Lot except: (i) signs required by legal proceedings; (ii) Residential Dwelling identification signs not exceeding 6 x 12 inches in size; (iii) one standard size realty company "for sale" or "for lease" sign; (iv) Project identification signs and other marketing signs installed by Declarant or the Association; and (v) such other signs as are approved by the Architectural Committee.

3.18 Restrictions on Further Subdivision, Property Restrictions and Rezoning

No Lot shall be further subdivided or separated into smaller Lots or parcels or divided into "time share" intervals as that term is defined in A.R.S. 32-2197, as amended from time to time, and no portion less than all of any such Lot shall be conveyed or transferred by an Owner other than Declarant, without the prior written consent of the Architectural Committee. No further covenants, conditions, restrictions, or easements shall be recorded by any Owner, Lessee, or other Person other than Declarant or the Board without the provisions thereof having first been approved by the Architectural Committee. No application for rezoning, variances, or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than Declarant or the Board, unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.19 Commercial Vehicles

No truck (other than a Family Vehicle truck as defined below), mobile home, bus, travel trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle (hereinafter "Commercial Vehicles") may be parked, maintained, constructed, reconstructed, or repaired on any Lot or Common Area (including driveways or Public Yards of Lots and any Common Areas streets) so as to be Visible from Neighboring Property without the prior written approval of the Architectural Committee, except for: (i) the temporary parking of any Commercial Vehicle on a Lot or street for loading and unloading for a period of not more than twenty-four (24) 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 Architectural Committee; and (iii) Commercial 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 less than one ton capacity with camper shells not exceeding eight (8) 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 Architectural Committee may, acting in good faith, designate a Commercial Vehicle 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 Vehicles are collectively referred to in this Article 3 as "Vehicles".

3.20 General Vehicle Restrictions and Guest Parking

3.20.1 Except for emergency Vehicle repairs, and subject to the further restrictions of Section 3.19 above, no Vehicle shall be constructed, reconstructed, or repaired on a Lot or any other portion of the Project except within the enclosed garage of a Residential Dwelling.

3.20.2 Subject to the further restrictions of Section 3.19 above, no Vehicle shall be parked on the Public Yard of any Lot, except for the driveway or attached garage or on any Common Area street or private road in the Project; provided, however, that Vehicles of guests and invitees of Residents in the Project may temporarily park on the private roads in the Project for a period not to exceed forty-eight (48) hours during any seven day period.

3.20.3 Parking spaces, if any, located on the Common Area shall be available for use by the guests and invitees of Owners and other Residents; provided, however, that the Board shall have the right to assign such parking spaces to the exclusive use of a Lot. The Board shall have the right to adopt Association Rules limiting the duration of guest parking.

Unofficial Document

3.21 Towing of Vehicles

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 at the sole cost and expense of the owner of the Vehicle. Any expense incurred by the Association in connection with the towing of any Vehicle shall be paid to the Association upon demand by the owner of the Vehicle. If the Vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner as provided for in this Declaration for the collection of Assessments.

3.22 Lighting

Except as initially installed by Declarant, no spotlights, flood lights, or other high intensity lighting shall be placed on utilized on any Lot which will allow light to be directed or reflected in any manner on the Common Area or any Lot.

3.23 Drainage

No Residential Dwelling or other Improvement shall be constructed, installed, placed, or maintained in any manner that would obstruct, interfere with, or change the direction or flow of water in 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 County of Maricopa.

3.24 Garages / Garage Sales

Garages shall be used only for the parking of Vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. Because the Project is a gated community, garage sales, or any similar type of sales or organized activities that would require the invitation to the Project of the public at large are not allowed within the Project, except that the Board may coordinate a cooperative garage sale or other organized activity for participation by all the Residents on a periodic basis.

3.25 Basketball Goals and Backboards

No basketball goal or backboard shall be attached to a roof of a Residential Dwelling.

3.26 Planting and Landscaping

Except for: (i) such planting and landscaping as is 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 Architectural Committee.

Unofficial Document

3.27 Variances

The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on an Owner 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 majority of the Committee members. If such variance is granted, no violation of the covenant, 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 Architectural Committee shall have the right to condition the granting of a variance as it may determine in the Committee's sole discretion, including, without limitation, making a variance temporary or permanent; or requiring the removal or replacement of a non-permanent or semi-permanent structure upon the sale or other conveyance of a Lot. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one instance or under certain circumstances, terms,

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 County of Maricopa.

3.24 Garages / Garage Sales

Garages shall be used only for the parking of Vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. Because the Project is a gated community, garage sales, or any similar type of sales or organized activities that would require the invitation to the Project of the public at large are not allowed within the Project, except that the Board may coordinate a cooperative garage sale or other organized activity for participation by all the Residents on a periodic basis.

3.25 Basketball Goals and Backboards

No basketball goal or backboard shall be attached to a roof of a Residential Dwelling.

3.26 Planting and Landscaping

Except for: (i) such planting and landscaping as is 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 Architectural Committee.

Unofficial Document

3.27 Gated Community

The Declarant will install, and the Association shall maintain and operate, entry or privacy gates at the entrance(s) / exit(s) to the Project. Neither the Declarant, nor the Association, Architectural Committee, or any member, directors, officer, shareholder, employee, or agent thereof, makes any representation to any Owner, Resident, or any other Person as to whether such privacy gates will be installed, or if installed, as to the security afforded by the existence of such gates. All Owners assume the risk of harm, damage, or injury to person or property of any kind from trespassers and agree that no claim or cause of action shall be maintained against Declarant, the Association, the Architectural Committee, or any member, director, officer, shareholder, employee, or agent thereof as a result of any harm resulting to an Owner, Resident, or other Person from a trespass through or around the gates areas.

3.28 Variances

The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on an Owner 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 majority of the Committee members. If such variance is granted, no violation of the covenant, 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 Architectural Committee shall have the right to condition the granting of a variance as it may determine in the Committee's sole discretion, including, without limitation, making a variance temporary or permanent; or requiring the removal or replacement of a non-permanent or semi-permanent structure upon the sale or other conveyance of a Lot. Moreover, because of the unique facts and circumstances surrounding each variance request, 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 Architectural Committee, in good faith, to disapprove a variance request in such instance.

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 unenforceable for any reason or to an extent, Declarant makes not 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.

ARTICLE 4

EASEMENTS

4.1 Owner's Easements of Enjoyment in Common Area / Declarant's Obligation to Convey Common Area

4.1.1 Subject to the rights and easements granted to the Declarant in Sections 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 any private streets which are part of the Common Area for ingress 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;
- (ii) The right of the Association to regulate the use of the Common Area through Association Rules and to charge reasonable admission or other fees for the use of any clubhouse or recreational facilities situated on the Common Area and to prohibit access to such portions of the Common Area, such as landscaped areas, not ^{intended} _{Unofficial Document} 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 (other than the right of an Owner and such Resident to use any private streets which are part of the Common Area for ingress or egress to the Owner's Lot) 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 Resident has violated any provision of the Project Documents and has failed to cure such violation, with such suspension not to exceed sixty (60) days for any infraction of the Project Documents other than the failure to pay Assessments, which suspension shall continue until the delinquent Assessment and all other late fees, interest, and other charges in conjunction therewith shall be paid.

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

4.1.3 Declarant shall convey the Common Area free and clear of all liens and monetary encumbrances to the Association not later than the conveyance of the first Lot to a Purchaser. Declarant shall provide the

[illegible][illegible][illegible][illegible][illegible]

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
2	2	1	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
3	3	2	1	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
4	4	3	2	1	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
5	5	4	3	2	1	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80																				

[illegible]

4.5 Easements in Favor of Association

The Lots are hereby made subject to easements in favor of the Association and its directors, officers, agents, employees, and independent contractors for: (i) inspection of the Lots (but not the interior of Residential Dwelling) 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 Project Documents; (ii) inspection, maintenance, repair, and replacement of the Areas of Association Responsibility accessible only from such Lots; (iii) correction of 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 Areas for the purpose of accommodating minor encroachments due to engineering errors, errors in original construction, settlement or shifting of 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 Resident or intentional encroachments, and provided, further that Declarant may remove and/or relocate any boundary wall or other encroachments onto Lots owned by Declarant, at Declarant's sole expense unless caused by the willful misconduct of any adjacent Owner or Resident.

Unofficial Document

ARTICLE 5**THE ASSOCIATION: ORGANIZATION, MEMBERSHIP
AND VOTING RIGHTS****5.1 Formation of Association**

The Association shall be a non-profit Arizona Corporation charged with the duties and invested with the powers prescribed by law and set forth in the Article, Bylaws, and this Declaration.

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. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

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 including, but not limited to, any recreational facilities situated Unofficial Document upon the Areas of Association Responsibility; (ii) minimum standards for maintenance of Lots; or (iii) the health, safety, and welfare of the Owners and Residents.

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 9.5.6 hereof, the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.

5.6 Identity of Member

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.

5.7 Classes of Membership and Voting Right

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 until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, Declarant shall be a Class A Member with one (1) vote for each Lot owned by Declarant but only for so long as Declarant owns any Lots.

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. The Class B membership shall cease and be converted to Class A Membership on the earlier of:

- a. One hundred and twenty days (120) days after the sale of all Lots to individual buyers; or
- b. Ten (10) years after the Recording of this Declaration; or
- c. The Declarant advises the Association that it is relinquishing all Class B votes.

If any Person to who Declarant has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security for an obligation succeeds to the interests of Declarant by virtue of the assignment, Class B membership shall not be terminated and the Person so succeeding to Declarant's interest shall hold Class B membership on the same terms as they were held by Declarant.

5.8 Voting Procedures

No change in 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 the Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

5.12 Suspension of Voting Rights

If any Owner fails to pay any Assessments of 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 of an Owner's lot violates any other provisions 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 until such time as all payment, including late charges, interest, and attorney's fees are brought current. Additionally, the Board shall have the right to suspend such Owner's right to vote for any other infraction or violation of the Project's Documents if such violation is not cured within thirty (30) days after notification from the Board.

Unofficial Document

ARTICLE 6

CONVENANT FOR ASSESSMENTS AND CREATION OF LIEN

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, but by becoming the Owner of a 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, together with interest, late charges, and all costs and charges permitted under the Project Documents, including but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, late charges, and all costs and charges permitted under the Project Documents, including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2 Annual Assessments

Unofficial Document

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 against each Lot an annual Assessment (the "Annual Assessment").

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 viability of the Annual Assessment established by the Board nor relieve any Owner from its obligations 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 Assessments by Members, it may increase the Annual Assessment for that Assessment (except as expressly limited in Section 6.2.3 (iv) below and by Arizona law) up to the Maximum Annual Assessment for that year and the revised Annual Assessment for that Assessment Period shall commence on the date designated by the Board.

6.2.3 The maximum Annual Assessment (the "Maximum Annual Assessment") for each fiscal year of the association shall be as follows:

- (i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Maximum annual Assessment for each Lot shall be SEVEN HUNDRED AND EIGHTY DOLLARS (\$780.00).
- (ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the Members, increase the Maximum Annual Assessment during each fiscal year of the Association by twenty percent (20%) of the Maximum Annual Assessment for the immediately preceding fiscal year.
- (iii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Maximum Annual Assessment may be increased by an amount greater than the amount established under Section 6.2.3(u) above, only by a majority vote of Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.3 Rate of Assessment

Except for Lots owned by Declarant, the Owner of each Lot shall bear an equal share of each Annual or Special Assessment. The Annual Assessment for Lots owned by Declarant shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Unofficial Document Lots owned by Owners other than Declarant. If a Lot ceases to qualify for the twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

6.4 Obligation of Declarant for Deficiencies

So long as there is a Class B membership in the Association, and unless Declarant elects to pay full Assessments for its Lots in which event this obligation to pay Common Expense shortfall shall not apply to such Lots, 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 may be requested by the Board, such funds as may be necessary when added to the Annual Assessments levied by the Association to pay all Common Expenses of the Association as they become due.

6.5 Special Assessments

The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a special Assessment (the "Special Assessment") 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, provided that any Special Assessment shall have the assent of Declarant, while Class B membership exists, and two-thirds (2/3) of the votes

entitled to be cast by Class A Members who are voting in person or by proxy at a meeting duly called for this purpose.

6.6 Assessment Period

The period for which the Annual Assessment is to be levied shall be the calendar year (the "Assessment Period"), except that the first Assessment Period, and the obligation of the Owners 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.

6.7 Commencement Date of Assessment Obligation

Except as provided in Section 6.20 below, with respect to Lots annexed into the Project pursuant to Section 2.3 of this Declaration, all Lots shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

6.8 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 provision of this Declaration, the Article 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 the Project Documents, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days' written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.9 Effect of Nonpayment of Assessments; Remedies of the Association

6.9.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment or any installment thereof first became due, shall have added thereto a late charge of \$15.00 or 10% of the amount of the unpaid Assessment, whichever is greater. 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 within thirty (30) days after such payment was due in an amount not to exceed the limitations of A.R.S. 33-1803, as amended from time to time.

6.9.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges, fines, penalties and other fees and charges assessed against the Lot or payable by

the Owner of the Lot; (iii) all attorney fees, court costs, title report fees, costs and fees charged by any collection agent either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (v) any amounts payable to the Association pursuant to Section 7.3 and 7.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. 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 interest, late charges, lien recording fees and reasonable attorney's fees. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent amounts. The demand shall state the date and amount of the delinquency and a statement as to the nature of the amounts due. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within a single demand. If the delinquency is not paid within thirty (30) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot. If the Association Records a Notice of Lien, the Association may charge to Owner of the Lot against which the Notice is Recorded a lien fee in an amount to be set from time to time by the Board.

6.9.3 Except as may be otherwise provided by Arizona law, the Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for Unofficial Document real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. Any First Mortgage 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.

6.9.4 Except as may be otherwise provided by Arizona Law, the Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, late charges, lien fees, fines, penalties, reasonable attorneys' fees, court costs, collection costs, and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, late charges, lien fees, fines, penalties, reasonable attorney's fees, court costs, 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 Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments 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.

6.10 Evidence of Payment of Assessments Resale Unit Information

Upon Receipt of a written request by a Member or other Person, and within a reasonable period of time thereafter (but not to exceed ten (10) days or such earlier time period as may be established under A.R.S. 3-1807 from time to time), 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 make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made.

6.11 Purposes for Which Association's Funds May Be Used

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. 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.

6.12 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 accomplishments of its purposes.

6.13 Working Capital Fund

To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant or from another other Owner, shall pay to the Association

immediately upon becoming the Owner of the Lot a sum equal to one-sixth ($1/6^{\text{th}}$) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section 6.13 may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.14 Transfer Fee

Each Purchaser of a Lot from any Owner other than Declarant shall pay to the Association immediately upon becoming the Owner a transfer fee in such amount as is established from time to time by the Board.

6.15 No Offsets

All Assessments and other amounts payable to the Association shall be payable in accordance with the provision of the Project Documents, and no offsets against such Assessments or other amounts 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.

6.16 No Exemption of Owners

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 waive and nonuse of any of the Common Area facilities or by abandonment of his Lot.

6.17 Maintenance of Reserve Fund

Out of the Annual Assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of Improvements to the Common Area and other Areas of Association Responsibility.

6.18 Notice and Quorum for Any Action Authorized Under Sections 6.2 and 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 Member is required under Sections 6.2 or 6.5 or 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 this first such meeting called, the presence of Member or of proxies entitled to cast sixty percent (60%) of all 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 ($1/2$) of the required meeting of 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.

6.19 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. Duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against the Association, every Owner, and the bona fide Purchaser or Person acquiring the Lot in question, pursuant to Title 6, Chapter 7. In addition to the foregoing information, the Association shall also provide such information to prospective Residential Dwelling Purchasers as may be requested by a Member for purposes of complying with A.R.S. – 33-1806, as amended from time to time in the event of a resale of a Lot, and the Association may charge a reasonable fee for such services as determined by the Board from time to time.

6.20 Assessments on Lots Subsequently Annexed

The Annual Assessment for Lots annexed by the Declarant pursuant to Section 2.3 of this Declaration shall commence on the first day of the first month following the month in which any annexed portion or phase of the Annexable Property becomes irrevocably annexed to the Project in accordance with said Section 2.3, and no Assessments may be levied against any such Lot until such time.

Unofficial Document

ARTICLE 7

MAINTENANCE

7.1 Maintenance of Common Area and Other Areas of Association Responsibility

The Association, or its duly designated representatives, shall be responsible for the maintenance, repair, and replacement of the Common Area and may, without any approval of the Owners or First Mortgagees being required, do any of the following:

7.1.1 Reconstruct, repair, replace, or refinish any Improvement thereon (including any Project perimeter wall regardless of whether located on a portion of a Lot or Common Area) to the extent that such work is not being done by a governmental entity, if any, responsible for such maintenance or upkeep.

7.1.2 Construct, reconstruct, repair, or refinish any portion of the Common Area used as a road, street, walk, driveway, and parking area.

7.1.3 Replace damaged or diseased trees or other vegetation in the Common Area and plant trees, shrubs, and ground cover to the extent the Board deems necessary for the conservation of water and soil and for aesthetic purposes.

Unofficial Document

7.1.4 Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use, and regulation thereof.

7.1.5 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 Project Documents.

7.2 Maintenance of Lots by Owners

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 and all Public Yard landscaping, except for any Areas of Association Responsibility established in accordance with this Declaration. All such Improvements shall be kept in good condition and repair. All Public Yard landscaping shall be irrigated, mowed, trimmed and/or cut, as appropriate, 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 Architectural Committee. No yard equipment, wood piles, or storage areas may be maintained so as to be Visible from Neighboring Property. Any Lots without Residential Dwelling thereon shall be maintained in a weed free manner.

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 guests, invitees or animals from whom the Owner or Resident is legally responsible under Arizona law, 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 to the extent the Owner is liable under Arizona law. Payment of such amounts shall be secured by the Assessment Lien and the Association may enforce collection of any such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

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 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 any manner which violates the Project Documents, or in the event an Owner is failing to perform any of his 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 thirty (30) days, the Board may cause such action to be taken at said Owner's expense. If, at the expiration of said thirty (30) day Unofficial Document period, 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. Payment of such amounts shall be secured by the Assessment Lien.

7.5 Boundary Wall

Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary 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 of an Owner or Resident of a Lot, or their guests, invitees or animals, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner. 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 conditions 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 adjoining Owners and the Architectural Committee. In the event any boundary wall encroaches upon a Lot,

pursuant to the provisions of Sections 4.6 and 4.7 a valid easement for such encroachment and for the maintenance of the boundary wall shall and does not exist in favor of the Owners of the Lots which share the boundary walls. To the extent necessary for an Owner to construction Improvements in the Private Yard of his Lot, Owner may remove all or part of a boundary wall, provided the Owner give reasonable notice to the adjoining Owner and Residents that all or part of the boundary wall will be removed and the Owner desiring to temporarily remove a portion of the walls makes appropriate arrangements (including the erection of a temporary fence or barrier) or pays appropriate compensation for the protection of children or 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 not longer necessary in connection with the construction of Improvements.

7.6 Maintenance of Walls Other Than Boundary Walls

Walls (other than boundary walls between Lots) located on a Lot shall be maintained, repaired, and replaced by an Owner of the Lot. Any wall which is placed on a boundary line between a Lot and the Common Area shall be maintained, repaired, and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area. In the event any such wall encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner as the case may be, pursuant to Section 4.6 above. Any wall which is placed on the boundary line between a Lot and public right-of-way ^{including the Project perimeter walls} shall be maintained, repaired, and replaced by the Association, except that the Owner of the Lot shall be responsible for the repair, painting, and stuccoing or re-texturing 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 this 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 Architectural Committee and the County of Maricopa, if applicable. Such approval may be conditioned on the erection of a temporary fence or barrier.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage

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

8.1.1 Comprehensive General Liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00 for any single occurrence, and \$2,000,000.00 general aggregate. 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 on all Areas of Association Responsibility insuring against all risk of direct physical loss, in an amount equal to the maximum insurable replacement value of 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. If the Common Area or other Areas of Association Responsibility are 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 the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, as amended from time to time.

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of Arizona law.

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners and Residents or required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, including, without limitation, 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 be brought into contribution or proration with any insurance which may be purchased by Owners or Residents, their First Mortgagees, or other 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 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 modification, 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 against loss and providing personal liability coverage. Each Owner is responsible for ascertaining the Association's coverage and for procuring such additional coverage as such Owner deems necessary. First Mortgagees may pay overdue premiums and may secure new insurance Unofficial Document upon the lapse of any policy with respect to any insurance required to be maintained by the Association or any Owner under this Declaration, and any First Mortgagee making such expenditure shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

8.4 Certificates of Insurance

An insurer that has issued an insurance policy under this Article 8 shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, First Mortgagee, or other mortgagee or beneficiary of a deed of trust. Any insurance obtained pursuant to this Article 8 may not be canceled until thirty (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

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 as a Common Expense.

8.6 Payment of Insurance Proceeds

With respect to any loss of 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

Any portion of an Area of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance; (ii) Owners, representing at least eighty percent (80%) of the total authorized votes in the Association elect not to rebuild by vote or proxy cast at a duly held meeting or by written agreement. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. 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.

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 reasonable practicable and substantially in accordance with the plans and specifications therefore 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**GENERAL PROVISIONS****9.1 Enforcement**

The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, any action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any law suit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney's fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Association shall have the power to levy reasonable monetary fines or penalties against an Owner for a violation of the Project Documents by the Owner or by any Resident of the Owner's Lot, or their guests and invitees under their control.

9.2 Term: Method of Termination

Unofficial Document

This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time during the initial term of this Declaration or any extension or renewal term, 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 each class of membership 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 to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President and 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 or effect and the Association shall be dissolved pursuant to the provisions set forth in the Articles.

9.3 Amendments

9.3.1 Except for amendments made pursuant to Sections 9.3.2 or 9.3.5 or this Declaration, the Declaration may be amended at any time during the initial term of this Declaration or any renewal or extension term, without regard to whether such amendments are of uniform effect as to the Owners or the Lots, by the written

approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots, with one vote per Lot.

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

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

9.3.4 So long as there is a Class B Membership in the Association, any amendment to this Declaration must have the prior written approval of the Veterans Administration or the Federal Housing Administration as further provided in Section 9.18 and 9.20 below.

9.3.5 Declarant, so long as Declarant owns any Lot, and thereafter the Board, may amend this Declaration without the consent of any other Owner or First Mortgagee to correct any error or inconsistency in the Declaration.

9.3.6 So long as Declarant owns the requisite number of Lots under this Section 9.3 to effect an amendment hereunder, any amendment to this Declaration shall be signed by Declarant and Recorded in the records of the County Recorder of Maricopa County, Arizona. At any time Declarant does not own the requisite number of Lots, any amendment approved by the Board pursuant to Sections 9.3.1, 9.3.2, or 9.3.5 shall be signed by the President or Vice President of the Association and shall be Recorded with the County Recorder of Maricopa County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section 9.3. Unless a later effective date is specified in the amendment, any amendment to this Declaration shall be effective upon the Recording of the instrument.

9.3.7 Declarant may amend the Plat at any time without the consent of any other Owner to alter the size of and the boundaries between any Lots so long as all such altered Lots are owned by Declarant, all First Mortgagees then encumbering the Lots to be altered consent in writing, and such alterations do not modify or change the size, the boundaries of any other Lot or the Common Area and do not increase the share of Common Expenses payable by Owners.

9.5 Right of First Mortgagees, Eligible Mortgage Holders, and Eligible Insurers or Guarantors

9.5.1 Any First Mortgagee will, upon written request identifying the name and address of the First Mortgagee for any Lot or the insurer or guarantor of such First Mortgagee and the Lot number or address, shall be entitled Eligible Mortgage Holders and/or Eligible Insurers or Guarantors and 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 any Lot subject to a First Mortgage held, insured, or guaranteed by such Eligible First Mortgagee or Eligible Insurer or Guarantor, as applicable; (iii) any delinquency in the payment of Assessments or other charges owed or any other default in the performance of obligations under the Project Documents by an Owner of a Lot subject to a First Mortgage held, insured, or guaranteed by such Eligible First Mortgagee or Eligible Insurer or Guarantor, as applicable, which remains uncured for a period of sixty (60) days; (iv) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and (v) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders under this Declaration.

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

9.5.3 Unless at least two-thirds (2/3) of ^{the First Mortgagees} ~~the First Mortgagees~~ (based upon one (1) vote for each First Mortgage owned by the First Mortgagee in the Project) or Owners (other than Declarant or any developer of Residential Dwellings for resale) of at least two thirds (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 utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Section 9.5;
- (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 Areas of Association Responsibility;

- (iv) fail to maintain fire and extended insurance coverage on a current replacement cost basis for the Areas of Association Responsibility 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.

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

9.5.5 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.

9.5.6 To the extent permitted by applicable law, Eligible Mortgage Holders shall have the following rights:

Unofficial Document

- (i) when professional management previously has been required by an Eligible Mortgage Holder or any Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of the Owners of Lots to which at sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of Lots subject to First Mortgages held by Eligible Mortgage Holders. Declarant shall not, and shall not have the authority or power to, bind the Association prior to termination of Class B membership, either directly or indirectly to, contracts or leases (including management contracts) unless the Association is provided with a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after such termination upon not more than ninety (90) days notice to the other party thereto;
- (ii) any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent

(51%) of the remaining votes in the Association allocated to Owners of Lots subject to First Mortgages held by Eligible Mortgage Holders;

- (iii) any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with the Declaration and the original plans and specifications of the Project unless other action is approved by Eligible Mortgage Holders holding First Mortgages on Lots the remaining Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of Lots subject to First Mortgages held by Eligible Mortgage Holders.

9.5.7 No breach of any of the covenants, conditions, restrictions contained in this Declaration, and no enforcement of any lien provisions herein shall render invalid the lien of any First Mortgage, but all of said covenants, conditions, and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

9.5.8 All amenities pertaining to the Project and located thereon (such as parking, recreation, and 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 the Common Area.

Unofficial Document

9.5.9 An action to abate the breach of any of these covenants, conditions, and restrictions may be brought against the 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.

9.5.10 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 Mortgage, 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 Assessment

9.5.11 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.

9.5.12 The right of any Owner to sell, transfer, or otherwise convey this Lot shall not be subject to any right of first refusal or similar restriction in favor of the Association and no such right of first refusal or similar restriction shall be herein after imposed by amendment of this Section 9.5.12 without the prior written consent of all First Mortgagees of record at the time the requested amendment is proposed.

9.5.13 In the event of any conflict or inconsistency between the provisions of this Section 9.5 and any other provision of the Project Documents, the provisions of this Section 9.5 shall prevail; provided, further, that in the event of any conflict or inconsistency between the provisions of this Section 9.5 and any other provisions of the Project Documents with respect to the number of percentage of Owners or First Mortgagees that must consent to: (i) an amendment of the Declaration, Articles or Bylaws; (ii) a termination of the Project, or: (iii) certain actions of the Association as specified in Section 9.5.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as Declarant owns any Lot, and thereafter the Board, shall have the right to amend the Declaration as provided in Section 9.3.2 and 9.3.5 without the consent of any other Owners or First Mortgagees.

9.6 Interpretation

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

9.7 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.

9.8 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.

9.9 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.

9.10 Notice of Violation

The Association shall have the right to record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner 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 this Declaration; (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 and Resident, and any subsequent Purchaser or other Person who may acquire the Lot, that there is such a violation. 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 which 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 that the violation does not exist. 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.

Unofficial Document

9.11 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 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.

9.12 Right to Inspect Documents; Audited Financial Statements

The Association shall make available to Owners, mortgagees, and insurers or guarantors of First Mortgagees, current copies of the Project Documents and the books, records, and financial statements of the Association. "Available" means available for inspection (and copying at the expense of the requesting party), upon request, during normal business hours or under other reasonable circumstances. In addition, First Mortgagees holding fifty-one percent (51%) or more of First Mortgages shall be entitled to have prepared, at their expense, an audited financial statement of the Association for the immediately preceding fiscal year if one is not otherwise available, and

the Association shall have prepared and distributed such statement to the First Mortgagees requesting it within a reasonable time following receipt by the Association of the request.

9.13 Condemnation

Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Common Area or Area of Association Responsibility is to be taken by any governmental body by exercise of the Power of condemnation or eminent domain, all Owners shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of any part of the Common Area or other Area of Association Responsibility, and every Owner appoints the Association as his attorney-in fact for this purpose. The entire award made 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 as trustee for the use and benefit of the Owners and their First Mortgagees as their interests may appear. The Association shall, as 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.

In the event of any taking of any lot in the Project ^{by eminent domain} Unofficial Document, the Owner of such Lot shall be entitled to receive the award for such taking, and after acceptance thereof he and all of his mortgagees shall be divested of all interest in the Project if such Owner shall vacate his Lot as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking. In the event of a taking by eminent domain of more than one Lot at the same time, the Association shall participate in the negotiations and shall propose the method of division of the proceeds of condemnation where Lots are not valued separately by the condemning authority or by the court. In the event any Owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under the rules of the American Arbitration Association.

9.14 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 instrument and his heirs, executors, administrators, successors, and assignees.

9.15 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.

9.16 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.

9.17 Notices

If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board, to be given to any Owner or Resident, then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published in any newspaper of general circulation within Maricopa County. This Section 9.17 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.

9.18 FHA/VA Approval

Unofficial Document

So long as there is Class B membership in the Association, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties (other than the Annexable Property), dedication, mortgaging, or conveyance of Common Area, and amendment of this Declaration.

9.19 No Absolute Liability

No provision 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 negligence or intentional acts of the Owners or Residents of their Lots.

9.20 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. Unless and until FHA or VA have 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 not outstanding mortgages or deeds of trust Recorded against a Lot to secure payment of an

insured or guaranteed loan by either or such agencies, all references herein to required approvals of consents of such agencies shall be deemed null and void and no force and effect.

9.21 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.

Unofficial Document

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:

HOMES BY JUDI of ARIZONA, LLC.

By Patrick Hendley

STATE OF Arizona)
) ss
COUNTY OF Maricopa

On this 20th day of December, 2001 before me, the undersigned notary public in and for said county and state, personally appeared PATRICK HENDLEY, the Vice-President of HOMES BY JUDI OF ARIZONA, LLC., a corporation, personally known (or proved) to me to be the person whose name is subscribed to the above instrument and who acknowledged that she executed the above instrument for and on behalf of the corporation, in her capacity as an authorized officer thereof.

NOTARY PUBLIC

Becky Boone

My Commission Expires: 7/27/03

