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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
NAVARRO GROVES COMMUNITY ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NAVARRO GROVES COMMUNITY ASSOCIATION is made as of the 11th day of Dec, 2017, by Maracay 91, L.L.C., an Arizona limited liability c o m p a n y .

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real Property located in the Town of Gilbert, Maricopa County, Arizona, which is more particularly described as Lots 1 through 54, inclusive, Tracts A through C, inclusive, according to the Final Plat for Navarro Groves recorded at Book 1318, page 49 in the Official Records of the Maricopa County, Arizona Recorder's Office.

WHEREAS, the Property shall generally be known as "Navarro Groves." Declarant desires to develop the Property into a planned community of Single-Family residential homes.

WHEREAS, for the purpose of protecting the value, desirability, attractiveness and character of the Property, Declarant intends that the Property shall be held, sold, and conveyed subject to the provisions hereof, which shall run with all of the Property. Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Property, which shall be binding on all parties having any right, title or interest in the Property, or any part thereof, and shall inure to the benefit of such parties and their successors and assigns.

WHEREAS, Declarant also deem it desirable to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Areas of Association Responsibility and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Areas of Association Responsibility and the enforcement of covenants, conditions and restrictions contained in this Declaration.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE I

DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings ascribed to them in this Article.

- 1.1 "Alleged Defect" means any alleged defect(s) or deficiency in the planning, design, engineering, grading, construction, or other development of any portion of the Common Areas, any Lot or Dwelling Unit constructed thereon, and/or any Improvements constructed within the Property.
- 1.2 "Annual Assessments" means the assessments levied and assessed against each Lot pursuant to Section 4.3 of this Declaration.
- 1.3 "Architectural Committee" means the committee which may be established pursuant to Section 3.4 of this Declaration.
- 1.4 "Architectural Guidelines" means those architectural and design guidelines established by the Board and/or Architectural Committee pursuant to Section 3.4, as such guidelines may be amended from time to time.

- 1.5 “Areas of Association Responsibility” means: (a) all of the Common Areas; (b) all land, and the Improvements situated thereon, which the Association is obligated to maintain, repair, and replace pursuant to the terms of this Declaration, the Plat, or other recorded document executed by the Declarant or the Association; and (c) all land or easements which are dedicated to a governmental entity or utility pursuant to this Declaration, the Plat, or other recorded document and which the governmental entity or utility requires the Association to maintain.
- 1.6 “Articles” means the Articles of Incorporation of the Association that are filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.
- 1.7 “Assessments” means all of the Assessments levied and assessed against each Lot pursuant to Article 4 of this Declaration, including, without limitation, Annual Assessments, Special Assessments, and Use Assessments.
- 1.8 “Association” means the Navarro Groves Community Association, an Arizona nonprofit corporation, and its successors and assigns.
- 1.9 “Association Rules” means the rules and regulations adopted by the Association pursuant to Section 3.3, as the same may be amended from time to time.
- 1.10 “Board” means the Board of Directors of the Association.
- 1.11 “Bylaws” means the Bylaws of the Association, as such Bylaws may be amended from time to time.
- Unofficial Document
- 1.12 “Common Area” and “Common Areas” means (a) any tracts shown on a Plat and designated as Common Areas, together with all Improvements situated thereon, (b) any easements, land, or Improvements shown on the Plat that the Association is obligated to maintain by virtue of a designation in the Plat including, without limitation, the right-of-way adjacent to the Project shown on the Plat and the private roadway easement shown on the Plat, and (c) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold or easement interest for as long as the Association is the Owner of such interest, except Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment lien or by any deed in lieu of foreclosure.
- 1.13 “Declarant” means Maracay 91, L.L.C., an Arizona limited liability company, or any Person or entity to whom any part or all of such rights reserved hereunder are assigned. Declarant’s rights shall only be assigned by a written, recorded instrument expressly assigning such rights. Notwithstanding the foregoing or anything to the contrary contained herein, no termination or assignment of Declarant’s rights shall serve to terminate any Declarant’s right to benefit from any limitations of liability, releases, waivers or indemnities in favor of Declarant as set forth herein, and all such limitations of liability, releases, waivers or indemnities in favor of Declarant shall survive any termination or assignment of Declarant’s rights.
- 1.14 “Declaration” means this Declaration of Covenants, Conditions and Restrictions for Navarro Groves Community Association, as it may be amended from time to time.

- 1.15 "Declarant Control Period" means the period commencing on the date of the recording of this Declaration and ending on the date that the Class B Membership in the Association terminates pursuant to Section 3.7.
- 1.16 "Dwelling Unit" means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.
- 1.17 "First Mortgage" means any mortgage or deed of trust recorded against a Lot which has first priority over any other mortgage or deed of trust recorded against the same Lot.
- 1.18 "Improvement" or Improvements" means buildings, driveways, roads, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures, improvements, or landscaping improvements of every type and kind.
- 1.19 "Lot" means any parcel of real property designated as a lot on the Plat and which is covered by this Declaration and any Dwelling Unit, building, structure or other Improvement situated thereon.
- 1.20 "Member" means any Person, corporation, partnership, joint venture, or other legal entity who owns one (1) or more Lots in the Project and is therefore a Member of the Association.
- 1.21 "Membership" means a Membership in the Association and the rights granted to the Owners hereof to participate in the Association.
- 1.22 "Owner" means the record owner, whether one (1) 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 ^{Official Document} not include (a) Persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (b) 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 monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions, or similar executory contracts that are intended to control the rights and obligations of the parties to the transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et. seq., the Trustor under the deed of trust shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust Property shall be deemed to be the Owner.
- 1.23 "Person" means a natural Person, corporation, business trust, estate, trust, limited liability company, partnership, Association, joint venture, municipality, governmental subdivision or agency or other legal or commercial entity.
- 1.24 "Plat" means the Final Plat for Navarro Groves, recorded at Book 1318, page 49, and Instrument No. 2017-0237581 in the Official Records of the Maricopa County, Arizona Recorder's Office, and all amendments thereto. The Plat contains numerous general notes and specific notes pertaining to the Project, the Lots, Common Areas, and other matters and should be reviewed in conjunction with the Project Documents.

- 1.25 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Guidelines, any amendments to the foregoing, any duly adopted resolution of the Board, and any other document, agreement or covenant pertaining to the Property.
- 1.26 "Property" or "Project" means the real Property described on the Plat together with all buildings and other Improvements located thereon from time to time, and all easements, rights and appurtenances belonging thereto.
- 1.27 "Purchaser" means any Person, other than the Declarant, who becomes the Owner of a Lot, except for (a) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.
- 1.28 "Reserve Account" means the federally insured bank accounts maintained by the Association for the segregation and retention of Reserve Funds from the Association's general operating account.
- 1.29 "Reserves" or "Reserve Funds" means those amounts specifically collected by the Association for, and in anticipation of, future expenses associated with (a) the proper operation and maintenance of the Association, (b) repair, replacement and maintenance of the Common Areas and Improvements thereon, and (c) repair, replacement and maintenance of the Areas of Association Responsibility.
- 1.30 "Resident" means (a) each occupant legally occupying or actually residing in a Dwelling Unit, and (b) Members of the immediate family of each Owner actually living in the same household with such Owner. Subject to such rules and regulations as the Association may hereafter specify, the term "Resident" also shall include the guests or invitees of any such Owner.
- Unofficial Document
- 1.31 "Single Family" means an individual living alone, a group of two (2) 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.
- 1.32 "Single Family Residential Use" means 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 statutes, ordinances, rules and regulations.
- 1.33 "Special Assessments" means the Assessments levied and assessed against each Lot pursuant to Section 4.8 of this Declaration.
- 1.34 "Use Assessments" means the Assessments levied and assessed against each Lot pursuant to Section 4.9 of this Declaration.
- 1.35 "Visible From Neighboring Property" means, with respect to any given object, that such object is, or would be, visible to a natural Person six feet (6') tall, standing on the same plane as the object being viewed at a distance of one hundred feet (100') or less from the nearest boundary of the Property being viewed. The Architectural Committee (or the Board if no committee has been formed) shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the Architectural Committee shall be binding in that regard, subject to any appeal granted by the Board.

ARTICLE 2

PROPERTY SUBJECT TO THE DECLARATION

- 2.1 **GENERAL DECLARATION:** Declarant intends by this Declaration to impose certain covenants, conditions and restrictions upon the Property in order to establish a general scheme for the development, sale, use, maintenance and enjoyment of the Property for the purpose of enhancing and protecting the value, desirability and quality of life within the Property. Declarant hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that any Property owned by or dedicated to a governmental agency or the public shall not be subject to this Declaration while owned by any such governmental entity or the public, except that any restrictions imposed in this Declaration upon the Owners concerning the use and maintenance of such Property shall be applicable at all times. This Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners of the Property and their successors in interest.
- 2.2 **LIMITATION OF RESTRICTIONS ON DECLARANT:** Declarant is undertaking the work of constructing Dwelling Units and incidental Improvements upon the Property. The completion of that work and the sale, rental and other disposal of said Dwelling Units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and Dwelling Units constructed on the Lots and the Property established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to: (a) prevent the Declarant, its contractors or subcontractors from doing on the Property whatever is necessary or advisable in connection with the completion of said work; or (b) prevent the Declarant ^{Unofficial Document} or its representatives from erecting, constructing and maintaining, on any part of the Property, such structures as may be reasonable or necessary for the conduct of the business of completing said work and establishing the Property as a residential community and disposing of the same by sale, lease or otherwise; or (c) prevent the Declarant from maintaining such sign or signs on any of the Property as may be reasonable or necessary for the sale, lease or disposition thereof, including, but not limited to, such sign or signs as may be required or requested by the institution(s) providing financing for the Project; or (d) prevent the Declarant from modifying the Plat or any portion thereof, subject to the terms and conditions otherwise contained herein. Notwithstanding the foregoing, Declarant shall use commercially reasonable efforts to avoid disturbing the Owners' use and enjoyment of the Lots while completing any work necessary on the Property.
- 2.3 **ASSOCIATION BOUND:** This Declaration shall be binding upon and shall benefit the Association.
- 2.4 **DISCLAIMER OF REPRESENTATIONS AND IMPLIED COVENANTS:** Declarant makes no representation or warranty that the Property will be developed in accordance with the zoning or the development plan for the Property as it exists as of the recording of this Declaration. Each Owner, Resident and other Person acquiring any Lot or other real Property in the Property acknowledges that the zoning and/or the development plan may be amended from time to time by the applicable governmental authority and/or Declarant. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Project Documents or as to the compliance of any provision of the Project Documents with public laws, ordinances, or regulations applicable to the Property. Nothing contained in this Declaration and nothing which may be represented to a Purchaser by real estate brokers or

salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any Property subject to this Declaration.

ARTICLE 3

THE ASSOCIATION: RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

- 3.1 **RIGHTS, POWERS and DUTIES:** The Association shall be an Arizona nonprofit corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona law and all powers necessary or desirable: (a) to perform the Association's duties and obligations under the Project Documents or imposed by law; (b) to exercise the rights and powers of the Association set forth in the Project Documents; and (c) to foster and promote the common good and general welfare of the Property, the Owners and Residents, and the surrounding community. 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 the objectives and purposes of the Association as set forth in the Project Documents.
- 3.2 **BOARD of DIRECTORS and OFFICERS:** The affairs of the Association shall be conducted by the Board elected in accordance with this Declaration and the Bylaws and Articles, and such officers and committees as the Board may elect or appoint in accordance with the Articles and Bylaws. The initial directors and officers of the Association shall be designated in the Articles, and such Persons shall serve until their death, resignation, removal from office, or until their successors are duly elected as provided in the Bylaws. Until the termination of the Declarant Control Period, the directors of the Association shall be appointed by and may be removed solely by Declarant. After the termination of the Declarant Control Period, or at such earlier time as Declarant relinquishes its rights to appoint the Board, the directors shall be elected by the Members in accordance with the Bylaws. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Unless the Project Documents specifically require the vote or consent of the Members and/or Declarant, the Board may do or cause to be done any act on behalf of the Association.
- 3.3 **ASSOCIATION RULES:** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. The Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.
- 3.4 **ARCHITECTURAL COMMITTEE:**
- (a) *Approval Required.* No Improvement which would be Visible From Neighboring Property, or which would cause any Person or thing to be Visible From Neighboring Property, shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee, which shall have the authority to regulate the external design and appearance of the Lots and all Improvements constructed thereon. No

addition, alteration, repair, change, or other work which in any way alters the exterior appearance of any part of a Lot, or any Improvements located thereon, which are or would be Visible From Neighboring Property shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change, or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee their written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change, or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans, and specifications which the Architectural Committee may reasonably request.

- (b) *Design Review Fee.* The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change, or other work pursuant to this Section 3.4, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.
- (c) *Construction Deposit.* The Architectural Committee shall have the right to require a fully-refundable construction deposit to ensure compliance with the Declaration, compliance with the approved plans, and to protect the Association against damage to the Areas of Association Responsibility, which deposit shall be payable at the time the application for approval is submitted to the Architectural Committee. Any such deposit shall be fully refundable to the Owner upon: (i) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee; and (ii) the Owner's written request to the Architectural Committee, so long as there is no damage caused to any of the ^{Unofficial Document} Association Responsibility by the Owner, its agents, or contractors. If an Owner or an Owner's agent causes damage to an Area of Association Responsibility, the Association may use the construction deposit to repair such Area of Association Responsibility. The Association's costs of repairing any Areas of Association Responsibility beyond the construction deposit shall be paid by the Owner upon demand from the Association and any sum not paid by an Owner may be treated as an Assessment, subject to lien, and collected in like manner as Assessments levied pursuant to this Declaration. Additionally, any delinquent Assessments may be collected from the construction deposit.
- (d) *Owners in Good Standing.* In addition to all other requirements of this Section 3.4, the Owner of a Lot must be in good standing to be eligible to submit plans for Improvements, additions, alterations, repairs, changes, or other work to the Architectural Committee for approval.
- (e) *Timeline for Review.* The Architectural Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections. If the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after an application meeting all of the requirements of this Declaration and of the Architectural Guidelines, together with any fee required to be paid and any additional information, plans, and specifications requested by the Architectural Committee, and any other requirements, have been submitted to the Architectural Committee, the application will be deemed to have been disapproved. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change, or other work shall not

be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, or other work subsequently submitted for approval.

- (f) *Review of Plans.* In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change, or other work which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography, and finish-grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change, or other work which must be approved by the Architectural Committee pursuant to this Section 3.4 if the Architectural Committee determines, in its sole and absolute discretion, that:
- (i) The proposed construction, installation, addition, alteration, repair, change, or other work would violate any provision of this Declaration;
 - (ii) The proposed construction, installation, addition, alteration, repair, change, or other work does not comply with all of the Architectural Guidelines;
 - (iii) The proposed construction, installation, addition, alteration, repair, change, or other work is not in harmony with existing Improvements on the Property or with Improvements previously approved by the Architectural Committee but not yet constructed;
 - (iv) The proposed construction, installation, addition, alteration, repair, change, or other work is not aesthetically acceptable;
 - (v) The proposed construction, installation, addition, alteration, repair, change, or other work would be detrimental to or adversely affect the appearance of the Property; or
 - (vi) The proposed construction, installation, addition, alteration, repair, change, or other work is otherwise not in accord with the general plan of development for the Property.

The approval required by the Architectural Committee pursuant to this Section 3.4 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. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change, or other work pursuant to this Section 3.4 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change, or other work or that such construction, installation, addition, alteration, repair, change, or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule, or regulation.

- (g) *Architectural Committee.* During the Declarant Control Period, Declarant shall have the sole right (a) to determine if an Architectural Committee will be established or if the Board will act in such capacity; (b) to determine the number of members on the Architectural Committee; and (c) to appoint and remove the members of the Architectural Committee (if any) at any time, with or without cause. Following the Declarant Control Period, the Board shall have the right to determine the foregoing with regard to the

Architectural Committee. All members of the Architectural Committee appointed by the Board shall serve for a term of one (1) year, subject to the right of the Board to remove such Person from the Committee prior to the expiration of such committee Member's term. Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event Declarant may require, if during the Declarant Control Period, that specified actions of the Architectural Committee, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Members of the Architectural Committee need not be Owners or Residents; however, at least one (1) Member of the Board shall serve as a Member of the Architectural Committee and the chair of the Architectural Committee must be a Member of the Board.

- (h) *Architectural Guidelines.* The Architectural Committee and the Board may adopt, amend, and repeal Architectural Guidelines, standards, and procedures to be used in rendering its decisions. Such guidelines, standards, and procedures may include, without limitation, provisions regarding (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography, (ii) placement of Dwelling Units and other buildings, (iii) landscape design, content and conformance with the character of the Property and permitted and prohibited plants, (iv) requirements concerning exterior color schemes, exterior finishes, and materials, (v) signage, (vi) perimeter and screen wall design and appearance, and (vii) such other limitations and restrictions as the Architectural Committee, in its reasonable discretion, may adopt. Notwithstanding anything herein to the contrary, the Architectural Guidelines may not conflict with this Declaration and this Declaration will prevail in the case of any conflict with the Architectural Guidelines.
- (i) *Decisions and Appeals.* Except ^{Unofficial Document} provided in this Section 3.4, the decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. An Owner who submitted a request for approval to the Architectural Committee may, in writing, appeal the Architectural Committee's decision to the Board. The Board shall have the right, but not the obligation, to review an appeal of any decision of the Architectural Committee and the decision of the Board shall in all cases be final and binding.
- (j) *Exclusions.* The provisions of this Section 3.4 shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change, or replacement of any Improvements (including, without limitation, Dwelling Units) made by or on behalf of Declarant.

3.5 **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, become a Member of the Association and shall remain a Member of the Association so long as such Owner owns a Lot.

3.6 **TRANSFER of MEMBERSHIP:** Membership in the Association shall be appurtenant to each Lot and a Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot, and then only to the Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

- 3.7 **CLASSES of MEMBERS:** The Association shall have two (2) classes of voting Membership. CLASS A Members shall be all Owners of Lots, with the exception of the Declarant until the termination of the Class B Membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned, subject to the authority of the Board to suspend such voting rights as provided herein. Declarant shall be the Class B Member. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the first to occur of the following: (a) the date on which one hundred percent (100%) of the Lots have been conveyed to Class A Members; or (b) when the Declarant notifies the Association in writing that it relinquishes its Class B Membership.
- 3.8 **JOINT MEMBERSHIP:** When more than one (1) Person is the Owner of any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint 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 Owner casts a ballot 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. In the event more than one (1) ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void. Each Lot may not hold more than one (1) Board seat.
- 3.9 **CORPORATE OWNERSHIP:** In the event any Lot is owned by a corporation, partnership or other entity, the corporation, partnership or entity shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said Membership, and in the absence of such designation, the general partner or chief executive officer of such corporation, partnership or entity shall have the power to vote for that Membership.
- Unofficial Document
- 3.10 **SUSPENSION of VOTING RIGHTS:** In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of sixty (60) days, said Owner's right to vote as a Member of the Association shall be automatically suspended and shall remain suspended until all payments, including accrued interest, late charges and attorney's fees, are brought current. In addition, the Board may suspend an Owner's right to vote for a period not to exceed ninety (90) days for any other infractions of the Project Documents.
- 3.11 **NO PERSONAL LIABILITY:** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association.
- 3.12 **FUNDS:** All funds received by the Association and the titles of all properties acquired by the Association shall be held in trust for the Members of the Association in accordance with this Declaration, the Articles and the Bylaws.
- 3.13 **SMALL CLAIMS COURT:** To the extent allowed under applicable law, the Association's managing agent may appear on behalf of the Association in Arizona Justice Court to represent the Association in "small claims" matters.

ARTICLE 4

COVENANT FOR MAINTENANCE ASSESSMENTS

- 4.1 CREATION of the LIEN and PERSONAL OBLIGATION of ASSESSMENTS: Each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay Assessments to the Association including, without limitation, Annual Assessments, Special Assessments, Use Assessments, fines and other charges as set forth herein. The Assessments, together with interest, late fees, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon each Lot. Assessments, together with interest, late fees, costs, fines, and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot. The personal obligation for Assessments shall not pass to the Owner's successors in title unless expressly assumed in writing by such successor.
- 4.2 PURPOSE of ASSESSMENTS: The Assessments levied by the Association shall be used (a) for the upkeep, maintenance and repair of Areas of Association Responsibility; (b) for promoting the health, safety and welfare of the Owners and Residents of Lots within the Project; (c) for the performance and exercise by the Association of its rights, duties and obligations under the Project Documents; (d) for any upkeep, maintenance or repair of property required by any governmental authority as Areas of Association Responsibility; and (e) to pay the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to the Reserve Fund determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. Further, no diminution or abatement of Assessments shall be claimed or allowed by reason of the alleged failure of the Association or the Board to take some action or perform some function under this Declaration, the Articles, Bylaws or any other controlling document, or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.
- 4.3 ANNUAL ASSESSMENTS: Annual Assessments shall include a reasonable amount for Reserve Funds for taxes, insurance, maintenance, repairs and replacement of the Areas of Association Responsibility and all other areas for which the Association is responsible. All Reserve Funds collected by the Association shall be deposited into one (1) or more Reserve Accounts.
- (a) *Annual Budget; Delivery to Membership.* The Board shall annually determine and fix the amount of the Annual Assessments against the Lots and shall notify the Owners of the Lots, in writing, as to (i) the amount of the Annual Assessments and (ii) the fractional payment cycle for the Annual Assessment (e.g., quarterly or monthly). The written notice shall be provided to Owners not less than thirty (30) days prior to the date that such Annual Assessments are to commence. Along with such notification, the Board shall provide the Owners with a proposed budget for the next fiscal year. In addition to including amounts for the estimated common expenses and cash requirements of the Association, each budget shall also provide for such other amounts required under the Project Documents, including, without limitation, Reserve Funds in such amounts as shall be determined by the Board to be reasonably adequate, taking into account the number and nature of replaceable property within the Common Areas and other areas for which the Association is responsible, the expected life of such item and each item's expected

repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause a copy of the budget and statement of the amount of the Annual Assessments to be levied against the Lots for the fiscal year in question to be delivered or mailed to the Owners. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of the fiscal year, then until and unless a budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect.

- (b) *Initial Annual Assessments.* Initial Annual Assessments shall be established by the Board in accordance with Arizona law. The Annual Assessments shall be prorated through the date of the close of escrow for each Lot based on the number of full and partial months remaining in the relevant billing cycle (e.g., quarterly or monthly).
- (c) *Maximum Increase in Annual Assessments.* Except as to the first Annual Assessments, the Annual Assessments may be neither increased by more than twenty percent (20%) above, nor decreased by more than twenty percent (20%) below the Annual Assessments for the previous year, without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to ten percent (10%) of the Members are present in person or by proxy. Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the maximum Annual Assessments for any fiscal year by an amount sufficient to permit the Board to cover any increase over the preceding fiscal year for: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; (ii) taxes on the Common Areas; or (iii) charges for utility services necessary to the Association's performance of its obligations under this Declaration. If item (i), (ii) or (iii) in the preceding sentence results in a ~~unofficial document~~ in the maximum Annual Assessments, such increase shall be permitted notwithstanding the fact that the resulting increase in maximum Annual Assessments is at a rate greater than otherwise permitted by the preceding portions of this Section. Increases in Annual Assessments shall be subject to any limitations imposed by A.R.S. § 33-1803 or other law as such may be amended from time to time. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in the full amount of the maximum Annual Assessments for the fiscal year, and the election by the Board not to levy Annual Assessments in a full amount of the maximum Annual Assessments for the fiscal year shall not prevent the Board from levying Annual Assessments in subsequent years in the full amount of the maximum Annual Assessments for the subsequent fiscal year (as determined in accordance with this Section). In the event that for any fiscal year, the Board elects to levy an Annual Assessments at less than the full amount of the maximum Annual Assessments for the fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy supplemental Annual Assessments during the same fiscal year so long as the total of the Annual Assessments levied during the fiscal year have not exceeded the maximum Annual Assessments for such fiscal year.
- (d) *Due Dates.* Unless otherwise determined by the Board, Assessments shall be due and payable within fifteen (15) days of assessment thereof. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

- (e) *Reserve Studies.* Reserves may be funded from Assessments, the Reserve contribution fee paid pursuant to Section 4.7, or any other revenue of the Association. The Board shall periodically obtain Reserve studies and updates to assist the Board in determining an appropriate amount for Reserves for the Association; provided, however, (i) no such report or study shall be required until at least three (3) years have elapsed following the date Assessments begin to accrue; and (ii) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for Reserves which are greater or less than those shown in the study; and (iii) in establishing Reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (A) the amount of Annual Assessments for the Property as compared to other comparable developments; (B) the past occurrences of required repairs at the Property; and (C) projected funds available to the Association pursuant to the working capital fees, initiation fees and Reserve contributions paid pursuant to this Declaration.
- (f) *Exemption.* During the Declarant Control Period and notwithstanding anything to the contrary contained herein, Declarant, shall not be required to pay any Assessments for Lots owned by Declarant, but instead may pay the operating deficiencies of the Association as set forth below. Upon the termination of the Declarant Control Period, all Members shall pay the Assessments for Lots as are payable for Lots owned by Class A Members. If a Lot ceases to qualify for the exemption granted herein to Declarant during the period for which Assessments are attributable, the Assessments shall be prorated between the applicable rates on the basis of the number of months in the applicable period that Lots owned by Declarant qualified for each rate.
- (g) *Obligation for Deficiencies.* During the Declarant Control Period, Declarant, shall pay or contribute to the Association cash as may be necessary to make up any budget shortfalls, which contribution shall be based upon the number of Lots owned by Declarant as of the end of the period for which the deficiency has been calculated, which period shall be determined by the Board in its sole discretion (hereinafter referred to as "Deficiency Assessments"). The Deficiency Assessments shall not exceed the Annual Assessments or pro rata portion thereof that would be payable by an Owner other than Declarant. Declarant may at any time in its sole discretion elect to cease paying the Deficiency Assessment, if any, and to pay instead the full Annual Assessment. Amounts paid directly by Declarant to the Association's creditors, or assets purchased by Declarant for the Association, or amounts paid for services rendered by Declarant, or affiliates for the benefit of the Association that otherwise would have been an expense of the Association, shall apply against the obligations of Declarant to pay all or a portion of such Association deficiency. Any deficiency to be paid by Declarant under this Article may be in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed.

4.4 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 Assessments 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.

- 4.5 **WORKING CAPITAL FUND:** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a sum established by the Board. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Board shall have broad discretion in the establishment of this fee and may suspend or reestablish this fee at any time and for any period.
- 4.6 **INITIATION FEE:** Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot an initiation fee in an amount previously agreed to by the Board in its sole and absolute discretion. This fee shall be used by the Association to offset administrative costs, and for social events and special projects. The initiation fee shall be in addition to, and shall not be offset against or considered as an advance payment of, any Assessments levied by the Association pursuant to this Declaration, and the payment of such initiation fee shall not entitle an initial Purchaser to the return of any working capital and reserve contributions made to the Association. The Board shall have broad discretion in the establishment of this fee and may suspend or reestablish this fee at any time and for any period.
- 4.7 **RESERVE CONTRIBUTION:** Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a sum established by the Board as a contribution to the Association's Reserves. All amounts paid pursuant to this Section shall be paid by the Association into the Reserve Account to fund future major repair and replacements of Property owned by the Association. Funds shall be drawn from the Reserve Account by resolution of the Board and used for the aforementioned ^{Unofficial Document} Declarant and the Association may take such payments into account when determining the amounts to be funded to Reserves from other Association funds. Nothing in this section shall be construed as prohibiting or mandating the Association to make additional payments into Reserve Accounts from other Association funds. The Reserve contributions shall be in addition to, and shall not be offset against or considered as an advance payment of, any Assessments levied by the Association pursuant to this Declaration. The Board shall have broad discretion in the establishment of this fee and may suspend or reestablish this fee at any time and for any period.
- 4.8 **SPECIAL ASSESSMENTS:** In addition to the Annual Assessments authorized above, the Association may levy, in any fiscal year, Special Assessments applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement of the Areas of Association Responsibility, including fixtures and personal Property related thereto, or for any other lawful Association purpose.
- 4.9 **USE ASSESSMENTS:** If the Board determines that certain services provided by the Association benefit the Lots in a disproportionate manner or if a Member or Members owning one (1) or more Lots contract with the Association for the Association to provide particular services with regard to such Lots, the Board shall be entitled to assess Use Assessments against such benefited Memberships. The amount of any Use Assessments shall be determined in a manner consistent with the Board's determination of the respective benefits each Lot receives from such service.
- 4.10 **EFFECT of NONPAYMENT of ASSESSMENTS; REMEDIES of the ASSOCIATION:** The Association shall have a lien on each Lot for: (a) all Assessments levied against the Lot or the

Owners, and (b) any other amounts payable to the Association pursuant to the Project Documents, subject to A.R.S. § 33-1807, as amended from time to time. Such lien shall be prior and superior to all other liens affecting the Lot in question, except (a) taxes, bonds, Assessments and other levies which, by law, are superior thereto, and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period the Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot, provided, however that the Association's acquisition and ownership of a Lots shall not be deemed to convert the same into Common Areas. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to record written notices of claims of lien in such circumstances as the Board may deem appropriate).

The Board may invoke any or all of the sanctions provided for herein or in this Declaration, or any other reasonable sanction, to compel payment of any Assessment (or installment thereof), or any other amount payable to the Association under the Project Documents, which is not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

- (a) *Interest and Late Fees.* The Board may impose late fees for payment of any Delinquent Amount that is not made within ^{Unofficial Document} 5 days of the due date, and interest in such amounts as it determines are appropriate from time to time, subject to any limitations stated herein or imposed by law which such amounts shall be secured by the aforementioned liens;
- (b) *Suspension of Rights.* The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights, rights to use and enjoy the Common Areas, and other Membership rights as provided herein, in accordance with the procedures that conform to Arizona law;
- (c) *Collection of Delinquent Amount.* The Board may institute an action at law for a money judgment or any other proceeding to recover the Delinquent Amount to the fullest extent permitted by law;
- (d) *Recording of Notice.* Subject to applicable law, the Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in this Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of recording the notice, processing the delinquency, and recording a notice of satisfaction of the lien; and
- (e) *Foreclosure of Lien.* The Board may foreclose the recorded lien against the Lot in accordance with the prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency).

It shall be the duty of every Owner to pay all Assessments and any other amount payable with respect to the Owner's Lot in the manner provided herein. Such Assessments and other amounts,

together with interest, late fees, attorneys' fees, and costs of collection as provided for herein, shall, until paid, be a charge and continuing servitude and lien upon the Lot against which such Assessments and other amounts are made. provided, however, that such lien shall be subordinate to only those matters identified in this Declaration. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided for in this Declaration or the Bylaws, or otherwise available at law or in equity for the collection of all unpaid Assessments or other amounts payable to the Association, interest thereon, costs of collection thereof and reasonable collection agency fees and attorneys' fees.

Notwithstanding anything herein to the contrary, the Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments and other amounts payable to the Association without a foreclosure of the lien for such Assessments, and the same shall not constitute a waiver of the lien for such Assessments or such other amounts payable to the Association.

- 4.11 **NO OFFSETS:** All Assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in Project Documents.

ARTICLE 5

PERMITTED USES AND RESTRICTIONS

- 5.1 **COVENANTS, CONDITIONS, RESTRICTIONS and EASEMENTS APPLICABLE to the PROPERTY:** The covenants, conditions, restrictions and reservations of easements and rights contained in this Article 5 shall apply to ^{Unofficial Document} all portions of the Property (unless otherwise specifically indicated) and the Owners thereof.
- 5.2 **RESTRICTIONS on FURTHER PROPERTY RESTRICTIONS:** No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Resident, occupant or other Person against any Lot without the provisions thereof having been first approved in writing by the Board and, during the Declarant Control Period, Declarant. Any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void.
- 5.3 **HEALTH, SAFETY AND WELFARE:** In the event any uses, activities and facilities on any Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, the Board may make rules restricting or regulating such uses within the Property, or may direct the Architectural Committee to make rules governing such uses on Lots as part of the Association Rules and/or Architectural Guidelines.
- 5.4 **RESIDENTIAL USE; SINGLE STORY HEIGHT RESTRICTION:** All Lots and Dwelling Units within the Project shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession trades or other nonresidential use shall be conducted on any Lot. No trade or business may be conducted on any Lot, except that an Owner or Resident may conduct a business activity within a Dwelling Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve Persons coming on to the Lot for purposes other than U.S. Mail or normal, infrequent parcel delivery; (iv) the business

activity does not involve the door-to-door solicitation of Owners or other Residents in the Project; (v) the business activity does not violate any provision of this Declaration, the Architectural Guidelines, or the Association Rules; and (vi) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation of other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required for such activity. The leasing of an entire Dwelling Unit by the Owner thereof shall not be considered a trade of business within the meaning of this Section. All Dwelling Units and other Improvements upon a Lot shall be limited to a single story (which shall not prohibit installation of a basement, to the extent not prohibited by law).

- 5.5 ANIMALS: No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing, or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or nuisance, or whether the number of animals on any such Property is reasonable. Any decision rendered by the Board shall be enforceable to the same extent as other restrictions contained in this Declaration. The Board may adopt such rules and regulations relating to animals ^{Unofficial Document} permitted and maintained on the Property.

No Owner, Resident, or any lessee or guest of an Owner shall permit any dog or other pet to relieve itself on another Owners' Lot or on any part of the Common Area. It shall be the responsibility of an Owner to immediately remove any droppings from pets. No pet shall be permitted to run at large, and each pet shall be confined entirely to an Owner's Lot except that a pet shall be permitted to leave an Owner's Lot if such pet is at all times kept on a leash not to exceed six (6) feet in length and is under the direct control of the Owner.

- 5.6 ANTENNAS: No antenna, aerial, satellite dish or other device for the transmission or reception of television or radio (including amateur or ham radio) signals of any kind (collectively referred to herein as "Antennas") will be allowed outside any Dwelling Unit, except that a device covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, will be permitted. Any such device shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property. The devices governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule) as of the date of the recording of this Declaration are as follows:
- (a) Direct Broadcast Satellite ("DBS") antennas one (1) meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite;
 - (b) Multi-point Distribution Service ("MDS") antennas one (1) meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite;

- (c) Antennas designed to receive local television broadcast signals ("TVBS"); and
- (d) Antennas designed to receive and/or transmit data services, including Internet access.

If the FCC expands the types of antennas that fall under the FCC Rule, this Section 5.6 shall encompass those antennas as well. The Board is hereby vested with the broadest discretion to enact rules and regulations to implement this Section 5.6 to conform to the law. The Board may enact rules and regulations that are more restrictive than this Section 5.6, if permissible by federal and state law.

- 5.7 **UTILITY and DRAINAGE EASEMENTS:** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, unless otherwise approved by the Board or the Declarant.

No structure, landscaping or other Improvement that may change the direction of flow of drainage channels or that may damage or interfere with the installation and maintenance of utilities shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement, drainage easement, waterline easement, or other similar easement. Such easement areas, and all Improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless such easement area is maintained by the Association, the utility company or a county, municipality or other public authority.

- 5.8 **TEMPORARY OCCUPANCY:** No ^{Unofficial Document}trailer, ~~structure~~ or other improvement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence on any Lot, either temporary or permanent. Except for temporary buildings, trailers or other structures used by Declarant or approved in writing by Declarant, temporary buildings, trailers or other structures used during the construction or modification of Improvements approved by the Architectural Committee shall be removed immediately after the completion of such construction or modification, and in no event shall any such buildings, trailers or other structures be maintained or kept on any Property for a period in excess of twelve (12) months without the prior written approval of the Architectural Committee.

- 5.9 **TRAILERS and MOTOR VEHICLES:** No motor vehicle classed by manufacturer rating as exceeding one (1) ton, mobile home, mini-motor home, travel trailer, recreational vehicle, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked or maintained, constructed, reconstructed or repaired on any Lot so as to be Visible From Neighboring Property. The provisions of this Section shall not apply to pick-up trucks of less than one (1) ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level. No mobile home, mini-motor home, boat, recreational vehicle, trailer (of any kind) truck, camper, permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired upon any Property. No motor vehicles of any kind which are not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit). For purposes of this Section 5.9, a vehicle is not in operating condition if it is not running, has a flat or missing tire for five (5) or more days, or is not properly licensed and registered. The provisions of this Section 5.9 shall not apply to

vehicles of Declarant (or their respective employees, agents, affiliates, contractors or subcontractors) or to any vehicles permitted by applicable law to park in streets or driveways.

- 5.10 **NUISANCES:** No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupant or which shall in any way interfere with the quiet enjoyment of each of the Owners of their respective Lots and Dwelling Units. No loud, noxious, or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or Property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners and Residents. Owners shall not allow any standing bodies of water to accumulate on their Lot, including, but not limited to, neglected pools, spas, or water features, that could become breeding environments for mosquitoes or other insects. The Board shall have the right to determine, in its sole discretion, whether the provisions of this Section 5.10 have been violated. Any decision rendered by the Board shall be enforceable and be binding in the same manner as other restrictions in this Declaration. Nothing contained in this Section 5.10 shall be construed to prevent the construction, installation, sales, or marketing by Declarant of any Dwelling Units on any Lot within the Property.
- 5.11 **CONSTRUCTION ACTIVITIES:** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise or emit therefrom so as to render any such Property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Temporary toilets shall be located in reasonable proximity to each Lot upon which construction has commenced and shall be maintained in such locations during the entire course of such construction, and all construction workers ^{Unofficial Document} required to use such toilets. Such toilets shall be maintained in presentable, safe, clean, sanitary and odor-free condition and removed immediately after completion of construction. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but all Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Architectural Committee. All trash and construction debris shall be immediately deposited in an enclosed metal container maintained by the Owner on the Lot. Such container shall be emptied with sufficient frequency to prevent the accumulation of trash and debris. Each Owner shall be responsible for immediately removing any dirt, mud or debris collecting in the streets as a result of the Owner's construction activities. In addition, any construction equipment and building materials stored or kept on any Lot during construction of Improvements may be kept only in areas approved by the Architectural Committee. The Architectural Committee may also require screening of said storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.
- 5.12 **REPAIR of BUILDINGS:** No building, landscaping or other Improvement upon any Lot shall be permitted to fall into disrepair, and each such building, landscaping or other Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished as designated by published guidelines of the Board and/or Architectural Committee. In the event a Dwelling Unit, building, landscaping or other Improvement falls into disrepair, the Board may give notice thereof to the Owner to commence repair of such Dwelling Unit, building, landscaping or other Improvement within fourteen (14) days of mailing of such notice. If at the expiration of the fourteen (14) day period the repair of such building, landscaping or other

Improvement has not commenced or if it has commenced and is not thereafter diligently pursued to completion, the Board shall be authorized and empowered to cause such repair to occur and the cost thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, and shall be secured by a lien against such Lot.

- 5.13 **TRASHCONTAINERS and COLLECTION:** No garbage, rubbish or trash shall be placed or kept on any Lot except in covered containers. In no event shall such containers be stored or maintained so as to be Visible From Neighboring Property except to make the same available for collection and such containers shall not be made available for collection more than twenty four (24) hours in advance of collection and shall be returned no later than twenty four (24) hours after collection. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No incinerators shall be kept or maintained on any Lot. To minimize the number of garbage trucks traveling through the streets of the Association and to minimize the number of days upon which garbage or trash containers shall be located along the streets for pickup, the Board may establish a designated garbage service with which all Members shall individually contract for garbage service. Notwithstanding the foregoing, garbage, rubbish or trash placed or kept on any Lot in connection with any bulk trash pickup program shall be acceptable, provided such garbage, rubbish or trash shall not be made available for collection earlier than the weekend immediately prior to the day of collection (e.g., if the day of collection for any bulk trash pickup program is Thursday of a given week, garbage, rubbish or trash in connection therewith shall not be made available for collection earlier than the Saturday immediately prior to such Thursday).
- 5.14 **SCREENING and FENCING:** All clotheslines, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot, ^{Unofficial Document} except in the rear yard and unless they are erected, placed or maintained in such a manner as to not be Visible From Neighboring Property.
- 5.15 **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 adjacent area (including, without limitation, Common Areas and adjacent Lots) from ground level to a height of eight (8) feet. The Common Area and all Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots and Common Area as constructed by the Declarant or as reconstructed or repaired in accordance with the original plans and specifications or as a result of repair, shifting, settlement or movement of any such structure.
- 5.16 **MACHINERY and EQUIPMENT:** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or repair of a Dwelling Unit, appurtenant structures, or other Improvements constructed by the Declarant or approved by the Architectural Committee.
- 5.17 **RESTRICTION on FURTHER SUBDIVISION:** No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot or an undivided interest in all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant.
- 5.18 **SIGNS:** No signs whatsoever which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- (a) Signs required by legal proceedings and signs that must be permitted by law;
- (b) No more than two (2) identification signs for individual Dwelling Units, each with a face area of seventy-two square inches (72") or less;
- (c) Signs and notices erected or posted in connection with the provision of building security with a face area of seventy-two square inches (72") or less;
- (d) Promotional and advertising signs of Declarant on any Lot. In addition, Declarant shall have the right and authority to permit and authorize any Designated Builder to construct and install temporary signage necessary or convenient for the development and sale of any Lots within the Property; and
- (e) Such other signs (including, but not limited to, construction job identification signs, builder identification signs and subdivision identification signs) which are in conformance with the applicable requirements of all applicable governmental agencies and which are permitted by Declarant during the Declarant Control Period or, thereafter, have approved in advance and in writing by the Architectural Committee as to size, color, design, message content, and location.

5.19 **MINERAL EXPLORATION:** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind and no derrick or other equipment designed or intended for any such activity shall be erected, placed, constructed or maintained on any Lot.

5.20 **DISEASES and INSECTS:** No Owner shall permit anything or condition to exist upon any Property that could induce, breed or harbor infectious plant diseases, pests, or noxious insects.

5.21 **COMMON WALLS:** Common walls are walls or fences separating the yards between two (2) Lots or one or more Lots and a portion of the Areas of Association Responsibility, which do not constitute a portion of a Dwelling Unit. The rights and duties of Owners of Lots with respect to common walls shall be as follows:

- (a) The Owners of contiguous Lots who have a common wall shall both equally have the right to use such wall provided that such use by the Owner does not interfere with the use and enjoyment of same by the other Owner;
- (b) In the event that any common wall is damaged or destroyed through the act of an Owner, or its agents, tenants, licensees, guests or family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to promptly rebuild and repair the common wall without cost to the other Owner or Owners and such Owner shall rebuild and repair the common wall such that it matches all adjacent walls in look, finish and color;
- (c) In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, its agents, tenants, licensees, guests or family (including wind damage, ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall promptly proceed to rebuild or repair the same to as good a condition as formerly at their joint and equal expense. Notwithstanding any other provision of this Section, an Owner who, by negligent or

willful act, causes any common wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements but such Owner shall not have the right to access the common wall through any vehicular no access easement as set forth on the Plat;

- (d) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;
- (e) In the event any common walls located between Lots and a portion of the Common Area is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by the act of an adjoining Owner, his Residents, agents, trees, irrigation systems, guests or members of his family, the Association shall be responsible for all maintenance thereof, including the painting of all portions of any fencing, except that the Owner of the Lot shall be responsible for maintaining and painting the surface of the common wall facing his Lot. The Association shall charge the Owner of the Lot an Assessment equal to one-half (1/2) of the cost of any structural repairs or replacements to the common wall or fence bordering the Owner's Lot, and one-half (1/2) of the cost of the painting of any common wall for that portion of the wall painted facing the Owner's Lot;
- (f) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall without the prior written consent of the Association and all Owners of any interest therein whether by way of easement or in fee; and
- (g) In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners. In the event any common wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots that share such common wall or in favor of the Association to the extent the common wall encroaches upon a Lot.

- 5.22 **OUTDOOR BURNING:** There shall be no outdoor burning of trash or other debris; provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills, or typical residential outdoor fireplaces, so long as such activities only take place in the rear yard.
- 5.23 **FUEL TANKS:** No fuel tanks of any kind shall be erected, placed or maintained on the Property except for propane or similar fuel tanks permitted under local ordinances or statutes and approved by the Architectural Committee.
- 5.24 **WINDOWS:** Within sixty (60) days of occupancy each Owner shall install permanent draperies or suitable window treatments on all windows facing the street or Common Areas. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows.
- 5.25 **HVAC and SOLAR PANELS:** Except as initially installed by the Declarant, no heating, air conditioning, evaporative cooling or solar energy collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee. Solar panels, while they may be permitted, must be submitted to the Architectural

Committee for review and approval prior to installation. Subject to the restrictions of applicable law, the Architectural Committee may adopt rules and regulations regarding the placement of solar energy devices in order to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a Person six feet (6') tall standing at ground level on adjacent properties.

- 5.26 **GARAGES and DRIVEWAYS:** The interior of all garages situated on any Lot shall be maintained in a neat, clean and sightly condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and material and shall not be used or converted for living quarters or recreational activities, except that Declarant may use a garage in one (1) or more model homes for a sales office and/or a construction office. All Owners shall be required to immediately clean up any oil drips on driveways or rights of way. Garage doors shall be opened only as required for ingress and egress or when in use. A carport may not be built in addition to or as a replacement for a garage, unless initially constructed by Declarant. All driveways shall be constructed with pavers and no cement or gravel driveways shall be permitted.
- 5.27 **LEASING RESTRICTIONS:** For purposes of this Section 5.27, a lease is defined as any occupancy of the Dwelling Unit (whether or not money is exchanged) by anyone other than: (a) the Owner, (b) the Owner's spouse, (c) the Owner's or the Owner's spouse's children or parents, (d) any individuals living with the Owner who are maintaining a common household with the Owner, or (e) guests of an Owner residing with the Owner of the Lot. No Owner may lease less than his, her or its entire Lot. Any lease must be in writing and be subject to the requirements of the Project Documents. No Lot may be leased for a period of less than six (6) consecutive months. Each Owner who rents a Lot or his Dwelling Unit thereon is required to advise the Board within fifteen (15) days of the effective date of the lease therefor and must provide the Association the following information (including upon any renewal or lease extension): (a) name of tenant, (b) date and term of the lease, (c) current address of the Owner, and (d) a description and the license plate numbers of the tenants' vehicles. Failure to provide the Association with such information is a violation of this Declaration. The Association or its managing agent, if there is one in place, shall have the right to charge an administrative fee in connection with the Association's record keeping for each new lease.
- 5.28 **COMPLIANCE WITH APPLICABLE ORDINANCES:** Notwithstanding anything to the contrary herein, the construction of Improvements and the use and operation of the Property shall be subject to applicable statutes, laws and ordinances.
- 5.29 **BASKETBALL GOALS:** Owners must submit an application to the Architectural Committee for approval prior to the installation of any basketball goal. Strict guidelines will be adhered to regarding the quality of equipment and installation and special attention will be paid to placement of the pole on the Lot. Backboards may be transparent or a standard type, however, highly visible logo material is prohibited. Only nylon or similar cord nets are acceptable. Metal or chain nets are not acceptable. All equipment must be constantly maintained. Broken backboards, disfigured or bent rims, ripped or torn nets, chipped and /or peeling paint, etc. constitute grounds for fines and/or removal. No lighting designed to illuminate basketball goals shall be installed without prior written approval of the Architectural Committee. The Owner of the Dwelling Unit with the basketball pole backboard is fully responsible for ball containment on such Owner's Lot. Any damage to neighboring property or landscaping from basketballs shall be the Owner's (with the goal or standards) responsibility to repair or replace.
- 5.30 **LANDSCAPING:** All landscaping shall be completed in accordance with all applicable statutes, ordinances and/or the Architectural Guidelines, whichever is most restrictive. Except as

expressly provided herein or approved by the Architectural Committee, landscaping on the Property shall be consistent with the character of the native desert environment surrounding the Project, and shall comply with the provisions of the Architectural Guidelines relating to permitted and prohibited plants, and with all applicable native plant preservation regulations of the Maricopa County and the State of Arizona. Front yard landscaping shall be completed by the Owner of the applicable Lot within ninety (90) days from the date of the initial close of escrow, and rear yard landscaping shall be completed by the Owner of the applicable Lot within one hundred and eighty (180) days from the date of the initial close of escrow. All Owners must obtain the prior written approval of the Architectural Committee before installing such landscaping. In the event an Owner fails to complete such landscaping within said time period, the Board may by resolution make a finding to such effect and pursuant thereto give notice thereof to such Owner that unless the landscaping is commenced within fourteen (14) days after receipt of the notice and thereafter diligently pursued to completion, the Board may cause such landscaping to be completed at such Owner's expense. If, at the expiration of said fourteen (14) day period of time, such landscaping has not been commenced and thereafter diligently pursued to completion, the Board shall be authorized and empowered to cause such landscaping to be completed and the cost thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, and shall be secured by a lien. Following the installation of the initial front and rear yard landscaping, any alterations to the landscaping Improvements located on a Lot must be approved in writing by the Architectural Committee prior to installation or modification.

- 5.31 **OUTDOOR LIGHTING:** All exterior lighting not installed by or on behalf of the Declarant must receive prior written approval from the Architectural Committee.
- 5.32 **ENVIRONMENTAL PROTECTIONS:** Neither the Lot nor any facilities on the Lot shall be used to generate, manufacture, refine, transport, ^{Unofficial Document} create, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this paragraph, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," or "toxic substances" in: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.
- 5.33 **PARKING:** All vehicles of Owners and Residents and of their lessees, employees, guests, and invitees shall be kept in garages or residential driveways wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot; provided, however, this section shall not be construed to permit the parking in the above described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle. In the event the garage and driveway is insufficient for parking, temporary parking shall be allowed on the street directly adjacent to the Lot; provided however, in no event shall overnight on-street parking be allowed on any street and in no event shall the Owner or Resident park on a temporary basis on streets other than directly adjacent to such Owner's or Resident's Lot. Parking in the front or side yard of any Lot is strictly prohibited. No part of any vehicle may be parked over any part of a sidewalk because such parking may impede use of the sidewalks, particularly for Persons with disabilities using the sidewalks. Notwithstanding anything herein to the contrary, the

restrictions on parking on streets and driveways shall not apply to vehicles permitted by applicable law to park in streets or driveways.

- 5.34 **TOWING OF VEHICLES:** The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration or any Association Rules towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an owner, any amounts payable pursuant to this Section shall be secured by an Assessment lien, and the Association may enforce collection in the same manner provided in this Declaration for the collection of Assessments.
- 5.35 **DECLARANT'S EXEMPTION:** Nothing contained in this Declaration, the Architectural Guidelines, or the Association Rules shall be construed to prevent or materially impair the erection, operation, maintenance, replacement and repair by Declarant, or its duly authorized agents, of structures, Improvements or signs necessary or convenient to the development, administration, management, sale, operation, maintenance and repair of model homes, Dwelling Units, or other Property within the Property. Without limiting the generality of the foregoing, the Declarant shall be exempt from the requirements of all architectural control provisions contained herein or in the Articles or Bylaws. Any provisions of this Declaration which prohibit non-residential use of Lots and regulate parking and vehicles shall not prohibit the construction and operation of model homes (including, without limitation, any use in whole or in part for sales offices, construction offices, parking or flags, banners or signs used in connection with sales or construction) (collectively, the "Models") by Persons engaged by Declarant for the construction of homes on the Property and parking ^{Unrecorded Document} available to the visiting of such Models so long as construction, operation and maintenance will otherwise comply with all of the provisions of this Declaration. The Declarant may also permit Lots in other areas to be used for parking in connection with the showing of Models. Any homes or other structures constructed as Models shall cease to be used as Models at any time that the Owner thereof is not actively engaged in the construction and sale of homes within the Property or within other properties being developed by Declarant within a reasonable proximity to the Property regardless of whether such other properties are part of this Association. Neither the provisions of this Section nor the provisions of any other Section in this Declaration shall restrict or prohibit the right of Declarant or an affiliate of Declarant to construct, operate and maintain Models within the Property.

ARTICLE 6

EASEMENTS

- 6.1 **UTILITY EASEMENT:** There is hereby created a (a) blanket easement upon, across, over and under the Common Area and (b) limited, specific easement over and through those portions of the Property shown as public utility easement areas (or shown with a similar designation) on the Plat, for ingress, egress, installation, replacing, repairing and maintaining all utilities approved by the Declarant, or the Board, including, but not limited to, water, sewer, gas, telephone, electricity and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain any necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated within the Property

except as initially created or approved by the Declarant without the prior written approval of, in the case of a Common Area, the Association and the Architectural Committee or, in the case of a Lot, the Owner of such Lot and the Architectural Committee.

- 6.2 **EASEMENTS for INGRESS and EGRESS:** Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their families, guests, tenants and invitees for pedestrian traffic over, through and across sidewalks, paths, walks and lanes: (a) as the same from time to time may exist upon the Common Area, (b) as depicted on the Plat, and (c) for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area. Easements for pedestrian ingress and egress only over those portions of Tract C depicted on the Plat as a "trail easement" or "public sidewalk" are hereby reserved; provided, however, that nothing herein shall constitute a public dedication of such portion (or any portion) of the Property, and notwithstanding any public use of Tract C, Tract C shall not be deemed dedicated to the public or otherwise.
- 6.3 **ASSOCIATION'S RIGHT of ENTRY:** During reasonable hours, any member of the Architectural Committee, any member of the Board, or any authorized representative of the Association or Architectural Committee (including, without limitation, a managing agent) shall have the right to enter upon and inspect any Lot, excluding the interior of any Dwelling Unit located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules, and the Architectural Guidelines are being complied with by the Owner of said Lot.
- 6.4 **ASSOCIATION'S EASEMENT for PERFORMING MAINTENANCE RESPONSIBILITIES:** The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Areas of Association Responsibility and for performing all other ^{under the Project Documents} Association's other rights, duties and obligations under the Project Documents.
- 6.5 **DECLARANT'S EASEMENT:** An easement is hereby reserved by the Declarant over the Lots and Tracts for the purpose of constructing, maintaining, and/or repairing all Dwelling Units and other Improvements. Declarant may make limited temporary assignments of its easement rights to any Person performing construction, installation or maintenance on any portion of the Property.
- 6.6 **USE and DRAINAGE:** Each Lot shall be subject to an easement for the drainage and/or retention of water from other Lots, Common Area or other property in accordance with the drainage plans for the Property or for any Lot as shown on the Plat or the drainage plans on file with Maricopa County or any other applicable governmental authority. Such easement shall include, without limitation, those Lots subject to any drainage easement described in the Plat, those Lots receiving the runoff from roofs and drainage under and through garden walls, and those Lots where water flows from such Lot under or through one (1) or more other Lots. No Owner may alter or change such easement area including, without limitation, impeding, diverting, altering, or otherwise changing the drainage, the drainage flow, or the finished grade of such Owner's Lot, without the prior written consent of the Architectural Committee and any applicable governmental authority. Without limiting the generality of the foregoing, it is Declarant's intention that there shall be no interference with the Established Drainage pattern over any Lot, Common Area, or other real property within the Property unless the prior written approval of the Architectural Committee and all applicable governmental authorities is obtained. For purposes hereof, "Established Drainage" shall mean the drainage that exists at the time the overall grading of the Property is completed, or which is on any plans conforming to all governmental agency rules, regulations, and ordinances. No fence, wall, or other structure shall be constructed along Lot lines in such a manner as to

obstruct the natural flow of drainage across Lot lines except as authorized by the Architectural Committee and all applicable governmental authorities.

- 6.7 **SIDEWALK EASEMENT.** A limited, specific easement is hereby created over and through those portions of the Property including, without limitation, any portions of the Lots, shown as sidewalk easements (or shown with a similar designation) on the Plat for the purpose of pedestrian ingress and egress.
- 6.8 **SIDEWALK LANDSCAPE EASEMENT:** A limited, specific easement is hereby created adjacent to the sidewalk easement area for the purpose of creating a landscape buffer between the Lots and the sidewalk. The Association shall be responsible for the installation and all maintenance and of the sidewalk landscape easement.
- 6.9 **DEDICATIONS and EASEMENTS REQUIRED by GOVERNMENTAL AUTHORITY.** Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.
- 6.10 **NO LIABILITY:** In no event is Declarant making any representation or warranty regarding the adequacy of any drainage onto or off of any Lot, Common Area or other part of the Property and Declarant is assuming no responsibility or liability for drainage of water over, under, or across the Lots, Common Area or any other part of the Property (whether such drainage is from neighboring property or other parts of the Property) nor for any damage, loss, costs, expenses or fees incurred as a result of any debris, silt, erosion, or other incidental consequences thereof.

ARTICLE 7

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PROPERTY RIGHTS

- 7.1 **OWNERS' EASEMENT of ENJOYMENT:** Every Owner, and each Person residing with such Owner, shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:
- (a) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and facilities located thereon, including without limitation hours of use;
 - (b) The right of the Association to suspend the rights of an Owner (and such Owner's family, tenants and guests) to use the recreational facilities located on the Common Area for any period during which any Assessment against such Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Project Documents;
 - (c) The right of the Association to dedicate or transfer (including, but not limited to, mortgage) all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that (1) no such dedication or transfer (except utility easements) shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members, and (2) all such dedications and transfers shall be subject to easements in favor of Owners for ingress and egress through the Common Area to their respective Lots;

- (d) The right of Declarant, and their agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales and leasing facilities, display and exhibit, and such other purposes as are determined by Declarant in its sole and absolute discretion;
- (e) The right of the Association to charge reasonable Use Assessments for the use of the Common Areas or any facilities constructed thereon. Any such Use Assessments shall be set by the Board from time to time, in its discretion. Use Assessments shall be charged only for actual entry upon or utilization of those Common Areas determined by the Board to be subject thereto;
- (f) The right of the Association to change the use of the Common Areas in accordance with this Declaration;
- (g) The use of the entry facilities, including entry gates and private streets within the Property by Declarant and its affiliates and designees; and
- (h) The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas and to abandon Common Areas so long as, in each case, the change does not conflict with Maricopa County's, the Town of Gilbert's, or any other applicable governmental authority's intended use of the Property and, either (i) the Board determines that the Members are not materially or adversely affected, or (ii) two-thirds (2/3) of each class of Memberships have executed an instrument agreeing to such change in size, shape or location, exchange or abandonment.

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- 7.2 **LESSEES:** If a Lot is leased or rented by the Owner thereof, the lessee and Members of such lessee's family residing with such lessee shall have the right to use the Common Area during the term of the lease. Furthermore, the Owner of such Lot that is being leased or rented shall not have the right to use the Common Area until the expiration or earlier termination of such lease.
- 7.3 **GUESTS AND INVITEES:** The Board shall have the right to regulate and limit the use of the Common Area by guests and invitees of Owners and Residents.
- 7.4 **LIMITATIONS:** An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement of enjoyment. No Owner shall be exempt from personal liability for Assessments, have the right to a release of such Owner's Lot from the liens or charges arising under this Declaration by waiver of the use and enjoyment of the Common Areas.
- 7.5 **DECLARANT EASEMENTS:** Declarant hereby reserves to itself, its duly authorized agents, employees, representatives, successors and assigns, a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, and as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising the rights granted to or reserved by Declarant in this Declaration, including without limitation: (a) temporary construction easements; (b)

easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (c) easements for the construction, installation and maintenance of Improvements on the Property or Improvements reasonably necessary to serve the Property. Declarant further reserves to itself, its duly authorized agents, employees, representatives, successors and assigns including, the right to: (a) use any Lots owned or leased by Declarant, any other Lot with written consent of the Owner thereof, or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; and (b) install and maintain on the Common Area, any Lot owned or leased by Declarant, or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which Declarant deems necessary for the development, sale or lease of the Property. The right reserved to Declarant under this Section 7.5 shall be in such number, of such size and in such locations as Declarant deems appropriate. In the event of any conflict or inconsistency between the provisions of this Section 7.5 and any other provision of this Declaration, this Section 7.5 shall control.

7.6 CHARACTERISTICS OF ADJACENT PROPERTIES:

- (a) *Adjacent Land Uses.* Residents of the Property may be exposed to nuisances stemming from the uses of adjacent and other properties in the immediate and surrounding area, including but not limited to, noise, odors, dust, traffic, grazing of animals, flies, pollen, chaff from harvesting, insects, pesticide spray applications, farm and other equipment operators, and other nuisances. Declarant makes no representations or warranties whatsoever with regard to such operations and uses.
- (b) *Change to Adjacent Land Uses.* Land uses in the vicinity of the Property may continue indefinitely but are subject to change from time to time, and it is the responsibility of each Owner and Resident to verify with applicable Maricopa County agencies to its own satisfaction whether an existing or proposed land use in the vicinity of the Property is a potential nuisance or affects them in any way.
- (c) *Release and Waiver.* Each Owner and Resident hereby releases Declarant and the Association and their respective directors, officers and agents from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage of any kind arising from or related to current land uses or future changes in land uses adjacent to or in the vicinity of the Property including, without limitation, those described in this Section 7.6.

7.7 PRIVATE STREETS: The streets within the Property, as more particularly described in the Plat, are owned by the Association. Accordingly, the Declarant or the Association:

- (a) shall have the right, as set forth in Section 7.8 below, to install access control structures within the medians of the private access ways shown on the Plat at the entrances to the Property, or portions thereof, which the Declarant or the Association, as appropriate, may, in such party's sole and absolute discretion, staff with personnel;
- (b) the personnel shall have the right to stop any Person entering the Property to inquire as to the Person's purposes for entering the Property; and

- (c) the personnel shall have the right to prohibit a person's access to the Property where such Person has no legitimate reason, in the reasonable discretion of such personnel, to access the Property.

7.8 **GATED ENTRY:** Declarant may, in its sole and absolute discretion, construct one (1) or more gated entries for pedestrian and automobile access on one or more private streets leading into the Property to limit access and to provide more privacy for the Owners and Residents; however, there is no guarantee that such gated entries will provide security and safety to all Owners, Residents, and their respective families, guests and invitees. Each Owner and Resident, for themselves and on behalf of their families, guests and invitees, acknowledge and assume the risks that the gated entries may restrict or delay entry into the Property by the police, fire department, ambulances and other emergency vehicles or personnel, and that the pedestrian gates will not keep all unauthorized pedestrians out of the Property. Neither Declarant, the Association, nor any director, officer, agent or employee of Declarant or the Association shall be liable to any Owner or Resident, or their families, guests or invitees, for any claims or damages resulting, directly or indirectly, from the construction, existence, operation, failure of operation, or maintenance of the gated entries and/or delays caused by reason of restricted access to the Property and the Lots therein or the entry of unauthorized pedestrians into the Property. Each Owner and Resident hereby releases Declarant and the Association and their respective directors, officers and agents from any and all claims, actions, suits, demands, causes of action, losses, costs, expenses, damages or liabilities of any kind related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting from activities or occurrences described in Section 7.7 and this Section 7.8. Notwithstanding anything contained in this Declaration to the contrary, so long as Declarant owns any Lot, no restrictions shall be approved by the Board or otherwise imposed upon Declarant which restricts construction traffic or access to the Property through the gated entries, restricts the hours when construction work may be performed, or eliminates any easements for construction purposes reserved to Declarant in this Declaration. Declarant may also leave any and all gates within the community in an open position for so long as Declarant constructing Dwelling Units, Single Family residences or other Improvements within the Property. This Section 7.8 shall survive the termination of the Declarant Control Period and may not be amended without the prior written approval of Declarant.

ARTICLE 8

MAINTENANCE

8.1 **MAINTENANCE OF AREAS OF ASSOCIATION RESPONSIBILITY BY THE ASSOCIATION:** The Association, or its duly delegated representative, shall, in the exercise of its discretion, maintain and otherwise manage, all Areas of Association Responsibility. The Association shall not maintain areas which (a) a governmental entity is maintaining, or (b) are required to be maintained by the Owners of a Lot. The Association may, in the discretion of the Board, and without any approval of the Owners, do any of the following:

- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof located on the Areas of Association Responsibility;
- (b) Construct, reconstruct, repair, replace or refinish any portion of the Areas of Association Responsibility used as a road, street, walkway, driveway or parking area;
- (c) Replace injured and diseased trees or vegetation in the Areas of Association Responsibility, and plant trees, shrubs and ground cover to the extent that the Board

deems necessary for drainage or 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, and
- (e) Pay, before delinquent, ad valorem real property taxes assessed against the Common Area; and
- (f) Do all such other and further acts which the Board deems necessary or convenient to preserve and protect the Areas of Association Responsibility and the appearance thereof, in accordance with the general purposes specified in this Declaration.

8.2 **MAINTENANCE BY ASSOCIATION OF LANDSCAPING ON AREAS OF ASSOCIATION RESPONSIBILITY:** The Association shall maintain, repair and replace the plants, trees and other landscaping Improvements situated on the Areas of Association Responsibility in compliance with all applicable zoning ordinances, laws, and other restrictions of record. In the event the need for maintenance, repair or replacement of any portion of the Areas of Association Responsibility that is being maintained by the Association pursuant to this Section is caused by the willful or negligent act of an Owner, its family, guest, invitees or animals for whom such Owner is legally responsible under Arizona law, the Association shall cause the maintenance or repair to be performed and the cost of the maintenance or repairs shall be paid to the Association by such Owner, upon demand. The cost of the maintenance and repair shall be a lien on the Owner's Lot, and the Association shall enforce collection of such costs in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

8.3 **MAINTENANCE OF LOTS BY OWNERS:** Each Owner shall be solely responsible for the maintenance, repair and replacement of such Owner's Lot, and the Dwelling Unit and all Improvements located thereon (including, but not limited to, the roofs of the Dwelling Unit, all walls and fences on the Lot (provided that common walls are governed by Section 5.21), and other structures situated on such Owner's Lot), and the landscaping Improvements to both the front and rear yards. Each Owner shall keep all landscaping, including, but not limited to, all shrubs, trees, hedges, ground coverings and plantings of every kind located on its Lot, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material and shall maintain the Lot in compliance with all applicable zoning ordinances. Any Improvements or landscaping that restricts, impedes or alters the free flow of storm water on any Lot will be a violation of this Declaration.

8.4 **DAMAGE OR DESTRUCTION OF AREAS OF ASSOCIATION RESPONSIBILITY BY OWNERS:** No Owner shall in any way damage or destroy any Areas of Association Responsibility or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner, Resident, or any lessee or guest of an Owner shall be paid by the Owner of the Lot at issue, upon demand, to the Association, and such amounts shall be a lien on any Lots owned by said Owner and the Association shall enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

8.5 **NONPERFORMANCE BY OWNERS:** If any Owner fails to maintain any portion of such Owner's Dwelling Unit, Lot, and/or the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request

of the Association shall be paid for by the Owner of the Lot, upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot, and the Association shall enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

- 8.6 **PAYMENT OF UTILITY CHARGES:** Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a common expense of the Association and shall be included in the budget of the Association.
- 8.7 **SERVICES:** The Association may enter into agreements and expend funds for facilities, services, and activities which benefit the Property and the surrounding area. The Association may provide, or provide for, such services and facilities for all of the Owners and Residents and their Lots, and the Association is authorized to enter into and terminate contracts or agreements with other entities, including the Declarant or its affiliate, to provide such services and facilities. The Association may charge use or service fees for any such services and facilities provided, but may also include all or a portion of the cost thereof in the Association's budget as a common expense and assess it as part of the Annual Assessments if the services and facilities are provided to all Lots or may also include all or a portion of the cost thereof in a Use Assessment if the services and facilities are provided to less than all of the Lots. In any contracts or agreements with third parties for the provision of services within the Property, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Association for the collection of such bills. By way of example, and without limiting the generality of the foregoing, the Association may, in its sole and absolute discretion, establish a designated trash and/or recycling collection vendor to provide exclusive service to the Association and with which all Owners ^{Unofficial Document} must individually contract for trash and/or recycling collection service, or the Association may contract with such vendor directly and include the cost thereof in the Association's budget as a common expense and assess it as part of the Annual Assessments.

ARTICLE9

INSURANCE

- 9.1 **SCOPE OF COVERAGE:** Commencing not later than the time of the first conveyance of a Lot to a Person or entity other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:
- (a) Property insurance on the Areas of Association Responsibility insuring against all risk of direct physical loss, insured in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from a property policy;
 - (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

Areas of ~~Responsibility~~ Responsibility, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a part;

- (c) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;
- (d) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, Members of the Board and Architectural Committee, 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 outside the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;
 - (iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;
 - (iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; and
 - (v) The Association shall be the named insured.

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- 9.2 FIDELITY BONDS: The Association may maintain blanket fidelity bonds as the Board deems appropriate or necessary for officers, directors, trustees and employees of the Association and any other Persons handling or responsible for funds of or administered by the Association, whether or not they receive compensation for their services. The total amount of any fidelity bond maintained by the Association shall be based upon the best business judgment of the Board.
- 9.3 PAYMENT OF PREMIUMS: The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.
- 9.4 INSURANCE OBTAINED BY OWNERS: Each Owner shall be responsible for obtaining property insurance for such Owner's own benefit and expense covering such Owner's Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of such Owner's Lot.
- 9.5 PAYMENT OF INSURANCE PROCEEDS: With respect to any loss to the Areas of Association Responsibility covered by property insurance obtained by the Association in accordance with this

Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.6, the proceeds shall be disbursed for the repair or restoration of the damage to Areas of Association Responsibility.

- 9.6 REPAIR and REPLACEMENT of DAMAGED or DESTROYED PROPERTY: Any portion of the Areas of Association Responsibility damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal or unauthorized under any state or local statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild or replace such Area of Association Responsibility; provided, however, that the Association should rebuild or replace such Area of Association Responsibility if required by law. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Area of Association Responsibility is not repaired or replaced, insurance proceeds attributable to the damaged Area of Association Responsibility 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.

ARTICLE 10

RIGHTS AND POWERS OF ASSOCIATION

- 10.1 ASSOCIATION'S RIGHTS AND POWERS AS SET FORTH IN ARTICLES AND BYLAWS: In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass ^{Unofficial Document} all things which a natural Person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. A copy of the Articles and Bylaws of the Association are available for inspection at the management office of the Association (or its managing agent) during reasonable business hours.
- 10.2 ASSOCIATION'S RIGHTS OF ENFORCEMENT OF PROVISIONS OF THIS AND OTHER INSTRUMENTS: The Association, as the agent and representative of the Owners, shall have the right to enforce the covenants set forth in this Declaration 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 or by Declarant.
- 10.3 CONTRACTS WITH OTHERS FOR PERFORMANCE OF ASSOCIATION'S DUTIES: Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one (1) or more directors or officers of the Association, or members of any committee, is employed by, or otherwise connected with, Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of

the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

- 10.4 **RESERVATION OF TRADE NAME:** Declarant hereby reserves all right, title and interest in the name of the Association for the uses set forth herein and any other use as Declarant may choose. The Association and all Owners shall be entitled to the non-exclusive use of such name only with reference to, and in connection with, the Property, the Association or its authorized activities.
- 10.5 **APPROVAL OF LITIGATION:** Except for any legal proceedings initiated by the Association to (i) enforce this Declaration against an Owner, Resident, or other Person (excepting any enforcement action against Declarant); (ii) enforce the Association Rules against an Owner, Resident, or other Person (excepting any enforcement action against Declarant); (iii) enforce any Architectural Guidelines against an Owner, Resident, or other Person (excepting any enforcement action against Declarant); (iv) collect any unpaid Assessments levied pursuant to this Declaration (excepting any collection action against Declarant); or (v) enforce a service contract for services rendered or to be rendered to the Association, the Association shall not incur litigation expenses, including without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of sixty-seven percent (67%) of the Members of the Association entitled to vote. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use Reserve Funds, or use monies collected for other specific Association obligations. Each Owner shall notify prospective purchasers of Lots of such legal proceedings as required by law. Nothing in this Section 10.5 shall preclude the Board from incurring expenses for legal advice in ^{Unofficial Document} the normal course of operating the Association to (i) enforce the Project Documents (excepting any enforcement action against Declarant); (ii) comply with the statutes or regulations related to the operation of the Association; (iii) amend the Project Documents as provided in this Declaration; (iv) grant easements or convey Common Area as provided in this Declaration; or (v) perform the obligations of the Association as provided in this Declaration. Without the prior written consent of Declarant, this Section 10.5 may not be amended for a period of twenty (20) years following the recording of the Declaration.

ARTICLE 11

GENERAL PROVISIONS

- 11.1 **ENFORCEMENT:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any Owner found to be in violation of this Declaration shall be responsible for the costs of enforcement of this Declaration including reasonable attorneys' fees required to obtain compliance.
- 11.2 **SEVERABILITY:** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.
- 11.3 **DURATION:** The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which

time they shall be extended automatically for successive periods of ten (10) years. This Declaration may be terminated at any time by the written approval or the affirmative vote of Owners representing not less than ninety percent (90%) of the Lots. Any termination of this Declaration shall be evidenced by a Declaration of Termination signed by the President or Vice President of the Association and recorded with the County Recorder of Maricopa County, Arizona. Thereupon, these covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. Notwithstanding anything herein to the contrary, during the Declarant Control Period no Declaration of Termination may be so recorded without the prior written approval of Declarant.

11.4 AMENDMENT:

(a) *By Declarant.* In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may amend this Declaration for any reason whatsoever, and without the consent or approval of any Owners or Members, or any other Person. In addition to the foregoing, after termination of the Declarant Control Period, and for so long as Declarant owns any portion of the Property, Declarant may of its own volition, and without the consent or approval of any Owners or Members, or any other Person, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with applicable law; (b) to satisfy the requirements of any governmental agency pertaining to lending criteria, or established as conditions for acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors; or (c) to correct any error or ambiguity, or to further the intent or purposes hereof by expanding upon the existing provisions hereof. Any amendment during such time as Declarant owns any portion of the Property shall require the written approval of Declarant.

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(b) *By the Association.* Except as otherwise specifically provided above or elsewhere in the Declaration, this Declaration may be amended at a meeting where quorum is present, by the approval of at least two-thirds (2/3) of the votes entitled to be cast by the Members of the Association, provided that no such amendment shall be valid without Declarant's written consent, so long as Declarant owns any portion of the Property. Notwithstanding the foregoing, the Board may, with the prior written consent of Declarant so long as Declarant owns any portion of the Property, amend this Declaration, without obtaining the approval or consent of any Owner, solely to conform this Declaration to the law. A certificate of amendment, setting forth the full amendment adopted, duly signed and acknowledged by the President or Vice-President of the Association shall be Recorded.

(c) *Challenge to Amendment.* Any challenge to an amendment to this Declaration for reason that the amendment was not adopted by the required number of Members or was not adopted in accordance with the procedures set forth in this Article must be made within (1) year after the recording of the amendment.

11.5 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 enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Declarant, the Association or any Owner.

11.6 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 or Improvement 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.

- 11.7 **REMEDIES CUMULATIVE:** Each remedy provided herein is cumulative and not exclusive.
- 11.8 **DELIVERY of NOTICES and DOCUMENTS:** Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: if to the Association or the Architectural Committee, to the current Association Statutory Agent which is on file with the Arizona Corporation Commission; if to the Declarant, to the current Association Statutory Agent which is on file with the Arizona Corporation Commission; if to an Owner, to the address of such Owner's Lot or to any other address last furnished by the Owner to the Association; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association.

Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address. Notwithstanding the forgoing, plans, specifications and other documents shall not be deemed to have been submitted to the Architectural Committee unless actually received by said Committee.

- 11.9 **BINDING EFFECT:** By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or entity, and such Person or entities heirs, personal representatives, successors, transferees and assigns, are hereby bound to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof.

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In addition, each such Person or entity by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Improvement and development of the Property and hereby evidences an interest that all the restrictions, conditions, covenants, 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 or entity fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future 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 to the Lot.

- 11.10 **MANAGEMENT AGREEMENTS:** Any agreement for professional management of the Association or the Project or any other contract providing for services of the Declarant, or other developer, sponsor or builder of the Project shall not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days advance written notice. Any professional management company shall have the authority to act as the agent of the Association in the enforcement of this Declaration pursuant to the terms and condition of the applicable professional management agreement.
- 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 in any way connected with such Membership and the covenants and obligations incident thereto.
- 11.14 **INTERPRETATION:** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Guidelines, the provisions of this Declaration shall prevail. The Board's interpretation of the Articles, Bylaws, Association Rules, Architectural Guidelines and this Declaration is final.
- 11.15 **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.
- 11.16 **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 ^{Unofficial Document} reasonable attorneys' fees incurred in any action.
- 11.17 **DECLARANT'S RIGHT to USE SIMILAR NAME:** The Association hereby irrevocably consents to the use by any other non-profit corporation that may be formed or incorporated by Declarant of a corporate name that is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation.

Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Association. Any officer of the Association, each acting alone without the other, is hereby authorized to execute on behalf of the Association such consents, approvals, confirmations, acknowledgments and other instruments as Declarant may request in order to evidence and confirm the rights and interests of Declarant in such name.

- 11.18 **RIGHT to REPLAT:** Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Members, to re-subdivide and re-plat any Lot or Lots that the Declarant then owns and has not sold.
- 11.19 **INDEMNIFICATION/ACKNOWLEDGMENT:** THE OWNERS, AS DEFINED HEREIN, ACKNOWLEDGE THAT: (1) THE PROPERTY SUBJECT TO THIS DECLARATION CONTAINS AREAS OF ASSOCIATION RESPONSIBILITY; (2) THE AREAS OF

ASSOCIATION RESPONSIBILITY POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS AND OTHERS; (3) NO SAFETY PERSONNEL WILL PATROL THE AREAS OF ASSOCIATION RESPONSIBILITY AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS OR OTHERS; AND (4) THE OWNERS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, INJURIES, DAMAGES, EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES, INCURRED BY OR CLAIMED AGAINST DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS UNDER ANY LAWS ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE AREAS OF ASSOCIATION RESPONSIBILITY.

EVERY DIRECTOR, OFFICER AND AGENT OF THE ASSOCIATION (WHETHER OR NOT SUCH AGENCY RELATIONSHIP RESULTS FROM APPOINTMENT, ELECTION OR EMPLOYMENT) SHALL BE INDEMNIFIED BY THE ASSOCIATION (AND THE ASSOCIATION SHALL DEFEND AND HOLD HARMLESS SUCH PERSON(S)) AGAINST ALL EXPENSES AND LIABILITIES, INCLUDING ATTORNEYS' FEES, INCURRED BY OR IMPOSED UPON SUCH PERSON IN CONNECTION WITH ANY PROCEEDING TO WHICH SUCH PERSON MAY BE A PARTY, OR IN WHICH SUCH PERSON MAY BECOME INVOLVED, BY REASON OR SUCH PERSON BEING OR HAVING BEEN A DIRECTOR, OFFICER OR AGENT OF THE ASSOCIATION, OR ANY SETTLEMENT THEREOF, WHETHER OR NOT SUCH PERSON IS A DIRECTOR, OFFICER OR AGENT AT THE TIME SUCH EXPENSES ARE INCURRED, TO THE FULLEST EXTENT THAT SUCH INDEMNIFICATION IS SPECIFICALLY PROVIDED FOR BY A.R.S. § 10-3202(B) OR BY THE LAWS OF THE STATE OF ARIZONA THEN IN EFFECT. THE FOREGOING RIGHTS OF INDEMNIFICATION SHALL BE IN ADDITION TO AND NOT EXCLUSIVE OF ALL OTHER RIGHTS TO WHICH SUCH DIRECTORS, OFFICERS OR AGENTS MAY BE ENTITLED.

ARTICLE 12

CLAIM AND DISPUTE RESOLUTION

The Association, the Board, and all Owners and Residents shall be bound by the following claim resolution procedures:

- 12.1 **RIGHT TO CURE ALLEGED DEFECT:** If a Person claims, contends, or alleges an Alleged Defect (such Person hereinafter referred to as "Claimant"), the party that constructed the Improvement with respect to which the Alleged Defect relates including, without limitation, Declarant (such party hereinafter referred to as the "Developer") shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.
- (a) *Notice of Alleged Defect.* If Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, Claimant shall give written notice of the Alleged Defect to the Developer stating plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Owner giving the notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any Persons or Property (such notice referred to as "Notice of Alleged Defect"). If the Alleged Defect is alleged to be the result of an act or omission

of a Person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes or any successor statutes (a "Licensed Professional"), then the Notice of Alleged Defect from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes, as amended from time to time.

- (b) *Right to Enter, Inspect, Repair and/or Replace.* Within a reasonable time after the receipt of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, any Lot or Dwelling Unit, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Developer in its sole and absolute discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

12.2 **NO ADDITIONAL OBLIGATIONS; IRREVOCABILITY AND WAIVER OF RIGHT:** Nothing set forth in this Article 12 shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which such Developer is not otherwise obligated under applicable law. The right reserved to Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to a Developer except by a written document executed by such Developer and recorded.

12.3 **LEGAL ACTIONS:** All legal actions in ^{Unofficial Document} ~~Unofficial Document~~ a Claimant shall be brought in accordance with and subject to Section 12.4 and Section 10.5 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging (1) damages for Alleged Defect costs, (2) for the diminution in value of any real or personal Property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from a Developer (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's Reserve Account. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer(s) which notice shall include at a minimum (1) a description of the Alleged Defect; (2) a description of the attempts of the Developer(s) to correct such Alleged Defect and the opportunities provided to the Developer(s) to correct such Alleged Defect; (3) a certification from a Licensed Professional that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such Licensed Professional; (4) the estimated Alleged Defect costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer(s) and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer(s) and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the action against the Developer(s); and (9) an affirmative statement

from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

12.4 ALTERNATIVE DISPUTE RESOLUTION: Except as to any claim brought by the Association against an Owner, Owners, or Person other than a Developer or Declarant, any dispute or claim between or among: (a) a Developer or Declarant, (or its brokers, agents, consultants, contractors, subcontractors or employees) on the one hand, and any Owner(s) and/or the Association on the other hand; or (b) the Association on the one hand, and any Owner on the other hand, regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of the Property; (iii) or an Alleged Defect (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 12.4 prior to any party to the Dispute instituting litigation with regard to the Dispute. All Disputes shall also be subject to Section 10.5 hereof.

(a) *Negotiation.* Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such negotiation.

(b) *Mediation.* If the parties cannot resolve their Dispute pursuant to the procedures described in Section 12.4(a) above within sixty (60) days of notice of the Dispute or such other time as may be agreed upon by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have thirty (30) days after the termination of negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association ("AAA") or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No Person shall serve as a mediator in any Dispute in which such Person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty (30) days after Termination of Negotiations, the Disputing Party shall be deemed to have fully and forever waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

(i) Position Memoranda: Pre-Mediation Conference. Within ten (10) days of the selection of the mediator pursuant to the rules of the AAA, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute

mutually agree to extend the mediation period. The mediation shall be held in Maricopa County or such other place agreed to by the parties to the Dispute.

- (ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Section 12.4(b)(v) below. The mediator does not have the authority to impose a settlement on any party to the Dispute.
 - (iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.
 - (iv) Parties Permitted at Sessions. Other than the parties' respective counsel and expert witnesses, Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.
 - (v) Expenses of Mediation. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to ^{Unofficial Document} fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear its/their own attorneys' fees and costs in connection with such mediation.
- (c) *Final and Binding Arbitration.* If the parties cannot resolve their Dispute pursuant to the procedures described in Section 12.4(b) above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to arbitration in accordance with the Commercial Arbitration Rules of the AAA (the "Commercial Arbitration Rules"), as modified or as otherwise provided in this Section 12.4(c). If the Disputing Party does not submit the Dispute to arbitration within thirty (30) days after termination of mediation proceedings, the Disputing Party shall be deemed to have fully and forever waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding; provided, however, that no Developer shall be required to participate in the arbitration proceeding if all parties against whom a Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the

limitations imposed in this Section 12.4(c), the arbitrator shall have the authority to try all issues, whether of fact or law.

- (i) Place. The arbitration proceedings shall be heard in Maricopa County or such other place as the parties to the Dispute may agree.
- (ii) Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association form panels maintained by the Association with experience in relevant matters which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the complaint (or such other notice of claims or document required by the AAA) on all defendants named therein.
- (iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.
- (iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.
- (v) Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. A Developer shall also be entitled to conduct further tests and inspections as provided in Section 12.1 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (vi) Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.
- (vii) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

- (viii) Joinder/Consolidation. Any arbitration proceeding may not be joined or consolidated with the claims or Disputes of the Association or any other Owner unless specifically agreed to in writing by all parties to the Dispute. The arbitrator is not authorized to permit any consolidated or joinder with any other Disputes of the Association or any other Owner without the written agreement of all parties to the Dispute.
- (ix) Expenses of Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party, and the arbitrator shall have no authority to award recovery of attorney fees or expert expenses. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

- 12.5 APPROVAL OF ARBITRATION OR LITIGATION. The Association shall not deliver a Notice of Alleged Defect or commence any legal action or mediation or arbitration proceeding or incur legal expenses without first complying with the requirements of Section 10.5.
- 12.6 STATUTES OF LIMITATIONS: Nothing in this Article 12 shall be considered to toll, stay, reduce, or extend any applicable statute of limitations; provided, however, that all statutes of limitations applicable to claims shall apply to the commencement of arbitration proceedings under Section 12.4. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the claim, the claim shall forever be barred.
- 12.7 ENFORCEMENT OF RESOLUTION: ~~Under this Declaration~~ ^{Under this Declaration} parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Section 12.4(a) or Section 12.4(b) above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if the parties accept an award of arbitration in accordance with Section 12.4(c) and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or the award without the need to again comply with the procedures set forth in this Article 12. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one (1) non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation or mediation or the award including, without limitation, attorneys' fees and court costs.
- 12.8 AMENDMENT OF SECTION 12. Without the prior written consent of Declarant, this Section 12 may not be amended for a period of twenty (20) years following the recording of the Declaration.
- 12.9 CONFLICTS: Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article 12 and any other provisions of the Articles, the Bylaws, the Association Rules or the Architectural Guidelines, this Article 12 shall control.

ARTICLE 13

ANNEXATION

- 13.1 ANNEXATION OF ADDITIONAL PROPERTY: Until the later of (a) twenty (20) years following recordation of this Declaration or (b) termination of the Declarant Control Period, Declarant hereby reserves the right from time to time to subject all or any portion of any additional real property to the terms and provisions of this Declaration. Annexation of additional property shall become effective upon recordation by the Declarant of a signed and acknowledged "Declaration of Annexation" with the County Recorder of Maricopa County, Arizona, stating that such additional property has been annexed to this Declaration. The Declaration of Annexation may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary as determined by the Declarant in its sole and absolute discretion. No consent or approval by the Board or the Members shall be necessary for an annexation by the Declarant. Upon recordation of a Declaration of Annexation, the annexed real property shall have the same rights, privileges and obligations as Property originally subject to the terms of this Declaration.
- 13.2 DE-ANNEXATION OF PROPERTY: Declarant shall have the right from time to time and without the consent of any Person to remove from the effect of this Declaration all or any portion of the Property. However, no portion of the Property may be de-annexed from this Declaration if such de-annexation would act to terminate access to any right-of-way or utility line unless reasonable alternative provisions are made for such access. De-annexation of all or any portion of the Property shall become effective upon recordation by the Declarant of a signed and acknowledged "Declaration of De-Annexation" with the County Recorder of Maricopa County, Arizona, stating that the applicable portion of the Property has been de-annexed from this Declaration. Upon recordation of a Declaration of De-Annexation, the de-annexed real property shall no longer have any of the rights, privileges and obligations of the remaining Property subject to the terms of this Declaration.

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IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first above written.

"DECLARANT"

MARACAY 91, L.L.C.,
an Arizona limited liability company

By: [Signature]
Name: Jason Weber
As: VP Land

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 11th day of December, 2017, by Jason Weber, the Vice President Land of MARACAY 91, L.L.C., an Arizona limited liability company, on behalf of such entity.

[Signature]
Notary Public

My Commission Expires:
5.23.21

