

This instrument was recorded at the request of:

Acacia Estates Community Association
C/O AAM, LLC
1600 W. Broadway Rd., Suite 200
Tempe, AZ 85282

Space Reserved for Recording Information.

Official Records of
Maricopa County Recorder
Helen Purcell
20130123995 02/07/2013 11:33
Electronic Recording
0275acaciaestat-3-1-1-- N

SECOND AMENDMENT TO THE AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND EASEMENTS
FOR
ACACIA ESTATES COMMUNITY ASSOCIATION

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ACACIA ESTATES COMMUNITY ASSOCIATION (hereinafter referred to as the "Second Amendment") is made this 6 day of February, 2013 by Acacia San Tan LLC, an Arizona limited liability company.

WITNESSETH

WHEREAS, that certain Declaration of Covenants, Conditions, Restrictions and Easements for Acacia Estates Community Association was recorded at Recording Number 2006-0813222, records of Maricopa County, Arizona, re-recorded at recording number 2006-0833238, records of Maricopa County, Arizona, amended by that certain amendment recorded at recording number 2008-0981029, records of Maricopa County, Arizona, amended and restated in the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Acacia Estates Community Association, recorded at recording number 2009-0049517, records of Maricopa County, Arizona, and further amended by that certain First Amendment to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Acacia Estates Community Association recorded at recording number 20120979202 (hereinafter together referred to as the "CC&Rs"); and

WHEREAS, pursuant to Section 9.6 of the Amended and Restated CC&Rs, the CC&Rs may be amended by the Developer, at any time prior to the Transition Date; and

WHEREAS, the Transition Date, as defined in the CC&Rs, has not occurred; and

SECOND AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
ACACIA ESTATES COMMUNITY ASSOCIATION

WHEREAS, in order to clarify maintenance obligations within portions of the Community, this Second Amendment was created and approved by the Developer.

NOW, THEREFORE, the CC&Rs are hereby amended in part as follows:

- (1) Section 3.29 shall be amended by adding the following sentences to the end of Section 3.29:

“Further, until the latter of the Transition Date or the date Weekley Homes, LLC and Weekley Homes Arizona, L.L.C., each hereby designated as a “designated homebuilder” (a “Designated Homebuilder”), have sold all of the Lots owned such Designated Homebuilder, the Developer or the Designated Homebuilder with unsold Lots shall control the hours of operation of all roadway access gates located within the Property. Unless subsequently modified by the Developer or a Designated Homebuilder, the roadway access gates are to remain open from 6:00 a.m. to 6:00 p.m., seven days a week.”

- (2) Section 8.1 shall be amended, by adding the following language to the end of Section 8.1:

"The Association shall also be responsible for the maintenance, repair and replacement of the sidewalks attached to the curbs of the private streets throughout Acacia, and with respect to Lots 9, 13, 14, 17, 21, 22, 25, 29, 30, 33, 37, 38 and 48, the Association shall maintain the existing wall situated on the corners of the respective Lots and the landscaping and maintenance of the areas between such walls and the sidewalks attached to the curbs adjacent thereto".

- (3) Section 8.4 shall be amended by adding the following language to the end of Section 8.4:

"Notwithstanding anything contained in this Declaration or in the Architectural and Landscaping Guidelines, the Owners of the Lots listed below shall be responsible for landscaping and maintaining the portion of Tract D or Tract E, as applicable, that is situated between their property line and the existing serpentine wall located in proximity thereto (the “Lot maintenance area”).

Tract D: Lots 8, 16, 24, 30, 31 and 32


Tract E: Lots 38, 39, 40 and 55

The landscaping and maintenance obligation described herein shall become effective with respect to each Lot upon the first Owner of such Lot (other than Declarant or a homebuilder) taking possession of such Lot. The Owners of the listed Lots are hereby granted, for the benefit of each present and future Owner, for so long as an Owner owns any interest in the Property, an easement over, under and across the Lot maintenance area as is reasonably necessary to carry out the landscaping and maintenance obligations described herein."

- (4) Except as otherwise expressly modified in this Second Amendment, the CC&Rs are and shall remain in full force and effect. In the event of any conflict or inconsistency between the CC&Rs and this Second Amendment, this Second Amendment shall govern and control.

IN WITNESS WHEREOF, the Declarant/Developer has executed this Second Amendment as of the 6 day of February, 2013.

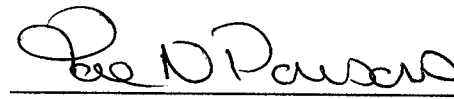
ACACIA SAN TAN, LLC
an Arizona Limited Liability Company

By: 
Name: KRES KORINEK
Its: MANAGER

State of Arizona §
 §
County of Maricopa §

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 6 day of February, 2013, by KRES KORINEK, the Manager of ACACIA SAN TAN, LLC, an Arizona limited liability company, on behalf of the company.

4.28.2013
My Commission Expires:


Notary Public – State of Arizona



TARA N. PARSONS
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
APRIL 28, 2013

This instrument was recorded at the request of:

**Rose Law Group pc
Attn: Court Rich
6613 N. Scottsdale Road, Suite 200
Scottsdale, AZ 85250**

The recording official is directed to return this
Instrument or a copy to the above person.

Official Records of
Maricopa County Recorder
Helen Purcell
20120979202 10/29/2012 11:10
Electronic Recording
0275acaciaam-3-1-1-- N

Space Reserved for Recording Information.

**FIRST AMENDMENT TO THE AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND EASEMENTS
FOR
ACACIA ESTATES COMMUNITY ASSOCIATION**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ACACIA ESTATES COMMUNITY ASSOCIATION (hereinafter referred to as the "First Amendment") is made this 26th day of October, 2012 by Acacia San Tan LLC, an Arizona limited liability company.

WITNESSETH

WHEREAS, that certain Declaration of Covenants, Conditions, Restrictions and Easements for Acacia Estates Community Association was recorded at Recording Number 2006-0813222, records of Maricopa County, Arizona, re-recorded at recording number 2006-0833238, records of Maricopa County, Arizona, amended by that certain amendment recorded at recording number 2008-0981029, records of Maricopa County, Arizona, and amended and restated in the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Acacia Estates Community Association, recorded at recording number 2009-0049517, records of Maricopa County, Arizona (hereinafter together referred to as the "CC&Rs"); and

WHEREAS, pursuant to Section 9.6 of the Amended and Restated CC&Rs, the CC&Rs may be amended by the Developer, at any time prior to the Transition Date; and

WHEREAS, the Transition Date, as defined in the CC&Rs, has not occurred; and

WHEREAS, in order to increase the readability of the CC&Rs and to modernize and update the CC&Rs, this First Amendment was created and approved by the Developer.

FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
ACACIA ESTATES COMMUNITY ASSOCIATION

NOW, THEREFORE, the CC&Rs are hereby amended in part as follows:

(1) Section 1.1 shall be amended by adding the following language to the end of Section 1.1:

“Notwithstanding anything contained in this Declaration or in the Architectural and Landscaping Guidelines, neither the Architectural and Landscaping Guidelines nor any provisions contained in this Declaration relating thereto or governing the procedures of the Committee shall be applicable to any improvements built on the Lots owned by any person or entity who has been assigned the rights of the Developer or its designated selected homebuilder hereunder with respect to such Lots.”

(2) Section 1.9 shall be amended, by adding the following language to the end of such Section 1.9:

“For purposes hereof, any person or entity who receives a partial assignment of the rights of the Developer or its designated selected homebuilder pursuant to this Declaration with respect to certain Lots shall be deemed to be the Developer for such specified Lots or Property, but only with respect to such Lots or Property.”

(3) Section 1.10 shall be amended by deleting the following phrase:

“,and such other single family residential lots which shall become a part of the Development”.

(4) Section 3.29 shall be amended by deleting the second and third sentences of such Section 3.29 in their entirety and by substituting the following sentences in their place:

“Without limiting the generality of the preceding sentence and notwithstanding any provisions contained in this Declaration to the contrary, the Developer and its designated selected homebuilder are expressly exempted from the provisions hereof requiring submittals to, or obtaining authorizations, consents or approvals by or from, the Board or the Committee; if this Declaration requires any consent from the Association, the Board, the Committee or any other party with respect to any improvements to be constructed on a Lot by a Developer or its designated selected homebuilder, no such consent shall be required and the Developer or its designated selected homebuilder shall have the right to construct such improvements as the Developer or its designated selected homebuilder determines appropriate. For the avoidance of doubt, the Developer or its designated selected homebuilder shall not be required to obtain any consents or approvals of the Board, the Developer, the Association or any other party or entity, other than from the Town of Gilbert, Arizona, in


connection with the initial construction of residential homes and associated improvements on the Lots by or for the Developer or its designated selected homebuilder. Any provisions of this Declaration which prohibit non-residential use of Lots and regulate parking and vehicles shall not prohibit the construction and operation by the Developer or its designated selected homebuilder of model homes (including, without limitation, any use in whole or in part as sales offices, collectively, the "Models") and parking available to the visiting of such Models."

(5) Sections 9.4.1 and 9.4.2 shall be deleted in their entirety.

(6) Except as otherwise expressly modified in this First Amendment, the CC&Rs are and shall remain in full force and effect. In the event of any conflict or inconsistency between the CC&Rs and this First Amendment, this First Amendment shall govern and control.

IN WITNESS WHEREOF, the Declarant/Developer has executed this First Amendment as of the 26th day of October, 2012.


ACACIA SAN TAN, LLC
an Arizona Limited Liability Company

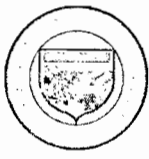
By: 
Name: Greg Korinek
Its: Manager

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 26 day of October, 2012, by KREG KORINEK, the Manager of **ACACIA SAN TAN, LLC**, an Arizona limited liability company, on behalf of the company.

4.28.2013
My Commission Expires:


Notary Public



TARA N. PARSONS
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
APRIL 28, 2013

FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ACACIA ESTATES COMMUNITY ASSOCIATION

DA



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2009-0049517 01/21/09 03:17 PM
1 OF 1

H0VP

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

FOR

ACACIA ESTATES COMMUNITY ASSOCIATION

TABLE OF CONTENTS

DEFINITIONS.....	2
Architectural and Landscaping Guidelines.....	2
Articles.....	2
Association.....	2
Board.....	2
Bylaws.....	2
Town.....	2
Committee.....	2
Common Property.....	2
Declaration.....	2
Developer.....	2
Development.....	2
Development Documents.....	2
Guest.....	3
Improvement.....	3
Landscaping.....	3
Lessee.....	3
Living Unit.....	3
Lot.....	3
Member.....	3
Mortgage.....	3
Occupant.....	3
Owner.....	3
Person.....	3
Plat.....	3
Property.....	4
Purchaser.....	4
Single Family.....	4
Single Family Residential Use.....	4
Town.....	4
Transition Date.....	4
Visible From Neighboring Property.....	4
PLAN OF DEVELOPMENT.....	4
Property Subject to the Declaration.....	4
Common Areas.....	5
Security and Monitoring Service.....	5
Bulk Cable Agreement.....	5
Disclaimer of Representation.....	5

COVENANTS, CONDITIONS, AND RESTRICTIONS	5
Residential Use.....	5
Temporary Occupancy and Buildings	6
Nuisances	6
Trash and Recycling Containers and Collection	7
Animals	7
Motor and Recreational Vehicles and Parking.....	7
Garages	8
Signs	8
Machinery and Equipment	8
Clotheslines	8
Sidewalk and Roadway Encroachments	8
HVAC and Solar Panels	8
Storage and Tool Sheds and Structures	9
Window Materials	9
Mineral Exploration.....	9
Conveyance.....	9
Further Subdivision	9
Violation of Statutes, Ordinances, and Regulations.....	9
Rental	10
Drainage.....	10
Utility and Irrigation Meters and Panels.....	10
Antennas and Satellite Dishes	11
Basketball Goals and Play Structures.....	12
Items Visible From Neighboring Property	12
Lights	13
Reflective Materials.....	13
Roofs and Flashings.....	13
Tennis Courts	13
Developer's Exemption.....	13
 ARCHITECTURAL AND LANDSCAPING CONTROL.....	 13
General.....	13-14
Landscaping Requirements	15
Appointment of Committee	15
Determination of Architectural and Landscaping Guidelines.....	15
 EASEMENTS.....	 16
Easements in Common Areas	16
Blanket Easement	16
Association's Right of Entry	16
Association's Easement for Performing Maintenance Responsibilities	16
Temporary Easements	17
Public Easements.....	17
Perimeter Wall Easements and Maintenance.....	17

RIGHT TO ADD ADDITIONAL LANDS.....	17
THE ASSOCIATION, MEMBERSHIP, AND VOTING RIGHTS.....	18
Organization.....	18
Control of the Association and Maintenance of the Common Property.....	18
Board of Directors and Officers.....	18
Powers and Duties of the Association.....	19
Power of Attorney.....	20
The Association Rules.....	20
Personal Liability.....	20
Membership.....	20
Voting.....	21
Assessments.....	21
Rights Suspended Upon Default.....	22
Remedies of the Association.....	22
Suit.....	22
Lien.....	23-24
MAINTENANCE.....	25
Maintenance by the Association.....	25
Maintenance of Improvements.....	25
Maintenance of Lots and Driveway Easements.....	26
Maintenance of Landscaping.....	26
Additional Maintenance; Standard of Care.....	26
Maintenance of Walls other than Common Walls.....	26
Assessment for Damage or Destruction.....	26
Assessment for Nonperformance of Maintenance.....	26
Insurance Obtained by Owner.....	27
Maintenance of Flood Control Structures Within the Association.....	27
MISCELLANEOUS.....	27
Interpretation.....	27
Notice of Noncompliance.....	27
Enforcement.....	27
Fine.....	27
Notice of Property Title or Lien.....	28
Effect and Amendment.....	28
Violation of Covenants, Conditions, and Restrictions.....	28
Invalidity of Any Portion.....	29
Failure to Enforce.....	29
Indemnification and Acknowledgment.....	29

AMENDED AND RESTATED

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
ACACIA ESTATES COMMUNITY ASSOCIATION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS FOR ACACIA ESTATES COMMUNITY ASSOCIATION (hereinafter referred to as the "Declaration") is made this _____ day of _____, 2008 by the Acacia San Tan LLC, an Arizona limited liability company.

WITNESSETH

WHEREAS, that certain Declaration of Covenants, Conditions, Restrictions and Easements for Acacia Estates Community Association was recorded at Recording Number 2006-0813222, records of Maricopa County, AZ, re-recorded at recording number 2006-0833238, records of Maricopa County, AZ and amended by that certain amended recorded at recording number 2008-0981029, records of Maricopa County, AZ (together, the "CC&Rs"); and

WHEREAS, pursuant to Section 9.6 of the CC&Rs, the CC&Rs may be amended by the Developer, at any time prior to the Transition Date; and

WHEREAS, the Transition Date, as defined in the CC&Rs, has not occurred; and

WHEREAS, *in order to increase the readability of the CC&Rs and to amend and restate the CC&Rs to modernize and update the CC&Rs, this Declaration was created and approved by the Developer.*

NOW, THEREFORE, the CC&Rs are of no further effect and are hereby deleted amended and restated by the Declaration as follows:

1. **DEFINITIONS.** Terms used in this Declaration shall have the meanings specified for such terms in the Zoning Code or Subdivision Ordinances for the Town of Gilbert, Arizona, unless otherwise specifically defined or illustrated on the plat of record for the subdivision or in this Declaration or unless the content hereof otherwise dictates. All references to the plat, lots, easements, etc., mean those in ACACIA ESTATES COMMUNITY ASSOCIATION, Gilbert, Arizona. Unless the content clearly indicates a different meaning, the following terms as used in this Declaration are defined as follows:
 - 1.1 **"Architectural and Landscaping Guidelines"** means the rules and guidelines adopted by the Committee, as they may be amended or supplemented, and any provisions contained in this Declaration which shall govern the procedures of the Committee.
 - 1.2 **"Articles"** means the Articles of Incorporation of the Association which are filed in the office of the Arizona Corporation Commission, as the Articles may be amended from time to time.
 - 1.3 **"Association"** means the ACACIA ESTATES COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, its successors and assigns, formed as an entity through which the Owners may act in accordance with the Declaration and its Articles and Bylaws.
 - 1.4 **"Board"** means the Board of Directors of the Association.
 - 1.5 **"Bylaws"** means the Bylaws of the Association, as they may be amended from time to time.
 - 1.6 **"Committee"** means the Developer or the Association's Architectural and Landscaping Control Committee.
 - 1.7 **"Common Property"** or **"Common Area"** is that property designated as such on the plats of the Development.
 - 1.8 **"Declaration"** means this instrument, as the same may be amended from time to time.
 - 1.9 **"Developer"** means ACACIA SAN TAN, LLC, an Arizona limited liability company, its successors and assigns.
 - 1.10 **"Development"** means ACACIA ESTATES COMMUNITY ASSOCIATION, a planned residential development in the Town of Gilbert, Arizona, comprised of Lots 1 through 55 and open spaces as shown on the Re-Plat of Acacia recorded in Book 911 of Maps, page 17, Recorder of Maricopa County, Arizona, and such other single family residential lots which shall become a part of the Development.
 - 1.11 **"Development Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural and Landscaping Guidelines, and all other documents or instruments pertaining to and affecting the Development, as the same may be amended from time to time.
 - 1.12 **"Guest"** means an agent, servant, tenant, licensee, or invitee of an Owner or any person or entity who has acquired any title or interest in a lot by or through an

Owner, including a lessee, mortgagee, or any agent, servant, tenant, invitee, or licensee of such person or entity.

- 1.13 **"Improvement"** means any changes, alterations, or additions to a Lot including any excavation, cut, fill, residence, buildings, outbuildings, roads, driveways, parking areas, walls, retaining walls, stairs, patios, courtyards, landscape, poles, signs, exterior art, swimming pools or spas, and any structure or other modification of any type or kind and any Landscaping and all other improvements of every type and kind constructed on a Lot or the Common Areas or otherwise located within the Development.
- 1.14 **"Landscaping"** means any tree, plant, shrub, hedge, cactus, grass, and other vegetation of any kind, any inert material used as ground cover and any rocks or similar materials used in connection with the landscaping of Lots or Common Areas.
- 1.15 **"Lessee"** means the lessee or tenant under a lease, oral or written, of any Lot, including any assignee of a lease.
- 1.16 **"Living Unit"** means any building, or portion of a building, situated upon a Lot, designed and intended for use and occupancy as a residence. All references to a Living Unit shall be deemed to refer also to the underlying Lot, whether or not developed, and all permanent Improvements thereon.
- 1.17 **"Lot"** means a residential lot as platted on a plat or plats of the planned residential development for ACACIA ESTATES COMMUNITY ASSOCIATION that was approved by the Town of Gilbert, Arizona, and additions thereto.
- 1.18 **"Member"** means any person or legal entity who is a member of the Association.
- 1.19 **"Mortgage"** means mortgage, deed of trust, or other security instrument which is a lien on a lot.
- 1.20 **"Occupant"** means any Person, other than an Owner, who occupies or is in possession of a Lot, or any portion thereof, or the Living Unit thereon, whether as a Lessee or otherwise.
- 1.21 **"Owner"** means the record owner, including the Developer, whether one or more persons or entities of equitable or beneficial title (or legal title if equitable title has merged therewith) to a Lot. Owner does not include a person or entity holding an interest in a Lot merely as security for the performance of any obligation, and shall not include a Lessee or tenant of a Lot or dwelling. The Owner may, however, grant the person living on the Lot, or purchasing the Lot under an agreement or contract, the right to act in every capacity on his or her behalf.
- 1.22 **"Person"** means a natural person, corporation, business trust, estate, trust, limited liability company, partnership, association, joint venture, municipality, governmental subdivision or agency, or other legal or commercial entity.
- 1.23 **"Plat"** means the Re-Plat of Acacia, recorded in Book 911 of Maps, Page 17, records of Maricopa County, Arizona, as may hereafter be amended or supplemented.

- 1.24 **"Property"** means all of the Lots, private roadways, and Common Areas platted on the recorded Plat of the Development and any additions thereto, and excludes only the streets dedicated to the Town of Gilbert, Arizona.
- 1.25 **"Purchaser"** means any Person, other than the Developer, who by means of a voluntary transfer, becomes the Owner of a Lot, except for (i) a Person who purchases a Lot and then leases it to the Developer for use as a model home in connection with the sale or lease of other Lots, or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Developer's rights under this Declaration.
- 1.26 **"Single Family"** means a group of one or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not so related, who maintain a common household in a Living Unit.
- 1.27 **"Single Family Residential Use"** means the occupation or use of a Lot by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning and other applicable laws.
- 1.28 **"Town"** means the Town of Gilbert, Arizona.
- 1.29 **Transition Date"** means that date specified on which the Developer relinquishes control of the Association or at such time as one hundred percent (100%) of the lots in the Development have been sold. The specific "Transition Date" shall be the date of the first meeting of the Members of the Association after the transfer by the Developer.
- 1.30 **"Visible From Neighboring Property"** means, with respect to any particular object or matter, if such object or matter would be visible to a person six (6) feet tall, standing on any part of the Development adjacent to the Lot on which the object or matter is situated at an elevation no higher than the elevation of the base of the object or matter being viewed.

2. **PLAN OF DEVELOPMENT.**

- 2.1 **Property Subject to the Declaration.** Developer declares that all of the Property within the Development shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any Lot subject to this Declaration, each Person, for himself or itself, his or its heirs, personal representatives, successors, transferees, and assigns, binds himself, his heirs, personal representatives, successors, transfers, and assigns to all of the provisions, restrictions, covenants, easements, charges, conditions, rules, and regulations now or hereafter imposed by this Declaration. In addition, each Person, by so doing, thereby acknowledges that all restrictions, conditions, covenants, easements, charges, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees, Occupants, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by the Association and all Owners. The Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or

separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot, even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 **Common Areas.** At the Developer's discretion but no later than the Transition Date, the Common Areas shall be transferred to the Association by special warranty deed. Such transfer shall be subject to this Declaration and all covenants, restrictions, easements, and matters of record affecting the Common Areas.

2.3 **Disclaimer of Representation.** Notwithstanding anything to the contrary herein, the Developer makes no warranties or representations whatsoever that the plans presently envisioned for the completed Development can or will be carried out or that the Property or any adjacent real property is or will be committed to, or developed for, a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While the Developer has no reason to believe that any of the restrictive covenants contained in this Declaration are, or may be, invalid or unenforceable, the Developer makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks as to the validity and enforceability thereof, and by accepting a deed to a Lot, agrees that the Developer shall have no liability with respect thereto.

3. **COVENANTS, CONDITIONS, AND RESTRICTIONS.** In addition to all other covenants and restrictions contained herein, the use of the Lots and the Improvements, the Common Areas, and all other parts of the Development, are subject to the covenants and restrictions contained in this section.

3.1 **Residential Use.** Each Lot in the Development shall be improved and used exclusively for Single Family Residential Use. No Lot, Living Unit, or any part of the Development shall ever be used or caused, allowed, or authorized in any way, directly or indirectly, to be used for any business, professional, religious, institutional, commercial, manufacturing, industrial, mercantile, storing, vending, or related purposes; provided, however, that the Developer and its duly authorized agents and employees may use any part of the Development owned by the Developer for a model site or sites, a display and sales office, a business office, and construction office during the construction and sales period. In no event shall Owners be permitted to hold garage, yard, patio, or other types of sale within the Development without approval by the Association.

3.2 **Temporary Occupancy and Buildings.** No trailer, bus, mobile home, tent, shack, storage shed, garage, barn, or other building of a temporary nature shall be installed, located, or used on any Lot at any time as a residence, either temporarily or permanently. Notwithstanding the foregoing, the Developer shall, as long as it owns any Lot, have the right, until the Development is fully developed and improved, to maintain construction facilities and storage areas incident to its development and improvement of the Development.

- 3.3 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or any other portion of the Property. In addition, a Living Unit or any other portion of the Development shall not be used in whole or in part for the storage of any property or thing that will cause the Living Unit or the Development or any part thereof to appear in any unclean or untidy condition or that will be unsightly, offensive, obnoxious or detrimental to any other Owners. No substance, thing or material shall be kept or used upon any Lot that will emit a foul, offensive, or obnoxious odor or that will cause any noise that will or might disturb the peace, quiet, comfort, serenity or tranquility of the Occupants of adjacent portions of the Development. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any portion of any Lot without the written consent of the Committee. Notwithstanding the foregoing, speakers specifically designed and installed as built-in and recessed exterior speakers for a stereo system installed inside any Living Unit may be installed on a Lot provided that such speakers shall not be Visible From Neighboring Property and shall not be used in a manner so as to disturb the peace or the quiet, serenity, or tranquility of the Occupants of adjacent portions of the Development. Noise caused by improperly muffled motor vehicles shall not be permitted and construction machinery and equipment must be operated within the manufacturers' recommendations and specifications and only during reasonable working hours. No nuisance of any kind or description shall be permitted to exist or operate upon any Lot so as to be offensive, unsanitary, unsightly or detrimental to the Occupants or Owners of adjacent portions of the Development. The Board, in its sole and absolute discretion, shall have the right to determine the existence of any nuisance whether described herein or not. No improvements or Landscaping shall be permitted to be constructed on or to otherwise be permitted to exist on any Lots, the height or location of which shall be deemed by the Committee (i) to constitute a traffic hazard, (ii) to be unreasonably unattractive, or (iii) to be unreasonably detrimental to adjoining property.
- 3.4 **Trash and Recycling Containers and Collection.** No rubbish, trash, garbage, refuse, debris, or recyclable materials shall be placed or kept on any portion of any Lot except in covered containers of a type, size, and style which are approved by the Committee. Refuse containers shall be kept clean, sanitary, and free of noxious odors. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make such containers available for collection and then only for the shortest period of time (not to exceed eighteen [18] consecutive hours) reasonably necessary to effect such collection. All rubbish, trash, garbage, refuse, debris, and recyclable materials shall be promptly removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be maintained or used and no rubbish, trash, garbage, refuse, or debris shall be burned by open fire or otherwise on any portion of any Lot.
- 3.5 **Animals.** No animals, fish, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except a reasonable number of generally recognized and commonly accepted household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose or maintained in unreasonable numbers. No

household pets may be kept on a Lot that results in an annoyance to or that are obnoxious to other Owners or Occupants. All household pets must be kept indoors or within fenced yards and may not be permitted to run loose. No structure for the care, housing, or confinement of any household pet shall be maintained so as to be Visible From Neighboring Property. The Owner of each pet is responsible for cleaning any dirt, soilage, and damage caused by the pet. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, for the purposes of this paragraph, whether a particular animal, fish, poultry, or livestock is a generally recognized and commonly accepted household pet or a nuisance or whether the number of animals, fish, poultry, or livestock on any Lot is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.

- 3.6 **Motor and Recreational Vehicles and Parking.** Except as otherwise regulated by statute, no mobile home, boat, jet ski, boat or jet-ski trailer, motor home, recreational vehicle, all-terrain vehicle, off-highway vehicle, trailer, horse trailer, camper, camper shell, snowmobile, bus, truck, or other motor vehicle classified by manufacturing rating as exceeding three-quarter (3/4) tons, vehicles designed for commercial purposes, or similar vehicles shall be parked, kept, placed, maintained, constructed, reconstructed, or repaired on any Lot or within the Development so as to be Visible From Neighboring Property; provided, however, that the provisions of this section shall not apply to emergency vehicle repairs and provided, further, that such items may, for a period not to exceed twenty-four (24) consecutive hours, be parked on paved driveways on Lots for the purpose of loading, unloading, and preparing such items for offsite usage. All other motor vehicles shall be permitted to park only in garages or on paved driveways on Lots and may not park on any roadway; provided, however, that vehicles of Guests may park on the Development streets (except at the entrance to the Development) and for a temporary period of time not to exceed twelve (12) hours, provided that such parking is done in a fashion so as not to obstruct driveways on other Lots or traffic within the Development, and provided further, that in no event may such vehicles be parked on any roadway or Common Area overnight. All motor vehicles of Owners, Occupants, and Guests shall be kept in garages whenever such facilities are sufficient to accommodate the number of motor vehicles on a Lot. No overnight street parking is allowed in the Association. Any vehicle parked in violation of this Declaration may be towed at the direction of the Board or its agent, and the recording of this Declaration shall constitute the legal notice of intent to tow as though the Declaration were posted in accordance with the applicable laws and ordinances. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the assessment lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of assessments. The Board may adopt additional parking restrictions including the establishment of fines and assessments for their violation.

- 3.7 **Garages.** Garages shall be used for parking vehicles and other garage purposes only and shall not be converted for living or recreational purposes. Garage doors must be kept completely closed at all times except to permit vehicle ingress and egress.
- 3.8 **Signs.** No signs or billboards of any kind shall be displayed to the public view on any portion of the Development except for: (i) signs as may be required by legal proceedings; (ii) not more than two (2) signs for each Living Unit for identification of the address of such Living Unit with a combined total face area of eighty-four (84) square inches or less; (iii) such signs erected by the Developer or desirable in connection with the development, sale, or operation of the Lots and Improvements during the construction and sales period; (iv) one (1) sign advertising the Lot for sale or for rent, which sign shall not be larger than 24" x 24" and shall be made of metal or fiberboard or wood and mounted on a wood or metal post; (v) such other signs, the nature, number, and location of which shall have been approved in advance by the Committee; and (vi) political signs pursuant to A.R.S. § 33-1808. All signs provided for under this section shall require the approval of the Committee as to the size, color, design, message content, location, type, and hours of display.
- 3.9 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence, appurtenant structures, or other Improvements, which machinery and equipment shall not be Visible From Neighboring Property, except when it is being operated or used in connection with the construction of Improvements or the maintenance of Improvements.
- 3.10 **Clotheslines.** No clotheslines of any sort or other device for drying or airing of clothes shall be erected, placed, or maintained upon any Lot.
- 3.11 **Sidewalk and Roadway Encroachments.** No Landscaping or Improvement of any kind shall be permitted to overhang or otherwise encroach upon any Common Area, sidewalk, or roadway within the Development.
- 3.12 **HVAC and Solar Panels.** Except as may be installed by the Developer during the original construction of any Living Unit, no heating, air conditioning, evaporative cooling facilities, or solar collector panels may be installed, constructed, or maintained upon any Living Unit unless the Committee has approved such facilities or panels prior to installation.
- 3.13 **Storage and Tool Sheds and Structures.** No storage or tool sheds or similar structures shall be placed, erected, or maintained upon any part of the Development, except where the storage or tool shed or similar structure (i) is constructed of the same or substantially similar materials as, and is the same color as and architecturally comparable to and compatible with, the exterior of the Living Unit located upon the Lot (all as reasonably determined by the Committee) subject to the applicable provisions of any Architectural and Landscaping Guidelines; (ii) complies with any applicable set-back line requirements; and (iii) is not Visible From Neighboring Property.

- 3.14 **Window Materials.** Within ninety (90) days of occupancy of a Living Unit, the Owner of the Living Unit shall install permanent draperies or suitable window treatments on all windows facing the street(s) adjacent to its Lot. However, no external window covering may be placed, or permitted to remain, on any window of any Living Unit or other Improvement without the prior written approval by the Committee. No reflective coating, materials, or covering may be placed on any window of any Living Unit or other Improvement. Further, all curtains, blinds, interior shutters, screens, and window coverings, or window treatments that are Visible From Neighboring Property must be neutral in color. No bed sheets, blankets, bedspreads, or other items not designed for use as curtains or other window coverings may be used for such purposes, whether permanently or temporarily, if they are Visible From Neighboring Property.
- 3.15 **Mineral Exploration.** No Lot shall be used in any manner to explore for or to remove any water, oil, or other hydrocarbons, minerals, gravel, or other natural resources of any kind.
- 3.16 **Conveyance.** No portion less than all of a Living Unit or Lot shall be conveyed, transferred, or encumbered. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of the Development for public utilities or any other public purposes, in which event the remaining portion of any Lot or Living Unit affected shall, for the purpose of this Declaration, be considered a whole Lot or Living Unit.
- 3.17 **Further Subdivision.** No Lot in the Development shall be further subdivided or separated into smaller lots or conveyed in less than the full original dimensions of such Lots as shown on the Plat. Notwithstanding this section or any other provision contained in this Declaration, as long as the Developer owns any Lots in the Development, the Developer, without the consent of any other Member, shall have the right to replat the Development in any manner that the Developer deems appropriate, including, without limitations, changing the size, location, configuration and number of Lots, roadways, and Common Areas.
- 3.18 **Violation of Statutes, Ordinances, and Regulations.** No Lot shall be maintained or utilized in such a manner as to violate any applicable statute, ordinance, or regulation of the United States of America, the State of Arizona, County of Maricopa, the Town, or any other municipality, governmental agency, or subdivision authority having jurisdiction over the Lots or the use or occupation thereof.
- 3.19 **Rental.** Only entire Living Units may be rented, and if so rented, the occupancy thereof shall be limited to the lessee and his family and Guests. No Owner shall be permitted to lease a Living Unit for transient or hotel purposes. All lease agreements shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Development Documents, and any failure by lessee to comply with the terms of such documents shall be a default under the lease. All lease agreements must be submitted to the Association prior to execution by the Owner. The Owner must also provide the Association with the names of and contact information for all occupants of the leased Lot. The Association may charge a reasonable review and processing fee concerning the

above. Additionally, any Owner wishing to lease his Lot must submit to the Association a security deposit equal to one (1) year's Annual Assessments (the "Security Deposit"). The Security Deposit shall be debited should any lessor of the Owner of a leased Lot or the Owner fail to abide by the provisions of this Declaration. For purposes of this Declaration, "lease" shall mean any agreement for the leasing or rental of all of a Living Unit, including, but not limited to, "month-to-month" rentals. The foregoing restrictions shall not apply to any leases pursuant to which the Developer leases one or more Living Unit for purposes of operating and maintaining a model home or model homes thereon.

- 3.20 **Drainage.** No Living Unit, Landscaping, or other Improvement shall be constructed, installed, placed, or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Development or any part thereof or for any Lot as shown on the drainage plan on file with the Town.
- 3.21 **Utility and Irrigation Meters and Panels.** No utility or service equipment or lines may be installed or located on any Lot except as has been approved by the Committee. No utility meter or apparatus shall be located on any pole or attached to the outside of any improvement that is exposed to view from any street within the Development. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls as necessary to comply with the requirements, requests, regulations, orders, commissions, or specifications of any public, quasi-public, or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel, or equipment on the outside front wall of any Living Unit or other building facing the street directly in front of or to the side of the Living Unit. All sprinkler and irrigation controls, valves, panels, and equipment installed on any Lot shall be installed so as not to be visible from any street located directly in front of or to the side of any Lot.
- 3.22 **Antennas and Satellite Dishes.**
- 3.22.1 This section applies to antennas, satellite television dishes, and other devices ("Receivers"), including any poles or masts ("Masts") for such Receivers, for the transmission or reception of television or radio signals or any other form of electromagnetic radiation.
- 3.22.2 As of the date of recordation of this instrument, Receivers one (1) meter or less in diameter are subject to the provisions of Title 47, Section 1.4000 of the Code of Federal Regulations (with such section being referred to herein as the "Federal Regulation"). "Regulated Receivers" shall mean Receivers subject to the Federal Regulation as such regulation may be amended or modified in the future, or subject to any other applicable federal, state, or local law, ordinance, or regulation that would render the restrictions in this section on Unregulated Receivers (hereinafter defined) invalid or unenforceable as to a particular Receiver ("Other Laws"). "Unregulated Receivers" shall mean all Receivers that are not Regulated Receivers. Notwithstanding the foregoing, a Regulated Receiver having a Mast in excess

of the size permitted under the Federal Regulation or Other Laws for Regulated Receivers shall be treated as Unregulated Receivers under this section.

3.22.3 No Unregulated Receivers shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Committee, with such screening and fencing as such Committee may require. Unregulated Receivers must be ground-mounted and must not be Visible from Neighboring Property.

3.22.4 Regulated Receivers shall be subject to the following requirements:

3.22.4.1 Regulated Receiver and any required Mast shall be placed so as not to be Visible from Neighboring Property if such placement will not (a) unreasonably delay or prevent installation, maintenance, or use of the Regulated Receiver, (b) unreasonably increase the cost of installation, maintenance or use of the Regulated Receiver, or (c) preclude the reception of an acceptable quality signal.

3.22.4.2 Regulated Receivers and any required Masts shall be placed on Lots only in accordance with the following descending order of locations, with Owners required to use the first available location that does not violate the requirement of parts (a) through (c) in subsection 3.23.4.1 above: (a) a location in the back yard of the Lot where the Receiver will be screened from view by Landscaping or other Improvements; (b) an unscreened location in the back yard of the Lot; (c) on the roof but below the roof line; (d) a location in the side yard of the Lot where the Receiver and any pole or Mast will be screened from view by Landscaping or other Improvements; (e) an unscreened location in the side yard; or (f) a location in the front yard of the Lot where the Receiver will be screened from view by Landscaping or other Improvements. Notwithstanding the foregoing order of locations, if a location stated in the above list allows a Receiver to be placed so as not to be Visible from Neighboring Property, such location shall be used for the Receiver rather than any high-listed location at which a Receiver will be Visible from a Neighboring Property, provided that placement in such non-visible location will not violate the requirements of parts (a) through (c) in subsection 3.23.4.1 above.

3.22.4.3 Owners shall install and maintain Landscaping or other Improvements (“Screening”) around Receivers and Masts to screen items that would otherwise be Visible from Neighboring Property unless such requirement would violate the requirements of parts (a) through (c) in subsection 3.23.4.1 above. If an Owner is not required to install and maintain Screening due to an unreasonable delay in installation of the Receiver that such Screening would cause, the Owner shall install such Screening within thirty (30) days following installation of the Receiver and shall thereafter maintain such Screening, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection 3.23.4.1 above. If an Owner is not required to install Screening due to an

unreasonable increase in the cost of installing the Receiver caused the cost of such Screening, the Association shall have the right, at the option of the Association, to enter onto the Lot and install such Screening and, in such event, the Owner shall maintain the Screening following installation, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection 3.23.4.1 above.

The provisions of this section are severable from each other. The invalidity or unenforceability of any provision or portion of this section shall not invalidate or render unenforceable any other provisions or portion of this section, and all such other provisions or portions of this section shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portions of this section to a particular type of Receiver or Mast or to a particular Receiver or Mast on a particular Lot shall not invalidate or render unenforceable such provisions or portions regarding other Receivers or Masts on other Lots.

- 3.23 **Basketball Goals and Play Structures.** No basketball goal, backboard, or similar structure or device, and no swing set, trampoline, batting cage, or other play-structure shall be placed or constructed on any Lot without the prior written approval of the Committee (including, but not limited to, approval of appearance and location). In no event shall basketball goals or other such play structures be permitted to be attached to any Living Unit. All such play-structures must be installed, placed, and kept no farther forward on any Lot than the garage doors of the Living Unit situated on that Lot. Permanent basketball goals must include a free-standing pole, which must be painted the color of the body of the Living Unit. The backboard of any basketball goal must be composed of a clear material.
- 3.24 **Items Visible From Neighboring Property.** The following shall not be erected, used, maintained, or kept on any Lot so as to be Visible from Neighboring Property: air conditioners, coolers, pool filters, pool heaters, lawn and yard tools, storage tanks for water, gas, gasoline, oil, or other fuel.
- 3.25 **Lights.** Spotlights or other lights shall not be installed, maintained, or used in a manner, which causes glare to neighboring property or an annoyance to the Occupant of neighboring Lots. Tennis-or sport-court and overhead swimming pool-lights shall not be allowed except as approved by the Committee. Tennis-and sport-court lighting shall not be utilized between the hours of 10 p.m. and 6 a.m. All outside lights, if any, will be of a height, design, and type approved by the Committee.
- 3.26 **Reflective Materials.** Reflective materials or articles, including reflective house sidings and roofing material, shall not be maintained on any Lot. No glass used in the construction of any exterior Improvement on any Lot shall have a light reflective value in excess of fifty percent (50%).
- 3.27 **Roofs and Flashings.** No asbestos shingle-roofs, light-reflective roofs, or flat roofs shall be allowed.
- 3.28 **Tennis Courts/Sport Courts.** Tennis/sport courts shall be permitted only if, in the judgment of the Committee, after proper application, the proposed tennis/sport court

is not detrimental to the surrounding properties and does not materially interfere with the harmonious and orderly development of the Development.

- 3.29 **Developer's Exemption.** Nothing contained in this Declaration shall be construed to prevent or materially impair the erection, operation, maintenance, replacement, and repair by the Developer or its duly authorized agents, of structures, improvements, or signs necessary or convenient to the development, administration, management, and sale and operation, maintenance, and repair of the Property. Without limiting the generality of the preceding sentence and notwithstanding any provisions contained in this Declaration, the Developer is expressly exempted from the provisions hereof requiring submittals to or authorizations by the Committee. Any provisions of this Declaration which prohibit non-residential use of Lots and regulate parking and vehicles shall not prohibit the construction and operation by the Developer of model homes (including, without limitation, any use in whole or in part as sales offices collectively, the "Models") and parking available to the visiting of such Models so long as construction, operation, and maintenance of such parking will otherwise comply with all of the provisions of this Declaration.

4. **ARCHITECTURAL AND LANDSCAPING CONTROL.**

4.1 **General.**

- 4.1.1 All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be moved from other locations onto any Lot. Each residence will contain at least two thousand eight hundred (2,800) square feet of enclosed air-conditioned living area. In no case shall a residence be less than 2,800 square feet in air-conditioned living area. The maximum area of a residence including all areas under roof will be reviewed on a site-by-site basis. Verification of maximum building coverage should be determined as required by the Town of Gilbert prior to commencement of design.
- 4.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Committee. The Development is located on soils that may be expansive in nature. All Owners shall obtain an engineer's recommendation concerning foundation and flooring systems.
- 4.1.3 No Improvement shall be constructed or removed from any Lot and, except for such removal as required in connection with routine Landscaping maintenance, no Landscaping shall be installed, planted, placed on, or removed from any Lot without the prior written approval of the Committee, and all Improvements and Landscaping must fully comply with the Architectural and Landscaping Guidelines.
- 4.1.4 No addition, alteration, repair, change, painting, or other work that in any way alters the exterior appearance of any Living Unit or any Landscaping or other Improvements on any Lot, including, without limitation, the exterior color scheme of any Improvements located thereon from their appearance on

the date the Lot is conveyed by Developer to the Purchaser, shall be made or done without the prior written approval of the Committee.

- 4.1.5 Any Owner desiring approval of the Committee for the construction, installation, addition, alteration, repair, change, or replacement of any Improvement or the Landscaping which would alter the exterior appearance of his or its Lot or the improvements or Landscaping located thereon shall submit to the Committee a written request for approval, specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Committee shall also submit to the Committee any additional information, plans and specifications which the Committee may request.
 - 4.1.6 Upon receipt of approval from the Committee for any construction, installation, addition, alteration, repair, change, or other work, the Owner who had requested such approval shall proceed to perform, construct, or make the addition, alteration, repair, change, or other work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Committee.
 - 4.1.7 Any change, deletion, or addition to the plans and specifications approved by the Committee must be approved in writing by the Committee.
 - 4.1.8 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 in having any application reviewed by architects, landscape architects, engineers, or other professionals and a reasonable refundable deposit, all or any portion of which may be retained by the Association if it is determined by the Committee that the applicant or any person acting on behalf of the applicant has failed to comply with the Development Documents. The Developer and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's budget as a common expense or as part of the regular assessment.
 - 4.1.9 The provisions of this section do not apply to, and approval of the Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change, or replacement of any improvements made by, or on behalf of, the Developer.
 - 4.1.10 The approval required by the Committee pursuant to this section shall be in addition to and not in lieu of any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule, or regulation, including, but not limited to, the ordinance requirements of the Town.
 - 4.1.11 All Improvements (except Landscaping) must be constructed to comply with the applicable setback requirements set forth on the Plat.
- 4.2 **Landscaping Requirements** shall be as set forth in the Architectural and Landscaping Guidelines.

- 4.3 **Appointment of Committee.** An Architectural and Landscaping Control Committee of not less than three (3) members shall be appointed to perform the functions of the Committee set forth in this Declaration and in the Architectural and Landscaping Guidelines. From the date of this Declaration until the period ending one (1) year after the Transition Date, the Developer shall have the sole right to appoint and remove the members of the Committee. At each times as the Developer no longer is entitled to appoint members of the Committee, the members of the Committee shall be appointed by the Board. The Developer may at any time voluntarily surrender its right to appoint and remove members of the Committee, and in that event, the Developer may require, for a period expiring one (1) year after the Transition Date, that specified actions of the Committee, as described in a recorded instrument executed by the Developer be approved by the Developer.
- 4.4 **Determination of Architectural and Landscaping Guidelines.** Prior to the Transition Date, the Developer shall have the right but not the obligation to establish and revise the Architectural and Landscaping Guidelines. The Architectural and Landscaping Guidelines may include supplemental procedures and restrictions for the construction, installation, and removal of any Improvements or Landscaping on any Lot. After the Transition Date, the Board shall have the right to make such changes to the Architectural and Landscaping Guidelines, as the Board shall deem appropriate. The Committee shall keep and maintain a written record of all actions taken in connection with the Committee. The Committee may establish a reasonable processing fee to cover the costs of the Association in considering any request for approval submitted to the Committee, which fee shall be paid at the time such request for approval is submitted. Any approval of the Committee pursuant to this section or the Architectural and Landscaping Guidelines shall be in addition to, and not in lieu of, any approvals, consents, or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Development.

5. **EASEMENTS.**

- 5.1 **Easements in Common Areas.** Each and every Member shall have a nonexclusive perpetual easement of use and enjoyment in and to the Common Areas. Such right and easement of use and enjoyment shall be subject to:
- 5.1.1 The right of the Association to limit the number of Guests of Members;
 - 5.1.2 The right of the Association to suspend the right of any Member to use the facilities situated upon the Common Areas for any period during which an assessment against the Member's Lot remains unpaid or for any violation of the Development Documents;
 - 5.1.3 The right of the Association to dedicate, transfer, or convey, all or any part of the Common Areas to any public agency, authority or utility as provided in this Declaration;
 - 5.1.4 The right of the Association to promulgate Rules and Regulations concerning the use of any Common Areas and all facilities located thereon; and

5.1.5 All existing easements of record.

- 5.2 **Blanket Easement.** There is hereby created in the Association and all providers to the Development of public utilities a blanket easement upon, across, over, and under the Property for ingress and egress for the installation, replacing, repairing, and maintaining of all utility and service lines and systems, including but not limited to water, sewer, gas, telephone, electrical, air conditioning, heating, television cable, or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company or the Association or their agents to install and maintain facilities and equipment on the Property and to affix and maintain wires, pipes, lines, conduits, ducts, vents, cables, circuits, and other appurtenant items on the Property and to trim any trees or shrubbery which interfere with any such utility facilities. Notwithstanding anything to the contrary contained in this section, no sewer facilities, electrical lines, water lines, or other utility or service lines may be installed or relocated on the Property, except as approved by the Developer, as long as the Developer owns any interest in any Lot or in the Development and, thereafter, except as approved by the Board.
- 5.3 **Association's Right of Entry.** During reasonable hours, the Association or any authorized representative of the Association shall have the right to enter upon and inspect any Lot, excluding the interior of any improvement located thereon, for the purpose of making inspections to determine whether the provisions of the Development Documents are being complied with by the Owner or Occupants of said Lot.
- 5.4 **Association's Easement for Performing Maintenance Responsibilities.** The Association shall have an easement upon, across, over, and under the Common Areas and the Lots for the purpose of repairing, maintaining, and replacing areas of Association responsibility and for performing all of the Association's other rights, duties, and obligations hereunder. In addition, during reasonable hours, the Association or any authorized representative of the Association shall have the right to enter upon and inspect any Lot, excluding the interior of any Improvement located thereon, for the purpose of making inspections to determine whether the provisions of the Development Documents are being complied with by the Owner or Occupants of said Lot.
- 5.5 **Temporary Easements.** The Developer, its agents, employees, and contractors shall have a temporary easement upon each Lot and the Common Areas as is necessary for development of adjacent Lots and Common Areas and completion of improvements in public rights-of-way, public utility easements, drainage easements, and Common Areas. In addition, the Developer and their agents, employees, and contractors shall have a temporary easement over every Lot and the Common Areas as is necessary to carry out any work required by, convenient to, or incidental to carrying out the terms of any warranty.
- 5.6 **Public Easements.** Each Owner who accepts a deed to or any interest in a Lot agrees to recognize and be bound by any drainage easements or other easements shown in the Plat or which otherwise exist with respect to the Lot purchased by such Owner or the Common Areas, all in accordance with applicable ordinances and regulations.

5.7 **Perimeter Wall-Easements and Maintenance.** Each Owner who accepts a deed to a Lot which borders the outside perimeter of the Development shall be deemed to grant to the Association a non-exclusive easement for access to, and maintenance and repair of, the perimeter walls for the Development, and each Owner of such a Lot shall be responsible for maintaining the interior side of any such perimeter wall and shall also be responsible for repairing any damage to such perimeter wall caused by such Owner or the Owner's family members, Guests, Lessees or agents. To the extent any perimeter-wall for the Development encroaches upon any Lot, an easement for such encroachment is hereby established over the encroached-upon portion of any such Lot for the benefit of the Association.

6. **RIGHT TO ADD ADDITIONAL LANDS.** The Developer, at its election, shall have the exclusive right to extend from time to time the areas served and maintained by the Developer or the Association pursuant to this Declaration. Such additional land, when added, shall become part of the ACACIA ESTATES COMMUNITY ASSOCIATION. Any new land subject to this Declaration shall be added as follows:

The Developer, its successor, or assigns, shall record in the office of the County Records of Maricopa County, Arizona, a supplement to this Declaration (hereinafter called "Supplemental Declaration"), signed by the Developer, which Supplemental Declaration shall (a) describe the new land being subjected to these covenants, and (b) state what additions, deletions or other changes or modifications have been made in the provisions hereof with respect to such new land.

7. **THE ASSOCIATION, MEMBERSHIP, AND VOTING RIGHTS.**

7.1 **Organization.** The Association is a nonprofit corporation under the laws of the State of Arizona and is charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted to be inconsistent with this Declaration. In the event of the inconsistency between the Articles or Bylaws and this Declaration, this Declaration shall govern.

7.2 **Control of the Association and Maintenance of the Common Property.** The Developer will maintain the Development's Common Property until the Transition Date or until the Developer conveys the Common Property to the Association as set forth below. The Developer or the Association will operate and maintain the Common Property for an annual fee and other assessments as set forth in section 7.10 below payable by each Owner on demand. The Developer shall have all rights in enforcing collection of the fee by the same means granted to the Association in this Declaration. The Developer may voluntarily at any time transfer control of the Association to the Members. When one hundred percent (100%) of the Lots are sold, the Developer will transfer control of the Association to the Members if the Developer has not already done so. When the Developer conveys the Common Property and facilities thereon to the Association, the Association shall become

responsible for the maintenance, repair, operation, and improvement of the Common Property and any facilities thereon, and shall be responsible for the payment of all costs in connection therewith, including, but not limited to, property taxes, insurance premiums, and all utilities used in connection therewith.

Notwithstanding the above, the Developer may, in its sole discretion, retain control of the Committee as to new construction until one (1) year after the Transition Date, at which time the Board may appoint a Committee of its choice.

- 7.3 **Board of Directors and Officers.** Prior to the Transition Date, the Board of Directors shall consist of three (3) members, all of whom shall be appointed by and serve at the pleasure of the Developer as first established in the Articles and Bylaws. If not sooner done, in the sole discretion of the Developer, when one hundred percent (100%) of the Lots in the Development have been sold, the Developer shall notify the Owners immediately in writing at the last known address of each Owner of record as set forth in the records of the Maricopa County Assessor. The Association shall call a meeting of Members for the purposes of taking over the operation, maintenance, and improvement of all Common Areas. The date of that first meeting of the Members of the Association shall be the Transition Date. At such meeting, the Association shall elect, by a majority of the votes cast, a Board of Directors consisting of no less than three (3) persons and no more than five (5) persons, all of whom shall be Owners in ACACIA ESTATES COMMUNITY ASSOCIATION. The Board of Directors shall estimate the expenses necessary to operate, maintain, and improve as desired the Common Areas and any facilities, shall include an appropriate reserve, shall assess the Members equally for the payment of said expenses and reserve, shall set up all necessary procedures for collection and disbursement of said funds, and shall formally adopt or re-adopt Bylaws. Thereafter, except as otherwise set forth herein, all affairs of the Association shall be conducted by a Board of Directors and such officers as they may elect or appoint in accordance with the Articles and Bylaws, as the same may be amended from time to time.
- 7.4 **Powers and Duties of the Association.** The Association shall have the following powers herein granted or necessarily implied which it shall exercise in its sole discretion, construing the powers herein granted and implied to the broadest extent consistent with the best interest of the Members:
- 7.4.1 Employ, by contract or otherwise, a manager or an independent contractor or a professional management company to oversee, supervise, and carry out the express intention and spirit of this Declaration; and
 - 7.4.2 Employ professional counsel and advice from such persons and firms such as, but not limited to, landscape architects, recreational experts, architects, planners, biologists, lawyers, accountants; and
 - 7.4.3 Employ or contract for water, area maintenance, and renovation of Common Areas and open spaces, hiking and riding trails, and all future tracts, Common Areas, or open spaces of ACACIA ESTATES COMMUNITY ASSOCIATION; and

- 7.4.4 Borrow and repay monies giving notes, mortgages, or other security inferior to the rights of existing mortgages, if any, upon such term or terms as it deems necessary; and
- 7.4.5 Create, in its sole discretion, various services and make appropriate charges therefore to the users thereof and/or each individual Owner, in connection with the maintenance and management of the Association's properties, provided that such services shall be available to all Members upon the payment of charges so established, and to avail itself of any rights granted by law without being required to render such services to those Members who do not assent to the same charges and to such other rules and regulations as the Association deems proper. In addition, the Association shall have the right to discontinue any service on non-payment, while the charges remain unpaid, or to eliminate services for which there is inadequate demand or inadequate funds; and be the final judge of all aesthetic matters and acts in its sole discretion without liability to any Member, with the exception of those matters pertaining to architectural control, which shall be the responsibility of the Committee; and
- 7.4.6 On behalf of the Association, at its common expense, shall effect and maintain at all times comprehensive general liability insurance covering errors and omissions of the Directors and covering the Association against any action brought against it. The coverage shall be placed with a reliable insurance company with limits of not less than One Million Dollars (\$1,000,000) for injury, property damage, or death to any person from one occurrence. Any member may maintain additional liability for his or her respective Lots without prejudice.
- 7.5 **Power of Attorney.** Whenever the Association is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do an act, including but not limited to action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging, and delivering any instruments or documents necessary, appropriate, or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest or by signing a contract for the purchase of a Lot or by succeeding in any other manner to the ownership of Lot, or any interest therein, or a membership in the Association, and that each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.
- 7.6 **The Association Rules.** By a majority vote of the Board of Directors, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the Association Rules. The Association Rules may restrict and govern the use of the Common Areas by any

Owner, by the family of such Owner, or by any Guest, licensee, or Lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners (unless there is determined to be a logical and reasonable necessity for distinguishing the rights, duties, obligations, and benefits of Owners) and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, said Rules shall have the same force and effect as if they were set forth in and were part of this Declaration.

- 7.7 **Personal Liability.** No member of the Board of Directors, the Developer, or any committee of the Association, or any officer of the Association, or any agent of the Board, Developer, or Association shall be personally liable to any Owner or Member for any act, omission, error, or negligence of the Association, the Developer, the Board, its agents, or any other representatives or employees of the Association, or any other committee, or any officer of the Association, provided that such person, committee, or agent has, upon the basis of such information as may be possessed, acted in good faith without willful or intentional misconduct.
- 7.8 **Membership.** Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot (or tract), which is subject to assessment. A membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of a Lot to a new Owner, or by intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process. Any attempt to make a prohibited transfer of membership shall be void and shall not be reflected upon the books of the Association. The Association shall record the proper transfer of ownership upon the books of the Association, thus affecting the issuance of a new membership to a new Owner. It is the responsibility of the new Owner and prior Owner to notify the Association in writing of the purchase of a Lot and, prior to such notification, the Association is entitled to rely on its records of ownership.
- 7.9 **Voting.** At all meetings of the Association starting with the Transition Date, each Member shall be entitled to one vote for each Lot owned, which voting right shall be exercised by an Owner of record of each Lot who shall be known as the "Voting Owner." The majority of the Voting Owners will constitute a quorum, and the decision of the majority of the quorum present shall be the act of the Association. The Voting Owner shall be designated by the record Owner or Owners by written notice to the Association. The designation of a record Owner as a Voting Owner shall be deemed to be automatically revoked: (1) upon notice to the Association of the death or judicial incompetency of anyone designated as a Voting Owner, or (2) upon a written instrument delivered to the Association by any record Owner or Owners. If no Voting Owner of a Lot shall have been designated, or if said designation has been revoked as stated herein, no vote shall be cast on behalf of such Lot until the Voting Owner is designated as provided herein.
- 7.10 **Assessments.** The Developer and/or the Association shall have the authority to set assessments as needed for administration of the Association and maintenance of the Common Property of the Development. Every Owner of any Lot in the Development

shall contribute toward the expenses of administration of the Development, including but not limited to all types of insurance and the costs of operation and maintenance of the Common Areas thereof. The initial annual assessment (also known as the regular assessment) on each Lot is One Thousand, Six Hundred Twenty Dollars (\$1,620.00).

The Board of Directors shall prepare a budget for each fiscal year showing, in reasonable detail, the estimated costs and expenses that will be payable, the estimated income and other funds which will be received, the estimated surplus from prior assessments, and the estimated total amount required to be raised by assessments to cover the anticipated expenses and to provide reasonable reserves. The Board shall provide each Member with a copy of the budget for the forthcoming year and a notice of the Development amount of the individual Lot assessment thirty (30) days prior to the end of each fiscal year. Annual or regular assessments may be billed quarterly or such other frequency as further adopted by the Board. Annual or regular assessments are due and payable thirty (30) days after the date of billing. The assessment is delinquent if payment is not received within forty-five (45) days after the date of billing. The Association shall further have the right, as determined by the Board of Directors from time to time, to establish special assessments for capital improvements or unexpected expenses. The total amount required to be raised by annual or special assessments shall be equally apportioned among the Lots, excluding any Lots retained by the Developer.

The Association shall not impose a regular assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's assessment without the approval of the majority of the Members of the Association.

Upon demand and for a reasonable charge, the Developer or Board of Directors shall furnish to any Owner a statement setting forth whether the assessments and charges on their residences are paid and, if unpaid, the amount unpaid. The statement when signed by an officer or director shall be binding upon the Association as of the date of issuance.

Lots owned by the Developer shall not be subject to assessment until conveyed by the Developer to another Owner, which is not a successor-Developer. The Developer, however, will be responsible for property taxes on Lots owned by the Developer.

In addition to the foregoing, the following rules shall apply to assessments:

7.10.1 Rights Suspended Upon Default. In the event that any Owner is in arrears in the payment of any amount due to the Association, or in default in the performance of any provision of this Declaration, or the Articles, Bylaws, or Association Rules for a period of fifteen (15) days or more, after written notice of same, the voting right of the Lot to which the default or violation relates may be suspended at any time without further notice by the Board of Directors of the Association and may remain suspended until all payments are brought current and all defaults and violations are remedied. Furthermore, in the event an Owner is in arrears in the payment of any amount due under any of the provisions of this Declaration, the Owner's right to use the Common Areas shall be suspended until all payments are marked current and

all defaults reimbursed. The Owner in default shall be charged a reasonable amount for any use of the Common Areas which occurs during the period of suspension.

7.10.2 **Remedies of the Association.** Each Owner covenants and agrees to pay to the Association the assessments provided for herein on or before the due date thereof and agrees to the enforcement of the assessments in the manner specified herein. In the event the Association employs attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this declaration, each Owner shall pay reasonable attorneys' fees and costs thereby incurred in addition to any other sums due or any other relief or remedy obtained against such Owner. In the event of a default in payment of any assessment when due, the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity.

7.10.3 **Suit.** The Board of Directors may cause a lawsuit to be commenced and maintained in the name of the Association against an Owner to enforce the payment of any delinquent assessment. Any judgment rendered in any such action shall include, without limitation, the amount of the delinquency, interest at twelve percent (12%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees fixed by the court.

7.10.4 **Lien.**

7.10.4.1 The Association has a lien on a Lot for any Assessment levied against that Lot or monetary penalties imposed against the Lot Owner from the time the assessment or penalty becomes due. The Association's lien may be foreclosed in the same manner as a mortgage on real estate. Unless the Declaration otherwise provides, fees, charges, late charges, monetary penalties, attorney's fees expended in order to gain compliance with the provisions of this Declaration and interest charged, are enforceable as assessments. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. After the occurrence of any default in the payment of any assessment, the Association, or its authorized representative, may but shall not be required to make a written demand for payment to the defaulting Owner on behalf of the Association. Each default shall constitute a separate lien, but any number of defaults may be included within a single suit or foreclosed as a single lien. All delinquent assessments shall constitute a continuing lien on the Lot from the date due but unpaid whether or not a claim of lien is recorded. A claim of lien may be executed, acknowledged, and recorded by any officer of the

Association, and shall contain substantially the following information:

- 7.10.4.1.1 The name of the delinquent Owner.
 - 7.10.4.1.2 The legal description and street address of the property.
 - 7.10.4.1.3 The amount due and owing including interest thereon, collection costs, and reasonable attorneys' fees.
 - 7.10.4.1.4 That the lien is claimed by the Association pursuant to this Declaration.
- 7.10.4.2 A lien hereunder is prior to all other liens and encumbrances on a Lot except.
- 7.10.4.2.1 Liens and encumbrances recorded before the recordation of the Declaration.
 - 7.10.4.2.2 Any first mortgage or deed of trust on the Lot.
 - 7.10.4.2.3 Liens for real estate taxes and other governmental assessments or charges against the Lot.
- 7.10.4.3 Subsection 7.10.4.1 above does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association.
- 7.10.4.4 Unless the Declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.
- 7.10.4.5 Recording of the Declaration constitutes record notice and perfection of the lien. Further recordation of any claim of lien for assessment is not required.
- 7.10.4.6 This section does not prohibit:
- 7.10.4.6.1 Actions to recover amounts for which subsection 7.10.4.1 of this section creates a lien.
 - 7.10.4.6.2 The Association from taking a deed in lieu of foreclosure.
- 7.10.4.7 A judgment or decree in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.
- 7.10.4.8 Each Owner, by becoming an Owner of a Lot or Lots, hereby expressly waives any objection to the provisions hereof with respect to the collection and enforcement of delinquent assessments. Sale or transfer of any Lot shall not affect the assessment lien or relieve such Owner or Lot from liability for any assessments thereafter becoming due or from the lien

thereof, nor shall sale or other conveyance relieve the previous Owner from personal liability for assessments that became due prior to such sale or other conveyance. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of the Lot.

- 7.10.4.9 To insure that the Association will have adequate funds to establish operating, maintenance, and capital improvement reserves or to meet its expenses or to purchase necessary equipment or services, in addition to any assessments set forth in Section 7.10, each new buyer of any Lot acquired by voluntary sale or transfer (including buyers under agreements for sale), shall immediately pay to the Association a sum for working capital. The working capital payment shall be equal to three (3) months of the assessment that is currently in effect as of the date of transfer. If the working capital payment is not made within thirty (30) days of the recording date of the deed or agreement for sale, late charges and other remedies of the Association shall apply according to the CC&Rs and Arizona law. Any amounts paid pursuant to this Section may be used for the funding of reserves, payment of current expenses or such other purposes as the Board may determine to be desirable and appropriate. All amounts so paid shall be nonrefundable and shall not be considered as an advance payment of any assessments levied by the Association pursuant to this Declaration.

8. MAINTENANCE.

- 8.1 **Maintenance by the Association.** The Association, or its duly delegated representative, shall be responsible for the maintenance, repair, and replacement of the Common Areas, including, but not limited to, any walls, structures, signs, Landscaping, streets, together with all other real and personal property owned by the Association.
- 8.2 **Maintenance of Improvements.** No Improvement upon any Lot shall be permitted to fall into disrepair, and all Improvements shall at all times be kept in good condition and repair, adequately painted, and otherwise finished. Each Owner shall maintain in good repair the exterior surfaces of each Improvement on said Owner's Lot, including but not limited to walls, roofs, porches, patios, and appurtenances. Nothing shall be done in or to any Improvement which will impair the structural integrity of any Improvement except in connection with any alterations and repairs permitted or required by the Committee. In the event of damage or destruction from any cause whatsoever to all or any portion of an Improvement, the Owner of the Lot shall promptly repair, reconstruct, or restore the same, or cause the same to be repaired, reconstructed, or restored, to the condition existing prior to such damage or

destruction. All repairs of internal installations of dwellings, such as water, light, power, sewage, telephones, sanitary installations, doors, windows, lamps, and all other accessories belonging to the dwelling area, shall be maintained at the Owner's expense. Each Owner shall also maintain in good condition and repair all paved, concrete, and other artificially surfaced areas located on the Owner's Lot.

- 8.3 **Maintenance of Lots and Driveway Easements.** Every Owner must perform promptly all maintenance and repair work on his or her own Lot, which if omitted would affect the Development in its entirety or in a part belonging to other Owners, and is expressly responsible for the damages and liabilities that his or her failure to do so may engender. An Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any Common Area or facility damaged through the Owner's fault or that of his or her Guests or invitees.

Easements for driveways shall be maintained in suitable condition for passenger car travel and shall have dust-free, hard surfaces. Maintenance expenses for driveways within an easement for common driveways, if any, shall be shared equitably by the Owners of the Lots which they service, unless the repairs are necessitated by the acts of a single Owner (for example, during construction) in which case that Owner shall be responsible for repairs. If the Owners cannot agree as to the responsibility for, or adequacy of, repairs, the Board of Directors of the Association shall decide.

- 8.4 **Maintenance of Landscaping.** All lawn-areas shall be kept mowed as needed to keep an even, well-groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds. In addition, each Owner of a Lot shall keep all other Landscaping of every kind located on his or its Lot neatly groomed and trimmed (including the pruning of dead wood) according to their plant culture and landscape design, and each Owner shall keep all such Landscaping watered and fertilized at such times and in such quantities as required to keep them alive and attractive, and each Owner shall keep all such areas properly cultivated and free of trash, weeds, and other unsightly materials. Each Owner shall immediately remove and replace any dead tree, shrub, plant, ground-cover, or other dead Landscaping on its Lot. Notwithstanding the foregoing, Owners shall not be responsible for maintenance of any area which (i) is an area of Association responsibility, or (ii) is an area which the Association assumes responsibility for in writing. All trees planted on Lots are to be planted a minimum of ten feet (10') from the edge of adjacent roadways and sidewalks and a minimum of three feet (3') from all utility easements, with such distances to be measured from the base of the trunk of such trees. All shrubs planted on Lots are to be a minimum of three feet (3') from roadways, sidewalks, driveways and curbs.

- 8.5 **Additional Maintenance; Standard of Care.** The Association shall have the right, but not the obligation, to undertake any maintenance within the Development as the Board may from time to time determine to be in the best interest of the Association and the Members. The Board shall endeavor to use a high standard of care in providing any maintenance, management and repair, so that the Development will reflect a high pride of ownership.

- 8.6 **Maintenance of Walls other than Common Walls.** Walls (other than common fencing-walls and other than perimeter-walls included as areas of Association responsibility) located on a Lot shall be maintained, repaired, and replaced by the Owner of the Lot as approved and authorized by the Association. Any wall which is placed on the boundary line between a Lot and the Common Area (other than perimeter-walls included as areas of Association responsibility) shall be maintained, repaired, and replaced by the Owner of the Lot as approved and authorized by the Association, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area.
- 8.7 **Assessment for Damage or Destruction.** Notwithstanding any other provision contained in this Declaration, in the event that any Lot or Common Areas are damaged or destroyed through the willful or negligent act or omission of any Owner, his family, pets, Guests, Lessees, Occupants, licensees, or agents and the Association performs the appropriate repairs or replacements as required or permitted herein, the cost to repair such damage or destruction shall be added to and become a part of the assessment to which such Lot is subject.
- 8.8 **Assessment for Nonperformance of Maintenance.** In the event any Owner fails to maintain any portion of its Lot and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of such maintenance and repairs shall be added to and become a part of the Assessment to which such Lot is subject.
- 8.9 **Insurance Obtained by Owner.** Each Owner shall be obligated and responsible for obtaining property damage insurance for his own benefit and at his own expense covering his own Lot and the Improvements located thereon. Each Owner shall also be obligated and responsible for obtaining, at his own expense personal liability insurance for death, bodily injury, or property damage arising out of the use, ownership, or maintenance of his Lot and Improvements.

9. **MISCELLANEOUS.**

- 9.1 **Interpretation.** Except for judicial construction, the Developer shall have the exclusive right to interpret and construe this Declaration until all Lots have been sold and escrows closed, or until such earlier date as the Developer relinquishes this right. Thereafter, the Association shall have the exclusive right to interpret and construe this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Developer's or the Association's (as the case may be) interpretation of the covenants hereunder shall be final, conclusive and binding upon all persons and upon the premises.
- 9.2 **Notice of Noncompliance.** The Committee may, at any reasonable time, inspect a Lot or improvement and, upon discovering a violation of this Declaration, provide a written notice of noncompliance to the Owner, including a reasonable time limit within which to correct the violation. If an Owner fails to comply within such time period, the Committee or its authorized agents may enter the Lot and correct the

violation at the expense of the Owner of such Lot, or may take whatever action it deems appropriate, including commencement of an action for specific performance.

9.3 **Enforcement.** The Association and/or Committee shall have the right to enforce corrective measures. Corrective measures shall be initiated by written notice to the Owner of the condition that requires correction. If the Owner fails to commence and diligently pursue the corrective measures as noticed or finally ordered, the Association may enter, or cause its agent or employee to enter, upon the Lot and accomplish the corrective measures, and the cost thereof shall be assessed against the Lot as a special assessment and may be secured by a lien.

9.4 **Fine.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE BOARD MAY FIX A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE ARCHITECTURAL CONTROL COMMITTEE. SAID FINE SHALL BE COLLECTED AS AN ASSESSMENT PER THE PROVISIONS OF THIS DECLARATION.

9.4.1 IF AN OWNER, WHO OWNS A LOT IN THE ASSOCIATION PRIOR TO THE EXECUTION OF THIS DECLARATION, DOES NOT CONSTRUCT A LIVABLE DWELLING, PER THE PROVISIONS OF THIS DECLARATION, ON HIS LOT WITHIN TWENTY-FOUR (24) MONTHS OF THE EXECUTION OF THIS DECLARATION, THE BOARD MAY FIX AN INITIAL FINE OF UP TO FIVE THOUSAND DOLLARS (\$5,000) AND A CONTINUING FINE OF ONE THOUSAND DOLLARS (\$1,000) PER MONTH UNTIL A LIVABLE STRUCTURE IS CONSTRUCTED ON THE LOT.

9.4.2 IF AN OWNER ACQUIRES OWNERSHIP OF A LOT SUBSEQUENT TO THE EXECUTION OF THIS DECLARATION, SAID OWNER, WITHIN TWENTY-FOUR MONTHS (24) OF ACQUIRING A LOT WITHIN THE ASSOCIATION, MUST CONSTRUCT A LIVABLE DWELLING. IF SAID OWNER FAILS TO ABIDE BY THIS SECTION, THE BOARD MAY FIX AN INITIAL FINE OF UP TO FIVE THOUSAND DOLLARS (\$5,000) AND A CONTINUING FINE OF ONE THOUSAND DOLLARS (\$1,000) PER MONTH UNTIL A LIVABLE STRUCTURE IS CONSTRUCTED ON THE LOT.

9.4.3 ANY FINE ISSUED PURSUANT TO SECTION 9.4 OF THE DECLARATION SHALL BE COLLECTED AS AN ASSESSMENT PER THE PROVISIONS OF THIS DECLARATION. THE ASSOCIATION MAY, BUT SHALL NOT BE REQUIRED, TO REMOVE ANY NONCONFORMING STRUCTURES OR IMPROVEMENTS AND MAY RECOVER THE COST OF SAID REMOVAL FROM THE MEMBER OR OWNER. ANY AMOUNT PAYABLE BY AN OWNER

HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY LIQUIDATED DAMAGES LEVIED AGAINST AN OWNER, SHALL BE DEEMED A SPECIAL ASSESSMENT AND MAY BE SECURED BY A LIEN. THE ASSOCIATION MAY ALSO SEEK AN INJUNCTION IN SUPERIOR COURT REQUESTING THAT THE COURT ORDER THE MEMBER OR OWNER TO ABIDE BY THIS DECLARATION. ANY ATTORNEYS' FEES OR COURT COSTS INCURRED IN SAID ACTION SHALL BE PAID BY THE OWNER OR MEMBER.

- 9.5 **Notice of Property Title or Lien.** Every Lot Owner shall promptly cause to be duly recorded in the office of the Maricopa County Recorder the deed, lease, assignment, or other conveyance to him or her of his or her Lot, or other evidence of his or her title thereto. In addition, every Lot owner shall immediately notify the Board of Directors through the treasurer, who shall in turn notify the secretary so that both may maintain such information in the appropriate records of the Association.

Any mortgagee, holder of a beneficial interest, or trustee under a deed of trust on a Lot may file a copy of its mortgage or deed of trust with the Board of Directors through the secretary, who shall maintain such information in the record of ownership for the Association. After the filing of the mortgage or deed of trust, the Board of Directors, through its secretary, shall be required to notify the mortgagee, beneficiary, or trustee of any Lot Owner who is in default in payment of any sum required herein, and the mortgagee, beneficiary, or trustee, at its option, may pay the delinquent expenses.

- 9.6 **Effect and Amendment.** The foregoing Covenants, Conditions, and Restrictions (CC&Rs) shall run with the land and shall be binding on all persons owning Lots until December 31, 2023, at which time said covenants shall be automatically extended for successive periods of ten (10) years each. The Developer, at any time prior to the Transition Date and thereafter the Owners, at any time, by a two-thirds (2/3) vote of the Members, may amend the Declaration except as hereinafter provided. No amendment to the Declaration shall affect the rights, exclusions, or exemptions granted to the Developer without the Developer's prior written consent, which consent shall be granted or withheld at the sole discretion of the Developer. No amendment may be made which allows for the right to amend this Declaration as it pertains to the rights, exclusions, or exemptions granted to the Developer without the Developer's prior written consent, which consent shall be granted or withheld at the sole discretion of the Developer. Deeds of conveyance of said property, or any part thereof, shall contain the above restrictive covenants by reference to this document, but whether or not such reference is made in such deed or any part thereof, each and all of such CC&Rs shall be valid and binding upon the respective grantees.

- 9.7 **Violation of Covenants, Conditions, and Restrictions.** Violation of any one or more of these CC&Rs may be restrained by any court of competent jurisdiction and damages awarded against such violators, provided, however, that a violation of these CC&Rs, or any one or more of them, shall not affect the lien of any mortgage which hereafter may be placed of record upon said Lot; nor shall a violation of said

covenants cause a reversion of the title to the land. Invalidation of any one of these restrictions by judgment or court order shall in no way affect any of the other provisions but they shall remain in full force and effect. If there is a violation or threat or attempted violation of any of these CC&Rs, it shall be lawful for any Owner, the Association, the Committee, or the Developer to prosecute any proceedings at law or in equity against the person or persons violating or attempting or threatening to violate any of these covenants or restrictions and either to restrain or enjoin such violation or recover damages or other remedies for such violation.

- 9.8 **Invalidity of Any Portion.** Any determination by any court of competent jurisdiction that any provision in this instrument is invalid or unenforceable shall not affect the validity or enforce ability of the remaining provisions of this instrument and the same shall remain in full force and effect. If any part of this Declaration is found to be in violation of the Arizona Revised Statutes concerning planned communities, as may be amended from time to time (currently set forth at A.R.S. § 33-1801, et seq.), then this Declaration shall be deemed amended to comply with such statutes so that this Declaration is no longer in violation thereof.
- 9.9 **Failure to Enforce.** The failure to enforce any breach or violation of any of the provisions of this Declaration shall not constitute an abandonment or waiver of any right to enforce such provision in the future or of any of the other covenants herein set forth.
- 9.10 **Indemnification and Acknowledgment.** THE OWNERS ACKNOWLEDGE THAT: (i) THE PROPERTY SUBJECT TO THIS DECLARATION CONTAINS COMMON AREAS; (ii) THE COMMON AREAS ARE INTENDED SOLELY FOR AESTHETIC PURPOSES AND LIMITED RECREATIONAL USE; (iii) THE COMMON AREAS POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS, AND OTHERS; (iv) NO SAFETY PERSONNEL WILL PATROL THE COMMON AREAS AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS, AND OTHERS; AND (v) THE OWNERS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DEVELOPER AND THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, INJURIES, DAMAGES, EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES INCURRED BY OR CLAIMED AGAINST THE DEVELOPER, THE ASSOCIATION, AND THEIR SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, INJURIES, DAMAGES, EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES, INCURRED BY OR CLAIMED AGAINST THE DEVELOPER, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS UNDER ANY LAWS ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE COMMON AREAS.

