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HELEN PURCELL  
20041200287 10/14/2004 09:23  
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802-42-1-1--  
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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS**

**FOR**

**AVALON VILLAGE**

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS FOR  
AVALON VILLAGE**

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

**FOR**

**AVALON VILLAGE**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS is executed to be effective as of the 4th day of October, 2004, by KB HOME Phoenix Inc., an Arizona corporation ("Declarant").

**RECITALS:**

A. Declarant is the owner of certain real property located in Phoenix, Arizona described on *Exhibit A* attached hereto and incorporated herein by this reference (the "Property") to be developed as a community known as "Avalon Village" (the "Project").

B. Declarant desire to form an Arizona nonprofit corporation to be known as the "Avalon Village Community Association" (the "Association") for the purposes of, among other things, (i) holding title in fee or otherwise controlling all or portions of the Common Areas, in regard to which the Association will be delegated certain powers to construct, administer, operate, repair, and maintain the Common Areas and enforce this Declaration; and (ii) establishing, collecting, disbursing, and enforcing the Assessments provided for or created herein.

C. Declarant desires and intends that the Property shall be held, sold, leased, and/or otherwise conveyed subject to the easements, restrictions, covenants, conditions, servitudes, assessments, liens, and reservations in this Declaration, which: (i) are for the purpose of protecting the desirability and attractiveness of the Property; (ii) shall run with all of the real property comprising the Property; (iii) shall be binding on all parties having any right, title, or interest in the Property, or any part thereof; and (iv) shall inure to the benefit of said parties and their successors and assigns.

NOW, THEREFORE, Declarant, as the present fee owner of the Property, hereby declares, covenants, and agrees as follows:

**ARTICLE 1**

**DEFINITIONS**

As used in this Declaration, the following terms shall have the following meanings:

"**Affiliate**" of a Person means a Person that controls, is controlled by, or is under common control with such other Person.

"**Agency**" means the Federal Housing Administration, Veterans Administration, Federal National Mortgage Corp., Federal Home Loan Mortgage Corp., or other governmental, quasi-governmental, or private agency providing residential loan financing, guarantees, or other accommodations.

"**Articles**" means the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

"**Annual Assessments**" means the Assessments levied by the Board pursuant to *Section 8.4*.

"**Assessment Lien**" means the lien created and imposed by *Section 8.2*.

"**Assessments**" means all assessments levied pursuant to *Article 8* and all fees, fines, penalties, and charges due under this Declaration or the Association Rules.

"**Association**" means the "Avalon Village Community Association", an Arizona nonprofit corporation, and its successors and assigns.

"**Association Rules**" means the reasonable rules and regulations adopted by the Association pursuant to *Section 6.3*.

"**Board**" means the Board of Directors of the Association.

"**Builder**" means a Person in the business of, or a Person which has an Affiliate in the business of, constructing and selling homes or in the business of acting as a landbanker that sells Lots to Persons who construct and sell homes, which purchases a Lot or Lots without Dwelling Units constructed thereon.

"**Bylaws**" means the Bylaws of the Association, as amended or restated from time to time.

"**City**" means the City of Phoenix or other municipality within which a portion of the Property may be located now or in the future.

"**Class A Member**" has the meaning given to it in *Section 7.2*.

"**Class B Member**" has the meaning given to it in *Section 7.2*.

"**Committee**" means the Design Review Committee formed pursuant to *Article 4*.

"**Common Areas**" means (a) those portions of the Project, together with the buildings, structures, and Improvements thereon, which the Association may, from time to time, own in fee or in which it may have an easement interest, for as long as the Association holds fee title or an easement interest; (b) all land within the Project which Declarant, by this Declaration or in any other Recorded instrument, makes available for use by Members of the Association or otherwise designates as Common Areas for purposes of this Declaration; (c) all land or right-of-way easements within the Project which are dedicated to the public or to the City, but which the City or other governmental agency requires the Association to maintain, (d) any and all private internal drives; and (e) any other areas with respect to which the Association has assumed in writing administrative or maintenance responsibilities.

Avalon Village

**"Common Expenses"** means the expenses of operating the Association, including all expenses listed in *Section 8.1* or *Section 9.1*.

**"Declarant"** means KB HOME Phoenix Inc., an Arizona corporation, and each Affiliate thereof including KB HOME Sales - Phoenix Inc., and any assignee of Declarant's rights. Declarant may assign its rights by a Recorded instrument expressly assigning such rights, or any portion thereof, to a subsequent Owner or Owners of all or part of the Property.

**"Declaration"** means this Declaration of Covenants, Conditions, Restrictions, and Easements, as amended or supplemented from time to time as herein permitted.

**"Design Guidelines"** has the meaning given to it in *Section 4.1*.

**"Designated Builder"** means a Builder that is designated by the Declarant as a "Designated Builder" in a Supplemental Declaration or in a written notice given by the Declarant to the Association and by such designation receives certain rights as expressly provided in this Declaration.

**"Dwelling Unit"** means any building, or part thereof, situated upon a Lot and intended for use and occupancy as a residence.

**"First Mortgage"** means a deed of trust or mortgage Recorded against a Lot which has priority over all other deeds of trust or mortgages recorded against the same Lot.

**"Improvement"** means any building, wall, structure, landscaping, equipment, or other item and any addition, alteration, modification, repair, change, or other work regarding any such item, including exterior paint, which in any way alters the exterior appearance of any part of a Lot and is Visible From Neighboring Property.

**"Lot"** means a lot shown on a Recorded plat for the Property upon which a Dwelling Unit can be constructed and occupied pursuant to applicable law.

**"Member"** means any Person entitled to a Membership in the Association hereunder.

**"Membership"** means the combination of rights and duties of Members in the Association.

**"Occupant"** means any Person, other than an Owner, occupying or in possession of a Lot, or any portion thereof or any building or structure thereon, whether as a lessee under a lease or otherwise.

**"Owner"** (when capitalized) means (and any reference in this Declaration to "own", "owned", or "ownership" when used in reference to a portion of the Property shall be deemed to include) the Record holder of legal title to the fee simple interest in any Lot or, in the case of a Recorded "contract", as that term is defined in A.R.S. § 33-741(2), then the holder, of Record, of the purchaser's or vendee's interest under said contract, but excluding others who hold such title merely as security. If fee simple title to a Lot is vested of Record in a trustee pursuant to A.R.S. § 33-801 *et seq.*, then for purposes of this Declaration legal title shall be deemed to be held by the trustor (or the trustor's successor of Record), and not by the trustee.

**"Person"** means a natural person, corporation, partnership, limited liability company, trustee, or any other legal entity.



Avalon Village

**"Project"** means the planned community known as "Avalon Village" to be developed on the Property.

**"Property"** means the real property more particularly described on *Exhibit A* attached hereto and incorporated by this reference subject to any adjustments under *Section 15.10*.

**"Record" "Recording" and "Recorded"** means placing or having placed a document of public record in the Official Records of Maricopa County, Arizona.

**"Special Assessments"** means the assessments, if any, levied by the Board pursuant to *Section 8.7*.

**"Visible From Neighboring Property"** means, with respect to any given object, that all or a part of such object is or would be visible to an individual six (6) feet tall, standing at ground level on any portion of any Lot, tract, or street within the Project.

## ARTICLE 2

### **PROPERTY AND PERSONS BOUND BY THIS DECLARATION**

**2.1 General Declaration.** This Declaration is established for the purpose of enhancing the value, desirability, and attractiveness of the Property. Declarant hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved, or transferred, in whole or in part, subject to this Declaration, as the same may be amended or modified from time to time, subject to any de-annexation under *Section 15.10*. Subject to the terms hereof, this Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Property, any Person having an interest in all or a portion of the Property, and their successors in interest.

**2.2 Declarant's Disclaimer of Representations.** Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that the 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 Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner or other Person acquiring title to a Lot or an interest in a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to a Lot agrees that Declarant shall have no liability with respect thereto. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes, or restrictions with respect to the use of any property subject to this Declaration.

## ARTICLE 3

**EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS**

**3.1 Easements and Rights of Enjoyment.** Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, which is appurtenant to and shall pass with the title to each Owner's Lot. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grant and rights are subject, among other things, to the following limitations:

(a) The right of the Association to suspend the voting rights and the right to use and enjoy the Common Areas:

(i) for any period during which an Assessment remains delinquent;

(ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association Rules; or,

(iii) for successive 60-day periods if any such delinquency or infraction is not corrected during any preceding suspension period;

(b) The right of the Association to regulate and control use of the Common Areas pursuant to the Association Rules or otherwise in accordance with this Declaration, including, but not limited to, rules, regulations, and policies limiting the number of guests who may use the Common Areas and restricting or prohibiting access to such portions of the Common Areas (such as landscaped areas) not intended for use by the Owners or Occupants; and,

(c) The right of the Association to grant permits, licenses, easements, dedicate, or transfer any part of the Common Areas to any public agency, authority, or utility for utilities, roads, and other purposes reasonable, necessary, or useful for the proper maintenance and operation of the Property and subject to such conditions as may be agreed to by the Association in accordance with *Section 10.5*, if applicable.

**3.2 Delegation of Use.** Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his rights of use and enjoyment in the Common Areas to the members of his family or his Occupants, employees, customers, or guests subject to the limitations set forth herein and in the Association Rules. Each Owner or Occupant shall cause his family members, tenants, other Occupants, employees, invitees, permittees, and guests to comply with this Declaration, the Articles, the Bylaws, and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such family members, tenants, other Occupants, employees, invitees, permittees and guests, notwithstanding the fact that such family members, tenants, other Occupants, employees, invitees, permittees, and guests are also fully liable for any violation of each and all of those documents. If a Lot is leased or rented by the Owner thereof, the Occupant and the members of the Occupant's family residing with such Occupant shall have the right to use the recreational facilities situated on the Common Areas during the term of the lease, and the Owner

of such Lot shall have no right to use such recreational facilities until the termination or expiration of such lease.

**3.3 Easement for Common Areas Maintenance and Enforcement.** The Association shall have an easement upon, over, under, and across all Lots and other property within the Project (except property owned by Declarant or a Designated Builder) for the purpose of (a) repairing, maintaining, and replacing the Common Areas and all Improvements thereon, and (b) performing all other rights, duties, and obligations of the Association under this Declaration.

**3.4 Utility Easements.** All utility installations including, without limitation, electrical installations, must be placed underground unless the prior written consent is given by the Declarant while there is a Class B Membership, or by the Association after the Class B Membership ceases to exist. All easements located in, on, or under the Common Areas must be specifically agreed to by Declarant while there is a Class B Membership, or by the Association after the Class B Membership ceases to exist. Until the Class B Membership ceases to exist, Declarant may cause the Association to grant easements and licenses over, under, and across the Common Areas as reasonably needed for development of the Project.

**3.5 Access.** If ingress or egress to any Lot is through Common Areas, an easement for such ingress and egress is hereby created except that ingress and egress is not created across Common Areas adjacent to any vehicular non-access easement which has been established on a Lot or the Common Areas pursuant to the Recorded plat.

**3.6 Easements to Facilitate Development.**

**3.6.1** The Declarant hereby reserves to itself and its successors and assigns, to its contractors, subcontractors, suppliers, engineers, architects, and agents, and to any Designated Builder a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, including without limitation: (a) the construction of all Improvements on the Common Areas which Declarant deems necessary; (b) the construction of Residences and other Improvements on Lots; and (c) the storage of supplies of building materials and equipment necessary to construct Improvements on the Common Areas and the Lots.

**3.6.2** The Declarant hereby reserves to itself, its successors and assigns, and any Designated Builder the right to: (a) use any Lots owned or leased by the Declarant or such Designated Builder, any other Lot with written consent of the Owner thereof, or any portion of the Common Areas as models, management offices, sales offices, a visitors' center, construction offices, customer service offices, or sales office parking areas; and (b) install and maintain on the Common Areas, any Lot owned or leased by the Declarant or such Designated Builder, or any other Lot with the consent of the Owner thereof, such marketing, promotional, or other signs which the Declarant or such Designated Builder deems necessary for the development, sale, or lease of the Property or any other property owned by Declarant or a Designated Builder. So long as the Declarant or such Designated Builder is selling and/or marketing the Property (or any other property owned by Declarant or such Designated Builder) the Declarant or such

Designated Builder shall have the right to restrict the use of parking spaces situated on the Common Areas and to reserve such parking spaces for use by prospective purchasers of Lots, the Declarant's or such Designated Builder's contractors, subcontractors, suppliers, agents, or employees or other Persons engaged in sales, marketing, or construction activities for or on behalf of the Declarant or such Designated Builder.

#### ARTICLE 4

##### DESIGN CONTROL

**4.1 Design Review Committee.** Declarant shall establish the Committee to perform the functions of the Committee set forth in this Declaration. The Committee shall adopt procedural rules and regulations for its performance of such duties, including procedures for the preparation, submission, and consideration of the application for any approvals required by this Declaration. The Committee shall make its decision on an application for approval within sixty (60) days of the submission of such application. If the Committee fails to respond to an application, the application shall be deemed disapproved. The Committee shall consist of such number of regular members and alternate members as Declarant may designate. All such members shall be appointed by Declarant for so long as Declarant owns property within the Project. Thereafter, the members of the Committee shall be appointed by the Board. The Committee and/or the Board of Directors shall promulgate design guidelines (herein, as amended from time to time, the "Design Guidelines") to be used by the Committee in rendering its decisions. The Committee shall have all the powers, duties, and authority conferred upon it by this Declaration and the Design Guidelines. The decisions of the Committee shall be final on all matters submitted to it pursuant to this Declaration.

**4.2 Variances.** The Committee may grant variances from the standards set forth in the Design Guidelines if the Committee determines the matter permitted under the requested variance will not have a substantially adverse affect on other Owners and Occupants and is consistent with the high quality of life intended for the Project.

**4.3 Fee.** The Committee may establish a reasonable fee from time to time to defer the costs of the Committee in considering any requests for approvals submitted to the Committee, which fee shall be paid at the time the request for approval is submitted. The Committee may also authorize supplemental fees to cover the cost of retaining consultants and other professional services needed to evaluate properly any matter submitted to the Committee for review.

**4.4 Personal Liability.** No Committee member, officer, or director of the Association (subject to any mandatory limitations imposed by A.R.S. § 10-3202 or other applicable law), Declarant, or Designated Builder shall be personally liable to the Association, any Owner, or to any other Person, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of their acts or omissions (including, without limitation, errors, and negligence) except to the extent such Committee member, officer or director, Declarant, or Designated Builder intentionally inflicts harm on the Association or its Members, intentionally violates criminal law, receives a financial benefit to

which such Person was not entitled, or is liable for an unlawful distribution under A.R.S. § 10-3833 or other applicable law.

**4.5 Provisions if No Committee.** In the event there is no Committee in existence, then the Board shall undertake the Committee's responsibilities hereunder, including without limitation approvals required by this Declaration.

## ARTICLE 5

### PERMITTED USES AND RESTRICTIONS

**5.1 Residential Purposes.** No gainful occupation, profession, business, trade, or other nonresidential use shall be conducted on or in any Dwelling Unit, provided that an Owner or Occupant may conduct limited business activities in a Dwelling Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve door-to-door solicitation of other Owners and Occupants; (d) the business activity does not generate drive-up traffic or customer or client parking; and (e) the business activity is consistent with the residential character of the property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other Owners, as may be determined in the sole discretion of the Board.

**5.2 Animals.** No animal, bird, livestock, poultry, or fowl of any kind, other than a reasonable number of generally recognized house pets (as determined by the Board and set forth in the Association Rules) shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. Notwithstanding the foregoing, no pets may be kept upon the Property or on or in any Lot which, in the opinion of the Board, result in any annoyance or are obnoxious to Owners or Occupants of other Lots in the vicinity.

**5.3 Garbage.** No garbage, trash, or debris shall be allowed, stored, or placed on a Lot except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except on days of collection only. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. No incinerator shall be maintained on any Lot and no trash, garbage, or debris shall be burned thereon by open fire or otherwise. The Board shall have the right to require all Owners and Occupants to place trash and garbage in containers located in areas designated from time to time by the Board or the City.

**5.4 Clothes Drying Facilities.** No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot unless they are not Visible From Neighboring Property.

**5.5 Window Coverings.** Within ninety (90) days of the initial conveyance of a Lot with a house constructed thereon to an Owner from the Declarant or a Designated Builder (or by a trustee, for the benefit of the Declarant or a Designated Builder), Owner or Occupant shall install permanent window coverings. All window coverings (temporary or permanent) shall be white, cream or natural wood stain from the exterior of the home, where Visible From

Neighboring Property. In no event shall the interior or exterior of any windows be covered with reflective material, such as foil, or with paper, bed sheets, or other temporary coverings.

**5.6 Garages and Driveways.** The garages situated on a Lot shall be used for parking vehicles and storage only, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons. Detached garages are not permitted.

**5.7 Improvements and Construction.** The design, size, color, location, and elevation of any Improvement or landscaping which are Visible From Neighboring Property, and any and all changes or alterations thereto, must be approved in writing by the Committee prior to installation. All Improvements and landscaping constructed or installed by or for Declarant and all changes thereto done by or for Declarant shall be conclusively deemed approved by the Committee. A storage shed, other equipment, and other Improvements which is/are Visible From Neighboring Property may not be placed or installed on a Lot unless approved in writing by the Committee and such approval may be withheld in the Committee's sole discretion. Only houses constructed on the Property in accordance with this *Section 5.7* shall be occupied as residences.

**5.8 Heating, Ventilating and Air Conditioning Units.** No heating, air conditioning, or evaporative cooling units or equipment shall be placed, constructed, or maintained upon the Property, including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall which conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Committee.

**5.9 Solar Collection Panels or Devices.** Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior written approval of the plans therefor by the Committee, solar collecting panels and devices may be placed, constructed, or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar collecting panels and devices are placed, constructed, and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed, and maintained in such location(s) and with such means of screening or concealment as the Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when Visible From Neighboring Property. The restrictions in this *Section 5.9* shall be subject to any limitations imposed by law.

**5.10 Antennas, Poles and Towers.** No antenna, aerial, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radio) signals of any kind (collectively referred to herein as "antennas") will be allowed outside the Dwelling Unit, except:

(a) Those antennas whose installation and use is protected under federal law or regulations (generally, certain antennas under one meter in diameter), provided that an application for such an antenna must be submitted to the Committee and such application will be approved only if:

(i) the antenna is designed to assure the minimal visual intrusion possible (i.e., is located in a manner that minimizes visibility from the street or other Lots); and

(ii) the antenna complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (i.e., without precluding reception of quality signal, or unreasonably increasing the cost of the antenna).

Upon the written request of the Owner when submitting the application, the Committee shall consider such an application on an expedited basis and shall strive to render a decision within seven days, but in no event later than fourteen days, from the date the applicant submits a complete application.

or

(b) Dishes 18" in diameter or smaller in locations approved in writing by the Committee for rear or side yard locations and appropriately screened.

Any transmission cable for a receiver to the house must be underground. The restrictions in this *Section 5.10* shall be subject to any limitations imposed by law.

**5.11 Basketball Goals.** Except to the extent such may be permitted by the Association Rules and Design Guidelines adopted and amended by the Committee from time to time, no basketball goal or similar structure or device shall be placed, constructed or attached on any Lot unless approved in writing by the Committee prior to installation.

**5.12 Parking.** Parking will be restricted to certain locations on the private drives (streets) as identified in the Association Rules and Regulations.

**5.13 Vehicles.** Private, non-commercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, ninety-six (96) inches in height or width or two hundred eighty-eight (288) inches in length, may be parked on the Property within a garage or in a private driveway appurtenant to a Dwelling Unit, but, except as provided in the next sentence, may not be parked elsewhere on the Property or streets adjoining the Property. The preceding sentence shall not preclude occasional overflow parking in a street right-of-way for guests or other reasonable purposes, provided that no inconvenience is imposed on the Owners or Occupants of other Lots and provided that such use is in compliance with street signage and parking restrictions, if any. No other vehicle (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents, or similar vehicles or equipment, commercial vehicles, or vehicles exceeding one (1) ton in carrying load or cargo capacity, ninety-six (96) inches in height or width, or two hundred eighty-eight (288) inches in length or similar vehicles or equipment) shall be kept, placed, or maintained upon the Property or any roadway adjacent thereto, except: (a) within a fully-enclosed garage

appurtenant to a Dwelling Unit; or (b) in such areas and subject to such rules and regulations as the Board may designate and adopt in its sole discretion (and the Board in its sole discretion may prohibit such other vehicles and equipment completely). No vehicle (including, but not limited to, those enumerated in the preceding sentences) shall be constructed, reconstructed, or repaired on the Property or any roadway therein or adjacent thereto except within a fully enclosed garage. No motor vehicles of any kind which are not in operating condition shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit). The provisions of this *Section 5.13* shall not apply to (a) vehicles of Declarant, a Designated Builder, or their employees, agents, Affiliates, contractors, or subcontractors during the course of construction activities or sales activities upon or about the Property, or (b) vehicles used by the Association in repairing, maintaining, and replacing the Common Areas and all Improvements thereon, and in performing all other rights, duties, and obligations of the Association under this Declaration. Notwithstanding anything to the contrary, the Association's right to prohibit a resident from parking a motor vehicle on a street or driveway within the Property are subject to the limitations imposed by A.R.S. §33-1809, as amended or restated.

**5.14 Towing of Vehicles.** The Board shall have the right to have any mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents, or similar vehicles or equipment, commercial vehicles, or vehicles exceeding one (1) ton in carrying load or cargo capacity, ninety-six (96) inches in height or width, or two hundred eighty-eight (288) inches in length, or similar vehicles or equipment, or any automobile, motorcycle, motorbike, or other motor vehicle that is parked, kept, maintained, constructed, reconstructed, or repaired in violation of *Section 5.13* towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment as provided in this *Section 5.14* 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 or Resident, any amounts payable to the Association shall be secured by the Assessment Lien described in *Section 8.2*, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

**5.15 Fences, Interferences, and Obstructions.** Unless otherwise shown on the Recorded plat for the Property, no fence, wall, hedge, shrub, or other plant which obstructs sight lines at elevations between two (2) feet and six (6) feet above adjacent public streets shall be permitted on any corner Lot within the triangular area formed by the streets and a straight line connecting those property lines at points twenty-five (25) feet from the intersection of those property lines (or, in the case of a rounded Lot corner, from the intersection of those property lines as extended). No tree shall be permitted to remain within such area unless the foliage line is maintained a sufficient height to prevent obstruction of such sight lines.

**5.16 Leasing; Obligations of Tenants and Other Occupants.** All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws, and the Association Rules. Each Owner shall cause his, her, or its tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws, and the Association Rules and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents. No Owner may lease less than his, her, or its entire Lot. No Lot may be leased for a period of less than thirty (30) days. The



provisions of this *Section 5.16* shall not apply to Declarant's or a Designated Builder's use of Lots owned by (or leased to) Declarant or a Designated Builder as a model home or for marketing purposes.

**5.17 Landscaping.**

**5.17.1** Within ninety (90) days of acquiring an improved Lot, each Owner (other than Declarant or a Designated Builder) shall complete the landscaping (if not already landscaped) of all portions of the Lot that are Visible From Neighboring Property, including without limitation, the rear yard of any Lot with view fencing and any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and an adjacent street. Each Owner shall maintain the landscaping on such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street (except to the extent the Association has expressly undertaken the obligation to maintain any such landscaping), and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Landscaping plans shall be approved in writing by the Committee prior to installation and landscaping is to be installed in compliance with applicable Design Guidelines and the approved plans. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean, and attractive condition consistent in appearance with other properly maintained, improved Lots within the Property. As provided in *Section 14.3*, each Owner or Occupant is encouraged, but is not obligated, to obtain for such Person's benefit property and casualty insurance insuring such Person's real or personal property interests on or within the Property. However, notwithstanding the fact that an Owner or Occupant maintains, or fails to maintain, insurance on his real or personal property interests on or within the Property, in the event any Dwelling Unit or other structure is totally or partially damaged or destroyed by fire, Act of God, or any other cause, the Owner shall fully repair the damage and complete reconstruction of the Dwelling Unit or other structure within eighteen (18) months after occurrence of the damage or destruction. The provisions of this *Section 5.17* shall not apply to any Lot or other property owned by Declarant or a Designated Builder.

**15.17.2** In the event an Owner fails to complete the required landscaping within the ninety (90) day period, the Board may, by resolution, make a finding to such effect and pursuant thereto give notice to the Owner that unless landscaping is commenced within fifteen (15) days and thereafter diligently pursued to completion, the Board may do one or more of the following: (i) cause the required landscaping to be accomplished at the Owner's expense and the cost thereof, including an administrative charge equal to ten percent (10%) of the amount incurred by the Association, plus interest at ten percent (10%) per year on all amounts from the date incurred by the Association until the date paid to the Association by the Owner, to be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, with such costs to be secured by the Assessment Lien described in *Section 8.2*; (ii) impose a fine to be set by the Board, plus interest from the date imposed by the Association until the date paid to the Association by the Owner, to be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, with such fine

to be secured by the Assessment Lien described in *Section 8.2*; and/or (iii) pursue any of the other rights and remedies permitted by this Declaration. If, at the expiration of the fifteen (15) day period of time, the required landscaping has not been commenced and thereafter diligently pursued to completion, the Board shall be authorized and empowered to pursue any of the rights and remedies permitted by this Declaration.

**5.18 Signs.** No signs of whatever nature shall be placed on any Lot which are Visible From Neighboring Property except (a) signs required by legal proceedings; (b) political signs allowed by law; (c) a maximum of two (2) street address identification signs for each individual residence; (d) "for sale" and "for lease" signs no larger than six (6) square feet; and (e) signs used by Declarant or a Designated Builder.

**5.19 Prohibited Uses.** No use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation, or pollution, or which constitutes a nuisance or unreasonable source of annoyance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Owner shall be permitted on any Lot. No use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception, or special use ordinance or regulation) of the United States, the State of Arizona, the City or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot. The provisions of this *Section 5.19* shall not apply to any activity of Declarant, a Designated Builder, or their employees, agents, Affiliates, contractors, or subcontractors during the course of construction activities or sales activities upon or about the Property.

**5.20 Dust Control.** After the sale of a Lot by Declarant or a Designated Builder to a Person other than a Designated Builder, the areas on each Lot that are not improved with buildings (the "Clear Areas") shall be maintained in a neat and attractive condition, free of weeds and debris, and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain its Lot in a manner that minimizes the possibility of dust being transmitted into the air and over adjacent properties. Nothing in this *Section 5.20* shall be interpreted to require Declarant or a Designated Builder to landscape a Lot before a sale of such Lot by Declarant or such Designated Builder.

**5.21 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property for any unreasonable time, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Occupants. No loud, noxious, or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to persons or property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Board shall have the right, but not the obligation, to determine, in its sole discretion, whether the provisions of this *Section 5.21* have been violated. Any decision rendered by the Board shall be conclusive and shall be enforceable in the same manner as other restrictions in this Declaration. The provisions of this *Section 5.21* shall not apply to any activity of Declarant, a Designated Builder, or their

employees, agents, Affiliates, contractors, or subcontractors during the course of construction activities or sales activities upon or about the Property.

**5.22 Drainage.** No Owner or Occupant shall interfere with the drainage established for his; her or its Lot, the Property, or any other property adjacent to his, her or its Lot. If an Owner or Occupant interferes with such drainage, (i) such Owner (including the Owner of the applicable Lot in the case of an Occupant) shall be liable for any and all damage caused by the interference as well as the cost to remedy the drainage problems created by the Owner and/or Occupant; and (ii) the Association may enter the affected Lot(s) to remedy the drainage problem, at the Owner's sole cost and expense, including an administrative charge of ten percent (10%) of the amount incurred by the Association, plus interest at ten percent (10%) per year on all amounts from the date incurred by the Association until the date paid to the Association by the Owner, which cost shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, with such costs to be secured by the Assessment Lien.

**5.23 Party Walls.** Except as provided in *Section 11.2*, the rights and duties of Owners of contiguous Lots that have shared walls or fences ("Party Walls") shall be as follows:

(a) each Owner shall have an equal right to use the Party Walls to the extent such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the act or omission of an Owner or Occupant, or their agents, guests, or family (whether or not such act is negligent or otherwise culpable), such Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense (provided that this shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any insurer, Occupant, agent, guest, or other Person who otherwise may be liable to such Owner);

(c) if any portion of a Party Wall is damaged or destroyed other than by the act of an adjoining Owner or Occupant, or their agents, guests, or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin such portion of the Party Wall to immediately rebuild and repair it, and the expense shall be ratably divided among such Owners based on the amount of linear footage of their respective Lots located along such portion of the Party Wall;

(d) if a dispute occurs between Owners regarding a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Committee, whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing the damage;

(e) The Association shall have the right, but not the obligation, to perform any work which an Owner or Owner(s) fails to do in a timely manner. The Owner(s) responsible for such work shall upon demand pay all costs incurred by the Association together with interest at ten percent (10%) per annum and an administrative fee at ten percent (10%) of the amount incurred by the Association. Any amounts payable to the Association shall be secured by the Assessment Lien created in *Section 8.2*, and the

Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

**5.24 Exemption of Declarant and Designated Builders.** Nothing contained in this Declaration shall be construed to prevent the construction, installation, or maintenance by Declarant (or its designated agents and contractors) and each Designated Builder (subject to approval by Declarant) during the period of development, construction, sales, and marketing on the Property, of any model homes and sales offices and parking incidental thereto, construction trailers, landscaping, or signs deemed necessary or convenient by Declarant and each Designated Builder (subject to the approval of Declarant), in their sole discretion, to the development, construction, sale, and marketing of property within the Property. Any actions taken by a Designated Builder pursuant to this *Section 5.24* shall require the prior written approval of Declarant, which shall not be unreasonably withheld.

**5.25 Further Subdivision, Property Restrictions, Rezoning, and Timeshares.** Without the prior written approval of the Committee and the Board, no Owner other than the Declarant or Designated Builder shall do any of the following: (a) further subdivide a Lot or separate the Lot into smaller lots or parcels; (b) convey or transfer less than all of a Lot; or (c) replat the Lot or combine the Lot with other Lots. No further covenants, conditions, restrictions, or easements shall be recorded by any Owner, Occupant, or other Person other than the Declarant or a Designated Builder (subject to the approval of Declarant) against any Lot without the provisions thereof having been first approved in writing by the Committee and the Board. No application for rezoning, variances, or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant or a Designated Builder unless the application has been approved by the Committee and the Board and the proposed use otherwise complies with this Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly, or any other type of revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants. Notwithstanding the foregoing, any actions taken by a Designated Builder pursuant to this *Section 5.25* shall require the prior written approval of Declarant, which shall not be unreasonably withheld.

**5.26 Miscellaneous.** The Board, in its good-faith discretion, may grant such waivers of the restrictions contained in this *Article 5* as it shall deem appropriate, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary, or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration. In addition, the Property shall continue at all times to be subject to applicable zoning laws and ordinances; provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

## ARTICLE 6

### ORGANIZATION OF ASSOCIATION

**6.1 Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and as set forth in the Articles, the Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

**6.2 Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. Until termination of the Class B Membership, Declarant will have the right to appoint and remove all members of the Board for so long as the Declarant owns any Lot. After termination of the Class B Membership, the Board shall be elected by the Members as provided in the Bylaws. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager and/or other staff members to be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to each such employee, manager, or staff member.

**6.3 Association Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Areas, provided that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules, as adopted or amended, shall be available for inspection at the office of the Association.

**6.4 Personal Liability.** No Board member, officer, committee member, employee, or representative of the Association, a Declarant, or a Designated Builder, nor the Association, Declarant, or any Designated Builder shall be personally liable to any Owner, or to any other Person, including the Association, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of their acts, omissions, errors, or negligence, unless such Person has engaged in willful or intentional misconduct.

## ARTICLE 7

### MEMBERSHIPS AND VOTING

**7.1 Membership.** Every Owner, including Declarant, automatically shall be a Member of the Association with voting rights as provided in this Declaration for so long as such ownership continues. A Person's Membership in the Association shall close and terminate immediately when such Person is no longer an Owner. Each Owner's Membership in the Association shall be appurtenant to, and may not be separated from ownership of, the Lot to which the Membership is attributable. In the event any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property, or otherwise, each such

Person shall be considered a Member but the Membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said Membership; provided, however, that if any one of such Persons casts a vote or votes representing a Lot without objection from any other Person sharing ownership of such Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. Neither Membership in the Association nor a Member's share, right, title, or interest in and to the funds and assets of the Association can be transferred, assigned, or hypothecated except as an appurtenance to the Member's ownership of a Lot. Membership may be evidenced by an official list of Owners, which list shall be kept by the Secretary of the Association and as provided by applicable law.

**7.2 Votes.** The Association shall have two classes of voting Members. Class A Members shall be all Owners, except Declarant and each Designated Builder while the Class B Membership is in effect. A Class A Member shall have one (1) vote for each Lot owned by such Member. The Class B Members shall be Declarant and each Designated Builder. The Class B Members shall have three (3) votes for each Lot owned by a Declarant and each Designated Builder. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives satisfactory evidence thereof. Fractional votes shall not be allowed. The Class B Membership shall automatically cease and be converted to a Class A Membership upon the happening of the first of the following events:

- (a) the date seventy-five percent (75%) of the Lots have been conveyed to a Person other than a Declarant or a Designated Builder; or
- (b) the date on which each Declarant and each Designated Builder relinquishes the Class B Membership by notifying the Class A Members in writing.

**7.3 Property Rights.** Every Owner shall have a non-exclusive right and easement of enjoyment in, to, and over the Common Areas, subject to this Declaration and to reasonable rules adopted by the Board pursuant hereto. Any Owner may assign that right of enjoyment to (and share the same with) the members of his or her household and assign the same to and share the same with his, her, or its tenants and invitees subject to the provisions of this Declaration and to reasonable regulation by the Board. An Owner who leases his, her, or its Lot shall be deemed to have delegated such Owner's rights and easements under this *Section 7.3* to the lessee of such Lot for the term of such lease.

## ARTICLE 8

### ASSESSMENTS

**8.1 Creation of Assessment Right; Covenants to Pay.** In order to provide funds to enable the Association to meet its obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Assessments (herein "Assessments") shall be for Common Expenses and shall be allocated equally among all Lots. Each Owner, by acceptance of his, her, or its deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's

Lot. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due shall also pay a late charge as set by the Board from time to time. The initial late charge shall be the greater of ten dollars (\$10.00) per month or ten percent of the unpaid Assessment. The fifteen-day delinquency period and late charges shall be subject to any limitations imposed by A.R.S. § 33-1803 or other law as amended from time to time. The Owner shall also pay all costs and reasonable attorneys' fees incurred by the Association in seeking to collect such Assessments and other amounts. The Assessments with respect to a Lot, together with interest, costs, and reasonable attorneys' fees as provided in this *Section 8.1*, shall also be the personal obligation of the Person who was the Owner of such Lot at the time such Assessments arose with respect to such Lot; provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using his, her, or its Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her, or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles, or the Bylaws.

**8.2 Lien for Assessments; Remedies; Foreclosure.** There is hereby created and established a lien in favor of the Association against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any other amounts levied against such Lot or the Owner thereof pursuant to the Declaration, the Articles, the Bylaws, or the Association Rules). Such lien shall be prior and superior to all other liens affecting the Lot in question, except: (a) taxes, bonds, assessments, and other levies which, by law, are superior thereto; and (b) the lien or charge of any First Mortgage. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate). The Board may invoke any or all of the sanctions provided for herein, or any other reasonable sanction, to compel payment of any Assessment or installment thereof, not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

(a) Interest and Late Fees. The Board may impose late fees and interest in such amounts as it determines are appropriate from time to time, subject to any limitations stated in the Declaration or imposed by law;

(b) Suspension of Rights. The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights and rights to use and enjoy the Common Areas;

(c) Collection of Delinquent Amount. The Board may institute an action at law to recover a money judgment or any other proceeding to recover the

Delinquent Amount, rent, interest, and attorneys' fees without foreclosing or waiving the lien securing same;

(d) Recording of Notice. The Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in the Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of recording the notice, processing the delinquency, and recording a notice of satisfaction of the lien; and

(e) Foreclosure of Lien. The Board may foreclose the Recorded lien against the Lot in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including any right to recover any deficiency). The sale or transfer of any Lot pursuant to a First Mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage, and convey the same. During the period the Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Areas.

**8.3 Dates Assessments Commence; Declarant's and Designated Builders' Obligations.** Assessments shall be payable with respect to a Lot commencing with the earlier of: (a) initial conveyance of such Lot to a purchaser (other than another Declarant or a Designated Builder) by Declarant or by a Designated Builder (or by a trustee, for the benefit of a Declarant or a Designated Builder); or (b) termination of the Class B Membership. Assessments with respect to a Lot shall be prorated as of the date of commencement. Declarant and Designated Builders shall not be obligated to pay any Assessments with respect to Lots owned by such Declarant or Designated Builder until the Class B Membership is terminated. Until the Class B Membership is terminated, Declarant and Designated Builders shall pay or contribute to the Association cash, goods, or services (as Declarant may elect) as may be necessary to make up any shortfalls in the budget of the Association resulting from such Person's exemption from Assessments (but in no event shall Declarant be required to make such payments or contributions in excess of the Assessments Declarant would be required to pay, in the absence of this *Section 8.3*, with respect to Lots owned by Declarant and in no event shall any Designated Builder be required to make such payments or contributions in excess of the Assessments such Designated Builder would be required to pay in the absence of this *Section 8.3*, with respect to Lots owned by such Designated Builder). Shortfalls shall be allocated between Declarant and each Designated Builder prorata based on the relative number of Lots owned at either the beginning of the period for which the shortfall occurred or at the time the shortfall is determined and notice is given, as selected by Declarant. Any Person who becomes an Owner of a Lot shall pay the Annual Assessment applicable to such Owner's Lot as such becomes due, and shall pay any Special Assessment levied on or after the date the Person becomes an Owner. The previous Owner of such Lot shall remain liable for all unpaid and delinquent Assessments levied against the Owner of the Lot prior to such transfer of ownership.



**8.4 Computation of Assessments; Annual Budget.** The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the annual Assessments (herein the "Annual Assessments") for the applicable fiscal year (subject to the limitations of *Section 8.6*). Annual Assessments shall be payable annually or in installments as set by the Board. Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall make available to each Owner, upon request, a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for that year. The failure to send or to receive such a statement shall not relieve any Owner of his obligation to pay such Assessment on or before the due date. All Assessments shall be payable to the Association. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year or fails to determine the Annual Assessments for any year, then until and unless such budget is adopted or the determination is made (as applicable), the budget (and the amount of the Assessments provided for therein) for the year immediately preceding shall remain in effect. Except as required by Arizona law, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners. The Board may increase the Annual Assessments to meet the Association's expenses which exceed the amounts previously budgeted, if the Board determines that such Assessments become necessary or desirable during the fiscal year.

**8.5 Due Dates.** Assessments shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

**8.6 Increases in Annual Assessment.** Increases in Annual Assessments from one assessment period to the next assessment period shall be subject to such limitations as may be imposed by Arizona law as amended.

**8.7 Special Assessments.** In addition to levying Annual Assessments, the Board may levy a Special Assessment, but only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement owned by the Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment must be approved by at least two-thirds (2/3rds) of the votes of each class of Members voting in person or by proxy at a meeting of the Association after notice to all Members. Special Assessments shall be assessed uniformly among the Owners.

**8.8 Working Capital Fund.** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person, with the exception of Declarant and each Designated Builder, who as a result of a purchase obtains title to a Lot shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to one-fourth (1/4) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this *Section 8.8* may be used by the Association for any purpose permitted under this Declaration. Payments made pursuant to this *Section 8.8* shall be nonrefundable and shall not be offset or credited against or considered as advance payment of

any Assessments levied pursuant to this Declaration. Assessments pursuant to this *Section 8.8* are secured by the lien created by *Section 8.2* and are in addition to any other fees provided for herein and any other fees to be paid at close of escrow. No Working Capital Fund shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership, or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Fund, in which event a Working Capital Fund shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, *et seq.*

**8.9 Transfer Fee.** Each Person, other than Declarant or a Designated Builder, who as a result of a purchase obtains title to a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Assessments pursuant to this *Section 8.9* are secured by the lien created by *Section 8.2* and are in addition to any other fees provided for herein and any other fees to be paid at close of escrow.

**8.10 Reserve Contribution.** Except as otherwise provided in this *Section 8.10*, each Person, with the exception of Declarant or a Designated Builder, who as a result of a purchase obtains title to a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-fourth (1/4) of the current Annual Assessment for the Lot to the reserves of the Association for the periodic maintenance, repair, and replacement of the major components of the Common Areas (the "Reserve Contribution"). The Board may from time to time increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board by more than twenty percent (20%) during any year without the approval of Members holding more than fifty percent (50%) of the votes in the Association. No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership, or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution, in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, *et seq.* All Reserve Contributions shall be deposited in the Reserve Account established pursuant to *Section 8.11*. Payments made pursuant to this *Section 8.10* shall be nonrefundable and shall not be offset or credited against or considered as advance payment of any Assessments levied pursuant to this Declaration. Reserve Contribution amounts pursuant to this *Section 8.10* are secured by the lien created by *Section 8.2* and are in addition to any other fees provided for herein and any other fees to be paid at close of escrow.

**8.11 Reserves.** The Board shall establish reserves for the future periodic maintenance, repair, or replacement of the major components of the Common Areas. The reserves may be funded from Annual Assessments, the Working Capital Fund paid pursuant to *Section 8.8*, the Reserve Contributions paid pursuant to *Section 8.10* or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Unless the Association is exempt from Federal or State taxes, all reserves shall be accounted for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Reserve Account may only be used to pay costs and expenses related to the periodic maintenance, repair, and replacement of the major components of the Common Areas, unless the expenditure of any or all of the funds in the Reserve Account for other purposes is approved by the vote of Owners holding at least two-thirds (2/3) of the votes in the Association.

**8.12 Records and Statements of Payment.** The Treasurer of the Association shall cause to be kept detailed and accurate records, in chronological order, of the receipts and expenditures affecting the Common Areas and any other property owned or controlled by the Association, specifying and itemizing the expenses incurred and expenditures made. All records authorizing such expenditures shall be available for examination by Owners at convenient hours designated by the Board. Within fifteen (15) days following the Board's receipt of a written request from any Owner, or such shorter time as may be required by applicable law, the Board shall issue to the requesting party (or to the Person designated by such requesting party) a written statement stating that, as of the date of the statement: (a) all Assessments (including collection fees, interest, costs, and attorneys' fees, if any) have been paid with respect to the Lot of such Owner; or (b) if any such amounts have not been paid, the amount(s) then due and payable. Subject to the limitations of applicable law, the Association may impose a reasonable charge, in addition to the transfer fee referenced in *Section 8.9* above, for the issuance of such a statement, which charge must be paid at the time the request for such statement is made.

**8.13 Discharge of Liens.** The Board may cause the Association or any Owner or Occupant (by Assessment) to discharge any mechanics' or materialmen's liens or other encumbrances which in the opinion of the Board may constitute a lien against the Common Areas. When less than all of the Owners are responsible for any such lien or encumbrance, those Owners that are responsible shall be jointly and severally liable for the amount necessary to discharge the same, and for all costs and expenses, including but not limited to attorneys' fees, incurred in connection with such lien or encumbrance.

## ARTICLE 9

### USE OF ASSOCIATION FUNDS

**9.1 Use of Association Funds.** In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all funds and property collected and received by the Association from any source (the "Funds") for the common good and benefit of the Property, the Owners, and the Occupants. The Funds may be used, among other things, to insure, acquire,

construct, alter, clean, maintain, supervise, provide, and operate, in any manner whatsoever, any and all land, properties, Improvements, services, projects, programs, studies, and systems, including, but not limited to, cluster mailboxes, within the Property and the Common Areas as may be necessary, desirable, or beneficial to the general common interests of the Owners and Occupants. In connection with the foregoing, the Funds may be used for the administration, office expenses, salaries, and other personnel costs of the Association. The Association may in its discretion collect and maintain Funds to be held in reserve for any of the uses referred to in this *Section 9.1*.

**9.2 Borrowing Power.** The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate, and may utilize Funds to repay any such loans; provided, however, that no portion of the Common Areas shall be mortgaged or otherwise encumbered except as provided in *Section 10.5* below.

**9.3 Association's Rights in Spending Funds From Year to Year.** The Association shall not be obligated to spend in any year all Funds received by it in such year, and the Board may carry forward as surplus or hold in reserve (for general purposes or for specified future expenditures) any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessments in any succeeding year if a surplus or reserves exist from a prior year or years.

## ARTICLE 10

### RIGHTS AND POWERS OF ASSOCIATION

**10.1 Rights, Powers, and Duties of the Association.** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights, powers, and duties as are granted by law or as may be reasonably necessary in order to effect all of the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

**10.2 Association's Rights of Enforcement.** The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration. Further, Declarant and any other Owner, so long as Declarant and such other Owner owns property within the Project, shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration; provided that, any Owner, other than Declarant, desiring to enforce any provision of this Declaration shall first request that the Association enforce such provision, and if the Association fails to act upon such Owner's request within a reasonable time, then such Owner may pursue enforcement of the provisions on its own.

**10.3 Contracts with Others.** Subject to the restrictions and limitations contained herein, or in the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts or other transactions with other parties, including Declarant or its Affiliated companies. Such contracts or other transactions shall not be void or voidable because one or more directors or officers of the Association are employed by, have a financial interest in, or are otherwise affiliated with such other parties, including Declarant or its Affiliates

(even if such officer(s) or director(s) is present and/or votes at the meeting of the Board or committee which authorizes the contract or transaction), if (a) the fact of such interest has been previously disclosed or made known to the other members of the Board or the committee acting upon such contract or transaction, and (b) the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any management contract entered into by the Association must be terminable, without penalty, by the Association for cause at any time and without cause upon reasonable notice.

**10.4 Procedure for Change of Use of Common Areas.** Upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Areas is no longer in the best interests of the Owners and Occupants, and the approval of such resolution by not less than two-thirds (2/3rds) of the votes of all Members entitled to vote and voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use: (a) also shall be for the common benefit of the Owners and Occupants; and (b) shall be consistent with any Recorded deed and zoning regulations.

**10.5 Procedure for Transfers of Common Areas.** Except as provided in *Section 3.1* or to make minor adjustments in the boundary lines between the Common Areas and adjoining Lots or public rights-of-way, the Association shall not dedicate or otherwise convey title to the Common Areas, or mortgage or otherwise encumber Common Areas except upon: (i) the adoption of a resolution by the Board stating that the transaction would be in the best interests of the Owners and Occupants, and (ii) the approval of such resolution by Owners of at least sixty-seven percent (67%) of the Lots (excluding Declarant and Designated Builders) and by Declarant and each Designated Builder so long as Declarant and each Designated Builder own a lot. Notwithstanding anything to the contrary herein contained, if ingress or egress to any Lot is through Common Areas to be dedicated, conveyed, or encumbered, such dedication, conveyance, or encumbrance shall be subject to an easement for ingress and egress benefiting such Lot.

**10.6 Landscaping Replacement.** Landscaping originally planted on the Common Areas may exceed the landscaping that is ultimately planned for Common Areas due to over-planting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead and damaged landscaping if, in the reasonable discretion of the Board: (a) the remaining landscaping is acceptable to the Board, and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with the City in connection with the Property, even if the location of specific plants is different than the locations shown on such approved landscaping plans. Neither Declarant, any Designated Builder, nor any other installer of landscaping in Common Areas shall be responsible for replacement of landscaping that dies more than ninety (90) days following installation or that requires replacement due to vandalism, lack of proper watering or maintenance by the Association, or damage due to negligence; the Association shall be solely responsible for such replacement (subject to potential recovery by the Association from any vandal or negligent person).

**10.7 Alteration of Maintenance Procedures.** Following the termination of the Class B Membership and so long as Declarant or any Designated Builder owns any Lot, the Association shall not, without the prior written approval of Declarant and all Designated

Builders, alter or fail to follow the maintenance and repair procedures recommended by the Association's management company as of the termination of the Class B Membership unless such alteration will provide for a higher level of maintenance and repair. Declarant or any Designated Builder shall have the right, but not the obligation, to perform any required maintenance or repair not performed by the Association within ten (10) business days following notice from Declarant or a Designated Builder that such maintenance or repair is required under this *Section 10.7*. If a Declarant or Designated Builder performs such maintenance or repair, the costs incurred by the Declarant or Designated Builder shall be reimbursed by the Association within thirty (30) days following written demand for reimbursement sent to the Association and accompanied by copies of invoices for such costs. If the Association fails to reimburse such costs within thirty (30) days following written demand, interest at the rate of twelve percent (12%) per annum from the date the costs were incurred until the date paid shall be added to and become a part of the amount due by the Association to the Declarant or Designated Builder. This *Section 10.7* shall not be subject to amendment without the written approval of Declarant and all Designated Builders.

## ARTICLE 11

### MAINTENANCE

#### **11.1 Common Areas and Public Rights-of-Way.**

**11.1.1 Areas of Association Responsibility.** The Association, or its duly designated representative, shall maintain, manage, and control the Common Areas and shall keep the Common Areas in good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof. The Association's costs of doing so shall be Common Expenses of the Association. Such responsibilities shall include, without limitation: (a) maintenance, repair, and replacement of all landscaping situated upon the Common Areas; (b) maintenance, repair, and replacement of landscaping in or upon public rights-of-way immediately adjacent to the Common Areas; and (c) operation, maintenance, and repair of any drainage improvements in the Common Areas not owned and maintained by a government entity or other Person.

**11.1.2 Delegation of Responsibilities.** The Board shall have the sole discretion to determine whether the Association or an individual Owner should be responsible for maintenance of certain Common Areas or public rights-of-way considering cost, uniformity of appearance, location, and other relevant factors.

**11.1.3 Standard of Care; Disclaimer of Liability.** The Association shall use a reasonably high standard of care in providing for the repair, management, and maintenance of the Common Areas so that the Project will reflect a high degree of pride of ownership. The Board, however, shall be the sole judge as to the appropriate level of maintenance of all Common Areas by the Association. Notwithstanding any duty the Association may have to maintain and repair the Common Areas, the Association, Declarant, and Designated Builders shall not be liable for any injury or damage caused by a latent condition or by any Member, Owner, Occupant, or other Person. Neither the Association, Declarant, nor any Designated Builder shall be liable to any Person for any claim, injury, or damage arising from the use of the Common Areas, which shall be used

at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage, or repair the Common Areas.

**11.2 Walls and Fences Between Lots and Common Areas.** If a wall is located on the boundary line between Common Areas and a Lot, then the Association shall be responsible for the painting and maintenance and repair of the surface on the side thereof that faces the Common Areas and the top of such wall, and the Owner or Owners owning the opposite side of the wall shall be responsible for the maintenance, repair, painting, and replacement of such opposite side. In the case of destruction of both sides of such wall or structural damage, the Owner(s) owning Lots adjacent to the wall shall be responsible for one-half of the cost of replacement or repair of the wall and the Association shall be responsible for the other one-half. Unless originally constructed by or for Declarant or otherwise approved in writing by the Board or Committee, a wall may not be located on the Common Areas unless it is part of the Common Areas.

**11.3 Maintenance and Repair.** Every Owner and Occupant shall perform promptly all maintenance and repair work required by this Declaration, the Association Rules, the Design Guidelines, and the Bylaws. If (a) any portion of any Lot is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot or other area, or is used in a manner which violates this Declaration, or (b) the Owner of any Lot or the Occupant of such Owner's Lot, or contractor, guest, invitee, or permittee of any Owner or Occupant, damages any Common Areas, or (c) the Owner of any Lot or the Occupant of such Owner's Lot fails to perform such Owner's obligations under this Declaration, the Association Rules, the Design Guidelines, the Articles, and the Bylaws, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot that unless specified corrective action is taken within a specified time period the Association, at such Owner's expense, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association shall have the right, but not the obligation, at its sole discretion, to cause corrective action to be taken and/or to commence appropriate legal action. The cost thereof, including court costs and attorneys' fees, including an administrative charge equal to ten percent (10%) of the amount incurred by the Association, together with all damages resulting from such Owner's or Occupant's, or other Person's listed above, acts or failure to act, plus interest at twelve percent (12%) per annum on all amounts from the date incurred by the Association until the date paid to the Association by the Owner, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot is subject and shall be secured by the lien described in *Section 8.2*. The foregoing shall not limit the right of others to enforce the provisions of this Declaration as described in *Section 15.1*

**11.4 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas.** In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Owner or Occupant, or his or her family, guests, or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien described in *Section 8.2*.

## ARTICLE 12

**DISPUTE RESOLUTION**

**12.1 Defined Terms.** As used in this *Article 12*, the following terms shall have the meaning set forth below:

(a) **"Alleged Defect"** means any alleged defect or deficiency in the planning, design, engineering, grading, construction, or development of the Common Areas or any Lot.

(b) **"Bound Parties"** means: (i) the Declarant; (ii) Designated Builders; (iii) the Association; (iv) all Owners and Occupants; and (v) any contractor or subcontractor, architect, engineer, consultant, or other Person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction, or observation of construction of the Common Areas or the Lots and who agrees in writing to be bound by the provisions of this *Article 12*.

(c) **"Claim"** means: (i) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction, or development of the Common Areas or the Lots or any other part of the Project, including, without limitation, any claim or cause of action that the Common Areas or the Lots are defective or that a Declarant, a Designated Builder, or their agents, contractors, employees, subcontractors, architects, engineers, or consultants were negligent in the planning, design, engineering, grading, construction, or development thereof; or (ii) any claim or cause of action against a Declarant, a Designated Builder, or any employee, agent, director, member, or officer of a Declarant or a Designated Builder arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct, or breach of fiduciary duty.

**12.2 Agreement to Resolve Certain Disputes Without Litigation.** All Bound Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this *Article 12*.

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

In the event the Claimant is the Association, the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference, or arbitration against a Declarant or any other Bound Party which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of any Declarant or other Bound Party to correct such Alleged Defect and the



opportunities provided to a Declarant or other Bound Party to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the claim against a Declarant or other Bound Party and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against a Declarant or other Bound Party and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action against a Declarant or other Bound Party, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle, or responses to offers to settle made either by the Association or other Bound Party, and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

**12.4 Mediation.** If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties (the "Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association (the "AAA") or such other independent mediation service agreed to by the Claimant and Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (the "Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

**12.5 Binding Arbitration.** In the event a Claim is not resolved by Mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this *Section 12.5*. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. If the Claimant submits the Claim to binding arbitration in accordance with this *Section 12.5*, the arbitration shall be conducted in accordance with the following:

(a) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules, or such other AAA rules as the AAA determines to be applicable (the "AAA Rules"). A Respondent may

join as a party to the arbitration any Bound Party who may be liable to the Respondent or the Claimant with respect to the Claim.

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, *et seq.* In the event of a conflict between the AAA Rules and this *Section 12.5*, the provisions of this *Section 12.5* shall govern.

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this *Subsection (c)* is referred to in this *Section 12.5* as the "Arbitrator".

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

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

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

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

witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

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

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

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

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

**12.6 Right to Enter, Inspect, Repair, and/or Replace.** Within a reasonable time after the receipt by a Declarant or other Bound Party of a Claim Notice, a Declarant or other Bound Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Areas, any Lot, including any Residence constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by a Declarant or other Bound Party, to correct, repair, and/or replace any Alleged Defect. In conducting such inspection, testing, repairs, and/or replacement, Declarant or other Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this *Section 12.6* shall be construed to impose any obligation on a Declarant or other Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which a Declarant or other Bound Party is not otherwise obligated under applicable law or

any limited warranty provided by a Declarant or other Bound Party in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of a Declarant and other Bound Parties to enter, inspect, test, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by a Declarant or other Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Declarant or other Bound Party conducts any inspection or testing of any Alleged Defects.

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

**12.8 Approval of Litigation.** The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party, or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with *Section 12.3*.

**BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES, AND ASSIGNS, AGREES TO SUBMIT AND RESOLVE ALL CLAIMS ACCORDING TO THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 12, AND WAIVES THE RIGHT TO PURSUE CLAIMS AGAINST ANY DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN THROUGH THE DISPUTE RESOLUTION PROCEDURES DESCRIBED IN THIS ARTICLE 12. THE ASSOCIATION, EACH OWNER, DECLARANT, AND EACH DESIGNATED BUILDER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 12, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER, DECLARANT, AND EACH DESIGNATED BUILDER FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT THE OWNER IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.**

**EVERY OWNER WHO PURCHASED A LOT FROM THE DECLARANT OR A DESIGNATED BUILDER, IF APPLICABLE, WAS OR MAY HAVE BEEN PROVIDED**

WITH A HOME BUILDER'S LIMITED WARRANTY WHICH TRANSFERS AUTOMATICALLY TO EACH SUBSEQUENT BUYER OF THE LOT. ALL CLAIMS BY AN OWNER OR THE ASSOCIATION FOR CONSTRUCTION DEFECTS COVERED BY THE HOME BUILDER'S LIMITED WARRANTY MUST BE RESOLVED PURSUANT TO THE PROVISIONS OF THE HOME BUILDER'S LIMITED WARRANTY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS DECLARATION TO THE CONTRARY, THE PROVISIONS OF THIS *ARTICLE 12* SHALL NOT APPLY TO ANY CLAIM BY AN OWNER OR THE ASSOCIATION FOR CONSTRUCTION DEFECTS COVERED BY THE HOME BUILDER'S LIMITED WARRANTY, EXCEPT THAT IF THE CLAIM IS BEING ASSERTED BY THE ASSOCIATION, THE APPROVAL OF THE MEMBERS OF THE ASSOCIATION REQUIRED BY *SECTION 12.8* MUST BE OBTAINED PRIOR TO THE ASSOCIATION DEMANDING ARBITRATION OF THE CLAIM PURSUANT TO THE TERMS OF THE HOME BUILDER'S LIMITED WARRANTY. ALL CLAIMS WHICH ARE NOT COVERED BY THE HOME BUILDER'S LIMITED WARRANTY MUST BE SUBMITTED TO AND RESOLVED PURSUANT TO THE DISPUTE RESOLUTION PROVISIONS OF THIS *ARTICLE 12*.

### ARTICLE 13

#### TERM; AMENDMENTS; TERMINATION

13.1 **Term.** The covenants, conditions, and restrictions of this Declaration as it may be amended from time to time: (a) shall run with and bind the Property, (b) shall inure to the benefit of and shall be enforceable by the Association or by the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns; and (c) shall remain in full force and effect (as amended, if applicable) until January 1, 2029, at which time said conditions, covenants, and restrictions shall automatically be extended for successive periods of twenty-five (25) years each, unless revoked by an affirmative vote of: (i) Members owning not less than sixty-seven percent (67%) of all Lots; and (ii) Declarant, so long as Declarant is an Owner.

13.2 **Amendment.** Except as otherwise provided herein, this Declaration may be amended only by the vote or written consent of: (i) Members owning not less than sixty-seven percent (67%) of all Lots; and (ii) Declarant, so long as Declarant is an Owner. No amendment to this Declaration shall be effective until such amendment is Recorded. An amendment shall be effective immediately upon Recording unless a delayed effective date is expressly stated in the amendment.

13.3 **Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institution.** Anything in this *Article 13* to the contrary notwithstanding, Declarant reserves the right to amend this Declaration as may be requested or required by the FHA, VA, or any other agency with whom Declarant or a Designated Builder elects to do business as a condition precedent to such agency's approval of this Declaration. Any such amendment shall be effected by Declarant recording an amendment duly executed and acknowledged by Declarant specifying the agency requesting the amendment and setting forth the requested or required amendment(s). Recordation of such amendment shall be deemed

conclusive proof of the agency's or institution's request or requirement and such amendment, when Recorded, shall be binding upon all of the Property and all Persons having an interest therein.

## ARTICLE 14

### EMINENT DOMAIN AND INSURANCE

#### (COMMON AREAS)

**14.1 Eminent Domain.** The term "Taking" as used in this *Section 14.1* shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Areas, the Owners hereby appoint the Board and such persons as the Board may designate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association and shall constitute Funds of the Association.

**14.2 Association's Authority to Purchase Insurance.** The Association shall purchase and maintain such property damage and liability insurance upon the Common Areas and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any Member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions. Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association, as well as all regular and alternate members of the Committee, in amounts and on terms adequate to permit the Association to meet its obligations to indemnify such persons pursuant to the Articles and Bylaws.

**14.3 Individual Responsibility; Disclaimer of Liability.** It shall be the responsibility of each Owner or Occupant to provide insurance for himself on his real or personal property interests on or within the Property, including, but not limited to, additions and Improvements thereto, furnishings and personal property thereon, and for his personal liability. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvements or fixtures on the Common Areas. The Association, any Board member, Declarant, or any Designated Builder shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

**14.4 Insurance Claims.** The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete

power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage unless otherwise approved by a majority of the votes of each class of Members voting in person or by proxy at a meeting called for such purpose. Any proceeds remaining upon repair of such damage may be retained by the Association as reserves or to reduce future Assessments.

## ARTICLE 15

### ADDITIONAL TERMS

**15.1 Enforcement.** The Association shall have the standing and power to enforce the provisions of this Declaration, the Articles, the Bylaws, and the Association Rules and to obtain injunctive relief and damages, and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at the rate of twelve percent (12%) per annum, shall constitute a lien on all Lots owned by the Owner or Owners against whom the action is taken (or against whose Occupants the action is taken), which lien shall have the priority and may be enforced in the manner described in *Section 8.2*. In addition, any Owner or Owners shall have the standing and power to enforce the provisions of this Declaration, the Articles, and the Bylaws, and the prevailing party or parties in any action by an Owner or Owners to enforce any such provisions shall be entitled to recover from the other party or parties its or their costs in such action (including reasonable attorneys' fees), together with interest thereon at the rate equal of twelve percent (12%) per annum, and shall further be entitled to have all such costs (including such interest) included in any judgment awarded to the prevailing party or parties in such action. Failure by the Association or by any Owner to take any such enforcement action shall in no event be deemed a waiver of the right to do so thereafter.

**15.2 Notice of Violation.** The Association shall have the right, but not the obligation, to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws, or the Association Rules. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

**15.3 No Partition.** No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any Person seek, any judicial partition of the Common Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate, or otherwise alienate all or any of such Owner's interest in the Common Areas or any funds or other assets of the Association except in connection with the sale, conveyance, or hypothecation of such Owner's Lot (and only appurtenant thereto).

**15.4 Interpretation of the Covenants.** Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and

interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and property benefited or bound by this Declaration.

**15.5 Severability.** If any provision of this Declaration or any application thereof shall be invalid or unenforceable, the remainder of this Declaration and any other application of such provision shall not be affected thereby.

**15.6 Rule Against Perpetuities.** If any of the interests, privileges, covenants, or rights created by this Declaration shall be unlawful, void, or voidable for violation of the Rule against Perpetuities or any related rule, then such provision shall continue until twenty-one (21) years after the death of the survivor of the descendants of the President of the United States living on the date this Declaration is Recorded.

**15.7 Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

**15.8 Gender and Number.** Wherever the context of this Declaration so requires, words used in the masculine, feminine, or neuter genders, or the singular or plural number, shall each include the others.

**15.9 Captions; References to Articles or Sections.** All captions, titles, or headings of all *Articles* and *Sections* are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof. References to an *Article* or a *Section* without further attribution shall be deemed to refer to an article or a section, as the case may be, of this Declaration.

**15.10 Annexation and De-annexation.**

**15.10.1 Annexation.** While the Class B Membership is in effect, Declarant may, in its sole discretion, annex additional property, which shall become a part of the Property and bound hereby by recording a Certificate of Annexation executed by Declarant and Owner(s) of all property to be annexed.

**15.10.2 De-annexation.** While the Class B Membership is in effect, a portion or portions of the Property may be de-annexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Association, provided that a Certificate of De-annexation identifying the portion of the Property sought to be de-annexed is executed and Recorded by Declarant and is approved by all Owners of that portion of the Property to be de-annexed.

**[Signature Page Follows]**



Avalon Village

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

**KB HOME Phoenix Inc.**, an Arizona corporation

By [Handwritten Signature]

Its: Director of Forward Planning

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

On this 13 day of October, 2004, before me, Heather Nelson, the undersigned notary public, personally appeared Jeremy Krahe, who acknowledged himself to be the Director of Forward Planning of KB HOME Phoenix Inc., an Arizona corporation, and that he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Notary Public

[Handwritten Signature: Heather Nelson]

My Commission Expires:



**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lots 1 through 346, inclusive and Tracts A through Z, and AA through DD, inclusive of AVALON VILLAGE, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded as Book 704 of Maps, Page 30.