

# Unofficial Document

When Recorded Return To:

ATV-1 Homeowners Association  
c/o Vision Community Management  
9633 S. 48th Street, Suite 150  
Phoenix, Arizona 85044

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## AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

This Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1 ("Declaration") is made this 18<sup>th</sup> day of April, 2013 by ATV-1 Homeowners Association, an Arizona nonprofit corporation ("Association").

### RECITALS

A. A Declaration of Covenants, Conditions and Restrictions of Ahwatukee ATV-1 was recorded on May 16, 1983, at Document No. 83-184001, Official Records of Maricopa County Recorder ("Original Declaration"), and was amended by the Amendment to Declaration of Covenants, Conditions and Restrictions of Ahwatukee ATV-1, recorded on January 13, 1984 at Document No. 84-017302, Official Records of Maricopa County Recorder ("First Amendment"); the Second Amendment to Declaration of Covenants, Conditions and Restrictions of Ahwatukee ATV-1, recorded on February 28, 1984 at Document No. 84-079718, Official Records of Maricopa County Recorder ("Second Amendment"); and the Third Amendment to Declaration of Covenants, Conditions and Restrictions of Ahwatukee ATV-1, recorded on August 8, 1990 at Document No. 90-357042, Official Records of Maricopa County Recorder ("Third Amendment"). The Original Declaration, as amended by the First Amendment; Second Amendment; and Third Amendment shall be referred to in this Declaration as the "Initial Declaration".

B. The Original Declaration placed certain covenants, conditions and restrictions on certain real property located in Maricopa County, Arizona:

AHWATUKEE ATV-1, according to the Plat thereof recorded in the office of the Maricopa County Recorder in Book 252 of Maps, at Page 47. ("ATV-1")

C. Fulton Homes was the owner of what were Lots 5882 through 5892 inclusive of Ahwatukee ATV-1, as recorded in Book 252 of Maps, Page 42, Maricopa County Recorder's Office, and replatted lots 5882 through 5992 as:

Ahwatukee ATV-1 Unit Two; Part of the NW 1/4 of Section 19, Township 1 South, Range 4 East, Gila & Salt River Base and Meridian, Maricopa County, Arizona, as recorded in Book 337 of Maps, Page 24, Maricopa County Recorder's Office. ("Replatted Property")

D. The Third Amendment deleted the Replatted Property from the effects of the Original Declaration, as amended, including without limitation, membership in the Association, assessments, architectural control or any other covenants, conditions and restrictions, except for the provisions of Article II of the Original Declaration entitled Restrictions on Use, paragraphs 1 through 12.

E. The Replatted Property shall remain subject to the Initial Declaration and the Restrictions on Use, paragraphs 1 through 12, which have been incorporated into this Declaration in Section 12, entitled Use Restrictions Applicable only to Replatted Property, and shall not be subject to any other covenants, conditions or restrictions in this Declaration, including, without limitation, membership in the Association, assessments, or architectural control.

F. AHWATUKEE BOARD OF MANAGEMENT conveyed Tracts B thru G and L thru S, AHWATUKEE ATV-1, according to Book 252 of Maps, Page 47, records of Maricopa County, Arizona, pursuant to a Warranty Deed recorded on August 27, 1985 at 85-403920, Official Records of Maricopa County Recorder, and, accordingly, no longer owns any real property in Ahwatukee ATV-1.

F. Pursuant to Article XIII, Section 11 of the Initial Declaration, the Declaration may be amended at any time by an instrument signed by the owners of not less than two-thirds (2/3) of the lots.

G. The Association, through its Owners, desires to amend and restate the Initial Declaration in its entirety as set forth herein.

H. This Declaration was approved by owners of not less than two-thirds (2/3) of the lots. This Declaration shall supersede the Initial Declaration in its entirety and upon the recording of this Declaration, except to the extent the Initial Declaration applies to the Replatted Property.

NOW THEREFORE, the Association hereby declares that all of Ahwatukee ATV-1 described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the properties described above. These easements, restrictions, covenants and conditions shall be deemed easements, restrictions, covenants and conditions running with the land and shall be binding on all parties having or acquiring any right, title or interest in the properties described above, or any part thereof, and shall inure to the benefit of each Owner thereof.

## SECTION 1 DEFINITIONS

The following defined terms have the meanings set forth hereafter whenever used herein:

1.1 ABM. The Ahwatukee Board of <sup>Unofficial Document</sup> Management, Inc., a nonprofit corporation which has been incorporated under the laws of the State of Arizona to manage and maintain the common areas within Ahwatukee.

1.2 Ahwatukee. All that real property included within the Ahwatukee Master Plan of Development including the plats specifically described above, and any additional property which developer may obtain or designate for Development as part of "Ahwatukee"

1.3 Architectural Committee. The committee established pursuant to Section 3.3 of this Declaration.

1.4 Articles. The Articles of Incorporation of the Association which have been or will be filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

1.5 Assessments. The annual, special and/or lot specific assessments levied and assessed against each Lot pursuant to Sections 7 and/or 8 of this Declaration and all other fees, charges, fines, penalties due the Association.

1.6 Assessment Lien. The lien granted to the Association by this Declaration to secure the payment of Assessments, including monetary penalties or other charges owed to the ABM and/or the Association by a Lot Owner.

1.7 Association. The Arizona nonprofit corporation organized by the Declarant as ATV-1 Homeowners Association to manage and maintain the "Common Areas" which are for the sole and exclusive use of the owners of Lots within ATV-1, and other authorized users as permitted by this Declaration, and its successors and assigns.

1.8 Association Rules. The restrictions, limitations, rules and regulations adopted by the Board on behalf of the Association pursuant to this Declaration, as the same may be amended from time to time.

- 1.9. Board. The Board of Directors of the Association.
- 1.10. Bylaws. The Bylaws of the Association, as such Bylaws may be amended from time to time.
- 1.11. Common Area or Common Areas. Such areas within ATV-1 designated "Common Areas" as shown on the Plat, which property has been or will be conveyed to or owned by the Association, and become a part of the Common Area within ATV-1. All members in good standing of the Association shall have the right and privilege to the use and enjoyment of the Common Area subject to the Project Documents. All Common Areas shall be owned by the Association at the time of conveyance of the first lot.
- 1.12. Common Expenses. Expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.13. Construction Guidelines. The guidelines, restrictions, limitations, rules and regulations adopted by the Board or Architectural Committee for purposes of construction upon a Lot.
- 1.14. Declarant. Chicago Title Agency, an Arizona Corporation, Trustee, its assigns and successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration.
- 1.15. Declaration. This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Ahwatukee ATV-1 herein set forth in this entire document, as the same may from time to time be amended.
- 1.16. Dwelling Completion. The date the primary Dwelling Unit on any Lot receives approval for occupancy by passage of a final inspection from the County of Maricopa.
- 1.17. Dwelling Unit. Any building or portion of a building, situated upon a Lot and designated for independent ownership and intended for Single Family Residential Use.
- 1.18. Exterior Alteration. Any construction, addition, alteration, repair, change, change of color, change of landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon.
- 1.19. First Mortgage. Any mortgage (which includes a recorded deed of trust or a recorded mortgage) which has priority over all other mortgages on the same Lot.
- 1.20. First Mortgagee. The holder or beneficiary of a First Mortgage.
- 1.21. Improvement. Any building, Dwelling Unit, fence, wall, sidewalk, driveway, entry/exit gates, mailboxes, cluster mailboxes, or any other structure, or any swimming pool, tennis court, sport court, road, driveway, parking area, or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.
- 1.22. Lessee. A third-party lessee, sub-lessee, tenant or sub-tenant under a lease, oral or written, of any Lot. As used herein "a third-party" is a Person who is not an Owner.
- 1.23. Lot. Any parcel of real property designated as a Lot on the Plat and, where the context indicates or requires, shall include any Dwelling Unit, building, structure or other Improvements situated on the Lot.
- 1.24. Maintenance Standard. The standard of maintenance of Improvements established from time to time by the Board or designated committee or, in the absence of any standard established by the Board or designated committee, the standard of maintenance of Improvements generally prevailing throughout the Project.
- 1.25. Member. Any Person who is a member of the Association.
- 1.26. Owner. The record owner, whether one or more persons or entities, 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. Owner

shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all moneys due under the contract. 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 Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.27. Person. A natural person, corporation, business trust, estate trust, living trust, partnership, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity.

1.28. Plat. The Plat of AHWATUKEE ATV-1 which was recorded with the County Recorder of Maricopa County, Arizona, in Book 252 of Maps, Page 47, as such Plat may be amended from time to time.

1.29. Project Documents. This Declaration, the Plat and the Articles, Bylaws, Association Rules, as the same may be amended from time to time.

1.30. Property or Project. The real property described on the Plat, together with all buildings and other Improvements located thereon, and all easements, rights and appurtenances belonging thereto.

1.31. Purchaser. Any Person other than the Declarant, who by means of a voluntary or involuntary transfer becomes the Owner of a Lot, except for (i) an Owner who purchase a Lot and then leases it to the Declarant for use as a model in connection with the sale of other Lots or (ii) an Owner who, in addition to purchasing a Lot, is assigned in writing any or all of the Declarant's rights under this Declaration.

1.32. Replatted Property. Lots 5882 thro<sup>Unofficial Document</sup>clusive of Ahwatukee ATV-1, as recorded in Book 252 of Maps, Page 42, Maricopa County Recorder's Office, and replatted as:

Ahwatukee ATV-1 Unit Two; Part of the NW 1/4 of Section 19, Township 1 South, Range 4 East, Gila & Salt River Base and Meridian, Maricopa County, Arizona, as recorded in Book 337 of Maps, Page 24, Maricopa County Recorder's Office.

1.33. Single Family. 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, together with their domestic servants, who maintain a common household in a Dwelling Unit.

1.34. Single Family Residential Use. The occupation or use of a Dwelling Unit by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.35. Visible From Neighboring Property. 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.

## SECTION 2 PLAN OF DEVELOPMENT

2.1. Property Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project and in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for

himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, 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.

### SECTION 3 USE RESTRICTIONS

3.1. Land Use. No building except a single Dwelling Unit and a private garage or carport for use in connection with such Dwelling Unit shall be erected, maintained, or permitted on any Lot or portion thereof. All Lots comprising the Property shall be designated as Single Family Residential Lots and shall be improved, used, and occupied in accordance with the provisions and conditions set forth under this Declaration, the other Project Documents and the Maricopa County zoning ordinances; provided, however, such zoning use may be changed where such changes are not detrimental to the overall intent of this Declaration and where prior approval for such changes is obtained from the Architectural Committee, the Board, and any governmental agency having jurisdiction.

3.2. Architectural Control. A purpose of this Declaration is to impose architectural controls on the Property to assure aesthetic integrity, to protect the health and welfare of residents, to protect the natural environment and to prevent nuisances detrimental to other properties within the Project. In connection with such purposes, the Project is hereby made subject to the <sup>Unofficial Document</sup> of the Architectural Committee, and all Owners and users of the Property shall comply with the requirements of the Architectural Committee. Any such improvement standards, definitions and land use regulations are not to be confused with any land use regulations or definitions contained in the zoning ordinance of Maricopa County, provided, however, in the event that any of the provisions of this Declaration conflict with any of the provisions of the zoning ordinances of Maricopa County, as applicable to the Property, the more restrictive of the two shall govern.

3.3. Architectural Committee. There is hereby established an Architectural Committee of the Association, which committee shall be composed entirely of the Members of the Association, all of whom may be members of the Board of Directors. The Board of Directors shall have the sole authority to appoint, remove and replace members of the Architectural Committee. The Architectural Committee shall have a chairperson, who shall be a member of the Board. In the absence of an Architectural Committee, the Board of Directors shall serve as the Architectural Committee.

(a) It shall be the purpose of this Committee to review all plans for all Improvements, structures, Dwelling Units and/or landscaping to insure that they comply with the restrictions, covenants, conditions, Design Guidelines, and rules and regulations applicable to the Lots. No construction may begin or Exterior Alteration commenced on any Improvements, structures and/or Dwelling Units until the written approval of same by the Architectural Committee has been obtained. Any Owner desiring the approval of the Architectural Committee for any construction, erection or installation, addition, Exterior Alteration, repair, change or other work which alters the exterior appearance of his Lot or the improvements located thereon shall submit to the Architectural Committee a written request for approval, specifying in detail the nature and extent of the construction, installation, addition, Exterior Alteration, repair, change or other work which Owner desires to perform. Any Owner requesting approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may reasonably request.

(b) No excavation or grading work shall be performed on the Lots without the prior written approval of the Architectural Committee.

(c) No Improvements or Exterior Alterations shall be constructed hereafter or installed on any Lot without the prior written approval of the Architectural Committee.

(d) No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including, but without limitation, the exterior color scheme, of any Lot or Dwelling Unit constructed on any Lot, or the Improvements located thereon, shall be made or done without the prior written approval of the Architectural Committee.

(e) No more than one detached Single Family Dwelling Unit may be constructed on any Lot, except that more than one Lot may be used for one Dwelling Unit, but the restrictions contained herein shall continue to apply to such Lots as if they were not combined.

(f) The approval by the Architectural Committee of any construction, installation, addition, Exterior Alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver from the Architectural Committee's right to withhold approval of any construction, erection, installation, addition, Exterior Alteration, repair, change or other work subsequently submitted for approval.

(g) Upon receipt of approval from the Architectural Committee for any construction, erection, installation, addition, Exterior Alteration, repair, change or other work, the Owner who has requested such approval shall proceed to perform, construct or make the construction, erection, installation, addition, Exterior Alteration, repair, change or other work approved by the Architectural Committee as soon as practical, and shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed by the Architectural Committee.

(h) The Architectural Committee must approve in writing any change, deletion or addition to the plans and specifications previously approved by the Architectural Committee in writing, including plans deemed approved as a result of the Architectural Committee's failure to act. Failure to submit changes, deletions or additions of previously approved plans shall void the original approval.

(i) The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any plans for development of any Lot or of any Exterior Alteration pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee; otherwise the application will not be deemed to be complete.

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

3.4. Zoning Compliance. All structures as defined in the Maricopa County Zoning Regulations in effect as of the date of recording this Declaration ("Structures") including, without limitation, swimming pools, must be constructed on the Lots in compliance with these restrictions.

(a) Set back requirements. All permanent Structures on all Lots shall comply with all minimum yard set back requirements established by the applicable zoning ordinance as it may be amended from time to time, or as may required in the Project Documents.

3.5. Construction Guidelines. All Dwelling Units, Improvements or other Structures of any type and all Lots shall be governed by the following restrictions.

(a) No Dwelling Unit shall have a livable area of less than eight hundred (800) livable square feet, exclusive of accessory buildings, breezeways, porches, screened porches, terraces, pergolas, patios and garages or carports. All buildings shall be constructed of brick, cement block, or other substantial constructions, or insulated

frame construction. No more than one Dwelling Unit shall be built on any one said Lot, and no temporary or permanent building of any nature detached from the Dwelling Unit shall be built, erected, placed or maintained on said Lot. Provided, however that a detached garage or carport, limited in size to three car capacity may be erected upon any Lot. No garage or carport shall be commenced upon any Lot until construction of the Dwelling Unit, complying with the Project Documents, shall have been commenced by a responsible contractor pursuant to a bona fide building contract, and all buildings shall be of the same or similar style as that of the dwelling erected or being in the Lot in which said buildings are located.

(b) Except as permitted by this Declaration, no building or appurtenance thereto shall be permitted to extend beyond the Lot line or that of the Lot on which such building or appurtenance is erected.

(c) No prefabricated building or structure of any nature whatsoever, permanent or temporary, attached or detached from a dwelling, shall be moved or placed upon or assembled or otherwise maintained on any Lot.

(d) Prior to any construction, a scaled landscape plan for the front and back yards shall be submitted to the Architectural Committee for approval.

(e) During construction all trash and construction debris shall be placed daily in a container of adequate size for the project and shall be removed as required, and all portable restroom facilities must be placed in a location designated by the Architectural Committee and be properly maintained.

(f) On all Dwelling Units under construction, the front street area shall be kept clean and free of debris by the Owner or contractor and all mud or construction debris left upon the street by the contractor, the Owner, or their agents or employees, shall be removed.

(g) Owners of unoccupied Lots shall keep the Lots free from any and all debris and weeds at all times.

(h) Construction detectable by sight, sound or smell shall be limited between the hours of 5:00 am and 8:00 pm, Monday through Saturday.

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3.6. Walls and Fences. Except as originally erected, the fence or wall (including any gates and iron inserts) for any Dwelling Unit shall be of the same architectural style as the Dwelling Unit and shall be approved by the Architectural Committee. No wall (including any gates and iron inserts), fence, hedge, or other improvements shall be erected or maintained closer to the front Lot line than the walls, attached open porch, carport, or balcony of the Dwelling Unit erected on said Lot. No side or rear wall (including any gates and iron inserts), fence, or hedge other than the wall of a building constructed on said Lot, shall be more than six (6) feet in height measured from the existing-graded ground elevation to the highest point of the fence or the fence posts, wall or wall posts, or the hedge. Except as originally constructed, no wall (including any gates and iron inserts), fence, hedge, or other Improvements of any nature shall be built, erected, placed or permitted to remain on Lots bordering a golf course at a height greater than two and one half (2 ½) feet within twenty-five (25) feet of the rear property line, however a wrought iron fence may be constructed upon the two and one half (2 ½) foot fence but not to exceed a height of six (6) feet measured from the existing-graded ground elevation to the highest point of the wrought iron fence or fence posts. Landscaping shall be planned for any units bordering a golf course so as to avoid any obstruction of the view of the golf course from the unit upon which the landscaping is planned and planted, and from the neighboring Dwelling Units. Walls and fences (including any gates and iron inserts) pursuant to this Section are to be constructed, maintained and repaired at the Lot Owner's expense.

3.7. Party Walls. The rights and duties of the owners of lots or Property with respect to party walls shall be governed by the following:

(a) Each wall, including patio and lot line walls, which is constructed as part of the original construction of improvements, any part of which is placed on the dividing line between separate lots or other Property shall constitute a party wall. With respect to any such wall, each of the adjoining owners shall assume the burdens and be entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

(b) The cost of reasonable repair and maintenance of a party wall be shared by the adjoining owners of such wall in the preparation to the use thereof, without prejudice, however to the right of any owner to call for a larger contribution from the adjoining owner under any rule of law regarding liability for negligent or willfull acts or omissions.

(c) In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his agents, tenants, licenses, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

(d) Notwithstanding any other provision of this Section, an owner who, by his own negligent or willful act, causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any owner to contributions from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.

(f) In addition to meeting the other requirements of the Project Documents and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions, or to rebuild his Dwelling Unit in any manner which requires the extension or other alteration of the party wall, shall first obtain the written consent of the adjoining owner.

(g) All disputes between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, shall be resolved by and among only said owners.

(h) These covenants shall be binding upon the heirs and assigns of any owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an owner

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3.8. No Business. Except as provided, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that real estate brokers, Owners and their agents may show Dwelling Units in the Properties for sale, or lease; nor shall any Lot be used as a hospital or sanitarium or other place for hire for the care or entertainment of persons, unless expressly required by law; nor shall anything be done on any Lot which may become an annoyance or nuisance to the neighborhood. Notwithstanding anything herein to the contrary, all Dwelling Units shall be used, improved and devoted exclusively to Single Family Residential Use.

(a) No trade or business of any kind may be conducted in or from any Lot, except that an Owner may conduct a business activity within a Dwelling Unit located on a Lot so long as the existence or operation of the business activity (i) is not apparent or detectable by sight, sound, or smell from the exterior of the Dwelling Unit; (ii) conforms to all zoning requirements for the Project; (iii) does not increase the liability or casualty insurance obligation or premium of the Association; (iv) is consistent with the residential character of the Project; and (v) does not constitute a nuisance or a hazardous or offensive use or generate excessive or unusual traffic or parking of vehicles in the vicinity of any Lot or the Common Areas, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in the previous sentence, shall be construed to have their ordinary and generally accepted meanings and shall include, without limitation, any occupation or work activity undertaken on an ongoing basis which involves providing 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: (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 therefor.

3.9. Pets. No livestock, swine, poultry or animals of any kind shall be raised, bred, or kept on any Lot. Dogs, cats, or other household pets may be kept, provided, they are confined to their owner's lot or on a leash held by a person capable of controlling the animal, and not permitted to run free and further provided they are not kept, bred, or maintained for any commercial purpose, or in unreasonable numbers. In no event shall a combination of more than three (3) dogs and/or cats be kept on a Lot at any one time. The keeping and maintaining of pets shall be



subject to such rules and regulations as may, from time to time, be adopted by ABM and the Association. Upon written request of any Lot Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether for the purpose of this Section, a particular animal is a generally recognized household pet, or a nuisance, or whether the number of pets in any Dwelling Unit or upon any Lot is reasonable. The Board shall have the right to prohibit maintenance of any pet which constitutes, in the sole and absolute discretion of the Board, a nuisance to any Lot Owner. All pets permitted herein and capable of being walked on a leash shall be kept on a leash not to exceed six (6) feet in length when outside a Dwelling Unit, and all pets shall be directly under the Lot Owner's control at all times when outside a Dwelling Unit or the fenced in back yard. No Lot Owner or any other lawful resident or guest or invitee thereof shall permit any pet to relieve itself on any portion of the Common Areas, it being understood that it shall be the responsibility of such Person to immediately remove any droppings from pets. In the event any unsanitary condition is created anywhere in the Project as a result of the violation of any portion of this Section, the Lot Owner will be assessed an amount per incident (such amount to be determined by the Board from time to time) for cleanup expenses by the Association as a Lot Specific Assessment and the Board may seek satisfaction thereof or any other relief relating thereto as permitted by law and by this Declaration, in addition to such other remedies available to the Association, including fines and penalties for violations.

3.10. No Clothes Lines. No clothing or household fabrics shall be hung so as to be Visible From Neighboring Property.

3.11. Signs. No advertising signs shall be displayed with the exception of: (1) a single "For Sale", "For Lease" or "For Rent" sign which shall not exceed eighteen by twenty-four inches (18" x 24"), and the industry standard size sign rider, which shall not exceed six by twenty-four inches (6" x 24"); (2) a temporary open house sign; or (3) political signs that may be displayed in accordance with Arizona law.

3.12. Solar Energy Devices. Solar energy units may be mounted on the roof of the Dwelling Unit, provided that the solar unit is screened from view from any other Lot Owner or resident, unless otherwise permitted by law. To the extent permitted by law, no solar panels shall be installed on any Dwelling Unit or Lot without the prior written approval and authorization of the Architectural Committee. If such approval is granted, the Architectural Committee may specify the size and type <sup>Unofficial Document</sup> panels allowed, and the location where they may be installed, to the extent permitted by law.

3.13. Vehicles. All automobiles, vans, pick-up trucks of equal or less than one (1) ton capacity with a pick-up style body only, motorcycles and motor vehicles owned by any Owner, members of such Owner's family, or Lessees, should be parked in the garage of such Owner's Dwelling Unit, except that two such vehicles may be parked on the driveway of a Lot, and no such vehicles shall be parked on any street. Except with the prior written approval of the Architectural Committee, no mobile home, motor home, trailer, truck with a capacity of one (1) ton (if not a pick-up style body) or more, camper, boat or other type of recreational vehicle shall be kept, placed, maintained, constructed, reconstructed or repaired within the Project. Motor homes, boats and recreational vehicles may be kept on site if maintained within a fully enclosed garage. The provisions of this Section shall not apply to short term emergency vehicle repairs, periodic social gatherings, prompt loading or unloading of household articles, or approved temporary construction shelters or facilities maintained during, and used exclusively in connection with the construction of any Improvement approved by the Architectural Committee. The provision of this Section shall also not apply to vehicles that may be parked on a Lot pursuant to Arizona law. As with any of these covenants, conditions and restrictions, the Board may adopt Association Rules for the regulation of the admission and parking of vehicles within the Project, including the imposition of fines against the Owners who violate or whose invitees violate such rules. Any charges so assessed shall be Lot Specific Assessments. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

3.14. Vehicles Being Repaired. Abandoned or junked vehicles or vehicles under major repair while being repaired or restored, shall be kept in an enclosed garage. For the purposes of this Section, (i) "abandoned or junked vehicle" means a vehicle not currently licensed and/or registered, a vehicle with one or more flat tires for a period in excess of one week, and/or a vehicle or any major portion thereof which is incapable at the time at issue of movement under its own power and will remain so without major repair or reconstruction; (ii) "major repair" means the removal from any vehicle of a major portion thereof, including but not limited to the differential, transmission,

head, engine block or oil pan; (iii) and "vehicle" means any self-propelled device in, upon, or by which any person or property is or may be transported upon a public highway.

3.15. Building Completion. Unless otherwise indicated in the approval for construction, any Dwelling Unit or other Improvement in this Property shall be completed within the earlier of: (i) twelve (12) months following the first construction disturbance on the Lot; or (ii) twenty-four (24) months from the approval of architectural plans by the Architectural Committee. Extensions can be granted by the Architectural Committee for delays caused by acts of God, strikes, actual inability of the Owner to procure delivery of necessary materials, or by interference by other Persons or forces beyond the control of the Owner to prevent and for which the Owner is not directly or indirectly responsible.

3.16. Repair of Buildings. No Dwelling Unit or other Improvement on any Lot or other Property shall be permitted to fall into disrepair and each such Dwelling Unit or other Improvement shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. In the event that any Dwelling Unit or other Improvement is damaged or destroyed, then, subject to the Architectural Committee approvals required in this Declaration, such Dwelling Unit or other Improvement shall be immediately repaired or rebuilt by the Lot Owner.

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

3.18. Vacant Lot Maintenance. All vacant Lots shall be at all times kept free of rubbish and litter, subject to the normal requirements of construction activities upon each Lot. The yards and grounds in connection with all improved properties shall be at all times kept in a neat and sightly condition. During prolonged absence, Lot Owners will arrange for the care of their Lots during such absence. In the event a Lot Owner does not maintain his Lot in a neat, proper manner, the Association may have said Lot cleaned up and upon the Lot Owner's refusal to pay the cost of such cleanup and within ten (10) days after presentation of a billing therefor, such amount shall constitute a Lot Specific Assessment subject to the provisions of Section 7 hereof.

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

3.20. Temporary Buildings. No tent, shack, garage, barn or other outbuildings which is Visible From Neighboring Property shall, at any time, be erected and used temporarily or permanently as a residence or for any other purpose, nor shall any recreational vehicle be used as a residence or for any other purpose on any of the Lots or streets in the Properties. No structure of any kind shall be moved into any part of the Properties, except temporary buildings used by contractors in connection with construction work and then only as approved in writing by the Architectural Committee, it being the intent of this Declaration that all structures on any Lot shall be of new construction and constructed thereon.

3.21. Planting and Landscaping. Except for (i) such planting and landscaping as is installed in accordance with the initial construction of Lots, and (ii) such planting and landscaping as is not Visible From Neighboring Property and is in an area not maintained by the Association, no planting or landscaping shall be done and no fence, hedges or walls shall be erected or maintained on any Lot without the prior written approval of the Architectural Committee.

3.22. Outside Speakers and Amplifiers. No radio, stereo or other broadcast units of any kind and no amplifiers or loudspeakers of any kind shall be placed, allowed or maintained outside, or be directed to the outside of any Dwelling Unit without the prior written approval and authorization of the Architectural Committee.

3.23. Utility Service. Except as approved in writing by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electronic current or power, including telephone, television,

and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same are 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 hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Dwelling Units or other structures approved by Declarant or the Architectural Committee.

3.24. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Dwelling Unit, appurtenant structures, or other Improvements, and except that which the Association may require for the operation and maintenance of the Property.

3.25. Window Covers. Interior curtains, drapes, shutters or blinds may be installed as window covers. No aluminum foil, reflective material, newspaper or other materials not customarily made for use as window covers may be installed or placed upon the inside or outside of any Dwelling Unit or other structure. Exterior awnings, canopies, shutters and similar items may not be installed without prior written approval of the Architectural Committee as to color, style, design and materials.

3.26. Nuisances. No rubbish, debris or hazardous materials of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other Property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Property or any portion thereof, or any activity thereon, unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to the occupants of such other Property. No other nuisance shall be permitted to exist or operate upon any Lot or other Property so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property, including streets. The Board shall have sole discretion to determine whether a nuisance exists.

3.27. Garbage and Trash. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Architectural Committee. 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 time reasonably necessary to effect such collection and subject to the Association Rules. The Board shall have the right, in its sole discretion, to require all Owners to place their garbage or trash containers at a specific location for collection. Unless otherwise indicated by the Board, garbage or trash containers must be placed behind the Lot wall so as not to be Visible From Neighboring Property. All rubbish, trash and garbage shall be removed from the Lots and Common Area and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area. During construction of a Dwelling Unit on a Lot, the Owner of such Lot shall provide an enclosed rubbish container for each Lot and shall keep its Lot clean of construction trash at all times. In addition, each Owner shall during such construction be responsible to immediately clean up any trash, rubbish, debris, mud and dirt brought or tracked onto the Project in connection with such construction. Additionally, during construction of a Dwelling Unit on the Lot, the Owner of such Lot shall provide a portable restroom facility on the Lot and maintain it as set forth above.

3.28. Disease and Insects. No Owner shall permit any thing or condition to exist upon any Property which shall induce, breed, or harbor infectious plant diseases or noxious insects.

3.29. Fires. Other than barbecues in properly constructed barbecue pits or grills, and fire pits or outside fireplaces in compliance with the Association Rules, Construction Guidelines or the Design Guidelines, or as otherwise expressly permitted in such rules, no open fire shall be permitted on the Project nor shall any other similar activity or condition be permitted.

3.30. Safe Condition. Without limiting any other provision in this Article, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Area.

3.31. 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 Architectural Committee.

3.32. Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Declarant. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Board. No other application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

3.33. Leasing of Lots. No Owner may lease or sublease his Lot to Lessee, nor shall a landlord-tenant relationship be established for any period whatsoever unless such lease or landlord-tenant relationship is in writing and the Lessee has agreed in writing that the lease is subject in all respects to the provisions of the Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations duly adopted by ABM and the Association. Said writing shall provide that any failure of the lessee or tenant to comply with the terms of such documents or rules and regulations shall be a default under the lease. All Owners of Lots that are leased or subleased, hereby grant to the Association a power of attorney to enforce against the Lessee the provisions of the Project Documents and to enforce against the Lessee those provisions of such leases or subleases that relate to violations by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors of the Project Documents or the lease agreement (except those provisions that relate to the payment of rent). The power of attorney granted hereby authorizes the Association to take any lawful action to enforce the Project Documents and the lease agreement, including, without limitation, bringing actions at law or in equity and to recover from the Owner and/or the Lessee against whom any enforcement effort or action is brought, the costs of enforcing the terms of the Project Documents and the lease or sublease with respect to violations thereof by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors. The "costs of enforcing" shall include <sup>Unofficial Document</sup> property taxes, fines and penalties, penalty late fees and interest, costs of collection (including legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action), attorneys' fees, court costs, property damage, etc.

3.34. Antennas and Satellite Dishes. There shall be no roof-mounted antennas or satellite dishes, unless otherwise permitted by law, in which event any such roof-mounted antenna or satellite dish must be located in the least visible location from the front of the Dwelling Unit while still permitting maximum reception, and the Architectural Committee can require the antenna or satellite dish to be painted/camouflaged to reduce the visual impact. Antennas and satellite dishes are also subject to the Association Rules.

3.35. Enforcement. The Association or its authorized agents may, upon reasonable written notice, enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to this Declaration, the Articles, Bylaws, Association Rules, Construction Guidelines and/or Design Guidelines, shall be a Lot Specific Assessment secured by a lien upon such Lot and enforceable in accordance with the provisions of Section 7 hereof. All remedies available at law or equity shall be available in the event of any breach of any provision of the Project Documents by any Owner, Lessee or other Person.

#### SECTION 4 EASEMENTS

##### 4.1. Owners' Easements of Enjoyment.

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

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in this Declaration.

(ii) The right of the Association to regulate the use of the Common Area by the Association Rules and to prohibit access to such portions of the Common Area, such as certain landscaped areas, not intended for use by the Owners or Lessees.

(iii) The right of the Association to suspend the right of an Owner or Lessee or such Owner's or Lessee's family, tenants and guests who use the Common Area if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Lessee has violated any other provision of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

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

4.2 Delegation of Use. Any owner may delegate, subject to compliance with this Declaration and the Articles of Incorporation, Bylaws and rules and regulations of the Association, his right of use of the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. All parties to whom these rights are delegated shall be subject to compliance with the Project Documents and all rules and regulations referred to herein as may, from time to time, be duly adopted by an authorized corporation or entity. No such delegation shall relieve the owner of his obligations to comply with all terms and conditions of Project Documents, nor shall such delegation relieve the owner of responsibility for payment for all assessments applicable to his Lot.

4.3. Waiver of Use. No Owner may exempt himself from personal responsibility for compliance with this Declaration or for the payment of assessments <sup>Unofficial Document</sup> by the Association, nor release the Lot owned by such Owner from the liens and the charges hereof, by waiver of the use and enjoyment of the Common Areas, or the facilities thereon, or by the abandonment of his Lot, or by the delegation of his right of use of such areas and facilities.

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

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

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

(b) For inspection, maintenance, repair and replacement of the Common Areas accessible only from such Lots;

(c) For correction of emergency conditions on one or more Lots;

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

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

4.6. Utilities; Release of Claims. Owners shall be solely responsible for maintenance, repair and replacement of all utility lines and pipes serving their Lots including, without limitation, sewer, water, plumbing, cable television, telephone, data and electrical lines and pipes and any similar items of any kind and type from upon their Lot to the point where such utility lines and pipes connect with any public utility line or pipe or cable television, data or telephone line, as applicable. The Association shall not be responsible for the maintenance, repair or replacement of any such utility lines or pipes. Neither the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Owner, resident, Lessee or his family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the construction, operation, existence or maintenance of any such utility lines or pipes. Each Owner, Lessee and resident, for himself and his family, invitees and licensees, hereby releases the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including, without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury, death or damage to Persons and property resulting from activities or occurrences described in this Section.

4.7. Maintenance Easement. Each Owner and Lessee shall permit the Owner of adjoining Lots, or their representatives, contractors, or employees when reasonably required and in a reasonable manner, to enter his Lot for the purpose of repairing or maintaining that portion of the Lot that is accessible only by entering upon such adjoining Lot.

## SECTION 5 MEMBERSHIP AND VOTING RIGHTS IN ABM

5.1. ABM Membership. Every Owner of a Lot which is subject to assessment shall be a member of ABM. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

5.2. Classes of Membership. ABM shall have one class of voting membership:

Class A. Class A members shall be all Lot owners, with the exception of the Declarant, and they shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any one lot. In the event more than one vote is cast with respect to any one lot, all such votes shall be disregarded.

## SECTION 6 THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

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

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. Any action reserved to the Association by this Declaration or the other Project Documents shall be in accordance with the majority vote of a quorum of the Board.

6.3. Non-liability. Declarant, the Board, officers or committee members of the Association shall not be liable in damages to any Owner affected by this Declaration or to any other Person or entity, including the

Association, by reason of mistake in judgment, negligence, omission, error or nonfeasance arising out of exercise of their rights, or performance of their duties called for hereunder, and every Owner of such property agrees that he will not bring any action or suit against the Board, officers or committee members of the Association to recover any such damages.

6.4. 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.

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

6.6. Classes of Members. The Association shall have one class of voting membership. Members shall be all Owners of Lots. Each Member shall be entitled to one (1) vote for each Lot owned.

6.7. Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a Lot, 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.

6.8. Voting By Mail. Unless the Project <sup>Unofficial Document</sup> require otherwise, when directors are to be elected or any other matter is submitted to a vote of the Members, such vote may be conducted by mail as provided in the Bylaws, as determined by the Board, or as otherwise required by law.

6.9. Transfer of Membership. The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of 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 is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

6.10. Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Owners representing at least sixty-seven percent (67%) of the votes entitled to be cast by Members of the Association.

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

6.12. Association Rules. The Board, by a majority vote, shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), which shall be binding upon all Persons subject to this Declaration and shall govern the use and/or occupancy of the Common Area, the

Lots or any other part of the Project. The Association Rules may include the establishment of a system of fines and penalties enforceable as Lot Specific Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area; provided, however, that the Association Rules may not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be available to each Owner. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and all other Persons having any interest in, or making any use of, the Property, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association for each Owner to review upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

6.13. Indemnification. To the fullest extent permitted by law, every director and every officer of the Association shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association against all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association, or any settlement thereof, whether or not he is a director, officer or serving in such other specified capacity at the time such expenses are incurred; provided that the Board shall determine, in good faith, that such officer, director, or other person, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

6.14. Records. The Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner <sup>Unofficial Document</sup> records and financial statements of the Association, together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, Design Guidelines, Construction Guidelines, and Association Rules.

6.15. Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles, Bylaws, Design Guidelines, Construction Guidelines, and Association Rules; provided, however, no such delegation to a professional management company or otherwise shall relieve the Association of its obligation to perform any such delegated duty.

6.16. Emergency Powers. The Association, or any Person authorized by the Association, may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and the Association shall repair any damage caused thereby, unless covered by insurance carried by the Owner.

## SECTION 7

### COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIENS THEREFOR OF ATV-1 HOMEOWNERS ASSOCIATION

7.1. Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties. Each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties (collectively "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, fee, charge, fine



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

7.2. Annual Assessments.

(a) 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 for each Assessment Period, shall assess an Annual Assessment against each Lot. The Board shall not levy an Annual Assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of a majority of the Members of the Association. Effective January 1, 2012, the Annual Assessment is \$1,260.00 per year.

(b) The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are or will become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may, subject to the twenty percent (20%) limit set forth in Section 7.2 (a) above, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

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

Unofficial Document

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

7.5. Special Assessments. The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of fifty-one percent (51%) of the votes entitled to be cast by Members who are voting in person or by mail at a meeting duly called for such purpose. Written notice of any meeting called for the purpose of obtaining the consent of the Members under this Section shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of ballots or proxies entitled to cast fifty-one percent (51%) of all the votes in the Association 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 (½) of the required quorum at the immediately preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting. When a Special Assessment is approved, each Lot Owner will be assessed a pro rata share of the total amount.

7.6. Lot Specific Assessments. Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Project Documents that the Owner has refused to cure or remedy, including the failure to keep a Lot clean and free of excessive weed growth and keeping the Improvements thereon in good repair that the Association is not otherwise obligated to perform pursuant to this Declaration, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments. A Lot Specific Assessment may also

be levied by the Board in its sole discretion against those Lots benefitting from a Common Expense where such a Common Expense benefits fewer than all of the Owners.

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

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

7.9. Rules Regarding Billing and Collection Procedures. Annual Assessments and Lot Specific Assessments shall be collected in advance on a monthly basis or such other basis as may be selected by the Board. Special Assessments and Lot Specific Assessments may be collected as specified by the Board or the applicable Project Documents. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period. Nevertheless, successor Owners of Lots may be given credit for pre-<sup>Unofficial Document</sup>paid assessments on a prorated basis, made by prior Owners.

7.10. Transfer, Refinance and Disclosure Fees. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board, in accordance with statutory limits. Fees charged pursuant hereto shall be secured by the Association lien established pursuant to this Section.

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

7.12. Notice of Violation, Appeal and Payment of Fines and Penalties.

(a) The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner, his family, Lessees, guests or invitees. A Notice of Violation may contain, in addition to any statutory requirements, (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or Lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

(b) A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Dwelling Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

(c) The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

(d) Any fines or penalty levied pursuant hereto shall be handled as a Lot Specific Assessment pursuant to this Section.

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

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

(a) Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within fifteen (15) days after <sup>Unofficial Document</sup> payment, fee, charge, fine or penalty, or the installment thereof first became due shall bear interest from the due date at the rate of interest established from time to time by the Board, but in an amount not less than ten percent (10%) per annum. In addition, the Board shall establish a monthly late fee to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty, or any installment thereof within fifteen (15) days after such payment was due, but in an amount not less than the greater of fifteen dollars (\$15.00) or ten percent (10%) of the unpaid assessment or installment thereof, or as otherwise limited by law.

(b) As set forth in this Section, the Association shall have an automatic lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees levied against or charged to a Lot or the Owner thereof. Recordation of this Declaration shall constitute record notice and perfection of the Association's Assessment Lien. Further recordation of any claim of lien for Assessments is not required. Nevertheless, the Association may, at its option, record a notice of lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the notice of lien is recorded and the amount claimed to be past due as of the date of the recording of the notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, reasonable attorneys' fees and the costs of preparing the notice of lien.

(c) Subject to any applicable statutes and the subordination provisions below, the lien created by this Section shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body that are specifically related to the referenced Lot.

(d) The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right to vote on any matter and/or the Owner's right to the use of the recreational facilities that are part of the Common Area.

(e) The Board may, without notice or demand, enforce the lien established pursuant to this Section by foreclosure, or by instituting an action at law or in equity for a money judgment to recover the amount of the delinquent Assessment, or both, so long as the Association does not secure a double recovery, together with all fees, charges, fines and penalties, interest, late charges, costs of collection and all attorneys' fees.

7.15. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior 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.

7.16. Proof of Payment of Assessments. The Association shall upon demand, and in accordance with applicable statutes, furnish a certificate in writing signed by an officer of the Association whether the Assessments on a specified Lot have been paid. The Board in the issuance of these certificates may make a reasonable charge. Such certificates shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

7.17. Subordination of the Lien to Mortgages. The Assessments Lien provided for herein shall be subordinate to the lien of any First Mortgage that arose prior to the Association's Assessment Lien. Sale or transfer of any Lot shall not affect the Assessment Lien. Subject to the foregoing, the sale or transfer of any Lot pursuant to mortgage foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish such Assessment Lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof. No breach of the covenants, conditions, or restrictions in this Declaration, nor the enforcement thereof, or of any lien provision herein, shall defeat or render invalid the lien of any such First Mortgage made in good faith and for value. However, all of the covenants, conditions and restrictions in this Declaration shall be binding upon any Owner whose title is derived through foreclosure or exercise of a power of sale. Moreover, the foreclosure of a First Mortgage or any proceeding in lieu thereof shall not affect any amount of the immediately preceding Owner due and owing the Association and the Association can pursue recovery all such amounts, Unofficial Document collection costs and attorneys' fees.

## SECTION 8 COVENANTS AND MAINTENANCE ASSESSMENTS OF ABM

8.1. Creation of the Lien and personal obligation of Assessments. The Declarant, for each Lot owned within ATV-1 hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to ABM: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The ABM annual and special assessments, together with collection of such assessments, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

8.2. Purpose of Assessments. The assessments levied by ABM shall be used exclusively to promote the recreation, health, safety, and welfare of the residents within Ahwatukee by providing for the improvement and maintenance of the common areas and parks within Ahwatukee, and to permit the Board of Directors to carry out their obligations consistent with this Declaration and the purposes of Ahwatukee Board of Management.

8.3. Maximum Annual Assessment. Until January 1<sup>st</sup> of the year immediately following the conveyance of the first lot to an owner, the maximum assessment shall be forty dollars (\$40.00) per lot.

(a) From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of membership.

(b) From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above five percent (5%) by a voice of two thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not to exceed the maximum.

8.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, ABM may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of a capital improvement upon the common areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two thirds (2/3) of the votes of each class of members of ABM who are voting in person or by proxy at a meeting duly called for this purpose.

8.5. Notice and Quorum for Any Action Authorized Under Section 8.3 and 8.4. The notice and quorum requirements for any action authorized under Sections 8.3 and 8.4 shall be as set forth in the Bylaws of ABM.

8.6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and shall be collected on an annual or other basis as determined from time to time by the Board of Directors.

8.7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided herein shall commence on the first day of the month following the conveyance to the Owner. The first annual assessment shall be adjusted according to the number of months remaining in the assessment year. The first assessment shall be paid through escrow upon purchase of the lot and annually thereafter. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The ABM shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the corporation <sup>Unofficial Document</sup> setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the ABM as to the status of assessment on a lot is binding upon the ABM as of the date of its issuance.

8.8. Effect of Nonpayment of Assessments: Remedies of the ABM. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The ABM may bring an action at law against the owner personally obligated to pay the same, and/or foreclose the lien against the property, and the ABM shall be entitled to recover its costs, expenses and reasonable attorney's fees incurred in the collection of the delinquent assessments. No owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the common areas or abandonment of his lot.

8.9. Subordination of the Lien Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from the lien thereof.

8.10. Abandoned or Unattended Lot. If a lot is abandoned or left unattended, ABM shall have the right and power to enter the lot and perform all repairs and maintenance work necessary to keep said lot in a reasonably nice appearance. Provided that ABM give thirty (30) days written notice of its intent to enter and remedy deficiencies in repairs and maintenance. Notice shall be sent by first class mail to the address provided to ABM for assessment purposes and shall be deemed effective affective upon mailing. The cost and expenses incurred by ABM in entering the Lot to perform necessary repair and maintenance work together with interest thereon at the rate of ten percent (10%) per annum and reasonable attorneys' fees incurred in the collection thereof shall be the personal obligation of the owner of the lot and shall be a continuing lien upon the premises. ABM shall have the right and obligation to recover these sums by bringing an action at law against the owner who is personally obligated and/or by foreclosing the lien against the property.

**SECTION 9  
COMMON AREAS, IMPROVEMENTS AND MAINTENANCE**

9.1. Improvements. The Association may install Improvements in the Common Area, including on any easements on Lots. The Association shall prevent any Lot Owner from removing or altering any such Improvements where such items have been installed on easements reserved for that purpose. Costs to the Association of such installation and/or prevention shall be included as part of the Assessments set forth above, with the Board determining whether the cost is an Annual Assessment, a Special Assessment or a Lot Specific Assessment.

9.2. Association Maintenance. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and the Improvements described above and may, without any approval by the Lot Owners, do any of the following:

(a) Reconstruct, repair, replace, maintain or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area).

(b) Construct, reconstruct, repair, maintain, replace or refinish any portion of the Common Area used as a road, street, walkway, drive-way or flood control area;

(c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes.

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

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, <sup>Unofficial Document</sup> in accordance with the general purposes specified in this Declaration.

(f) The Association, or its duly designated representative, shall maintain, manage and control the Common Areas and shall keep the Common Areas in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof. The Association's costs of doing so shall be Common Expenses of the Association. Such maintenance shall include maintenance, repair and replacement of all landscaping situated upon the Common Areas.

(g) The Board shall be the sole judge as to the appropriate maintenance of the Common Area.

9.3. Association Exterior Lot Maintenance. In addition to maintenance upon the Common Areas, the Association shall provide exterior maintenance to each Lot hereunder as follows: paint the exterior building surfaces of the Dwelling Units and exterior surfaces of the walls and fences, maintain, replace and care for front yard desert landscaping, trees, and shrubs, and the irrigation servicing these items. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of these areas. The Association shall not be responsible for damage to any Dwelling Unit or other Improvement that is caused by trees or roots. This includes clogged or damaged sewer lines or fallen or broken trees or branches that come into contact with a Dwelling Unit or other Improvement. Owners may remove or replace trees on their Lots at their own expense and only after obtaining the prior written approval of the Association. Trees must be trimmed to ensure they do not buffet or damage any street lamp post in accordance with Phoenix City Code.

9.4. Owner Lot Maintenance. Each Owner shall be responsible for maintaining all portions of his Lot the Association is not otherwise obligated to maintain pursuant to Section 9.3 of the Declaration. This includes maintaining, repairing or replacing the buildings, all portions of the Dwelling Unit, including the roofs, landscaping, sidewalk, driveway, vegetation within the private patio areas, windows and other glass surfaces, heating and cooling equipment, walls, fences, exterior hardware, and other Improvements situated on his Lot. All buildings, Dwelling

Units, landscaping, and other Improvements shall at all times be kept in good condition and repair. Replacement and removal of vegetation on the front yard of the Lots also may be subject to any Rules or policies as may be adopted by the Board from time to time.

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

9.6. 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, interferes with an area of Association responsibility, 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 his obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within the specified time period, the Board may cause such action to be taken at said Owner's cost. If at the expiration of the specified period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject as a Lot Specific Assessment.

## SECTION 10 INSURANCE

10.1. Scope of Coverage. The Association <sup>Unofficial Document</sup> maintain, to the extent reasonably available, the following insurance coverage:

(a) Property insurance on the Common Area insuring against all risk of direct physical loss, in an amount equal to the maximum insurable replacement value of the Common Area, 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;

(b) 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 Common Area and all other portions of Property which the Association is obligated to maintain under this Declaration, and shall also include cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

(c) Worker'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 pro-rata 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 thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

(f) If the Property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended; and

(g) "Agreed Amount" and "Inflation Guard" endorsements.

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

10.3. Payment of Premiums. The premiums for any insurance obtained by the Association shall be included in the budget of the Association and shall be paid by the Association.

10.4. Insurance Obtained by Owners. Each Owner shall be responsible for and shall be required to obtain property casualty insurance (including coverage for fires) for his own benefit and at his own expense covering his Lot and the Improvements located thereon, including the Dwelling Unit and his personal property and fixtures located on his Lot, and personal liability insurance coverage.

10.5. Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by insurance obtained by the Association in accordance with this Section, 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 and the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

10.6. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The Association shall pay the cost of repair or replacement in excess of insurance proceeds and reserves. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any State or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.



**SECTION 11  
MISCELLANEOUS**

11.1. Enforcement. The Association or any Owner shall have the right but not the obligation to enforce the Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. Such rights shall include the right to seek injunctive relief. 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. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the nonprevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party. In the event an Owner initiates any administrative proceeding including, without limitation, proceedings initiated pursuant to A.R.S. § 41-2198.01, *et seq.*, against the Association, the Association shall be entitled to an award of all of its attorneys' fees and costs incurred in defending such action, if the Association is the prevailing party.

11.2. Dedication. Declarant reserves the right to convey and dedicate rights of way and easements for drainage purposes, public utilities, and television and other communication cables, over a five foot strip of land within and along all side and rear Lot lines of each and every Lot.

11.3. Run with the Land: Termination. The provisions hereof shall run with the land and shall be binding upon all parties and all persons claiming under them. This Declaration shall remain and be in full force and effect for an initial term of thirty-five (35) years from the date this Declaration is recorded. Thereafter, this Declaration shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked by an instrument in writing, executed and acknowledged by the then Lot Owners of not less than seventy-five percent (75%) of the Lots subject hereto, and by the approval of not less than sixty-seven percent (67%) of the "Eligible First Mortgagees" (which is defined to mean those First Mortgagees who have filed a written request with the Association requesting notice of certain matters as set forth above), which said instrument shall be recorded in the Maricopa County Recorder's Office, Arizona, not earlier than ninety (90) days prior to the expiration of the initial effective period hereof, or any ten (10) year extension.

11.4. Amendments. At any time this Declaration may be amended by an instrument in writing, executed by the then Lot Owners of not less than fifty-one percent (51%) of the Lots in the Project. No amendment shall be effective until recorded. No amendment shall relieve an owner from mandatory membership in ABM and the Association or from the payment of any assessments payable to any of said entities.

11.5. Conflicts. If any of the provisions of this Declaration conflict with any other provisions herein or incorporated herein, the more restrictive of the two shall govern. If any paragraph, section, sentence, clause or phrase of the provisions hereof shall be or become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases herein contained shall not be affected thereby.

11.6. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be, but is not required to be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Declarant, the Association or any Owner.

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

11.8. References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this

Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his heirs, executors, successors and assignees.

11.9. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive. For example, the pursuit of a foreclosure action not resulting in a recovery or a full recovery shall not preclude the Association from pursuing a money judgment, or vice versa, so long as the Association does not secure a double recovery. Likewise, pursuit of an injunction shall not preclude the Association from pursuing a foreclosure and/or a money judgment.

11.10. Management Agreements. ABM and the Association, through their respective Board of Directors, are each authorized to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the respective corporations, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the corporation to terminate the same. Any agreement for professional management of the Association or the Project, shall not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.

11.11. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.12. Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or this Declaration.

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

11.14. Interpretation. Except for judicial construction, the Board 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 Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules, Construction Guidelines or Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, Association Rules, Construction Guidelines or Design Guidelines, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Construction Guidelines or Design Guidelines, the Bylaws shall control. In the event of any conflict between the Association Rules, Construction Guidelines or Design Guidelines, the more restrictive provision of said documents shall control.

11.15. 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.

11.16. Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest. The "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

11.17. 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.

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

11.19. Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees incurred in any such action.

11.20. Association's Disclaimer of Representations. While the Association has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, the Association makes no warranty or representation as to the present or future validity or enforceability of any provisions of this Declaration. Any Lot Owner acquiring a Lot in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold the Association and any future Board members and officers of the Association harmless therefrom.

11.21 Initial Declaration Superseded. This Declaration shall supersede the Initial Declaration in its entirety, and upon the Recording of this Declaration, the Initial Declaration shall be of no further force or effect, except as it applies to the Replatted Property.

## SECTION 12

### USE RESTRICTIONS APPLICABLE ONLY TO REPLATTED PROPERTY

12.1 Application Only To Replatted Property. Neither the Replatted Property nor the owner of any lots in the Replatted Property shall be subject to, <sup>Unofficial Document</sup> without limitation, membership in the ATV-1 Homeowners Association, assessments, architectural control or any other of the covenants, conditions and restrictions contained in this Declaration, except for those specifically mentioned in Section 12.2, below and set forth in the Initial Declaration, dealing with restrictions on use. The Use Restrictions in Section 12.2, below, shall not apply to any Lot, Member or Owner in ATV-1. Notwithstanding the foregoing, all other portions of the Declaration shall apply to every Lot, Member and Owner in ATV-1, even if any covenant, condition and restriction is the same or similar to those set forth in Section 12.2, below. References to "developer" in this Section 12 shall refer to Fulton Homes Corporation, an Arizona corporation.

#### 12.2 Use Restrictions.

1. No building except a single family residential dwelling (hereinafter sometimes called "dwelling" and a private garage or carport for use in connection with such dwelling shall be erected, maintained, or permitted on any lot or portion thereof. No dwelling shall be used except as a single family dwelling.

2. No dwelling should be erected upon any of said lots unless such dwelling contains at least eight hundred (800) square feet of enclosed living areas floor space. The term "living area floor space" is exclusive of floor in porches, pergolas, garages or carports. All buildings shall be constructed of brick, cement block, or other substantial constructions, or insulated frame construction. No more than one dwelling shall be built on any one said lot, and no temporary or permanent building of any nature detached from the dwelling shall be built, erected, placed or maintained on said lot. Provided, however that a detached garage or carport, limited in size to three car capacity may be erected upon any lot. No garage or carport shall be commenced upon any lot until construction of the dwelling, complying within these restrictions, shall have been commenced by a responsible contractor pursuant to be a bone a fide building contract, and all buildings shall be of the same or similar style as that of the dwelling erected or being in the lot in which said buildings are located.

3. Except as permitted by this Declaration, no building or appurtenance thereto shall be permitted to extend beyond the lot line or that of the lot on which such building or appurtenance is erected.

4. No trailer, house trailer, camper, vehicle with camper shell exceeding the size of the bed and/or the height of the cab, motorhome, or off road vehicle, boat, plane, or other man-made vehicle of any kind whatsoever, except golf carts and regular passenger cars or their accepted substitute such as motorcycles and pickup trucks, shall be permitted to remain on any lot, or remain parked adjacent thereto, except for loading and unloading purposes.

5. No store, office or other place of business of any kind, and no hospital, sanatorium, or other place for the care or treatment of the physically or mentally ill, nor any theater, saloon, or other place of entertainment shall be erected or permitted upon any lot., and no business of any kind or character whatsoever shall be conducted in or from the buildings or lots located within ATV-1.

6. No swine, horses, cows, or any other livestock, and no pigeons, chickens, ducks, turkeys, or other poultry shall ever be kept upon said lots or tracts. Dogs, cats, or other household pets may be kept, provided, they are confined to their owner's lot or on a leash held by a person capable of controlling the animal, and not permitted to run free and further provided they are not kept, bred, or maintained for any commercial purpose, or in unreasonable numbers. In no event shall a combination of more than three (3) dogs and/or cats be kept on the premises at any one time. The keeping and maintaining of pets shall be subject to such rules and regulations as may, from time to time, be adopted by ABM and the Association.

7. Except as planned or erected by developer, no wall (including gates and iron inserts), fence, hedge, or other improvements shall be erected or maintained nearer to the front property line than the walls, attached open porch, carport, or balcony of the dwelling erected on said tracts. No side or rear wall (including any gates and iron inserts), fence, or hedge other than the wall of a building constructed on said tracts, shall be more than six (6) feet in height measured from the developer graded ground elevation to the highest point of the fence or the fence posts, Unofficial Document posts, hedge or other improvements of any nature shall be built, erected, placed or permitted to remain on lots bordering a built, erected, placed, or permitted on lots bordering a golf course at a height greater than two and one half (2 ½) feet within twenty-five (25) feet of the rear property line, however a wrought iron fence may be constructed upon the two and one half (2 ½) foot fence but not to exceed a height of six (6) feet measured from the developer-graded ground elevation to the highest point of the wrought iron fence or fence posts. Landscaping shall be planned for any units bordering a golf course so as to avoid any obstruction of the view of the gold course from the unit upon which the landscaping is planned and planted, and from the neighboring units.

8. No prefabricated building or structure of any nature whatsoever, permanent or temporary, attached or detached from a dwelling, shall be moved or placed upon or assembled or otherwise maintained on any lot; provided however, that a temporary office, tool shed, saw shed, lumber shed, and sales office may be maintained upon any lot or lots for the purpose erected and selling dwellings on any lot or lots, but such temporary structures shall be removed upon completion of construction or of selling of dwellings, whichever later occurs.

9. All equipment, service yards, wood piles, or storage piles shall be kept screened by a solid wall, a solid fence or a hedge so as to conceal them from view of neighboring lots, streets, park areas, or golf courses. No outside clothes line shall be allowed or maintained. All rubbish, trash or garbage shall be regularly removed at least once a week from each lot and shall not be allowed to accumulate thereon, and shall not be burned.

10. Any addition to the dwelling unit constructed by Developer must be of like material, color and craftsmanship. No solar units for heating or cooling or other purposes shall be erected, constructed, installed and maintained on any lot if it is visible from the front of the lot or the side of the intersecting street if it is on a corner lot. A solar unit may be erected, constructed, installed or maintained in the rear of the house if it consists of flat plate collectors lying flush with the roof surface and protruding

therefrom no more than six inches (6") or the solar unit is boxed in by a solid wall covered with shingles to match the color and texture of the existing roof.

11. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors whether attached to a building or structure or otherwise.

12. No advertising (except one of not more than five (5) square feet "For Rent" or "For Sale" sign per lot), billboards, unsightly objects or nuisance shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health, safety, or welfare of the owner of any dwelling or any resident thereof. These restrictions shall not apply to the business activities, signs, billboards, or the construction or maintenance of buildings, if any, of Developer, and its agents or designees, during the construction and sale period, and of ABM and the Association, their successors and assigns in furtherance of their powers and purposes, as set forth herein.

CERTIFICATION

The undersigned hereby certifies that the amendments contained in this Declaration have been approved by instruments signed by the owners of not less than two-thirds (2/3) of the lots pursuant to Article XIII, Section 11 of the Initial Declaration. Said instruments are attached hereto.

ATV-1 HOMEOWNERS ASSOCIATION, INC., an Arizona nonprofit corporation

By: *Jack Kaske*  
Its: President

Unofficial Document

State of Arizona )  
  ) ss.  
County of Maricopa )

SUBSCRIBED, SWORN AND ACKNOWLEDGED before me this 19<sup>th</sup> day of April, 2013, by Jack Kaske, the President of ATV-1 Homeowners Association, an Arizona nonprofit corporation, for and on behalf of the corporation.

*Michelle C Hepp*  
Notary Public

My Commission Expires:

March 5, 2016



INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

Pursuant to the amendment requirements of Article XI, Section 7, of the Declaration (as defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1), the undersigned Owner of the referenced Lot(s) hereby signs this document to express approval for the proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1 as if the signature(s) referenced below was included on the actual Declaration.

Dated this 8 day of November, 2012.

Lot Number(s): 5842

Name of Lot Owner: Gandra Epstein Shrader

Signature: Gandra Epstein Shrader

Title (if Lot Owner is an entity): \_\_\_\_\_

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Dated this 8 day of February, 2012.

Lot Number(s): 5843

Name of Lot Owner: Denise M. Bell

Signature: Denise M. Bell

Title (if Lot Owner is an entity): —

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Dated this 13 day of November, 2012.

Lot Number(s):

5844

Name of Lot Owner:

Barbara Prokerton

Signature:

[Signature]

Title (if Lot Owner is an entity):

\_\_\_\_\_



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Dated this 28 day of 11, 2012.

Lot Number(s):

5845

Name of Lot Owner:

JASON HARRIS

Signature:

[Handwritten Signature]

Title (if Lot Owner is an entity):

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Dated this 8<sup>TH</sup> day of November, 2012.

Lot Number(s):

5846

Name of Lot Owner:

Robert P. Spoltz

Signature:

R. P. Spoltz

Title (if Lot Owner is an entity):

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Dated this 11 day of April, ~~2012~~ <sup>2013</sup>.

Lot Number(s): 5847

Name of Lot Owner: Betsy L. Spinks

Signature: Betsy L. Spinks

Title (if Lot Owner is an entity): \_\_\_\_\_

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Dated this 2 day of Dec, 2012.

Lot Number(s): 5848

Name of Lot Owner: STEVE FINN

Signature: [Handwritten Signature]

Title (if Lot Owner is an entity): N/A

INSTRUMENT TO AMEND DECLARATION  
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Dated this 14 day of MARCH, 2013

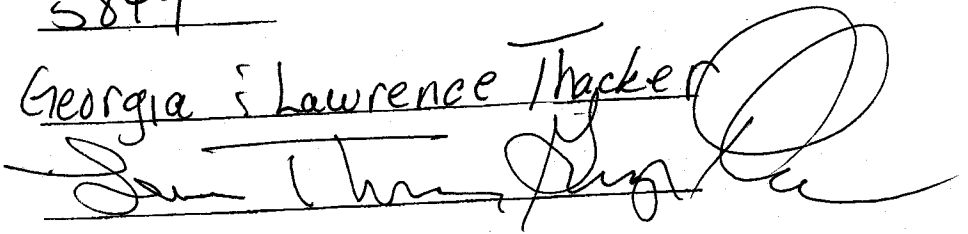
Lot Number(s):

5849

Name of Lot Owner:

Georgia & Lawrence Tracker

Signature:



Title (if Lot Owner is an entity): \_\_\_\_\_

Unofficial Document

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Dated this 17<sup>th</sup> day of NOVEMBER, 2012.

Lot Number(s): 5851

Name of Lot Owner: VAN CORTLANDT PARTNERS

Signature: [Handwritten Signature]

Title (if Lot Owner is an entity): \_\_\_\_\_

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Dated this 20<sup>th</sup> day of November, 2012.

Lot Number(s):

5852

Name of Lot Owner:

Wendy L. Hauptli

Signature:

Wendy L Hauptli

Title (if Lot Owner is an entity):

\_\_\_\_\_

Unofficial Document

See attached  
recommendations.

INSTRUMENT TO AMEND DECLARATION  
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Dated this 3rd day of December, 2012.

Lot Number(s): 5853 4310 E Sandia St Phoenix AZ  
85044

Name of Lot Owner: Leslie Seubert Trust

Signature: Leslie Seubert

Title (if Lot Owner is an entity): owner / Trustee



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Dated this 17<sup>th</sup> day of March, 2013

Lot Number(s): 5855

Name of Lot Owner: THOMAS & MARY JESWALD

Signature: Thomas Jeswald Mary Jeswald

Title (if Lot Owner is an entity): \_\_\_\_\_

Unofficial Document

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Dated this 21<sup>st</sup> day of November, 2012.

Lot Number(s): 5856

Name of Lot Owner: Ann Rice

Signature: Ann Rice

Title (if Lot Owner is an entity): \_\_\_\_\_

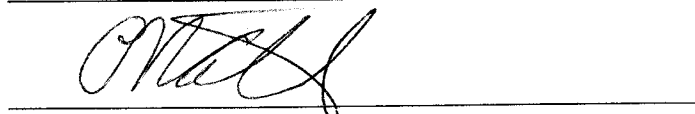
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Dated this 7 day of NOV, 2012.

Lot Number(s): 5857

Name of Lot Owner: Charles Ertl

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_

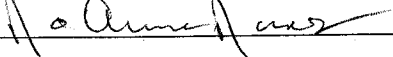
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Dated this 11/28/12 day of \_\_\_\_\_, 2012.

Lot Number(s): 5858

Name of Lot Owner: JO ANNE JONES

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_

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Dated this 9<sup>th</sup> day of November, 2012.

Lot Number(s):

5859

Name of Lot Owner:

JOHN & JO ANN KASKE

Signature:

John Kaske

Title (if Lot Owner is an entity):

\_\_\_\_\_

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Dated this 19 day of November, 2012.

Lot Number(s): 5860

Name of Lot Owner:  John Atkins

Signature:  John Atkins

Title (if Lot Owner is an entity): \_\_\_\_\_

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Dated this 12 day of January, 2012.

Lot Number(s):

5861

Name of Lot Owner:

James A. Howe Jr.

Signature:

James A. Howe Jr.

Title (if Lot Owner is an entity):

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Dated this 17 day of November, 2012.

Lot Number(s): 5862-12602 S. Tonto Court

Name of Lot Owner: Valston Management, LLC

Signature: David W. Elston, Man.

Title (if Lot Owner is an entity): Manager



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Dated this 11-21-12 day of \_\_\_\_\_, 2012.

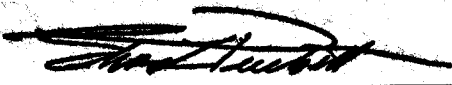
Lot Number(s):

5864

Name of Lot Owner:

ELMER L. PUCKETT

Signature:



Title (if Lot Owner is an entity):

\_\_\_\_\_

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Dated this 24 day of March, 2013

Lot Number(s): 5865

Name of Lot Owner: Julie Hoffman

Signature: Julie Hoffman

Title (if Lot Owner is an entity): \_\_\_\_\_

Unofficial Document

INSTRUMENT TO AMEND DECLARATION  
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Dated this 13<sup>th</sup> day of November, 2012.

Lot Number(s): 5868

Name of Lot Owner: Michael & Laurie Medchill

Signature: Laurie Medchill

Title (if Lot Owner is an entity): \_\_\_\_\_


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Dated this 9 day of November, 2012.

Lot Number(s): 5869  
4260 E. Sandia St., PHX, AZ

Name of Lot Owner: LENORE Espinoza

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

Pursuant to the amendment requirements of Article XI, Section 7, of the Declaration (as defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1), the undersigned Owner of the referenced Lot(s) hereby signs this document to express approval for the proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1 as if the signature(s) referenced below was included on the actual Declaration.

Dated this 17<sup>th</sup> day of March, 2013.

Lot Number(s): ATV-5870

Name of Lot Owner: David + Peggy Whitman Trust

Signature: David Whitman

Title (if Lot Owner is an entity): \_\_\_\_\_

Unofficial Document

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 15<sup>TH</sup> day of November, 2012.

Lot Number(s): 5871

Name of Lot Owner: JOSEPH SIMMONS / SANDRA SIMMONS

Signature: Joseph Simmons / Sandra Simmons

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 5<sup>th</sup> day of December, 2012.

Lot Number(s): 5873

Name of Lot Owner: FLICK BIRDS TRUST

Signature: LARRY & CYNTHIA FLICK TREE'S  
Larry J. Flick, Cheryl J. Flick TREE'S

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 07 day of NOV, 2012.

Lot Number(s): 5876 12609 S. NAMBE ST.

Name of Lot Owner: William H. Drew

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_



INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 11-8-12 day of THURSDAY, 2012.

Lot Number(s): 5877 PARCEL ACT 301-58-301

Name of Lot Owner: JOHN J CARDELLO

Signature:

John Cardello

Title (if Lot Owner is an entity):

\_\_\_\_\_

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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 12 day of November, 2012.

Lot Number(s): 5879

Name of Lot Owner: Molly SteinKemper

Signature: Molly SteinKemper

Title (if Lot Owner is an entity): \_\_\_\_\_

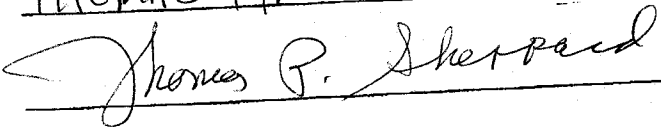
INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 15<sup>th</sup> day of FEBRUARY, 2013

Lot Number(s): 5881

Name of Lot Owner: THOMAS & PATRICIA SHEPPARD

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 28 day of November, 2012.

Lot Number(s): 5893

Name of Lot Owner: \_\_\_\_\_

Signature: 

Title (if Lot Owner is an entity): Nambe LLC

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 27 day of November, 2012.

Lot Number(s): 5894

Name of Lot Owner: Jean S. Gutmacher

Signature: Jean S. Gutmacher

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 4 day of 12, 2013

Lot Number(s): 5897

Name of Lot Owner: ELIZABETH KLEESPIES

Signature:  Elizabeth Kleespies  
Unofficial Document

Title (if Lot Owner is an entity): \_\_\_\_\_

4236

INSTRUMENT TO AMEND DECLARATION  
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Dated this 13 day of APRIL, 2013

Lot Number(s): 5899

Name of Lot Owner: x Peter Ludwig

Signature: [Handwritten Signature]

Title (if Lot Owner is an entity): \_\_\_\_\_

Unofficial Document

Mail  
CR

J. [Handwritten Signature]

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 3-16- day of March, 2013

Lot Number(s): 5900

Name of Lot Owner: Beverly Deso

Signature: Beverly Deso

Title (if Lot Owner is an entity): \_\_\_\_\_



INSTRUMENT TO AMEND DECLARATION  
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Dated this 18 day of March, 2013

Lot Number(s): 5902

Name of Lot Owner: Joni M Repp

Signature: Joni M Repp

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 21 day of November, 2012.

Lot Number(s):

5903

Name of Lot Owner:

CINDY & TIM KREY

Signature:

Cindy J Krey

Title (if Lot Owner is an entity):

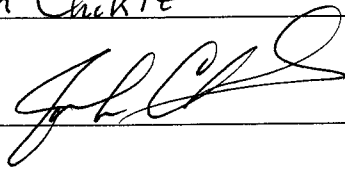
INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

Pursuant to the amendment requirements of Article XI, Section 7, of the Declaration (as defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1), the undersigned Owner of the referenced Lot(s) hereby signs this document to express approval for the proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1 as if the signature(s) referenced below was included on the actual Declaration.

Dated this 7 day of November, 2012.

Lot Number(s): ATV - 5904

Name of Lot Owner: John Chickie

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_

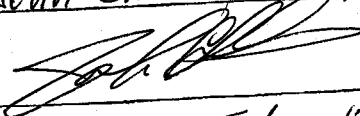
INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 14 day of March, 2013

Lot Number(s): 5904

Name of Lot Owner: John Chikie / Gail Fedun

Signature: 

Title (if Lot Owner is an entity): Chikie-Fedun Living Trust

INSTRUMENT TO AMEND DECLARATION  
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Dated this 4 day of 11, 2013

Lot Number(s): 5905

4212

Name of Lot Owner:

Walter W. Farnick

Signature:

Walter W. Farnick  
Unofficial Document

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 17 day of 4, 2013

Lot Number(s): 5908

Name of Lot Owner: J. B. Swanson

Signature: J  
Unofficial Document

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
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Dated this 15<sup>th</sup> day of March, 2013

Lot Number(s): 5909

Name of Lot Owner: James E. Swan

Signature: JAMES E. SWAN

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
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Dated this 31 day of Dec, 2012.

Lot Number(s):

5912

Name of Lot Owner:

Derek D Steveson

Signature:



Title (if Lot Owner is an entity):

\_\_\_\_\_



INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 28 day of NOVEMBER, 2012.

Lot Number(s): 5913

Name of Lot Owner: JUDY EVELYN TRUAX

Signature: Judy Evelyn Truax

Title (if Lot Owner is an entity): \_\_\_\_\_

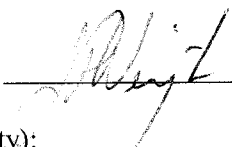
INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 16 day of November, 2012.

Lot Number(s): 5915

Name of Lot Owner: Weigt

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

Pursuant to the amendment requirements of Article XI, Section 7, of the Declaration (as defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1), the undersigned Owner of the referenced Lot(s) hereby signs this document to express approval for the proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1 as if the signature(s) referenced below was included on the actual Declaration.

Dated this 5<sup>th</sup> day of DECEMBER, 2012.

Lot Number(s): 5918

Name of Lot Owner: KENNETH R. GERLACH

Signature: Kenneth R. Gerlach

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 8th day of November, 2012.

Lot Number(s): 5919

Name of Lot Owner: Elizabeth J. Rehbein

Signature: Elizabeth J. Rehbein

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 31st day of January, 2013

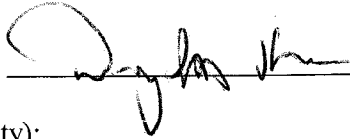
Lot Number(s):

5943

Name of Lot Owner:

Douglas Kerr

Signature:



Title (if Lot Owner is an entity):

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 19 day of March, 2013

Lot Number(s): 5944

Name of Lot Owner: JEFFREY GREEN

Signature: Jeffrey Green

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 12<sup>th</sup> day of November, 2012.

Lot Number(s): 5949

Name of Lot Owner: Jessie Belcher and Marilyn Belcher

Signature:

Jessie Belcher Marilyn Belcher

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 17<sup>th</sup> day of March, 2013

Lot Number(s): ATV 5950

Name of Lot Owner: Yolanda Najera

Signature: Yolanda Najera

Title (if Lot Owner is an entity): \_\_\_\_\_




INSTRUMENT TO AMEND DECLARATION  
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Dated this 9<sup>th</sup> day of November, 2012.

Lot Number(s): 5951

Name of Lot Owner: Daniel + Alberta Carmody

Signature: Alberta R. Carmody 

Title (if Lot Owner is an entity): \_\_\_\_\_



INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 16 day of March, 2013

Lot Number(s): 5953

Name of Lot Owner: MARY ANN KWILOSZ

Signature: Mary Ann Kwilosz

Title (if Lot Owner is an entity): \_\_\_\_\_

-Unofficial Document

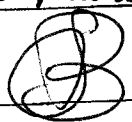
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 2 day of April, 2013

Lot Number(s): ATV 5954

Name of Lot Owner: Stephanie Bird

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
OF  
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Dated this 25 day of March, 2013

Lot Number(s): 5956

Name of Lot Owner: Marion Garrity

Signature: Marion Garrity

Title (if Lot Owner is an entity): Marion Garrity, James Garrity  
Unofficial Document

INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 11<sup>th</sup> day of April, 2013

Lot Number(s): 5957

Name of Lot Owner: Karin & Jon Paulikowsky

Signature:

Karin Paulikowsky Jon Paulikowsky

Title (if Lot Owner is an entity): \_\_\_\_\_

—Unofficial Document

INSTRUMENT TO AMEND DECLARATION  
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Dated this 15 day of March, 2013

Lot Number(s): 5958

Name of Lot Owner: Margaret Sue McPartland Trust

Signature: Sue McPartland

Title (if Lot Owner is an entity): \_\_\_\_\_

Unofficial Document





INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 11th day of December, 2012.

Lot Number(s):

5961

Name of Lot Owner:

Lonna Mae Wilcox

Signature:

Lonna Mae Wilcox

Title (if Lot Owner is an entity):

\_\_\_\_\_

DEC 18 2012

INSTRUMENT TO AMEND DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

Pursuant to the amendment requirements of Article XI, Section 7, of the Declaration (as defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1), the undersigned Owner of the referenced Lot(s) hereby signs this document to express approval for the proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions Ahwatukee ATV-1 as if the signature(s) referenced below was included on the actual Declaration.

Dated this 8 day of December, 2012.

Lot Number(s): 5962

Name of Lot Owner: Rosemary Fusco

Signature: Rosemary Fusco

Title (if Lot Owner is an entity): ~~5962~~

INSTRUMENT TO AMEND DECLARATION  
OF  
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Dated this 10 day of NOVEMBER, 2012.

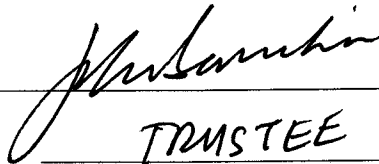
Lot Number(s):

5963

Name of Lot Owner:

BARRAVECCHIA FAMILY TRUST

Signature:



Title (if Lot Owner is an entity):

TRUSTEE

INSTRUMENT TO AMEND DECLARATION  
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Dated this 05<sup>th</sup> day of December, 2012.

Lot Number(s):

5965

Name of Lot Owner:

Katelyn Hamel

Signature:



Title (if Lot Owner is an entity):

\_\_\_\_\_

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Dated this 4 day of 11 (2013)

Lot Number(s): 5967

Name of Lot Owner: x D. L. Loney

Signature: x D. L. Loney  
Unofficial Document

Title (if Lot Owner is an entity): \_\_\_\_\_

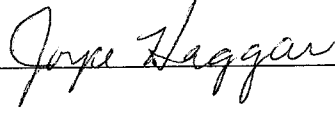
INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 21 day of NOV, 2012.

Lot Number(s): 5970

Name of Lot Owner: Ron Haggan Joyce Haggan

Signature:  

Title (if Lot Owner is an entity): \_\_\_\_\_

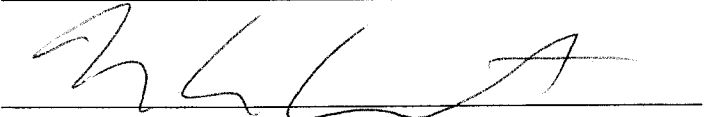
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Dated this 11<sup>TH</sup> day of NOVEMBER, 2012.

Lot Number(s): 5972

Name of Lot Owner: NICHOLAS ARETAKIS

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_

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Dated this 15<sup>th</sup> day of November, 2012.

Lot Number(s): 5975

Name of Lot Owner: Traci Zalesky

Signature: Traci Zalesky

Title (if Lot Owner is an entity): \_\_\_\_\_



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Dated this 12 day of November, 2012.

Lot Number(s):

5977

Name of Lot Owner:

Deborah Lewis

Signature:

Deborah Lewis

Title (if Lot Owner is an entity):

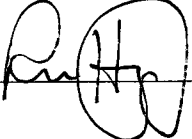
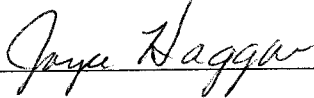
INSTRUMENT TO AMEND DECLARATION  
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COVENANTS, CONDITIONS AND RESTRICTIONS OF AHWATUKEE ATV-1

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Dated this 21 day of Nov, 2012.

Lot Number(s): 5979

Name of Lot Owner: Ron Haggan & Joyce Haggan

Signature:  

Title (if Lot Owner is an entity): \_\_\_\_\_

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Dated this 15 day of March, 2013

Lot Number(s): 5980

Name of Lot Owner: The Van Horn Landing Revocable Living Trust

Signature: Mitchell W. Van Horn, Trustee

Title (if Lot Owner is an entity): Trustee

Unofficial Document

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Dated this 28<sup>th</sup> day of November, 2012.

Lot Number(s): 5981

Name of Lot Owner: Alfred E. O'Leary

Signature: Alfred E. O'Leary

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
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Dated this 28<sup>th</sup> day of NOVEMBER, 2012.

Lot Number(s): 5983

Name of Lot Owner: Adeline O'Leary Hallock

Signature: Adeline O'Leary Hallock

Title (if Lot Owner is an entity): \_\_\_\_\_

INSTRUMENT TO AMEND DECLARATION  
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Dated this 21 day of November, 2012.

Lot Number(s):

5985

Name of Lot Owner:

Salvatore Paparone

Signature:

[Handwritten Signature]

Title (if Lot Owner is an entity):

\_\_\_\_\_

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Dated this 15 day of March, 2013

Lot Number(s): 5986

Name of Lot Owner: William D. and Susan E. Cook

Signature: William D. Cook Susan E. Cook

Title (if Lot Owner is an entity): \_\_\_\_\_

Unofficial Document

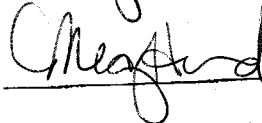
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Dated this 23 day of March, 2013

Lot Number(s): 5841

Name of Lot Owner: Megan Herold

Signature: 

Title (if Lot Owner is an entity): \_\_\_\_\_