

WHEN RECORDED MAIL TO:
Grayson , LLC
3543 S. 157th Way
Gilbert, AZ 85297

CAPTION HEADING:
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
CEDAR RIDGE AT PRESIDIO

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THIS IS PART OF THE OFFICIAL DOCUMENT

Unofficial Copy

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
CEDAR RIDGE AT PRESIDIO

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made this 6 day of April, 2012, by Declarant (as defined below).

A. Declarant is the owner of the Property (as defined below). This Declaration imposes upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property. In furtherance of that plan, this Declaration provides for the formation of Cottages at Cedar Ridge Homeowners' Association, Inc., an Arizona nonprofit corporation, to own, operate and/or maintain certain common areas and community improvements and to administer and enforce the provisions of this Declaration, the By-Laws and the Use Restrictions and Rules promulgated pursuant to this Declaration.

B. Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon and shall inure to the benefit of all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

ARTICLE I
DEFINITIONS

The terms used in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Architectural Control Committee." The Architectural Control Committee established as provided in Article IX.

1.2 "Area of Common Responsibility." The Common Area, together with such other areas for which the Association is assigned or assumes responsibility pursuant to the terms of this Declaration or other applicable covenants, contracts, or agreements.

1.3 "Articles of Incorporation" or "Articles" The Articles of Incorporation of Cottages at Cedar Ridge Homeowners' Association, Inc., as filed with the State of Arizona Corporation Commission, as they may be amended.

1.4 "Association." Cottages at Cedar Ridge Homeowners' Association, Inc., an Arizona nonprofit corporation, its successors or assigns.

1.5 "Base Assessments." Assessments levied on all Units subject to assessment, to fund Common Expenses for the general benefit of all Units, as more particularly described in Article VIII.

1.6 "Board of Directors" or "Board." The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under State of Arizona corporate law.

1.7 "Builder." Any Person that purchases one or more Units for the purpose of constructing improvements for later sale to consumers.

1.8 "By-Laws." The By-Laws of Cottages at Cedar Ridge Homeowners' Association, Inc., as adopted by the Association, as they may be amended.

1.9 "Class "A" Members." The members of the Association as described in Section 3.3.

1.10 "Class "B" Members." The Declarant as described in Section 3.3.

1.11 "Common Area" All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.12 "Common Expenses." The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation, including, without limitation, the costs of performing the Association's responsibilities as provided in this Declaration. Common Expenses shall not include any expenses incurred with respect to the initial development, original construction, installation of infrastructure, original capital improvements or other original construction costs unless approved by a majority of the Class "A" Members.

1.13 "Community-Wide Standard." The standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard is expected to evolve over time as development progresses and may be more specifically determined by Declarant, the Board of Directors and the Architectural Control Committee.

1.14 "Declarant." Grayson, LLC., or any successor, successor-in-title, or assign who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, there shall be no more than one Declarant at any time.

1.15 "Member." A Person subject to membership in the Association as provided in Section 3.2.

1.16 "Mortgage." A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.17 "Mortgagee." A beneficiary or holder of a Mortgage.

1.18 "Mortgagor." Any Person who gives a Mortgage.

1.19 "Owner." One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides.

If a Unit is transferred in any manner that makes the transfer valid under Arizona law, but the transfer is not recorded at the Coconino County Recorder's Office or is recorded in an imperfect or incorrect manner, then the Person or Persons who shall be considered the Owner shall be the following:

The Association may, at its sole and absolute discretion, elect one of the following options. These options are exclusive—only one may be chosen:

1. The Owner has not changed. The Person or Persons who hold record title were given notice (by recordation of these CC&Rs) that they are the Owner under these CC&Rs until some other Person or Persons become the holder of record title. All duties, obligations, and benefits of an Owner remain with the record title holder regardless of whether the Person or Persons actually own or hold legal title to a Unit or

2. The person who took title is the Owner. Even though the title was not recorded, the person who took title is considered the Owner for all purposes under these CC&Rs as of the effective date of the document that transferred title.

1.20 "Person." A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.21 "Property." The real property described on **Exhibit "A."**

1.22 "Public Records", "Record", and "of record". An instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Coconino County, Arizona.

1.23 "Special Assessment." Assessments levied in accordance with Section 8.5.

1.24 "Unit". A portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family. The term shall refer to the land which is

part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public.

1.25 "Use Restrictions and Rules." Those use restrictions and rules affecting the Property, which may be adopted, modified and repealed as set forth in Article X. The initial Use Restrictions and Rules are set forth on **Exhibit "B"**.

1.26 "Visible From Neighboring Property" means that an object is or could be clearly visible without artificial sight aids to a person six feet tall, standing on any part of the Property at proper grade adjoining the lot or the portion of the Property upon which the object is located.

1.27 Yard (whether capitalized or not) means all portions of the lot other than the portions of the lot upon which the Detached Dwelling Unit or an Ancillary Unit is constructed. The term "Private Yard" means the portion of the yard that generally is not Visible From Neighboring Property and is shielded or enclosed by walls, fences and similar structurally enclosed items (typically, a back or enclosed side yard of the lot). The term "Open Yard" means that portion of the Yard that is Visible From Neighboring Property, whether located in front of, beside, or behind a Detached Dwelling Unit (typically, a front yard or open side yard of a lot). The term "Enclosed Side Yard" means the enclosed side yard portion of a lot that is located behind, when viewed from the street in front of the Detached Dwelling Unit, the front wall of a lot. The Architectural Committee will be the sole judge as to what constitutes a side yard.

ARTICLE II **PROPERTY RIGHTS**

2.1 Common Area. Every Owner shall have a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) this Declaration and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board and the membership to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area pursuant to Article X, including rules limiting the number of guests who may use the Common Area;
- (d) the right of the Board to suspend the right of an Owner to use recreational facilities, if any, within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of this Declaration, the By-Laws, or rules of the Association;

(e) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(f) the right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(g) the right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in this Declaration; and

(i) Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area that is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3 Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least 67% of the Class "A" Members and of Declarant, as long as Declarant has any right, title, or interest in any portion of the Property), by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on any unimproved land remaining in the Common Area to the extent feasible, unless within 60 days after such taking, Declarant, as long as Declarant has any right, title, or interest in any portion of the Property and at least 75% of the Class "A" Members shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any

such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area and other portions of the Area of Common Responsibility to the extent such responsibility is assigned to or assumed by the Association. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Property as the Board or the membership may adopt pursuant to Article X. The Association also shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Arizona.

3.2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. For any property used in a residence club, the members of the residence club are not Owners, but shall enjoy the privileges of membership in the association during their stay at the property.

3.3 Voting. The Association shall have two classes of membership, Class "A" and Class "B".

Class "A" - Class "A" Members all shall be Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.9.

Class "B" - The Class "B" Member shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The total votes which the Declarant shall be entitled to cast may be cast in such proportion on any matters as the Declarant may determine. The rights of the Class "B" Member, including the right to approve, or withhold approval of actions proposed under this Declaration, are specified in the relevant sections of this Declaration. The Class "B" Member may appoint a majority of the members of the Board of Directors as long as Declarant has any right, title or interest in any portion of the Property.

The Class "B" membership shall terminate upon the earlier of:

- a. when Declarant no longer has any right, title, or interest in any portion of the Property; or

b. when, in its discretion, Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

In any situation where a Member is entitled personally to exercise the vote for his or her Unit and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

ARTICLE IV **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2 Personal Property and Real Property for Common Use; Conveyance of the Common Area. The Association through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant shall convey the Common Area to the Association upon the completion of the sale by Declarant of 75% of the Units or at such earlier date as the Declarant in its sole discretion shall determine.

4.3 Enforcement.

4.3.1 The Association may impose sanctions for violations of this Declaration, the By-Laws, or Association rules, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. If the law requires a hearing before imposing a fine or penalty, then the Association shall offer an Owner the opportunity to have the matter heard by the Board before the fine or penalty is imposed. All remedies set forth in this Declaration shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

4.3.2 The Association shall not be obligated to take action to enforce any covenant, restriction or rule that the Board reasonably determines is, or is likely to be construed

as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

4.4 Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Indemnification.

4.5.1 The Association shall indemnify every officer, director, and committee member, including the members of the committees established under Article IX, and any employees and managers or managing agent, against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section or State of Arizona law.

4.5.2 The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

ARTICLE V **MAINTENANCE**

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility.

5.1.1 There are hereby reserved to the Association easements over the Property as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, in perpetuity and the Association shall not be

dissolved unless another entity agrees to assume the operation and maintenance responsibilities of the Association. The City of Flagstaff shall have the right but not the obligation to enter upon and maintain the areas of common responsibility. After reasonable notice if the Association fails to perform maintenance and the City of Flagstaff exercises its right to maintain the areas of common responsibility it shall be entitled to recover all costs thereof both direct and indirect from the Association and to place a pro-rata lien on the individual unit if the Association does not reimburse the City. The declaration shall be construed in all respects to comply with Flagstaff City Code as amended. Declarant and its successors in interest shall not amend the declaration to deprive the City of Flagstaff of its right to maintain the areas of common responsibility and collect assessments unless the subject property is reverted to acreage and the plat abandoned.

5.1.2 Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, and other improvements comprising the Unit, in a manner consistent with the Community-Wide Standard and all applicable covenants. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance; Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, in such amounts as the Board deems appropriate in the exercise of its business judgment:

- (a) Blanket property insurance covering all insurable improvements on the

Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvements;

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf;

(c) Workers' compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage;

(e) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(f) Such additional insurance as the Board in the exercise of its business judgment determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

6.2 Policy Requirements.

6.2.1 The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in Coconino County, Arizona.

6.2.2 All Association policies shall provide for a certificate of insurance to be furnished, upon request, to each Member insured and to the Association.

6.2.3 The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Section 6. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units.

6.2.4 All insurance coverage obtained by the Board shall:

(a) be written with a company authorized to do business in the State of Arizona whose primary business is providing insurance coverage and which satisfies such minimum financial size and strength requirements as the Board deems appropriate in the exercise of its business judgment;

(b) be written in the name of the Association. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement; and

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which provide:

(a) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(b) waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(c) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(d) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(e) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(f) a cross liability provision; and

(g) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

6.3 Damage and Destruction. Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

6.3.1 Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least 75% of the Class "A" Members and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

6.3.2 If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

6.3.3 If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.3.4 Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

6.3.5 If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.

6.4 Owners' Insurance.

6.4.1 By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible.

6.4.2 Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall

clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE VII
ADDITIONAL COVENANTS AND AMENDMENT

7.1 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Property to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants and easements shall be set forth in a supplemental declaration recorded in the Public Records, and shall require the written consent of the owner(s) of such property, if other than Declarant. Any such supplemental declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.2 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any of the Property.

ARTICLE VIII
ASSESSMENTS

8.1 Creation of Assessments. There are hereby created and the Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be two types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; and (b) Special Assessments. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

8.1.1 All assessments, together with interest (computed from the due date of such assessment at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of State of Arizona law), reasonable late charges in such amount as the Board may establish by resolution, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is levied until paid, as more particularly provided in this Declaration. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

8.1.2 The Association shall, upon request, furnish to any Owner liable for any type of assessment an estoppel certificate in writing signed by an Association officer setting forth

whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

8.1.3 Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at the closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

8.1.4 No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

8.2 Declarant's Obligation for Assessments. During the time Declarant is a Class "B" Member, Declarant may annually elect either to pay regular assessments on its unsold Units or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Declarant may make such election at any time prior to the end of the fiscal year for such fiscal year; provided, if Declarant fails to notify the Board in writing of its election prior to the end of any fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as elected for the immediately preceding fiscal year. Regardless of such election, the Association shall have a lien against all Units owned by Declarant to secure Declarant's obligations under this Section, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against each Unit under Section 8.6. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

8.3 Computation of Base Assessments. At least 90 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in this Declaration.

8.3.1 Until commencement of the first calendar year immediately following the first conveyance of a lot to an owner other than the Declarant the maximum base assessment for common expenses payable by each owner other than the Declarant shall be \$50.00 per month per lot at the commencement of the first calendar year immediately following the first conveyance of a lot to an owner other than the Declarant and at commencement of each and every calendar year thereafter the board may set the base assessment at level which is reasonably

expected to produce total income for the Association equal to the total budgeted Common expenses, including reserves provided, however, that in no event shall the Board impose a base assessment that is more than 20% greater than the base assessment during the immediately preceding calendar year without approval of a majority of the Class "A" Members of the Association and the Class "B" Member.

8.3.2 The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least sixty days prior to the proposed effective date of such budget. The budget and assessments shall become effective unless disapproved at a meeting by at least 75% of the Class "A" Members and the vote of the Class "B" Member, if such exists. Base Assessments shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, as well as any income expected pursuant to covenants imposed on land that is not included in the Property but that benefits from the Association's maintenance or other activities.

8.3.3 The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least sixty days prior to the proposed effective date of such budget. The budget and assessment shall become effective unless disapproved at a meeting by vote of at least 75% of the Class "A" Members and the vote of Class "B" Member, if such exists.

8.3.4. The Board may revise the budget and any assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.3.5. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget most recently in effect shall continue in effect until a new budget becomes effective hereunder.

8.4 Reserve Budget and Capital Contribution. The Board shall prepare annually reserve budgets for both general purposes which take into account the number and nature of those assets within the Area of Common Responsibility which have an expected life of more than one year, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments over the budget period.

8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted, extraordinary or other expenses which the Board determines to be more appropriately handled outside of the annual operating budget. Any such Special Assessment shall be levied against all Units. Special

Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Any Special Assessment adopted by the Board shall become effective 30 days after notice of such Special Assessment is sent to the Owners unless disapproved at a meeting by at least 75% of the Class "A" Members and by the Class "B" Member, if such exists.

8.6 Lien for Assessments. All assessments authorized in this Article shall constitute a lien in favor of the Association against the Unit upon which they are levied until paid. The lien shall also secure payment of interest, late charges, and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as Mortgages on real property are foreclosed under the laws of the State of Arizona, which shall include the right of nonjudicial foreclosure if permitted under the laws of the State of Arizona.

8.6.1 The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association or Maintenance Corporation. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

8.6.2 The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under the provisions of this Declaration, including such acquirer, its successors and assigns.

The lien rights created in this Declaration shall be for the benefit of the Association.

8.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.8 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.9 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

(a) all Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and

(b) any property dedicated to and accepted by any governmental authority or public utility.

8.10 Reserves Impound Fee. In addition to other authorized assessments each purchaser of a unit shall pay to the Association immediately upon becoming a Unit Owner a reserve impound fee in the amount of FIVE HUNDRED Dollars (\$500.00) or such greater amount as shall be established from time to time by the Board of Directors which shall be used for future periodic maintenance, repair and replacement of all or a portion of the common elements.

ARTICLE IX ARCHITECTURAL CONTROL

9.1 General

9.1.1 No building, fence, wall or other structure shall be placed, erected or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) (any such activities being referred to in this Article as "Work") shall take place except in compliance with this Article, and approval of the Architectural Control Committee.

9.1.2 Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with original plans and specifications.

9.1.3 This Article shall not apply to the activities of Declarant nor to improvements to the Common Area made by or on behalf of the Association during the time.

9.1.4 This Article may not be amended without Declarant's written consent as long as Declarant has any right, title, or interest in any portion of the Property.

9.2 Architectural Control Committee. Responsibility for review of all applications for construction and modifications under this Article shall be handled by the Architectural Control Committee. The members of the Architectural Control Committee need not be Members or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committee in having any application reviewed by architects, engineers or other professionals. The Architectural Control Committee shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on and modifications to any portion of the Property. Until 100% of the Property has been developed and conveyed to Owners other than Builders, Declarant retains the right to appoint all members of the Architectural Control Committee who shall serve at Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant.

9.3 Procedures.

(a) Prior to commencing any Work within the scope of Section 9.1, an application for approval of such work shall be submitted to the Architectural Control committee, in such form as may be required by the Architectural Control Committee. The application shall include plans and specifications ("Plans") showing the site layout and placement of all proposed structures and improvements, the structural design, exterior elevations and exterior materials and colors for all structures and improvements, landscaping, drainage, exterior lighting and other features of the proposed construction as applicable. In reviewing each submission, the committees may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography, and finish grade elevation, among other things. The Architectural Control Committee may require the submission of such additional information as it deems necessary to consider any application.

(b) The Architectural Control Committee may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life and architectural merit. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

(c) The Architectural Control Committee, within 30 days after receipt of each submission of the Plans, shall advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the disapproval of such Plans, specifying the segments or features of the Plans which are objectionable. The Architectural Control Committee may make suggestions for curing such

objections. In the event the Architectural Control Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the Architectural Control Committee written notice of such failure to respond and stating that unless the Architectural Control Committee responds within 10 days of receipt of such notice, approval shall be deemed granted and, upon such further failure, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

(d) Notwithstanding the above, the Architectural Control Committee by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

(e) If construction does not commence on any Work for which approval has been granted within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to re-submit the Plans for reconsideration prior to commencing such Work. All Work shall be completed within one year of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Architectural Control Committee.

9.4 No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the work is completed, but the Architectural Control Committee may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

9.5 Limitation of Liability. The standards and procedures established by this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property but shall not create any duty to any Person. NEITHER DECLARANT NOR THE ARCHITECTURAL CONTROL COMMITTEE SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NOR FOR ENSURING THAT ALL STRUCTURES AND IMPROVEMENTS CONSTRUCTED WITHIN THE PROPERTY ARE OF COMPARABLE QUALITY, VALUE, OR SIZE, OR OF SIMILAR DESIGN. NEITHER THE ASSOCIATION, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR SOIL CONDITIONS, DRAINAGE PROBLEMS OR OTHER

GENERAL SITE WORK, NOR FOR DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED HEREUNDER, NOR FOR ANY STRUCTURAL OR OTHER DEFECTS IN WORK DONE ACCORDING TO APPROVED PLANS, NOR FOR ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE MANNER, DESIGN OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY UNIT.

9.6 Enforcement

9.6.1 Any Work performed in violation of this Article or in a manner inconsistent with the approved Plans shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, correct any nonconforming condition or remove any nonconforming structure or improvements and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board, Declarant or their designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Association may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefited Unit as a specific Assessment, which shall be in addition to the Base Assessment and Special Assessment with respect to the benefited Unit.

9.6.2 Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained.

9.6.3 Declarant and the Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article from continuing or performing any further activities in the Property. In such event, neither Declarant, the Association, nor their officers, directors or agents shall be held liable to any Person for exercising the rights granted by this paragraph.

9.6.4 In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Architectural Control Committee.

ARTICLE X

USE RESTRICTIONS AND RULES

10.1 Plan of Development: Applicability: Effect. Declarant has established a general plan of development for the Property in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Property, and the vitality of and sense of community within the Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, technology, conditions, needs, and desires within the master planned

community and to regulate and control the Area of Common Responsibility. The Property is subject to provisions of this Declaration governing individual conduct and uses of and actions upon the Property, and the Use Restrictions and Rules promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the Property. All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide or shall be deemed to provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

10.2 Authority to Promulgate Use Restrictions and Rules. The initial Use Restrictions and Rules applicable to all of the Property are attached as **Exhibit "B"** to this Declaration. Subject to the terms of this Article, such initial Use Restrictions and Rules may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to its duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules set forth on **Exhibit "B."** The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered.

(b) Such action shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by more than 50% of the Class "A" Members and by the Class "B" Member, if such exists.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner specifying the effective date. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

10.3 Owners' Acknowledgment and Notice to Purchasers. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Use Restrictions and Rules may change from time to time. **ALL PURCHASERS OF UNITS ARE HEREBY PLACED ON NOTICE THAT THE ASSOCIATION MAY HAVE ADOPTED CHANGES TO THE INITIAL USE RESTRICTIONS AND RULES ON EXHIBIT "B"**. Copies of the current Use Restrictions and Rules may be obtained from the Association.

10.4 Rights of Owners. In recognition of the flexibility that this procedure for adopting and changing Use Restrictions and Rules provides to address changes in circumstances, conditions, needs and desires within the Property over time, it is appropriate for the protection of each Owner to establish certain parameters within which the Board and the Members may make modifications and additions to the Use Restrictions. Therefore, except as may be specifically set

forth in this Declaration (either initially or by amendment) or in **Exhibit "B,"** neither the Board nor the Members may adopt any rule in violation of the following provisions:

10.4.1 Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

10.4.2 Political Signs. No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

10.4.3 Religious and Holiday Displays. No rules shall restrict the rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods, except that the Association may adopt time, place, and manner restrictions.

10.4.4 Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area. For any property used in a residence club, the members of the residence club shall be treated as members of a single housekeeping unit, not as guests.

10.4.5 Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

10.4.6 Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

10.4.7 Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

10.4.8 Rights to Develop. No rule or action by the Association or Board shall impede Declarant's right to develop the Property.

10.4.9 Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit. The limitations in this Section shall apply to new rules only; they shall not invalidate any of the Use Restrictions and Rules initially set forth on **Exhibit "B"** nor shall they apply to amendments to this Declaration adopted in accordance with Section 13.2.

10.5 Landscaping. Unless completed by Declarant as part of the Owner's purchase contract for the Lot and Detached Dwelling Unit, the Open Yard of a Lot must be landscaped by the Owner within 90 days of becoming an Owner. The foregoing timing requirement will not apply to the Declarant or any Lots owned by the Declarant as model units or Completed Inventory Lots. Plans for all landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, decorative features (such as fountains, water features, flag poles, planters, bird baths, sculptures, and walkways) and the like (collectively called, in this Declaration, the "landscaping") that are to be installed on the Open Yard must be approved prior to installation by the Architectural Committee under Article IX of this Declaration. The Lot and all landscaping located on the Lot must be maintained at all times in clean, safe, neat and attractive condition and repair solely by the Owner of the Lot, and the Owner will be solely responsible for neatly trimming and properly cultivating the landscaping located anywhere on the Lot and for the removal of all yard clippings, trash, weeds, leaves, and other unsightly material located on the Lot. Even though Architectural Control Committee approval is generally not required for landscaping in the Private Yard, any above ground decorative features (such as flag poles, water slides, diving boards, etc.) in the Private Yard Visible From Neighboring Property must be approved by the Architectural Committee prior to the installation in the Private Yard. If an Owner fails to complete the landscaping required by this paragraph in a timely fashion, upon the vote of a majority of the Board of Directors and after not less than thirty days written notice to the Owner the Association shall have the right, in addition to any other remedies permitted under the terms of this Declaration or under applicable law to impose a monetary penalty against the Owner not to exceed \$50.00 per day until the landscaping is completed which shall be both a personal obligation of the Owner as well as a charge and continuing lien upon the lot against which the penalty levied is imposed and the Association may also suspend the Owner's right to vote and right to use any recreational facilities within the common area until such time as the landscaping is completed.

10.6 Owner's Failure to Maintain. If an Owner fails to perform any maintenance and repair required under the terms of this Article X, then, upon the vote of a majority of the Board of Directors and after not less than 30 days prior written notice to that Owner, the Association will have the right (but not the obligation) to enter upon or into that Lot and to provide the required maintenance or make the required repairs. Any entry by the Association or its agents

will not be considered a trespass. The cost of these maintenance items and repairs will be an assessment against the applicable Lot and the Owner, will be paid promptly to the Association by that Owner, and will constitute a lien upon that Owner's Lot. The self-help rights of the Association described above are in addition to any other remedies available to the Association under the Project Documents or Arizona law. Without limiting the rights of the Association described above, if, concurrent with delivery of the 30 day written default notice to Owner for failure of the Owner to perform its obligations under this Article X the Association delivers a similar written notice to the holders of all Mortgages on defaulting Owner's Lot, the lien in favor of the Association will constitute a lien for other assessments of the Association under A.R.S. § 33-1807C. Upon recordation of a Notice and Claim of Lien specifically referring to this Section 10.5.2, the assessment made for the cost of the maintenance and repairs performed by the Association will be deemed to have been delinquent as of the date of recordation of this Declaration, and the lien for this other assessment will have priority based on the recordation date of this Declaration.

10.7 Fences and Walls.

(a) Construction. Except as may be installed by the Declarant, no boundary wall, enclosure fence, or privacy wall may be constructed on any Lot without the prior approval of the Architectural Control Committee. No fence or wall of the type described in the previous sentence will be more than six feet in height, as measured from the highest adjacent grade on the Lot, unless otherwise approved by the Architectural Control Committee. In certain circumstances as more fully described below, the height, design and construction of specific fences and walls will be further restricted. All gates will be no higher than the adjacent fence or wall. For purposes of this Section the fences or walls described above will be referred to generally as a "Fence" or "Fences". Notwithstanding the foregoing, any prevailing governmental regulations will take precedent over these fence restrictions if the governmental regulations are more restrictive. Unless otherwise required under this Section 10.7 or approved by the Architectural Control Committee, all Fences and any materials used for Fences dividing, or defining the Lots must be of new masonry or block construction and must be erected in a good and workmanlike manner and in a timely manner.

(b) Encroachments. Declarant will endeavor to construct all boundary Fences upon the dividing line between the Lots. By virtue of accepting a deed for a Lot (whether or not it is expressed in the deed or conveying instrument) or otherwise becoming an Owner, all Owners acknowledge and accept that the boundary Fences installed by Declarant may not be exactly upon the dividing line, but rather may be near or adjacent to the dividing line because of minor encroachments or minor engineering errors or because existing easements or utility lines prevent a boundary Fence from being located on the dividing line. With respect to any boundary Fence not located exactly on a dividing line between Lots but located near or adjacent to the dividing line, an Owner of a Lot will have and is granted a permanent and exclusive easement over any property immediately adjoining the Owner's Lot up to the center line of the boundary Fence for the sole use and enjoyment of that Owner.

(c) Maintenance and Repair of Fences. All Fences constructed upon or near the dividing line between the Lots will be jointly maintained in good condition by the adjoining Lot Owners and, if damaged or destroyed, repaired at the joint cost and expense of the adjoining Lot Owners. If, however, any dividing line Fence is damaged or destroyed by the act or acts of one of the adjoining Lot Owners or the applicable Owner's Permittees, the Lot Owner that is responsible for the damage will promptly rebuild and repair the Fence to its prior condition, at that Owner's sole cost and expense. If the Lot Owners fail to timely commence and complete any of these repairs or maintenance, the Association may cause the maintenance or repairs to be made at the joint and sole cost and expense of the adjoining Owners or Owner, as applicable. Fences that adjoin Common Area as well as a Lot will be maintained by the Association at the Association's cost and expense unless damage to the Fence is caused by any one or more adjoining Owners or applicable Owner's Permittees (in which case the Association will complete the Fence repairs but at the cost of the responsible Owner). Except for repairs necessitated by the negligent acts or omissions of the Association or any other Owner, all Fences constructed on a Lot that adjoin property that is not subject to this Declaration will be maintained and repaired at the sole cost and expense of the Owner upon whose Lot (or immediately adjacent to whose Lot) the Fence is installed. Nothing in the prior sentence, however, will be construed as a waiver or limitation of the right of any Owner to be reimbursed for damage or destruction to a Fence arising out of the act or omissions of any adjoining property owner that is not subject to this Declaration.

(d) Easement for Repair. For the purpose of repairing and maintaining any Fence located upon the dividing line between Lots (or located near or adjacent to the dividing line), a permanent and non-exclusive easement not to exceed five feet in width is created and reserved over the portion of every Lot or Common Area immediately adjacent to any Fence.

(e) Fence Design and Color. The exterior appearance, color, or finish of the side of any Fence that is visible from any street located within or adjacent to the Property may not be modified from the condition originally constructed by the Declarant unless approved by the Architectural Control Committee. The design, material, construction or appearance (including interior and exterior appearance, color and finish) of any Fence may not be altered or changed without the approval of the adjoining Owners, if any, and the Architectural Control Committee. Without limiting the preceding portions of this Section, the interior or exterior side of any Fence may not be painted or stuccoed a color or texture other than what was previously and properly in existence without the prior approval of the Architectural Committee.

ARTICLE XI **EASEMENTS**

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered on the Unit or the Common Area (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular

to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws and Use Restrictions and Rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, and the members of the Architectural Control Committee pursuant to Article IX, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to perform maintenance and to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to perform such maintenance or cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE XII **DECLARANT'S RIGHTS**

12.1 Transfer of Declarant Rights. Any or all of the special rights and obligations of Declarant set forth in this Declaration may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Public Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

12.2 Use of Common Area. Declarant and its designees may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, sales offices and storage facilities. Declarant and its designees shall have easements for access to and use of such facilities.

12.3 Easements in Favor of Declarant. Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

12.4 Amendment. This Article may not be amended without the written consent of Declarant so long as Declarant has any rights hereunder.

ARTICLE XIII
GENERAL PROVISIONS

13.1 Duration.

13.1.1 Unless terminated as provided in this Declaration, this Declaration shall have perpetual duration. If State of Arizona law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

13.1.2 Unless otherwise required by State of Arizona law, in which case such law shall control, this Declaration may not be terminated within the first 30 years after the date of recording except by an instrument signed by Owners of at least 75% of the total Units within the Property and by Declarant, if Declarant has any right, title, or interest in any portion of the Property, which instrument is recorded in the Public Records. After the thirtieth anniversary of the date of recording, termination may be accomplished by an instrument signed by Owners of at least 51% of the total Units within the Property and signed by Declarant, if Declarant has any right, title, or interest in any portion of the Property. Any such instrument shall set forth the intent to terminate this Declaration and shall be recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

13.2 Amendment.

13.2.1 Until conveyance of the first unit to a person other than a builder Declarant may unilaterally amend this Declaration for any purpose. Thereafter, except for amendments made pursuant to subsections 13.2.2 or 13.2.4, the Declaration may only be amended by written approval or affirmative vote or any combination thereof of Owners of not less than seventy five percent (75%) of the lots.

13.2.2 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board may amend this Declaration, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local

governmental agency whose approval of the Project or the Project Documents is required by law or requested by the Declarant or the Board.

13.2.3 So long as the Declarant is a Member of the Association, any amendment to this Declaration must be approved in writing by the Declarant.

13.2.4 The Declarant, so long as the Declarant is a Member of the Association, and thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration.

13.2.5 So long as the Declarant owns more than seventy five percent (75%) of the Lots, any amendments to this Declaration shall be signed by the Declarant and recorded. At any time the Declarant does not own seventy five percent (75%) of the Lots, any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 9.3.4 of this Declaration shall be signed by the Declarant and recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the recording of the amendment.

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

13.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

13.4 Dispute Resolution.

Arizona law may provide non-litigation alternative dispute resolution procedures, such as submitting a dispute to Arizona's Department of Fire, Building and Life Safety. If an Arizona law provides such an alternative dispute resolution procedure, then following that procedure will satisfy all duties set forth in mediation § 13.4.3. If the Arizona alternative dispute resolution procedure is binding, then following that procedure will replace all duties and procedures set forth in arbitration § 13.4.4. Nothing in this paragraph shall constitute a waiver of the duty to comply with Notice of Claim § 13.4.2 prior to taking any other action.

13.4.1 Agreement to Resolve Certain Disputes Without Litigation.

As used in this Article XIII, the term "Claim" shall mean (a) any claim, damages or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Area or any Lot or any Improvements situated thereon, including, without limitation, any claim or cause of action that the Common Areas are defective or that the Declarant or its agents, contractors, employees, subcontractors,

architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; of (b) any claim, damages or cause of action against the Declarant or the Developer or any employee, agent, director, member or officer of Declarant or of the Developer arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Association, the Declarant, the Developer, all Owners, Lessees, Residents or any other Person bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Article (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this article shall apply to any Claim.

13.4.2 Notice of Claim.

Any Bound Party having or alleging to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; (c) what Claimant wants Respondent to do or not do to resolve the Claim; and (d) a statement of damages claimed.

In the event the Claimant is the Association and the Claim involves an Alleged Defect (as defined in section 13.4.5), the Association must provide written notice to all Members at least 30 days prior to the Board of Directors meeting to authorize pursuit of a claim and prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against a Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of the Declarant or other Bound Parties to correct such Alleged Defect and the opportunities provided to Declarant or other Bound Parties to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or a Bound Party, (i) names and copies of opinions for each expert who has or will provide an opinion as known at the time of the notice; and (j) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "licensed professional"), then the notice from the Association must be accompanied by an affidavit from a licensed professional in the same discipline as the licensed professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602(B) of the Arizona Revised Statutes or any subsequent statutory requirements.

13.4.3 Mediation.

If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties (“Termination of Negotiations”), claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association (“AAA”) or such other mediator or mediation service agreed upon by the Parties. The mediation shall be conducted in accordance with the Commercial Mediation Rules of the AAA, within Yavapai County, Arizona.

If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all further liability to Claimant on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation Notice”). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

13.4.4 Binding Arbitration

In the event a Claim is not resolved by Mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. If the Claimant submits the Claim to binding arbitration in accordance with this Section, the arbitration shall be conducted in accordance with the following:

(a) Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the Commercial Arbitration Rules of the AAA (the “AAA Rules”).

(b) Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 13.4.4, the provisions of this Section 13.4.4 shall govern.

(c) Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an Arbitrator willing to serve, the AAA

shall appoint a qualified Arbitrator to serve. Any Arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 13.4.4 as the "Arbitrator".

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

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

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

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

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

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

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

(k) Final Award. The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the Parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the Arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the parties against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

13.4.5 Right to Enter, Inspect, Repair and/or Replace

Within a reasonable time after the receipt by the Declarant or other Bound Party of a Claim Notice, the Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residence constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant or other Bound Party, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot, or any Improvement constructed on the Common Area or a Lot which is the basis for the Claim (the "Alleged Defect"). In conducting such inspection, testing, repairs and/or replacement, Declarant or other Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this Section shall be construed to impose any obligation on the Declarant or other Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant or other Bound Party is not otherwise obligated under applicable law or any limited warranty provided by the Declarant or other Bound Party in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the Declarant and other Bound Parties to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Declarant or other Bound Party. In no event shall any statutes of limitations be tolled during the period in which the Declarant or other Bound Party conducts any inspection or testing of any Alleged Defects. The rights of the Declarant and other Bound Parties under this Section shall also extend to their respective employers, agents, contractors, subcontractors and suppliers.

13.4.6 Use of Funds

In the event the Association recovers any funds from the Declarant or any other Person as a result of a Claim involving an Alleged Defect, the funds shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any excess funds shall be paid into the Association's reserve fund.

13.4.7 Approval of Arbitration or Litigation.

The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceedings and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 13.4.2.

13.4.8 Repurchase Option for Alleged Defect Claims.

Notwithstanding anything in this Declaration to the contrary, in the event any Owner, either directly or through the Association, shall commence an action against the Declarant or the Developer in connection with any Alleged Defects on or to such Owner's Lot, the Declarant or the Developer (or any assignee of the Declarant or the Developer) that constructed and/or sold such Lot shall have the option (but not the obligation) to purchase such Lot as improved with a Residence on the following terms and conditions:

(a) The purchase price shall be an amount equal to the sum of the following less any sums paid to such Owner under any homeowner's warranty in connection with the Alleged Defect:

(i) The purchase price paid by the Owner of the Lot which purchased such Lot from the Declarant or the Developer, following the substantial completion of the Residence on the Lot;

(ii) The value of any documented Improvements made to the Lot by third-party contractors or decorators after the conveyance thereof to the initial Owner that added an ascertainable value to the Property;

(iii) The Owner's reasonable moving costs; and

(iv) Any closing costs, including loan fees and/or "points" incurred by the Owner in connection with the purchase of another primary residence within ninety (90) days after the closing of the repurchase provided for herein.

(b) Close of escrow of the repurchase of the Lot shall not occur later than forty-five (45) days after written notice from the Declarant or the Developer to the Owner of the Declarant's or Developer's intent to exercise the option herein.

(c) Title shall be conveyed to the Declarant or the Developer, as applicable, free and clear of all monetary liens and encumbrances other than non-delinquent real estate taxes.

(d) All closing costs in connection with the repurchase shall be paid by the Declarant or the Developer, as applicable, who is repurchasing the Lot.

(e) Exercise of the repurchase options as provided hereinabove shall constitute full and final satisfaction of all claims relating to the subject Lot, including claims relating to the Alleged Defect. The Owner of an affected Lot (or Association, as applicable) shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

13.4.9 Declarant's Option to Litigate.

Notwithstanding the foregoing provisions of this Article 13.4 and any other provisions contained in the Condominium Documents, Declarant shall, in its sole and absolute discretion, have the right to elect to waive the binding arbitration provisions regarding the disposition of Alleged Defects set forth above and to require that any such claim by a Claimant be resolved in a court of law rather than by the binding arbitration provisions set forth herein or in any purchase contract between Declarant and a Claimant. Declarant shall make such election, if at all, on or before one hundred twenty (120) days following its receipt of the Notice of Alleged Defect.

13.4.10 Arizona Statutory Compliance.

In the event a court of competent jurisdiction invalidates all or part of this Article 13.4 regarding the resolution of Alleged Defects and litigation unfortunately becomes necessary, Declarant, the Association and all Unit Owners shall be bound by the applicable Arizona construction defect statute presently codified at A.R.S. § 12-1361 et seq. and A.R.S. § 33-2001 et seq.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT SUBJECT TO THESE COVENANTS, CONDITIONS AND RESTRICTIONS, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFERREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM FOR ALLEGED DEFECT RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 13.4 AND WAIVES THE RIGHT TO PURSUE DECLARANT OR ANY OF DECLARANT AGENTS IN ANY MANNER

OTHER THAN AS PROVIDED IN THIS ARTICLE 13.4. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS FOR ALLEGED DEFECTS AS PROVIDED IN THIS ARTICLE 13.4, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A JUDGE OR JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM FOR ALLEGED DEFECT BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT AND EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT HE OR SHE IS GIVING UP ANY RIGHTS AN OWNER MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JUDGE OR JURY RELATING IN ANY WAY TO A CLAIM FOR ALLEGED DEFECT.

13.5 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

13.6 Notice. Except as may otherwise be provided in this Declaration, all notices, demands, bills, statements, or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to Declarant, at the address of Declarant's principal place of business in the State of Arizona or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

(d) if to Declarant, at the address of Declarant's principal place of business in the State of Arizona or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

All notices sent in compliance with the above shall be deemed received on the third day after the date postmarked. Nothing in this Section shall invalidate notice given by personal delivery (which shall include overnight delivery service or courier service) or by any other means, if actually received by the addressee.

13.7 Captions. Titles or captions of Sections contained in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Declaration or the intent of any provision hereof.

13.8 Applicable Law. This Declaration shall be construed and interpreted under the laws of the State of Arizona.

13.9 Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 13.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration that refer to such exhibits.

ARTICLE XIV **ANNEXATION**

14.1 Subordination. This Declaration is subject to and subordinate to The Presidio in the Pines Homeowners Association, Inc. Covenants, Conditions, and Restrictions first recorded on May 19, 2005, at 3322437, Records of the Coconino County Recorder and as they have been, and may continue to be, amended thereafter.

14.2 Effect of Subordination. Until the time of Annexation, described in § 14.3, this Declaration shall guide the use and enjoyment of the property described in Exhibit A. The property described in Exhibit A is subject to all of the covenants, conditions, restrictions and easements that are set forth in this Declaration, all of which are to be construed as restrictive covenants running with the land.

14.3 Annexation. The Presidio in the Pines Homeowners Association, Inc. may annex the property described in Exhibit A by recording at the Coconino County Recorder's Office a Declaration of Annexation. Any such annexation must annex the whole of the property described in Exhibit A. So long as Declarant holds any ownership interest in any of the property described in Exhibit "A", any annexation requires written consent by the Declarant.

14.4 Effect of Annexation. Upon Annexation, the Cottages at Cedar Ridge Homeowners' Association, Inc. shall cease to operate. All rights, duties, and obligations shall inhere to The Presidio in the Pines Homeowners Association, Inc. The last acting Board of Directors of the Cottages at Cedar Ridge Homeowners' Association, Inc. shall terminate or "wind up" the corporation as they deem fit. The property described in exhibit A shall thereafter be governed by the Presidio in the Pines Homeowners Association, Inc. Covenants, Conditions, and Restrictions. Notwithstanding anything stated herein to the contrary, the Declarant shall at all times retain its rights and privileges as stated in this Declaration. If this Declaration and the Presidio in the Pines Homeowners Association, Inc. Covenants, Conditions, and Restrictions have provisions that govern the same or similar matter regarding the Declarant, even if the provisions are not directly contradictory, then Declarant shall choose, at its sole and absolute discretion, which provision shall govern.

14.5 Post-Annexation Membership and Assessments. No Owner shall be required to pay double assessments. Upon Annexation, Owners shall cease to be members of the Cottages at Cedar Ridge Homeowners' Association and shall become members of the Presidio in the Pines Homeowners Association.

14.6 Post-Annexation Grandfathering. Any building, structure, or landscaping built or made in compliance with this Declaration prior to annexation shall not be in violation of The Presidio in the Pines Homeowners Association, Inc. Covenants, Conditions, and Restrictions even if it would not have been allowed under those rules. The purpose of this provision is to prevent "automatic" violations upon annexation resulting from differing standards. After annexation, any new construction, alteration, etc. to buildings, structures, and landscaping must comply with the standards set forth in The Presidio in the Pines Homeowners Association, Inc. Covenants, Conditions, and Restrictions.

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

DECLARANT :

Grayson, LLC

By [Signature]
Its [Signature]

STATE OF ARIZONA)
) ss.
County of Coconino)

On this 6th day of April, 2012 before me, the undersigned Notary Public, personally appeared Justin Jobe the managing member of Grayson, LLC or by satisfactory evidence proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires:

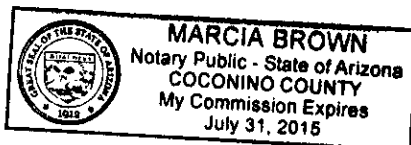


EXHIBIT A

Property Description

Lots 1-50, inclusive, CEDAR RIDGE AT PRESIDIO, as shown on the plat thereof recorded in Instrument No. 3454341, records of Coconino County, Arizona.

EXCEPT 1/16TH of all oil, gases and other hydrocarbon substances, coal, stone metals, minerals, fossils, and fertilizers of every name and description.

AND ALSO EXCEPTING all materials which may be essential to the production of fissionable materials as reserved in the Arizona Revised Statutes.

EXHIBIT B

INITIAL USE RESTRICTIONS AND RULES

1. **Residential Use.** The Units shall be single-family residential Units only. There may be erected on any one Unit not more than one single-family residence in accordance with applicable zoning. No other buildings shall be erected on any of the Units.
2. **Subdividing.** No Unit shall be re-subdivided into smaller Units nor conveyed or encumbered in less than the full original dimensions of such Unit as shown by the recorded Plat. Nothing herein contained shall prevent the dedication or conveyance of portions of a Unit for public utilities purposes in which event the remaining portion of such Units, for the purpose of this provision, shall be treated as a whole Unit.
3. **Parking.** Automobiles of the private passenger class and pickup trucks not exceeding three-quarter ton may be parked on the side of any Unit; provided that such area shall comply with the same setback requirements as the residential dwellings and area subject to required approval by the Architectural Control Committee. Campers, trailers and boats may be parked on the back of any Unit; provided that any such parking shall be screened or concealed from neighboring Units, roads or streets below a 6 foot wall, and then only with the prior approval of the Architectural Committee. All other trucks, vehicles and equipment shall not be kept on any Unit or street for a period of time longer than twenty-four (24) consecutive hours except in a private garage or a designated guest parking space. No motor vehicle, which is under repair or not in operating condition, shall be placed or permitted to remain on any street or streets, or any portion of any Unit or Units unless it is within an enclosed garage or structure.
4. **General Upkeep.** All clotheslines, yard equipment, garbage cans and service yards shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring parcels and streets. All rubbish, trash or garbage shall be removed from the premises of all Units and shall not be allowed to accumulate thereon. No antenna or broadcasting tower shall be erected on any of the Units, except that a television antenna may be constructed and maintained within the attic of any approved building and a satellite dish may be installed if (i) it is screened so as to not be visible from the street or any neighboring property, and (ii) such installation has been specifically approved by the Architectural Control Committee.
5. **Sewage.** All bathrooms, toilets or sanitary conveniences shall be connected to

sewer lines. There shall not be allowed any outside portable lavatories, outside toilets or open plumbing.

6. Tanks. No elevated tanks of any kind shall be erected, placed or permitted on any of the Units.

7. Animals. No animals, birds, fowl, poultry or livestock, other than a reasonable number of generally recognized house pets shall be maintained on any Unit. All determinations as to what constitutes a reasonable number of and what are generally recognized house pets shall be made by the Architectural Control Committee. No animals shall be allowed to make an unreasonable amount of noise or become a nuisance. Any structure for the care, housing or confinement of any animal shall be constructed or maintained only with the prior written approval of the Committee. Pets shall be leashed when not confined within a fenced area or residence. Persons walking any pets within the Property shall remove promptly from the Property the excrement of the pet. At no time shall swine, peacocks or geese be allowed.

8. Construction Permitted. All structures erected must be of new construction and no buildings or structures may be moved from any other location, other than a point of distribution or manufacture onto any of the Units.

9. Commercial Activities. No hotels, store, multi-family dwelling, boarding house, guest ranch, children's day care, nursing type facilities or any other place of business of any kind, and no hospital, sanitarium or other place for the care or treatment of the physically or mentally sick or for the treatment of disabled animals shall be erected or permitted upon the premises of any Unit or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence or home office building on any of the Units; provided, however a home office is permitted if the use of the same does not present a nuisance or annoyance such as excessive traffic and noise. Nothing shall prohibit the use of property in a residence club so long as the residence club members use the property for residential purposes.

10. Signs. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted to remain on any of the Units, provided however, that a sign or signs as may be required by legal proceeds and a single "For Sale" or "For Rent" sign, not containing more than four square feet of surface area, may be placed on any Unit.

11. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Unit, except in covered containers. 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.

12. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Unit which may induce, breed or harbor infectious plant diseases or noxious insects.

13. Air-conditioning Equipment. No heating, air conditioning or refrigeration equipment shall be placed, allowed or maintained anywhere other than on the ground unless screened or concealed (subject to required approvals by the Architectural Control Committee) in such

manner that the screening or concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece or pieces of machinery fixtures or equipment.

14. Satellite Dishes. Satellite dishes for the reception of television signals shall be subject to the approval of the Architectural Control Committee.

15. Utility and Service Lines. No gas, electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Unit, except to the extent, if any underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.

16. Burning and Incinerators. No open fires or burning shall be permitted on any Unit at any time and no incinerators or like equipment shall be placed, allowed or maintained on any Unit. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

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