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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR
HAWES MANOR**

ARTICLE 1 - DEFINITIONS 1

(a) "Alleged Defect" 1
 (b) "Annual Assessment" 2
 (c) "Articles" 2
 (d) "Assessable Property" 2
 (e) "Assessment" 2
 (f) "Assessment Lien" 2
 (g) "Association" 2
 (h) "Board" 2
 (i) "Bylaws" 2
 (j) "Claimant" 2
 (k) "Common Area" and "Common Areas" 2
 (l) "Contractor" 2
 (m) "Covenants" 3
 (n) "Declarant" 3
 (o) "Declaration" 3
 (p) "Deed" 3
 (q) "Design Review Committee" 3
 (r) "Design Review Guidelines" 3
 (s) "Developer" or "Developers" 3
 (t) "Dwelling Unit" 3
 (u) "Exempt Property" 3
 (v) "Lot" 3
 (w) "Maintenance Charges" 4
 (x) "Member" 4
 (y) "Membership" 4
 (z) "Occupant" 4
 (aa) "Owner" 4
 (bb) "Person" 4
 (cc) "Plat" 4
 (dd) "Property" 4
 (ee) "Purchaser" 4
 (ff) "Recording" or "Recordation" 5
 (gg) "Reserves" or "Reserve Funds" 5
 (hh) "Resident" 5
 (ii) "Single Family" 5
 (jj) "Special Assessment" 5
 (kk) "Special Use Fees" 5
 (ll) "Visible From Neighboring Property" 6

ARTICLE 2 - PROPERTY SUBJECT TO THE DECLARATION 6

Section 2.1	General Declaration.....	6
Section 2.2	Limitation of Restrictions on Declarant.....	6
Section 2.3	Association Bound.....	7
ARTICLE 3 - <u>EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS</u>.....		7
Section 3.1	Easements of Enjoyment.....	7
Section 3.2	Delegation of Use.....	8
Section 3.3	Waiver of Use.....	8
Section 3.4	Declarant Easements.....	9
Section 3.5	Access Easements.....	9
Section 3.6	Drainage Easement.....	9
Section 3.7	No Liability.....	9
Section 3.8	Private Streets.....	9
Section 3.9	Gated Entry; Restriction on Liability of the Association and Declarant.....	9
ARTICLE 4 - <u>PERMITTED USES AND RESTRICTIONS</u>.....		10
Section 4.1	Covenants, Conditions, Restrictions and Easements Applicable to the Property.....	10
ARTICLE 5 - <u>ORGANIZATION OF ASSOCIATION</u>.....		20
Section 5.1	Formation of Association.....	20
Section 5.2	Board of Directors and Officers.....	20
Section 5.3	Association Rules.....	20
Section 5.4	Personal Liability.....	21
Section 5.5	Funds.....	21
ARTICLE 6 - <u>MEMBERSHIPS AND VOTING</u>.....		21
Section 6.1	Owners of Lots.....	21
Section 6.2	Declarant.....	21
Section 6.3	Voting.....	21
Section 6.4	Right to Vote.....	22
Section 6.5	Membership Rights.....	22
Section 6.6	Transfer of Membership.....	22
ARTICLE 7 - <u>COVENANT FOR ASSESSMENTS AND CREATION OF LIEN</u>.....		23
Section 7.1	Creation of Lien and Personal Obligation of Assessments and Maintenance Charges.....	23
Section 7.2	Purpose of Assessments; Reserve Funds.....	23

Section 7.3	Annual Assessments.....	24
Section 7.4	Use Assessments	26
Section 7.5	Special Assessments for Capital Improvements and Extraordinary Expenses	26
Section 7.6	Uniform Rate of Assessment	26
Section 7.7	Notice and Quorum for Any Action Authorized Under Section 7.5.....	27
Section 7.8	Rules Regarding Billing and Collection Procedures.....	27
Section 7.9	Collection Costs and Interest on Delinquent Assessments.....	27
Section 7.10	Evidence of Payment of the Assessments	27
Section 7.11	Property Exempted from the Annual, Use and Special Assessments and Assessment Lien	28
Section 7.12	Working Capital Fees and Reserve Funds.....	28
Section 7.13	Transfer Fee.....	28
 ARTICLE 8 - <u>ENFORCEMENT OF PAYMENT OF ANNUAL ASSESSMENTS, USE ASSESSMENTS AND SPECIAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN</u>		29
Section 8.1	Association as Enforcing Body.....	29
Section 8.2	Association's Remedies to Enforce Payment of Annual Assessments, Use Assessments, Special Assessments and Maintenance Charges	29
Section 8.3	Subordination of Assessment Lien to First Mortgage or Deed of Trust: Priority of Lien.....	29
Section 8.4	Costs to be Borne by Member in Connection with Enforcement of Payment of Annual Assessments, Use Assessments, Special Assessments and Maintenance Charges.....	30
 ARTICLE 9 - <u>USE OF FUNDS: BORROWING POWER</u>		30
Section 9.1	Purposes for which Association's Funds May Be Used	30
Section 9.2	Borrowing Power	31
Section 9.3	Association's Rights in Spending Funds From Year to Year	31
Section 9.4	Administration of Special Use Fees	31
Section 9.5	Insurance.....	31
Section 9.6	Non-Liability of Association/Board.....	31
 ARTICLE 10 - <u>MAINTENANCE</u>		31
Section 10.1	Common Areas and Public Rights-of-Way	31
Section 10.2	Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas	32
Section 10.3	Improper Maintenance and Use of Lots.....	33

ARTICLE 11 - <u>DESIGN REVIEW COMMITTEE</u>	33
Section 11.1 Establishment.....	33
Section 11.2 Purpose	33
Section 11.3 Operation/Authority	34
Section 11.4 Fee	34
Section 11.5 Limited Liability of Design Review Committee Approval.....	35
Section 11.6 Waiver	35
Section 11.7 Nonapplicability to Declarant.....	35
ARTICLE 12 - <u>RIGHTS AND POWERS OF ASSOCIATION</u>	35
Section 12.1 Association's Rights and Powers as Set Forth in Articles and Bylaws.....	35
Section 12.2 Association's Rights of Enforcement of Provisions of This and Other Instruments	35
Section 12.3 Contracts with Others for Performance of Association's Duties	36
Section 12.4 Reservation of Trade Name	36
Section 12.5 Approval of Litigation.....	36
ARTICLE 13 - <u>TERM: AMENDMENTS: TERMINATION</u>	37
Section 13.1 Term: Method of Termination	37
Section 13.2 Amendments	37
Section 13.3 Right of Amendment if Requested by Governmental Agency or Lending .. Institutions	38
Section 13.4 Declarant's Rights of Amendment	38
ARTICLE 14 - <u>MISCELLANEOUS</u>	38
Section 14.1 Interpretation of the Covenants.....	38
Section 14.2 Severability	39
Section 14.3 Perpetuities and Restraints on Alienation.....	39
Section 14.4 Rules and Regulations	39
Section 14.5 Declarant's Disclaimer of Representations.....	39
Section 14.6 References to the Covenants in Deeds	39
Section 14.7 Successors and Assigns of Declarant	40
Section 14.8 Gender and Number	40
Section 14.9 Captions and Titles.....	40
Section 14.10 Notices.....	40
Section 14.11 FHA/VA Approval.....	40
Section 14.12 Indemnification/Acknowledgment.....	41
ARTICLE 15 - <u>CLAIM AND DISPUTE RESOLUTION</u>	41
Section 15.1 Right to Cure Alleged Defect	42

- (b) "Annual Assessment" shall mean the charge levied and assessed each year against each Membership pursuant to Section 7.3 hereof.
- (c) "Articles" shall mean the Articles of Incorporation of the Association as the same may be from time to time be amended or supplemented.
- (d) "Assessable Property" shall mean any Lot, except such part or parts thereof as may from time to time constitute Exempt Property.
- (e) "Assessment" shall mean an Annual Assessment, Use Assessment, Special Assessment and/or Maintenance Charge.
- (f) "Assessment Lien" shall mean the lien created and imposed by Article 7.
- (g) "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated.
- (h) "Board" shall mean the Board of Directors of the Association.
- (i) "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.
- (j) "Claimant" shall mean the Association, the Board or any Owner.
- (k) "Common Area" and "Common Areas" shall mean all real property (including easements) and the improvements or amenities thereon, owned, controlled or operated by or created for the benefit of the Association (including without limitation areas identified on the Plat to be used for private streets, landscaping, drainage, flood control, open areas and the like), or other rights running to the benefit of the Association and intended for the use and enjoyment of the Owners and/or Residents of the Property, or with respect to which the Association has administrative, maintenance or other similar responsibilities.
- (l) "Contractor" shall mean a Person other than Declarant who is engaged in residential real estate construction within the Property for the purpose of constructing initial Improvements upon a Lot.
- (m) "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.
- (n) "Declarant" shall mean and refer to the above-recited Declarant or any person or entity to whom any part or all of Declarant's rights reserved to the Declarant

hereunder are assigned. The Declarant's rights shall only be assigned by a written, recorded instrument expressly assigning those rights.

(o) "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Reservations and Easements, as amended or supplemented from time to time.

(p) "Deed" shall mean a deed or other instrument conveying the fee simple title in a Lot.

(q) "Design Review Committee" shall mean the committee of the Association to be created pursuant to Article 11 hereof.

(r) "Design Review Guidelines" shall mean those guidelines established by the Declarant pursuant to Section 11.1 hereof.

(s) "Developer" or "Developers," as used in Article 15 of this Declaration, shall mean the Declarant and/or any Contractor or Contractors.

(t) "Dwelling Unit" shall mean 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.

(u) "Exempt Property" shall mean the following parts of the Property:

(i) All land and improvements owned by or dedicated to and accepted by any political entity or subdivision, for as long as any such political or entity subdivision is the owner thereof or for so long as said dedication remains effective; and

(ii) All Common Areas, for as long as the Association is the owner thereof.

(v) "Lot" shall mean any area of real property within the Property designated as a Lot on the Plat Recorded by Declarant; as used herein, "Lot" may include the improvements on a Lot.

(w) "Maintenance Charges" shall mean any and all costs assessed pursuant to Article 10 hereof.

(x) "Member" shall mean any person holding a Membership in the Association pursuant to this Declaration.

(y) "Membership" shall mean a Membership in the Association and the rights granted to the Owners pursuant to Article 6 hereof to participate in the Association

(z) "Occupant" shall mean any person temporarily occupying any Dwelling Unit with the permission of the Owner thereof.

(aa) "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot, but excluding those who hold such title merely as security for the performance of an obligation. In the case of a Lot, the fee simple title to which is vested of Record in a seller under a valid and outstanding Agreement or Contract of Sale, as defined in A.R.S. §33-741, legal title shall be deemed to be in the purchaser under such Agreement or Contract of Sale. In the case of a Lot, the fee simple title to which is vested of Record in a trustee pursuant to A.R.S. §33-801, et seq., legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot.

(bb) "Person" shall mean 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.

(cc) "Plat" shall mean and refer to the plat of survey of the Property, as recorded in Book 623 of Maps, at Page 26, Office of the County Recorder of Maricopa County, Arizona.

(dd) "Property" shall mean the real property described on Exhibit "A" attached hereto and by this reference incorporated herein.

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

(ff) "Recording" or "Recordation" shall mean placing an instrument of public record in the Office of the County Recorder of Maricopa County, Arizona, and "Recorded" shall mean having been so placed of public record.

(gg) "Reserves" or "Reserve Funds" shall mean those amounts specifically collected by Declarant and/or the Association for, and in anticipation of, future expenses associated with (i) the proper operation and maintenance of the Association and (ii) repair, replacement and maintenance of the Common Areas and Improvements thereon. "Reserve Account" shall refer to the account (or, series of accounts) maintained by Declarant and/or the Association for the segregation and retention of Reserve Funds.

(hh) "Resident" shall mean:

(i) Each Occupant actually residing on any part of the Assessable Property; and

(ii) Members of the immediate family of each Owner or Occupant actually living in the same household with such Owner or Occupant.

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 or Occupant, if and to the extent the Board in its absolute discretion by resolution so directs, provided, however, that no guest or invitee may stay with an Owner or Occupant, in a Dwelling Unit or on a Lot for more than thirty (30) days in total during any calendar year.

(ii) "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than four (4) persons not all so related, who maintain a common household in a Dwelling Unit.

(jj) "Special Assessment" shall mean any Assessment levied and assessed pursuant to Section 7.5 hereof.

(kk) "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner, Occupant, Resident or any other person is obligated to pay to the Association over, above and in addition to any Annual Assessments, Use Assessments, Special Assessments or Maintenance Charges imposed or payable hereunder.

(ll) Intentionally Omitted.

(mm) Intentionally Omitted.

(nn) "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on the same plane as the object being viewed at a distance of one hundred (100) feet or less from the nearest boundary of the property being viewed.

ARTICLE 2

PROPERTY SUBJECT TO THE DECLARATION

Section 2.1 General Declaration. Declarant intends to develop the Property generally in accordance with the Plat and to sell and convey the Lots thereof. 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 and Residents concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. 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 and Residents of the Property and their successors in interest.

Section 2.2 Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

ARTICLE 3

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Section 3.1 Easements of Enjoyment. Declarant and every Owner, Occupant and Resident of the Property shall have a right and easement of enjoyment in and to all of the Common Areas which 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 charge reasonable admission and other Special Use Fees for the use of the Common Areas or any facilities constructed thereon. Any such Special Use Fees shall be set by the Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Common Areas determined by the Board to be subject to a Special Use Fee.

(b) The right of the Association to suspend the voting rights and right to use of the facilities and other Common Areas by any Member (i) for any period during which any Assessment against his Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association Rules, and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period.

(c) The right of the Association to regulate the use of the Common Areas through the Association Rules and to prohibit or limit access to those Common Areas not intended for use by the Members. The Association Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, and otherwise shall serve to promote the best interests of the Owners, Occupants and Residents of the Property.

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or quasi-public agency, authority, or utility for such

purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or other agreements with applicable governing municipalities or quasi-governmental agencies, entities or districts effective prior to the date hereof or specified on the Plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners of two-thirds (2/3) of the Memberships in each class of Members agreeing to such dedication or transfer has been Recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit the Property and which do not have any substantial adverse effect on the enjoyment of the Common Areas by the Members.

(e) The right of the Association to change the use of the Common Areas in accordance with this Declaration.

(f) 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, 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 has/have executed an instrument agreeing to such change in size, shape or location, exchange or abandonment.

Section 3.2 Delegation of Use. Any Owner or Resident may, in accordance with the Declaration and the Association Rules and the limitations therein contained, delegate his right of enjoyment in the Common Areas and facilities to the members of his family, his tenants or his guests; provided, however, that the Association shall have the right to limit the number of guests of an Owner or Resident using the Common Areas.

Section 3.3 Waiver of Use. No Owner may exempt himself from personal liability for Assessments, nor release the Lot owned by him from the liens or charges arising under this Declaration by waiver of his use and enjoyment of the Common Areas.

Section 3.4 Declarant Easements. Declarant shall have the right and an easement on, over and under the Common Area for the purpose of maintaining and correcting drainage of surface or storm water. The easement created by this Subsection expressly includes the right to cut and/or remove any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

Section 3.5 Access Easements. If access to a Lot is through a Common Area, any conveyance or encumbrance of such Common Area is subject to such easement.

Section 3.6 Drainage Easement. 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 drainage plans on file with the City of Mesa.

Section 3.7 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.

Section 3.8 Private Streets. The Declarant or the Association:

(a) shall have the right to (but shall not be required to) install access control structures within the medians of the private access ways (the "Rights-of-Way") at the entrances to the Property which the Declarant or the Association, as appropriate, may staff with personnel (the "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 to access the Property provided the Personnel do not intentionally deny access to any person with a right of access to the Property.

3.9 Access Control; Restriction on Liability of the Association and Declarant. The Declarant or the Association may station Personnel at the access control structures twenty-four (24) hours per day. Upon installation of access control structures in the Rights-of-Way, the Association shall not remove such structures without the prior written consent of two-thirds (2/3) of the vote of all Members who are eligible to vote.

(a) *Release and Waiver*. Each Owner, Occupant 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 resulting from activities or occurrences described in this Section 3.9.

(b) *No Restriction on Access*. Notwithstanding anything contained in this Declaration to the contrary, so long as Declarant or any builder retained/hired by Declarant is constructing Single Family residences or other Improvements within the Property, no restrictions shall be approved by the Board or otherwise imposed upon Declarant or a builder retained/hired by 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. The foregoing shall survive the termination of Declarant's Class B membership and may not be amended without the prior written approval of Declarant.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

Section 4.1 Covenants, Conditions, Restrictions and Easements Applicable to the Property. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all portions of the Property which are not Exempt Property (unless otherwise specifically indicated), the Owners, Residents and Occupants thereof.

(a) Architectural Control. The Property is subject to architectural control as established by the Design Review Committee. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters a Lot, or the exterior appearance of improvements located thereon, shall be made or done without the prior approval of the Design Review Committee. No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without prior written approval of the Design Review Committee. The exterior (and those interior portions of structures visible from the outside of the applicable structure) of any building fence, wall, residence or other structure shall not be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Design Review Committee.

(b) Restriction on Further Property Restrictions. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Occupant or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void.

(c) Landscaping. Within six (6) months from conveyance by Declarant of a Lot to an Owner by means of a Deed, such Owner shall complete the landscaping of all portions of the Lot that are Visible From Neighboring Property or visible from the Common Areas or the streets. In the event an Owner fails to complete such landscaping within said 6 month period, the Board may by resolution make a finding to such effect and pursuant thereto give notice thereof to the Owner that unless landscaping is commenced within fourteen (14) days and thereafter diligently pursued to completion, the Board may cause such landscaping to be accomplished at said 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 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 the Assessment Lien. Except as otherwise expressly provided in this Declaration, such landscaping and incidental work shall not be commenced without the prior written approval of the Design Review Committee and no changes or deviations in

or from any plans and specifications approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee.

(d) Utility Easements. There is hereby created a blanket easement upon, across, over and under the Property for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems, as such utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Areas and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings thereon. Notwithstanding anything to the contrary contained in this Subsection, 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 Design Review Committee or, in the case of a Lot, the Owner of such Lot and the Design Review Committee.

(e) 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, Occupants or Residents, the Board may make rules restricting or regulating their presence within the Property as part of the Association Rules, or may direct the Design Review Committee to make rules governing their presence on Lots as part of the Design Review Guidelines.

(f) Maintenance of Lawns and Plantings. Each Owner of a Lot shall keep neatly trimmed, properly cultivated and free from trash, weeds and other unsightly material, all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot (including set back areas, easement areas and Common Areas), (ii) planted public right-of-way areas between sidewalks (or bike paths) and the street curb in front of or within his property, if any, (iii) any other public right-of-way or easement area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path or similar area, and (iv) any non-street public right-of-way; provided, however, that such Owner shall not be responsible for maintenance of any area over which (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a Recorded instrument as provided in Section 10.1 of this Declaration; or (3) the City of Mesa, County of Maricopa or other public agency assumes responsibility, for so long as the Association, said political subdivision or other public agency assumes or has responsibility as provided in (1), (2) or (3) above. The Design Review Committee may require landscaping by the Owner of the areas described in Subsections (ii), (iii) and (iv) above.

(g) Nuisances, 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 shall be 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. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, fireworks, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot. 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 Design Review 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 public 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 Design Review Committee. The Design Review 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.

(h) Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner, unless the obligation for any such repairs or maintenance has been specifically undertaken by the Association by official Board action. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

(i) Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

(i) Signs required by legal proceedings.

(ii) No more than one (1) property location or identification sign for individual residences, each with a face area of seventy-two (72) square inches or

less, the nature and location of which have been approved in advance in writing by the Design Review Committee of the Association.

(iii) Signs indicating a property to be "For Sale" or "For Lease," provided no more than one (1) such sign is located on each individual residence, no individual sign is larger than four hundred thirty-two (432) square inches in size, and no sign is placed closer to the street than six (6) feet, the nature and location of which have been approved in advance in writing by the Design Review Committee of the Association.

(iv) Such other signs which are in conformance with the applicable requirements of the City of Mesa, County of Maricopa or other applicable governmental agencies and which have been approved in advance and in writing by the Design Review Committee as to size, color, design, message content and location.

(j) Roof Structures and Equipment. No solar units or panels, heating, air-conditioning or ventilation equipment, or any other equipment or structures shall be located or installed within any Lot, including on any roof of any building located on any Lot, without the prior written approval of the Design Review Committee.

(k) Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by the Declarant or as may be otherwise approved by the Design Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee.

(l) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Occupant of a Lot, any member of the Design Review Committee, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration have been, or are being, complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

(m) The Declarant's Exemption. Consistent with Section 2.2, above, nothing contained in this Declaration or the Design Review Guidelines 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 or other property within the Property. Without limiting the generality of the preceding sentence, and consistent with Section 11.7 hereof, Declarant is expressly exempted from the provisions requiring submittals to or authorizations by the Design Review Committee. 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 as sales offices) (collectively, the "Models") by Persons engaged in the construction of homes on the Property and parking available to the visiting of such Models so long as construction, operation and maintenance of such Model parking 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, and no home or other structure shall be used as a Model for the sale of homes if the structure is not located within the Property. 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.

(n) Permitted Uses. Each Lot shall be improved and used exclusively for Single Family residential use. No trade or business may be conducted on any Lot or in or from any Dwelling Unit EXCEPT that an Owner, Occupant 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 of Dwelling Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Property, (iii) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Owners, Occupants or Residents within the Property, (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Owners, Occupants or Residents within the Property and (v) the business actually conducted from within a Dwelling Unit does not involve any employees, other than family members residing in the Dwelling Unit, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade", as used in this Section, shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part-time, (ii) such activity is intended or does generate a profit or (iii) a license is required for such activity. The sale or lease of a Dwelling Unit by the Owner thereof shall not be considered a "trade" or "business" within the meaning of this Section.

(o) Animals. No animal, bird, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and

then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No house or yard pets shall exceed one hundred (100) pounds in weight, unless such pet is used to aid a handicapped resident. No animal, bird, poultry or livestock 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, bird, poultry or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, poultry or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

(p) Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

(q) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

(r) Antennas. Subject to applicable law, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation which are Visible From Neighboring Property shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Design Review Committee.

(s) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Design Review Committee and acceptable to the appropriate garbage/trash collector. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be promptly removed from all Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(t) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within a fenced yard or otherwise concealed and are not Visible From Neighboring Property.

(u) Window Treatments. All windows within any Dwelling Unit constructed on any Lot shall be covered with appropriate window treatments within ninety (90) days

after first occupancy thereof. No reflective materials, including but not limited to aluminum foil, reflective screens or glass, mirrors or similar-type items shall be installed or placed on the outside or inside of any windows. The exterior side of all drapes, curtains or other window coverings shall be white, off-white, beige or natural wood-toned in color or such other colors as permitted by the Design Review Committee.

(v) Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots, or party fences between Lots shall be as follows:

(i) The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(ii) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any party wall or party fence 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 agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such party wall or party fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall or party fence.

(iv) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein whether by way of easement or in fee.

(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(vi) Anything in the foregoing to the contrary notwithstanding, in the case of party fences (1) between Common Areas and Lots, or (2) constructed by the Declarant or the Association on Common Areas, the Association shall be

responsible for all maintenance thereof, subject to the provisions of Article 10 of the Declaration, except that each Owner of a Lot shall be responsible for painting the portion of the party wall or party fence facing his Lot or the portion thereof which is not a portion of the Common Area, and responsible for any repairs, replacements and maintenance resulting from the improper or defective construction of such party wall or party fence.

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

(x) Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding one-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or street in the Property so as to be Visible From Neighboring Property or to be visible from the Common Areas or the streets.

(y) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street in the Property, and no inoperable vehicle may be stored or parked on any such Lot or street so as to be Visible From Neighboring Property or to be visible from the Common Areas or the street.

(z) Parking. Vehicles of all Owners, Lessees and Residents, and of their guests and invitees, are to be kept only in garages and carports or upon the driveway of any Lot and not upon the streets located within the Property; provided, however, this paragraph shall not be construed to permit the parking in the above-described areas of any vehicle whose parking in the Property is otherwise prohibited or the parking upon any driveway or Common Areas of any inoperable vehicle.

(aa) Tenants and Guests. The entire Dwelling Unit on a Lot may be let to a Single Family tenant from time to time by the Owner, subject to the provisions of this Declaration. No guest or invitee of any Owner or Occupant may stay with an Owner or Occupant, in a Dwelling Unit or on a Lot for more than thirty (30) days in total during any calendar year. Notwithstanding anything to the contrary contained herein, no employee of any Owner or Occupant shall live in a Dwelling Unit or on a Lot.

(bb) Environmental Protections. Neither the Lot nor any facilities on the Lot shall be used to generate, manufacture, refine, transport, treat, 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, fi 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.

(cc) No Subdivision. No Lot shall be further subdivided by any Owner into smaller lots or parcels and no portion less than all of any such Lot shall be conveyed, transferred or hypothecated by any Owner. Nothing in the foregoing shall preclude Declarant from replatting the Property or re-subdividing any Lot.

(dd) No Two Story Homes on Specific Lots. Notwithstanding anything in this Declaration to the contrary, there shall be no two story residences, homes or dwellings constructed on Lots 30 or 31 of the Property.

(ee) Visibility Easement, Setback Restrictions and Other Easements. The Property shall be subject to the Visibility Easement, setback restrictions and other easements set forth on the Plat.

ARTICLE 5

ORGANIZATION OF ASSOCIATION

Section 5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) members. Upon the termination of the Class B Memberships, the Members shall elect a replacement Board pursuant to the Bylaws of the Association. Such replacement Board shall consist of not more than seven (7) nor less than five (5) directors. 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.

Section 5.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules

and regulations to be known as the "Association Rules." The Association Rules may restrict and govern the use of any Common Area by any Member, Occupant or Resident; provided, however, that the Association Rules shall not be inconsistent with this Declaration, the Articles or the Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 5.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct. Failure of a Board member to fully disclose (i) his/her relationship with Association counsel and the Association's management company pursuant to Section 15.3(5) and (ii) the nature of any financial gain he/she may receive upon the Association's institution of a proceeding against a Developer(s) shall be deemed bad faith and shall subject the Board member to liability for (a) breach of the covenant of good faith and fair dealing and (b) breach of the duty of loyalty.

Section 5.5 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.

ARTICLE 6

MEMBERSHIPS AND VOTING

Section 6.1 Owners of Lots. Each Owner of a Lot which is subject to assessment pursuant to Article 7 hereof shall be a Member of the Association. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not cause there to be more than one Membership per Lot.

Section 6.2 Declarant. The Declarant shall be a Member of the Association for so long as Declarant holds a Membership pursuant to Section 6.3 below.

Section 6.3 Voting.

(a) Memberships. The Association shall have two classes of voting Memberships:

(i) Class A. Class A Memberships shall be all Memberships, except the Class B Memberships held by the Declarant, and each Owner shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the

authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof;

(ii) Class B. Until converted to Class A Memberships as provided below, each Membership owned by Declarant shall be a Class B Membership. At the time of any vote by the Members of the Association, Declarant shall be entitled respectively to three (3) votes for each Class B Membership held thereby. The Class B Memberships shall cease and be converted to Class A Memberships on the first to occur of the following:

(A) The date which is ninety (90) days after the date when the total votes outstanding in the Class A Memberships entitled to vote equal the total votes outstanding in the Class B Memberships;

(B) Three (3) years following the conveyance by Declarant of the first Lot to an Owner; or

(C) The date Declarant notifies the Board in writing that Declarant is terminating (or has terminated) its Class B Memberships and is converting such Memberships to Class A Memberships.

Section 6.4 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

Section 6.5 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 6.6 Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot. A transfer of ownership to a Lot may be effectuated by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be

void. Any transfer of the ownership of a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

ARTICLE 7

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 7.1 Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. The Declarant, for each Lot hereafter established within the Property, hereby covenants and agrees and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree to pay to the Association the following assessments and charges as provided herein: (1) Annual Assessments established by this Article; (2) Use Assessments established by this Article; (3) Special Assessments for Capital Improvements or other extraordinary expenses or costs established by this Article; and (4) Maintenance Charges established by Article 10, all such assessments to be established and collected as hereinafter provided. The Annual Assessments, Use Assessments, Special Assessments, and Maintenance Charges (sometimes hereinafter referred to collectively as the "Assessments" and individually as the "Assessment"), together with interest, costs, and reasonable attorneys' fees, shall be a charge, continuing servitude and lien upon the Lot against which each such Assessment is made. No diminution or abatement of Assessments or set-off 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. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the Assessment was due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by such successors.

Section 7.2 Purpose of Assessments; Reserve Funds. The Assessments shall be used exclusively by the Association for the improvement and maintenance of the Common Areas and any other areas for which the Association is responsible, the promotion of the recreation, health, safety and welfare of the Owners, Occupants and Residents of the Property, the operation and administration of the Association and for the common good of the Property. Annual Assessments may include a reasonable Reserve Fund for taxes, insurance, maintenance, repairs and replacement of the Common Areas and all other areas for which the Association is responsible. Any Reserve Funds collected by the Association shall be deposited into one (1) or more federally insured bank accounts ("Reserve Account(s)") and shall be segregated from the Association's general operating account(s).

Section 7.3 Annual Assessments.

(a) *Annual Budget; Delivery to Membership.* The Board shall annually determine and fix the amount of the Annual Assessment against each Lot and shall notify

the Owner of each Lot, in writing, as to (i) the amount of such Annual Assessment and (ii) the fractional payment cycle for the Annual Assessment (e.g., quarterly or monthly). The written notice shall be provided to each Owner not less than thirty (30) days prior to the date that such Annual Assessment is to commence. Along with such notification, the Board shall provide the Owners with a proposed budget for the next fiscal year and a summary of the Association's finances for the previous fiscal year. In addition to including amounts for the estimated common expenses and cash requirements of the Association, each budget may also provide for a reserve for contingencies and a reserve for replacements, all 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 Assessment to be levied against the Owner's Lot for the fiscal year in question to be delivered or mailed to each Owner. 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 Assessment provided for therein) for the year immediately preceding shall remain in effect.

(b) *Initial Annual Assessment.* In the year of the close of escrow on the sale of the first Lot to a purchaser, the maximum Annual Assessment per Lot shall be Four Hundred Twenty and No/100 Dollars (\$420.00), and the Annual Assessment 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).

(c) *Maximum Increase in Annual Assessment.* Except as to the first Annual Assessment, the Annual Assessment may be neither increased by more than twenty percent (20%) above, nor decreased by more than twenty percent (20%) below the Annual Assessment 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 fifty-one percent (51%) of the Members entitled to vote. Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the maximum Annual Assessment 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 an increase in the maximum Annual Assessment, such increase shall be permitted notwithstanding the fact that the resulting increase in maximum Annual Assessment is at a rate greater than otherwise permitted by the preceding portions of this Section. Nothing herein shall obligate the Board to levy, in any fiscal year, an Annual Assessments in a full amount of the maximum Annual Assessment for the fiscal year, and the election by the Board not to levy Annual

owning one 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.

Section 7.5 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments and Use Assessments authorized above, the Association may levy, in any Assessment period, a Special Assessment applicable to that Assessment period only for the purposes of: (i) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; (ii) defraying other extraordinary expenses; or (iii) repaying any amounts borrowed by the Board of Directors in accordance with Section 9.2; provided that any such Special Assessment must have the prior written consent of all holders of Class B Memberships or, if no Class B Memberships exist, two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this section shall not preclude or limit the assessment, collection or use of the Annual Assessments for the aforesaid purposes.

Section 7.6 Uniform Rate of Assessment. Except as hereinafter specifically provided herein, the amount of any Annual Assessment or Special Assessment shall be fixed at a uniform rate per Membership. The Annual Assessments and the Use Assessments may be collected on a monthly, quarterly, or annual basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

Section 7.7 Notice and Quorum for Any Action Authorized Under Section 7.5. Written notice of any meeting called for the purpose of taking any action authorized under Section 7.5 of this Article shall be sent to all Members subject to such Assessment no less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7.8 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein, for the billing and collection of the Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice, prior to such foreclosure or enforcement at the address of the Member on the records of the

Association, that the Assessment, or any installment thereof is, or will be, due, and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment period; successor Owners of Lots shall be given credit on a prorated basis for prepayments made by prior Owners. If the owner of a Membership becomes liable for payment of an increased sum pursuant to this Article during the Assessment period, he shall notify the Association, but his failure to notify the Association shall not relieve him of the liability for such amounts.

Section 7.9 Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid within thirty (30) days after the date such Assessment or installment is due shall be deemed delinquent and shall bear interest and a late fee, from date of delinquency. The interest rate and amount of late fee shall be determined by the Board, subject to applicable law, and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The Board also may, but is not obligated to, Record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien and may establish a forced fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 7.10 Evidence of Payment of the Assessments. Subject to applicable law, upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating (a) that all Assessments (including costs and attorney's fees, if any, as provided in Section 7.9 above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all Assessments have not been paid, the amount of such Assessments (including costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charge must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

Section 7.11 Property Exempted from the Annual, Use and Special Assessments and Assessment Lien. Exempt Property shall be exempted from the Annual Assessments, Use Assessments and Special Assessments and, except as provided in Article 10, from Maintenance Charges and the Assessment Lien; provided, however, that if any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall, to the extent applicable, be subject to the Annual Assessments, Use Assessments and Special Assessments and, if exempt therefrom, Maintenance Charges (prorated as of the date it became Assessable Property) and the Assessment Lien.

Section 7.12 Working Capital Fees and Reserve Funds. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services and to create a reasonable Reserve Fund, each Person who initially purchases a Lot from

Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-_____ (1/__) of the then current Annual Assessment against its Lot[DISCUSS]. Payments made pursuant to this Section 7.12 shall be nonrefundable and shall not be considered as an advance payment of any other Assessments levied by the Association pursuant to this Declaration.

Section 7.13 Transfer Fee. Each purchaser of a Lot, except for a Person who initially purchases a Lot from Declarant, shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in an amount not to exceed one- Half (1/2) of the then current Annual Assessment against the Lot, which amount shall be used by the Association in connection with such transfer and to supplement the Association's Reserve Fund[DISCUSS]. The transfer fee shall be in addition to, and shall not be offset against or considered as an advance payment of, any Assessment levied by the Association pursuant to this Declaration, and the payment of such transfer fee shall not entitle an initial purchaser to the return of any working capital and reserve payments made to the Association pursuant to Section 7.12 above.

ARTICLE 8

ENFORCEMENT OF PAYMENT OF ANNUAL ASSESSMENTS, USE ASSESSMENTS AND SPECIAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section 8.1 Association as Enforcing Body. Declarant, for so long as it holds a Class B Membership, and the Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Declarant and Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, by any appropriate action, whether in law or in equity but not at the expense of the Association.

Section 8.2 Association's Remedies to Enforce Payment of Annual Assessments, Use Assessments, Special Assessments and Maintenance Charges. If any Member fails to pay the Annual Assessments, Use Assessments or Special Assessments or installments when due, or to pay Maintenance Charges assessed pursuant to Article 10, the Association may enforce the payment of such Assessments and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

- (a) Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments; and
- (b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages or deeds of trust

(including, where applicable, the right to recover any deficiency) and, if foreclosed as a realty mortgage, the Lot may be redeemed after foreclosure sale as provided by law.

Section 8.3 Subordination of Assessment Lien to First Mortgage or Deed of Trust: Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual Assessments, Use Assessments, Special Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual Assessments, Use Assessments, Special Assessments, Maintenance Charges and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 8.4 Costs to be Borne by Member in Connection with Enforcement of Payment of Annual Assessments, Use Assessments, Special Assessments and Maintenance Charges. In any action taken pursuant to Section 8.2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments, Use Assessments, Special Assessments and Maintenance Charges together with the Association's collection costs and attorney's fees, including those costs and fees specified in Article 7, Section 7.9.

ARTICLE 9

USE OF FUNDS: BORROWING POWER

Section 9.1 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual Assessments and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Property, which may be necessary,

desirable or beneficial to the general common interests of the Property, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance of landscaping on Common Areas and public right-of-way and drainage areas within the Property, obtaining of liability insurance, supplying of utilities and other public services, providing for communication and transportation within and dissemination of information concerning the Property, indemnification of officers and directors of the Association and generally protecting the health and safety of the Members and the Residents. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

Section 9.2 Borrowing Power. The Association, acting through its Board of Directors, may borrow money in such amounts, at such rates, upon such terms, and for such period of time as is necessary or appropriate. By way of example only, and not by way of limitation, the Board of Directors may borrow money to improve and/or maintain the Common Areas. Furthermore, repayment of borrowed funds may be accomplished through the use of Special Assessments, all in accordance with the provisions of Section 7.5 hereof.

Section 9.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual Assessments, Use Assessments or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 9.4 Administration of Special Use Fees. The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvement to which they pertain.

Section 9.5 Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas, with the amount and type of coverage to be determined by the Board.

Section 9.6 Non-Liability of Association/Board. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member or their respective affiliates shall be liable to any Owner, Occupant or Resident if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate. It shall be the responsibility of each Owner, Occupant and Resident to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner, Occupant or Resident may desire.

ARTICLE 10

MAINTENANCE

Section 10.1 Common Areas and Public Rights-of-Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including, but not limited to, landscaping, walkways, paths, parking areas, drives (including the Rights-of-Way) and other facilities. The Association shall also maintain any landscaping and other improvements not on Lots which are within the exterior boundaries of the Property which are intended for the general benefit of the Owners and Residents of the Property, except the Association shall not maintain areas which (i) the city and county in which the Property is located, or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot unless the Association elects to maintain such areas. Specific areas to be maintained by the Association may be identified on the Plat or approved by the Declarant, and in deeds from the Declarant to a transferee of a Lot, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of the Property.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so it will reflect a high pride of ownership. In connection therewith the Association may, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any Common Area;
- (b) Replace injured and diseased trees and other vegetation in any Common Area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (c) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the prior identification, use and regulation thereof;
- (d) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

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

In the event the Plat, deed restriction or this Declaration permits the Board to determine whether Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it

would be in the best interest of the Owners, Occupants and Residents of the Property for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article 10 and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 10.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject, and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 10.3 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration or the Design Review Guidelines, standards and rules and regulations of the Design Review Committee, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien.

ARTICLE 11

DESIGN REVIEW COMMITTEE

Section 11.1 Establishment. The Board shall establish a Design Review Committee and shall establish and adopt Design Review Guidelines and procedural rules and regulations to direct the Design Review Committee in the performance of its duties. The Design Review Committee shall consist of three (3) regular members and an alternate member, each appointed by the Board. The appointees need not be Owners, Occupants or Residents and need not possess any special qualifications except such as the Board may, in its sole discretion, require. The Board may replace any member of the Design Review Committee at any time with or without cause. In

the event of the death or resignation of any member of the Design Review Committee, the Board shall replace said member within ninety (90) days following such death or resignation. Pending the replacement of such deceased or resigned member, the remaining member or members of the Design Review Committee shall have full authority to act as the Design Review Committee under this Declaration.

Section 11.2 Purpose. The purpose of the Design Review Committee is to maintain uniformity of architectural and landscaping standards throughout the Property and thereby enhance the aesthetic and economic value of the Property. The Design Review Committee is hereby empowered to supplement and amend the Design Review Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary; provided, however, that such modifications are in general conformity with the standards set forth in this Declaration. Neither the Design Review Committee, Declarant nor Association is assuming any liability for the economic value nor structural integrity of any improvement. Design Review Committee's decisions shall pertain solely to the matters set forth herein and shall in no way constitute a representation or warranty of economic value or structural integrity. All decisions shall be made in the Design Review Committee's sole discretion and shall be final and conclusive.

Section 11.3 Operation/Authority. It shall be the duty of the Design Review Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. The Design Review Committee shall hold regular meetings in accordance with its procedural rules and regulations. A quorum for such meetings shall consist of two (2) members and an affirmative vote of two (2) of the members of the Design Review Committee shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The Design Review 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 Design Review Committee fails to furnish a written decision within thirty (30) calendar days after an application has been submitted or resubmitted to it, then the application shall be deemed approved. The Design Review Committee shall have broad discretionary powers in determining whether an application is in conformance with the Design Review Guidelines. In addition, the Design Review Committee may disapprove any application if it, in its discretion, believes the applicant has not supplied sufficient or accurate information for the Design Review Committee to exercise the judgment required by this Declaration. The Design Review Committee has the authority to grant variances to the Design Review Guidelines by an affirmative vote of the majority of the members of the Design Review Committee. The Design Review Committee shall keep complete written records of all applications for approval submitted to it (including one (1) set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Review Guidelines. All such records shall be maintained for a minimum of three (3) years after approval or disapproval.

Section 11.4 Fee. The Board shall have the right, in its sole discretion, to assess against applicants a processing fee to defer the costs incurred by the Design Review Committee in considering any requests for approval submitted to it. If imposed, the fee shall be in such amount

Section 12.1 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 any and 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. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 12.2 Association's Rights of Enforcement of Provisions of This and Other Instruments. The Association, as the agent and representative of the Owners and Occupants, 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.

Section 12.3 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.

Section 12.4 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. 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.

Section 12.5 Approval of Litigation. Except for any legal proceedings initiated by the Association to (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules; (iii) enforce the Design Review Guidelines; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) enforce a service contract for services 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 seventy-five percent (75%) of the Members of the Association entitled to vote, excluding the vote of any Owner who would be a defendant in such proceedings. 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 initiated by the

Board and not included in the above exceptions. Nothing in this Section 12.5 shall preclude the Board from incurring expenses for legal advise in the normal course of operating the Association to (i) enforce the Declaration, the Articles, the Bylaws, the Association Rules, the Design Review Guidelines or any other document, agreement or covenant pertaining to the Property (collectively the "Project Documents"); (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.

ARTICLE 13

TERM: AMENDMENTS: TERMINATION

Section 13.1 Term: Method of Termination. This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if ninety percent (90%) of the votes cast by each class of Members shall be cast in favor of termination at a meeting held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Section 8.3 above, on seventy-five percent (75 %) of the Lots upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. 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.

Section 13.2 Amendments. This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Sections 13.3 and 13.4 of this Article, shall certify that, at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws, the Owners casting at least ninety percent (90%) of the votes then entitled to be cast voted affirmatively for the adoption of the Amendment; provided, however, after twenty-five (25) years from the date of the Recording of this Declaration, the affirmative vote of the Owners casting at least seventy-five percent (75 %) of the votes then entitled to be cast at a duly called meeting shall be necessary to amend this Declaration.

Section 13.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the members, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of the Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt, as an amendment hereto, other and different control provisions. Except as provided in this Section 13.3 and in Section 13.4, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of this Article.

Section 13.4 Declarant's Rights of Amendment. Notwithstanding anything in this Article to the contrary, Declarant shall, for so long as it possesses a Class B Membership, be entitled to unilaterally amend this Declaration to correct minor errors and omissions.

ARTICLE 14

MISCELLANEOUS

Section 14.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 14.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 14.3 Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation

of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States on the date hereof.

Section 14.4 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 14.5 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on the Plat or other instrument Recorded in the office of the County Recorder of Maricopa County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can, or will be, carried out, or that any land now owned or hereafter acquired by it is, or will be, subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to, or developed for, a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect. Declarant makes no representations and warranties that the use of any Property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser of a Lot by real estate brokers or salesmen representing the Declarant shall be deemed to create any implied covenants or restrictions with respect to the use of any Property.

Section 14.6 References to the Covenants in Deeds. Deeds to, and instruments affecting, any Lot or any part of the Property may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee/Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

Section 14.7 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written, Recorded instrument expressly assigning such rights and powers in accordance with the requirements set forth herein.

Section 14.8 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 14.9 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to

be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 14.10 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Occupant or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 14.11 FHA/VA Approval. Declarant may, without obligation, apply for approval of the development of the Property by the FHA or the VA or any other governmental agencies or financial institutions whose approval Declarant deems necessary and desirable. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: (i) annexation of additional property into the Property; (ii) mergers and consolidations; (iii) mortgaging or otherwise encumbering Common Area; (iv) dedications or other transfers of Common Areas (except where such dedication is required as of the date hereof to any governmental entity or subdivision); (v) dissolution of the Association; and (vi) amendment of this Declaration, the Articles or the Bylaws to the extent required to be approved by the FHA or VA pursuant to their rules and regulations. Consent of the FHA and VA to the foregoing will not be required if the FHA and VA have elected not to approve the Property for certification or if such approval has been revoked, withdrawn, canceled or suspended.

Section 14.12 Indemnification/Acknowledgment. THE OWNERS, AS DEFINED HEREIN, ACKNOWLEDGE THAT: (1) THE PROPERTY SUBJECT TO THIS DECLARATION CONTAINS COMMON AREAS; (2) THE COMMON AREAS ARE INTENDED SOLELY FOR AESTHETIC PURPOSES AND LIMITED RECREATIONAL USE; (3) THE COMMON AREAS POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS AND OTHERS; (4) NO SAFETY PERSONNEL WILL PATROL THE COMMON AREAS AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS OR OTHERS; AND (5) THE OWNERS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE 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 THE DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS UNDER ANY LAWS ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE COMMON AREAS.

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 HIM OR HER IN CONNECTION WITH ANY PROCEEDING TO WHICH HE OR SHE MAY BE A PARTY, OR IN WHICH HE OR SHE 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 15

CLAIM AND DISPUTE RESOLUTION

It is intended that the Property, the Common Areas, each Lot and all Improvements constructed on the Property will be constructed in compliance with all applicable building codes and ordinances and that all Improvements will be of a quality that is consistent with good construction and development practices in the area where the Property is located for production housing similar to that constructed within the Property. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefore. It is intended that all disputes and claims regarding Alleged Defects will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers, the Association, the Board, and all Owners, Residents and Occupants shall be bound by the following claim resolution procedures.

15.1 Right to Cure Alleged Defect. If a Claimant claims, contends, or alleges an Alleged Defect, each Developer shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

(a) *Notice of Alleged Defect.* If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, Claimant shall give Notice of Alleged Defect to the Developer constructing the Improvement with respect to which the Alleged Defect relates.

(b) *Right to Enter, Inspect, Repair and/or Replace.* Within a reasonable time after the receipt by a Developer of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, 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 at its sole 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.

15.2 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article 15 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 or any warranty provided by such Developer in connection with the sale of the Lots and Dwelling Units and/or the Improvements constructed thereon. 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.

15.3 Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to Section 15.4 and Section 12.5 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 fund. 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 an architect or engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (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. A copy of the notice described herein shall also be delivered to the Developer(s) at the same time delivery is made to the Members.

15.4 Alternative Dispute Resolution. Any dispute or claim between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors or employees) on the one hand, and any Owner(s) or the Association on the other hand; or (b) any Owner and another Owner; or (c) the Association and any Owner 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, but excluding disputes relating to the payment of any type of Assessment (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 15.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

(a) *Negotiation*. Each party to a Dispute shall, as a preliminary obligation and condition precedent to the continuation of any Dispute, meet in person and confer for the purpose of resolving the 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 Subsection 15.4(a) above within such time period 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 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 days after Termination of Negotiations, the Disputing Party shall be deemed to have 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, 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 as is mutually acceptable 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 Subsection 15.4(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. 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, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties 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 Subsection 15.4(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 American Arbitration Association, as modified or as otherwise provided in this Subsection 15.4(c). If the Disputing Party does not submit the Dispute to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have 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. 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 Subsection 15.4(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.

(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 initial complaint 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. The Developer shall also be entitled to conduct further tests and inspections as provided in Section 15.1 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 or 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) 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. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

15.5 Statutes of Limitations. Nothing in this Article 15 shall be considered to toll, stay, reduce, or extend any applicable statute of limitations.

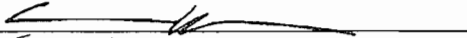
15.6 Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Subsection 15.4(a) or Subsection 15.4(b) above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if the parties accept an award of arbitration in accordance with Subsection 15.4(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 15. 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 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.

15.7 Conflicts. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article 15 and any other provisions of the Articles, the Bylaws, the Association Rules or the Design Review Guidelines, this Article shall control.

IN WITNESS WHEREOF, the Declarant has caused its name to be signed by the signature of its duly authorized representatives as of the day and year first above written.

HAWES DEVELOPMENT, L.L.C., an Arizona
limited liability company

By: Canusa Homes, Inc., an Arizona
Corporation

By: 
Its: Secretary

By: T & J Holdings, Ltd., an Arizona
Corporation

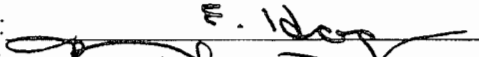
By: 
Its: President

EXHIBIT A

(Legal Description of the Property)

Lots 1 through 40 and Tracts A and B, HAWES MANOR, according to Book 623 of Maps, Page 26, records of Maricopa County, Arizona.