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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ARBOLEDA RANCH**

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FOR
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ARBOLEDA RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ARBOLEDA RANCH is made as of the ____ day of _____, 20____, by JOSEPH CARL HOMES, LLC, an Arizona limited liability company (“**Declarant**”), and ARBOLEDA RANCH 31, LLC, an Arizona limited liability company (“**Developer**”).

ARTICLE 1

DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

1.1 “**Annual Assessment**” means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.2 “**Annual Budget**” has the meaning set forth in Section 6.2.1 of this Declaration.

1.3 “**Architectural Committee**” means the committee of the Association to be created pursuant to Section 5.10 of this Declaration.

1.4 “**Architectural Committee Rules**” means any rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.5 “**Areas of Association Responsibility**” means (a) all Common Area, including, without limitation, Tracts A, B and C as shown on the Plat, and all improvements thereon, including, without limitation, mailboxes, entry gates and entry features, as well as the landscape strip from back of City sidewalk to the theme wall along the 28th St. community boundary, except for (1) any portions thereof which any governmental entity is maintaining or is obligated to maintain, and (2) such portions thereof as Owners may be obligated to maintain, repair and/or replace pursuant to the terms of this Declaration or of another document executed by Declarant or the Association and recorded with the County Recorder of Maricopa County, Arizona subsequent to the recordation of this Declaration; (b) all walls which border a Common Area except for routine maintenance, repair, cleaning and painting of the side of such wall facing an Owner’s Lot, which routine maintenance, repair, cleaning and painting shall be the responsibility of the Owner of the Lot; provided, however, that all wrought iron portions of such walls shall remain an Area of Association

Responsibility; (c) the sidewalk situated on each Lot and the landscape strip between the sidewalk and the back of the curb; (d) any portions of Lots on which the entry gates or related equipment are located; and (e) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of any document executed by Declarant or the Association and recorded with the County Recorder of Maricopa County, Arizona subsequent to the recordation of this Declaration.

1.6 “**Articles**” means the Articles of Incorporation of the Association, as amended from time to time.

1.7 “**Assessment**” means an Annual Assessment or a Special Assessment.

1.8 “**Assessment Lien**” means the lien created and imposed by Article 6 of this Declaration.

1.9 “**Assessment Period**” means the period set forth in Section 6.6 of this Declaration.

1.10 “**Association**” means Arboleda Ranch Homeowners’ Association, an Arizona nonprofit corporation, and its successors and assigns.

1.11 “**Association Rules**” means any rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.

1.12 “**Board**” means the Board of Directors of the Association.

1.13 “**Bylaws**” means the Bylaws of the Association, as amended from time to time.

1.14 “**Common Area**” means (a) Tracts A, B and C shown on the Plat, and (b) any other land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

1.15 “**Common Expenses**” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.16 “**Declarant**” means Joseph Carl Homes, LLC, an Arizona limited liability company, and any Person to whom it may expressly assign any or all of its rights as Declarant under this Declaration by an instrument recorded with the County Recorder of Maricopa County, Arizona. On the date of the recordation of this Declaration, the Lots are owned by Developer subject to an option to purchase in favor of Declarant and, accordingly, Declarant is considered the Owner of the Lots. In the event said option terminates prior to Declarant’s purchase of all of the Lots (excluding any Lot(s) which

may subsequently be excluded from said option), the rights of Declarant as Declarant hereunder shall be deemed automatically assigned to Developer and this sentence shall constitute the express recorded assignment contemplated by this first sentence of this Section 1.16, with Developer to have no liability for the obligations of Declarant which accrue prior to the effective date of the deemed assignment, and Declarant shall become a Designated Homebuilder

1.17 “**Declaration**” means this Declaration of Covenants, Conditions, and Restrictions, as amended from time to time.

1.18 “**Designated Homebuilder**” means any homebuilder owning one or more Lots and designated as a Designated Homebuilder in a document executed and acknowledged by Declarant and recorded with the County Recorder of Maricopa County, Arizona.

1.19 “**Developer**” means Arboleda Ranch 31, LLC, an Arizona limited liability company, and any Person to whom it may expressly assign any or all of its rights as Developer under this Declaration by an instrument recorded with the County Recorder of Maricopa County, Arizona.

1.20 “**First Mortgage**” means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

1.21 “**First Mortgagee**” means the holder or beneficiary of any First Mortgage.

1.22 “**Improvement**” means any building, fence, wall, gazebo or other structure, any swimming pool, any playground or other recreational equipment, any road, driveway, or parking area or any tree, plant, shrub, planter, sculpture, monument or sign or any grass or other landscaping or hardscaping improvements of any type or kind, whether in the front, rear, or side yard of a Lot.

1.23 “**Lessee**” means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

1.24 “**Lot**” means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.25 “**Member**” means any Person who is a member of the Association.

1.26 “**Owner**” means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot, provided, however, in the event the record owner has granted Declarant or a Designated Homebuilder the option to purchase a Lot, Declarant or the Designated Homebuilder shall be considered the Owner of the Lot for so

long as the option remains in effect. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a recorded contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741, et seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Lots subject to a deed of trust pursuant to A.R.S. § 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.27 “Person” means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.28 “Plat” means the Final Subdivision Plat for Arboleda Ranch recorded in Book 966, Page 35, in the records of the Maricopa County, Arizona Recorder, and all amendments, supplements, affidavits of correction and other modifications thereto.

1.29 “Project” or “Property” means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon.

1.30 “Project Documents” means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

1.31 “Purchaser” means any Person, other than Declarant or Developer or a Designated Homebuilder, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to Declarant or a Designated Homebuilder for use as a model in connection with the sale or lease of other Lots (until such time as the lease terminates); or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of Declarant’s or Developer’s rights under this Declaration.

1.32 “Recording” means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and “**Recorded**” means having been so placed of public record.

1.33 “Resident” means each individual residing in any Residential Unit.

1.34 “Residential Unit” means any building, or portion of a building, situated upon a Lot and designed and intended (with the Lot) for independent ownership and for use and occupancy as a residence.

1.35 “Special Assessment” means any Assessment levied and assessed pursuant to Section 6.5 or 7.5.1.7 of this Declaration.

1.36 **“Visible From Neighboring Property”** means, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any part of any other Lot or Common Area.

1.37 **“Work”** means any construction, erection, installation, addition, alteration, repair, change, replacement or other work.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 **Property Subject to the Declaration.** Developer is the record owner and Declarant is the Owner of the Property, and Declarant and Developer intend by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of development and desire to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Declarant and Developer hereby declare that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value and desirability of and which shall run with the Property. Declarant and Developer further declare that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, and their successors, successors in title and assigns and shall inure to the benefit of each Owner thereof. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and for his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, and his, her and its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development, sale, lease and use of the Property and hereby evidences his, her or its agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, and his, her and its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with his, her or its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 **Disclaimer of Implied Covenants.** Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salespersons

or others shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of the Property.

ARTICLE 3

USE RESTRICTIONS

3.1 Architectural Control.

3.1.1 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.2 No Improvement which would be Visible From Neighboring Property shall be constructed, erected, installed, placed or maintained on any Lot without the prior written approval of the Architectural Committee. No Work which in any way alters (a) the exterior appearance, including, but without limitation, the exterior color scheme of any part of a Lot, or (b) any Improvement located on a Lot, which in either case is Visible From Neighboring Property, shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for Improvements or Work which is or would be Visible From Neighboring Property shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Work which the Owner desires to perform, any fee payable pursuant to Section 3.1.6 of this Declaration and any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within forty-five (45) days after the foregoing have been submitted to the Architectural Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Architectural Committee of any Work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Work subsequently submitted for approval.

3.1.3 In reviewing plans and specifications for any Work which is subject to approval by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural Committee may disapprove plans and specifications for any Work which is subject to approval by the Architectural Committee pursuant to this Section 3.1 if the Architectural Committee determines, in its sole and absolute discretion, that: (a) the proposed Work would violate any provision of this Declaration; (b) the proposed Work does not comply with an Architectural Committee Rule; (c) the proposed Work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (d) the proposed Work is not aesthetically acceptable; (e) the proposed Work would be detrimental

to or adversely affect the appearance of the Project; or (f) the proposed Work is otherwise not in accord with the general plan of development for the Project.

3.1.4 Upon receipt of approval from the Architectural Committee for any Work, the Owner who had requested such approval shall proceed to perform, construct or do the Work approved by the Architectural Committee as soon as practicable and shall diligently pursue such Work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.5 Any change, deviation, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.1.6 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any Work pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.7 All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

3.1.8 Notwithstanding anything to the contrary, the provisions of this Section 3.1 do not apply to, and approval of the Architectural Committee shall not be required for, any Work done by, or on behalf of Declarant.

3.1.9 The approval required of the Architectural Committee pursuant to this Section 3.1 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. In no event shall Declarant, a Designated Homebuilder, the Association, the Architectural Committee or any member of the Architectural Committee have any liability for any action or inaction by the Architectural Committee or its members, including, without limitation, any approval or disapproval of plans by the Architectural Committee. The sole remedy for an Owner asserting that the Architectural Committee has improperly withheld approval or has improperly granted approval shall be an action to compel the Architectural Committee to take appropriate action. In no event shall any damages of any nature be awarded against Declarant, a Designated Homebuilder, the Association, the Architectural Committee or any member of the Architectural Committee of any nature arising from any action or inaction described in this Article 3.

3.1.10 The approval by the Architectural Committee of any Work pursuant to this Section 3.1 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such Work or that such Work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.1.11 The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to: (a) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) repair any damage which might be caused to any Area of Association Responsibility as a result of such Work.

3.1.12 If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association would be responsible for the maintenance, repair and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed Work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the maintenance, repair or replacement of such Improvement.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, basement (if any) of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures (or buildings or structures under construction) of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Architectural Committee.

3.3 Nuisances, Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No condition shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas.

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

3.5 Antennas. No exterior radio antenna or aerial, television antennas or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Property, shall be erected or maintained on any Lot or Residential Unit, unless approved by the Architectural Committee; provided, however, "**Permitted Devices**" (defined as antennas or satellite dishes; (i) which are one meter or less in diameter and designed to receive direct broadcast satellite service; (ii) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services, (iii) designed to receive television broadcast signals, or (iv) any similar antenna or satellite dish, the residential use of which is protected under the Telecommunications Act of 1996 and applicable regulations promulgated thereunder, as either may be amended from time to time (collectively "**Telecommunications Laws**")) shall be permitted. When permitted by the Telecommunications Laws, the Architectural Committee may adopt rules and regulations requiring Permitted Devices to be placed in specific locations, or screening devices so long as the restrictions do not impair the installation, maintenance, or use of the Permitted Devices. If an Owner reasonably determines that a Permitted Device cannot be located in compliance with such rules without precluding reception of an acceptable quality signal, then the Owner may install such Permitted Device in the least conspicuous alternative location within the Residential Unit where an acceptable quality signal can be obtained; provided further that Permitted Devices shall be reasonably screened from view from the street or any other portion of the Property, and shall be subject to any further rules and regulations adopted by the Architectural Committee or Board, establishing a preferred hierarchy of alternative location, so long as the same do not unreasonably increase the cost of installation, or use of the Permitted Device.

3.6 Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons or minerals of any kind, or, without the prior written approval of the Architectural Committee, gravel, earth or any earth substance of any kind.

3.7 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Architectural Committee or required by the City of Phoenix, Arizona, which containers shall be kept in the locations designated for same in the Architectural Committee Rules, except to make them available for collection and then only for the shortest time reasonably necessary to effect such collection and in the location designated for collection. All rubbish, trash, and garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot. The foregoing

provisions shall not apply to construction bins used by a Designated Homebuilder during periods of construction by such Designated Homebuilder.

3.8 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot.

3.9 Utility Service. Subject to the provisions of Section 3.5 above, without the prior written approval of the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, cable television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

3.10 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or Common Area from ground level to a height of eight (8) feet.

3.11 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use and no trade or business may be conducted on any Lot or in or from any Residential Unit or other building on the Lot, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential 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 Residential Unit; (b) the business activity conforms to all applicable laws, ordinances and requirements for the Project (including, without limitation, those pertaining to zoning); (c) the business activity does not involve persons coming on to the Lot other than on an infrequent basis nor does it involve the door-to-door solicitation of Owners or other Residents in the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended to or does generate a profit; or (c) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section, provided, however, no lease shall be of less than an entire Lot and all Improvements thereon. 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, Lots owned or leased by Declarant or a Designated Homebuilder may be used as model homes and for sales and construction offices and trailers and parking for the purpose of enabling Declarant or a Designated Homebuilder to sell Lots within the Property until such time as all of the Lots owned by it have been sold and closed or leased to Purchasers or tenants.

3.12 Animals. No bird, fowl, poultry, fish, reptile, livestock or other animal may be kept on any Lot, except that dogs, cats, fish, birds or similar household pets may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes; provided, however, that in no case shall (a) the number of dogs kept on a Lot exceed two (2), (b) the number of cats exceed two (2), or (c) the combined number of dogs and cats exceed three (3). Animals belonging to an Owner, Lessee, Resident or any family member, licensee, tenant or invitee of same must be kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance. In the event any animal becomes such a nuisance or creates an unreasonable amount of noise, in addition to any other rights and remedies, the Board may remove such animal if the Owner fails within a reasonable time to do so upon request by the Board. No structure for the care, housing or confinement of any dog, cat, bird, fowl, poultry, fish, reptile, livestock or other animal shall be maintained so as to be Visible From Neighboring Property. It shall be the absolute duty and responsibility of each Owner, Lessee and Resident to clean up the Property and any abutting streets or property after animals belonging to or in the care of such Owner, Lessee, Resident or any family member, licensee, tenant or invitee of same.

3.13 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a permitted Improvement (and, in the case of construction, only during the period of construction) or such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

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

3.14.1 Signs required by legal proceedings.

3.14.2 Residence identification signs provided the size, color, design, content and location of such signs have been approved in writing by the Architectural Committee.

3.14.3 One (1) "For Sale" sign in compliance with applicable law.

3.14.4 During any period of construction on Lots by a Designated Homebuilder, marketing, construction and directional signs of the Designated Homebuilder approved by the Architectural Committee.

3.14.5 One (1) political sign in accordance with applicable law.

3.15 Restriction on Further Subdivision, Property Restrictions and Rezoning.

No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than Declarant against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.16 Vehicles and Parking.

3.16.1 As used in this Section 3.16, the term "Motor Vehicle" means, whether motorized or not, a car, van, truck, sport utility vehicle, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck, other motor vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, or boat trailer or other similar equipment.

3.16.2 Except as permitted by Subsection 3.16.3 or 3.16.4, no Motor Vehicle may be parked, kept or stored on any Lot, the Common Area, or any street within the Property without the prior written approval of the Architectural Committee.

3.16.3 Motor Vehicles owned or leased by an Owner, Lessee or other Resident of a Lot may be parked (a) on any street within the Property for no more than 24 consecutive hours, and (b) on a Lot as long as same are parked in the garage of the Residential Unit unless there is insufficient space within the garage for the parking of all such Motor Vehicles, in which case such Motor Vehicles, if but only if operable, may be parked (as opposed to stored [as defined below]) in the driveway situated on the Lot provided such Motor Vehicles do not exceed 7 feet in height or 20 feet in length, do not exceed the length of the driveway or encroach or obstruct access to any sidewalk, are not used for commercial purposes and do not display any commercial name, phone number or message of any kind. No Motor Vehicle of any kind may be stored on a Lot except in a garage; and no Motor Vehicle of any kind may be stored on the Common Area or any street within the Property. For purposes of this Subsection 3.16.3, a Motor Vehicle shall be deemed stored if it is covered by a cover, tarp or other material or parked within the Property for more than twenty-four (24) consecutive hours or for more than seventy-two

(72) hours within any seven (7) day period. Motor Vehicles owned or leased by an Owner, Lessee or Resident which exceed 7 feet in height and/or exceed 20 feet in length may be parked in the driveway on a Lot for the purpose of loading or unloading, but in no event shall any such Motor Vehicle be parked in the driveway for more than twenty-four (24) consecutive hours or for more than seventy-two (72) hours within any seven (7) day period. In no event shall recreational vehicles (RVs), boats, campers, camper shells, snowmobiles, all terrain vehicles or trailers, including horse trailers and boat trailers, be kept within any portion of the Property except in the garage of a Residential Unit. So that the community may function in an orderly manner, it shall be the duty and obligation of every Owner, Lessee and Resident, on behalf of himself, his family members, tenants, servants, guests and invitees, to observe and enforce the parking restrictions. No Owner, Lessee or Resident shall permit any Motor Vehicle (except as permitted hereunder), bicycle, basketball hoop/backboard (either fixed or portable), motorized skateboard or scooter, go-cart or other object to be or remain parked on any street or sidewalk.

3.16.4 Motor Vehicles owned by guests or invitees of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on a street for a period not to exceed 72 hours within any seven (7) day period or such longer period as may be consented to in writing by the Architectural Committee.

3.16.5 The Board shall have the right and power to adopt rules and regulations governing the parking of Motor Vehicles on Lots and the Common Area and implementing the provisions of this Section 3.16, which may include implementing fines for violations of the rules and regulations or this Declaration. In the event of any conflict or inconsistency between the provisions of this Section 3.16 and the rules and regulations adopted by the Board, the more restrictive shall control.

3.16.6 No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot or Common Area or street within the Property in such a manner as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked on any Lot or Common Area or street within the Property in such a manner as to be Visible From Neighboring Property; provided, however, that this provision shall not apply to emergency vehicle repairs completed within seventy-two (72) hours.

3.16.7 The Board shall have the right to have any Motor Vehicle which is parked, kept, stored, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the Motor Vehicle. Any expense incurred by the Association in connection with the towing of any Motor Vehicle shall be paid to the Association upon demand by the owner of the Motor Vehicle. If the Motor Vehicle is owned by an Owner, Lessee or Resident or family member of same residing at the Residential Unit, any amounts payable to the Association shall be secured by an Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

3.16.8 Anything herein to the contrary notwithstanding, this Section 3.16 shall not prohibit the reasonable parking on a Lot of vehicles belonging to the employees or agents of a Designated Homebuilder in connection with and during periods of construction, by such Designated Homebuilder.

3.17 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained, and no vegetation shall be planted or allowed to grow, in any manner that would impede, obstruct, interfere with or change the direction or flow of water other than in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located. The City of Phoenix may construct and/or maintain drainage facilities on or under the retention basin tracts shown on the Plat.

3.18 Garages. The interior of all garages situated on a Lot shall be maintained by the respective Owner in a neat, clean and sightly condition. Garages shall be used only for storage and for the parking of Motor Vehicles and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except as necessary to enter and exit and maintain same.

3.19 Rooftop Air Conditioners Prohibited. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be Visible From Neighboring Property.

3.20 Basketball Hoops and Backboards. No basketball backboard, hoop or similar structure or device shall be attached to a Residential Unit or other building, except that basketball backboards, hoops and similar structures and devices attached to a free-standing pole may be placed within an enclosed rear or enclosed side yard on a Lot provided the location, style, and color of the basketball backboard, hoop and similar structures and devices are approved in writing by the Architectural Committee, and further provided that same shall be used only during hours set by the Board.

3.21 Solar Collecting Panels or Devices. Subject to prior written approval of the plans therefor by the Architectural 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), only so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be visible from ground level view from adjacent properties; or (b) such solar collecting panels and devices are placed, constructed and maintained in such locations(s) and with such means of screening or concealment as the Architectural Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a person six feet tall standing at ground level on adjacent properties.

3.22 Playground Equipment. No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring property shall be erected or installed on any Lot without the prior written approval of the Architectural Committee.

3.23 Exterior Lights. Except as initially installed by Declarant, no spotlights, floodlights or other lights shall be installed on the exterior of a Residence or on the ground or on any wall situated on any Lot without the prior written approval of the Architectural Committee.

3.24 Window Cover Materials. Within forty-five (45) days of the initial conveyance of a Lot, with a Residence constructed thereon, to an Owner from the Declarant or a Designated Homebuilder, the Owner or Resident of the Lot shall install permanent window coverings. All window coverings Visible From Neighboring Property must show white or beige colors unless otherwise approved in writing by the Architectural Committee. No reflective materials (including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items) shall be installed or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Architectural Committee. No drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence and Visible From Neighboring Property shall be installed or placed on the inside or outside of the windows of a Residence without the prior written consent of the Architectural Committee. In no event shall windows be covered with paper, bed sheets or other temporary coverings. No metal bars or security shutters shall be installed on the outside of windows.

3.25 Declarant Exemption. Notwithstanding anything to the contrary, the provisions of Sections 3.1 to 3.24 and 7.2 of this Declaration do not apply to Declarant.

3.26 Variances. The Architectural Committee may, at its option and in extenuating circumstances, grant waivers or variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (a) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete or otherwise inappropriate, and (b) that the activity permitted under the variance (i) will not have any substantial adverse affect on the Owners, Lessees and Residents of the Project, (ii) is consistent with the high quality of life intended for Residents of the Project, (iii) does not result in an unsafe, unsanitary or aesthetically displeasing condition, and (iv) does not result in a substantial departure from the common plan of development contemplated by this Declaration. In addition, all portions of the Property shall continue at all times to be subject to any and all 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. A variance granted to an Owner by the Architectural Committee shall not set a precedent for such variance being granted to that Owner in the future or to any other Owner.

ARTICLE 4

EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted in Sections 4.3 and 4.4 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.11 of this Declaration.

(b) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.

(c) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area [**(other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot)**] if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provision of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed by Declarant or as approved by the Board and in no event shall the easement herein granted encroach on any building within the Property.

4.3 Declarant's Use for Sales, Construction and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices or trailers

(temporary or otherwise), construction and management offices or trailers (temporary or otherwise) and models and parking areas related to same throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on Lots of which Declarant is the Owner or lessee while Declarant is selling Lots and/or constructing homes. Declarant reserves the right to place models, management offices or trailers (temporary or otherwise) and sales and leasing offices or trailers (temporary or otherwise) and parking areas related to same on any portion of the Common Area or on Lots of which Declarant is the Owner or lessee in such number, of such size and in such locations as Declarant deems appropriate. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control. Declarant's rights under this Section 4.3 can be assigned on an exclusive or non-exclusive basis to any Designated Homebuilder, provided, however, any assignment may be qualified in any manner Declarant deems appropriate in its sole and absolute discretion.

4.4 Declarant's Easements. Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct and maintain all Improvements Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots of which Declarant is the Owner or lessee for construction or renovation and related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility and the Lots as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.5 Easements in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.5.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.5.2 For use, inspection, maintenance, repair and replacement of the Areas of Association Responsibility;

4.5.3 For correction of emergency conditions in one or more Lots;

4.5.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents; and

4.5.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

4.6 Public Access, Landscaping and No-Build Easement. A perpetual nonexclusive easement is hereby created over, under, upon and across the portions of the Lots extending ten feet from the back of the street curb to the edge of the sidewalk labeled as "10' P.A.; P.U.E. (Typ)" on the Plat (the "**Public Access and Landscaping Easement Area**"). The Association shall be responsible for the maintenance, repair and replacement of all trees, shrubs, grass and other landscaping, and all sidewalk improvements, installed within the Public Access and Landscaping Easement Area as well as existing Declarant planted and irrigated trees within the lot (the **Tree-Lined Area**). Each Owner shall be responsible for the maintenance, cleaning, and general care of all other landscaping and other improvements existing or installed in the Tree-Lined Area located within the Owner's lot. The Association and its contractors, agents and employees are hereby granted a perpetual non-exclusive easement over, under, upon and across the Lots for the purpose of installing, fertilizing, pruning and otherwise caring for the trees within the Tree-Lined Area and for the installation, maintenance, repair and replacement of the irrigation system for the trees. No Owner or Person other than the Association and its contractors, agents, and employees shall water, prune, cut or remove the trees within the Tree-Lined Area or alter or remove the irrigation system for the trees. No buildings or other permanent structures of any kind (including, but not limited to, sheds, ramadas, playground equipment or pools) shall be constructed, installed or maintained within the Public Access and Landscaping Easement Area.

4.7 Additional Easements. In elaboration but not in limitation of Sections 4.4 and 4.5, Declarant and the Association each has an easement over Lots or portions thereof as necessary or appropriate to construct, operate and maintain entry gates and associated equipment. Declarant and each Owner, Lessee and Resident and their respective family members, employees, agents and invitees has an easement over any applicable portions of Lots necessary for the use of the entry gates, including, without limitation, any portions of Lots over which such gates swing or are situated when open.

Any Person exercising any of the foregoing rights shall not be deemed guilty of trespass by reason of entering a Lot.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot.

5.3 The Association Rules. The Board may (but is under no obligation to), from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Areas of Association Responsibility; (b) minimum standards for the maintenance and landscaping of Lots; or (c) restrictions on the use of Lots. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration, subject to the provision on conflict set forth in Section 9.5.

5.4 Personal Liability. No member of the Board or of the Architectural Committee or any other committee of the Association, no officer of the Association, and no employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the member, officer or employee acting in such capacity; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

5.6 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as he, she or it is no longer an Owner for any reason, at which time his, her or its membership in the Association shall automatically cease.

5.7 Classes of Members and Voting Rights. The Association shall have the following two classes of voting membership:

- (a) Class A. Class A Members are all Owners, with the exception of Declarant until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each Lot with respect to which it is the

Owner. Upon the termination of the Class B membership, Declarant shall be a Class A Member so long as Declarant owns any Lot.

(b) Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to thirty-one (31) votes for each Lot with respect to which such Member is the Owner. The Class B membership shall cease and be converted to Class A membership on the earlier of (i) the date on which the votes entitled to be cast by the Class A Members equals or exceeds the votes entitled to be cast by the Class B Member; (ii) the date which is seven (7) years after the recording of this Declaration; or (iii) when the Class B Member notifies the Association in writing that it relinquishes its Class B membership.

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

5.9 Transfer of Membership. The rights and obligations of any Member other than Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of the Purchaser's purchase within ten (10) days after the Purchaser becomes the Owner of a Lot.

5.10 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as Declarant is the Owner of any Lot, Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as Declarant is no longer the Owner of any Lot, the members of the Architectural Committee shall be appointed by the Board. Declarant may at any time voluntarily surrender its right to appoint and remove the members of the

Architectural Committee, and in that event Declarant may require, for so long as Declarant is the Owner of any Lot, that specified actions of the Architectural Committee, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. The Architectural Committee may (but is under no obligation to) adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (a) the size of Residential Units; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (c) placement of Residential Units and other buildings; (d) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; and (g) perimeter and screen wall design and appearance. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

5.11 Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Member of the Association, if any, and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Association.

5.12 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

5.13 Legal Proceedings. Except for any legal proceedings initiated to (a) enforce any use restrictions, easement rights or nonmonetary obligations of Owners (other than legal proceedings against Declarant, Developer or a Designated Homebuilder) expressly set out in this Declaration; (b) enforce any Association Rules (other than legal proceedings against Declarant, Developer or a Designated Homebuilder); (c) enforce any Architectural Committee Rules (other than legal proceedings against Declarant, Developer or a Designated Homebuilder); (d) collect any unpaid assessments levied pursuant to this Declaration; or (e) pursue or resolve any "small claims" (i.e., matters in which the amount in controversy could not reasonably be expected to exceed \$25,000.00), the Association (or Board) shall not initiate legal proceedings or join as a plaintiff in legal proceedings without the prior approval of Owners representing seventy-five percent (75%) or more of the votes in the Association. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions

shall be funded by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds or use monies collected for other specific Association obligations for such purpose. With respect to matters involving property or improvements to property, the Association (and the Board) additionally shall not initiate legal proceedings or pay for legal proceedings or join as a plaintiff in legal proceedings unless (1) such property or improvements is owned by the Association; (2) the Association has the maintenance responsibility for such property or improvements pursuant to this Declaration; or (3) the Owner who owns such property or improvements consents in writing to the Association initiating or joining such legal proceeding. Nothing in this section shall preclude the Board from incurring expenses for legal advice in complying with statutes or regulations related to the operation of the Association or otherwise in the normal course of operating the Association when legal proceedings are not involved. In any event, no action may be filed by any Owner to enforce the Project Documents and no action may be filed by the Association in any court against Declarant, Developer or any Designated Homebuilder, until the Association, following written notice of such meeting, meets as an Association, obtains the affirmative vote of Owners representing seventy-five percent (75%) or more of the votes in the Association to file such an action, and provides Declarant, Developer or Designated Homebuilder written notice of such vote and at least 30 days following such written notice to cure any claimed failure, breach, or other default prior to the filing of any such action. Notwithstanding anything herein to the contrary, this section may not be modified or amended without the prior approval of Owners representing seventy-five percent (75%) or more of the votes in the Association.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot with respect to which it is the Owner, hereby covenants and agrees, and each Owner, other than Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made from the time same becomes due. Each Assessment, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them but, except as

is otherwise explicitly set forth herein or required by applicable law, the charge and lien shall continue upon the Lot.

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and other expenses to perform the Association duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess against each Lot an Annual Assessment. The total amount to be assessed against the Lots as an Annual Assessment shall be the amount which is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses and all other expenses to perform the Association's duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves taking into account other sources of funds available to the Association (the "Annual Budget").

6.2.2 The Board shall endeavor to give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become inadequate for any reason to meet all Common Expenses and expenses to perform the Association's duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, including, without limitation, due to nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.2.3 The maximum Annual Assessment for each fiscal year of the Association shall be as follows:

(a) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum Annual Assessment for each Lot shall be \$1,700.00. Said maximum Annual Assessment shall continue to increase as set forth in Section 6.2.3(b) of this Declaration, whether or not said maximum is actually assessed.

(b) For the Assessment Period beginning January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, and for any subsequent Assessment Period, the Board may, without a vote of the Members, increase the maximum Annual Assessment by the greater of (i) 10% of the maximum Annual Assessment for the immediately preceding Assessment Period or (ii) an amount based upon the percentage increase in the Consumer Price Index for

All Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each Assessment Period for the subsequent Assessment Period in accordance with the following formula:

X = Consumer Price Index for July of the calendar year immediately preceding the calendar year which immediately precedes the calendar year for which the maximum Annual Assessment is to be determined.

Y = Consumer Price Index for July of the calendar year immediately preceding the calendar year for which the maximum Annual Assessment is to be determined.

$\frac{Y-X}{X}$ multiplied by the maximum Annual Assessment for the then current calendar year equals the amount by which the maximum Annual Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the maximum Annual Assessment permitted under this Section 6.2 shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such substitute index is recommended by the United States government, the index selected by the Board.

(c) For the Assessment Period beginning on January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, and for any subsequent Assessment Period, the maximum Annual Assessment may be increased by a vote of Members entitled to cast a majority of the votes by an amount greater than the maximum increase allowed pursuant to (b) above but in no event greater than the amount permitted by law.

6.3 Rate of Assessment. The amount of the Annual Assessment shall be the same for each Lot other than Lots with respect to which Declarant or any Designated Homebuilder is the Owner. The Annual Assessment for Lots with respect to which Declarant or a Designated Homebuilder is the Owner shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots with respect to which a Person other than Declarant or a Designated Homebuilder is the Owner. If a Lot ceases to qualify for the twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

6.4: **Obligation of Class B Members.** So long as there is a Class B membership in the Association, Declarant and each Designated Homebuilder, on a pro rata basis determined by the respective number of Lots with respect to which each is the Owner, shall contribute to the Association an amount equal to the difference between (a) the sum of the actual expenses of the Association as permitted hereunder and the budgeted reserves reasonably established by the management company retained by the Association and (b) the total amount of the Annual Assessment actually collected. Said contribution shall be paid on a quarterly basis or on an as needed basis. Notwithstanding Declarant's and the Designated Homebuilders' obligations under this Section 6.4 to contribute a portion of the actual expenses and reserves of the Association, Declarant and the Designated Homebuilders shall have no liability, jointly or severally, for any amounts in excess of the difference between (A) the amount Declarant or the Designated Homebuilder, respectively, would have paid if paying the assessment amount at one hundred percent (100%) rather than at twenty-five percent (25%) pursuant to Section 6.3 and (B) the amount Declarant or the Designated Homebuilder actually pays pursuant to Section 6.3.

6.5 **Special Assessments.** The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area or Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment (other than those contemplated by Section 7.5.1.7) shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.6 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Annual Assessments shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.7 **Commencement Date of Assessment Obligation.** All Lots described on Exhibit A to this Declaration shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

6.8 **Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments shall be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than fifteen (15)

days written notice prior to such foreclosure that the Assessment or any installation thereof is more than fifteen (15) days in arrears and of the amount owing. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.9 Effect of Nonpayment of Assessments; Remedies of the Association.

6.9.1 Any Assessment (or any installment of an Assessment) not paid within fifteen (15) days after the Assessment (or the installment of the Assessment) first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum or such other rate of interest as may be set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due. Notwithstanding the foregoing, or anything herein to the contrary, charges for the late payment of Assessments shall not exceed the maximum amount allowed by law.

6.9.2 The Association shall have a lien on each Lot for (and the following shall be enforceable as Assessments): (a) all Assessments levied against the Lot; (b) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) all fines levied against the Owner of the Lot; (d) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot, whether or not suit is filed by the Association; (e) any amounts payable to the Association pursuant to Section 7.3 or 7.4 of this Declaration; and (f) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within fifteen (15) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

6.9.3 The Assessment Lien shall have priority over all liens or claims except for: (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body; (c) the lien of any First Mortgage; and (d) any lien entitled to priority under applicable law. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale with respect to the First Mortgage, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure with respect to the First Mortgage, shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6.9.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien, or (b) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.10 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within fifteen (15) days after receipt of the request, shall issue to such Member or other Person a written certificate stating that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments and other amounts have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charge must be paid at the time the request for any such certificate is made.

6.11 Purposes for which Association's Funds May Be Used. The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (a) discharging and performing the Association's duties and obligations under the Project Documents; (b) exercising the rights and powers granted to the Association by the Project Documents; and (c) the common good and benefit of the

Project and the Owners, Lessees and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners, the Lessees and the Residents.

6.12 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

6.13 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase or replace necessary equipment or services, each Purchaser of a Lot from Declarant or from a Designated Homebuilder shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses, establishment of appropriate maintenance and/or replacement reserves, or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of Assessments levied by the Association pursuant to this Declaration.

6.14 Transfer Fee. Each Person who purchases a Lot from a Person other than Declarant, Developer or a Designated Homebuilder 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.

6.15 Reserve Contribution.

6.15.1 Except as otherwise provided in this Section, each Purchaser shall pay to the Association, immediately upon becoming the Owner of a Lot, a contribution to the reserves of the Association for the periodic maintenance, repair and replacement of the major components of the Areas of Association Responsibility (the "**Reserve Contribution**"). The amount of the initial Reserve Contribution shall be set by the Board prior to the conveyance of the first Lot to a Purchaser. The Board may from time to time thereafter 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 ten percent (10%) during any year without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

6.15.2 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; (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.; or (f) a conveyance of a Lot by Declarant or a Designated Builder to the initial Purchaser.

6.15.3 All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 6.16. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments. Reserve Contributions payable pursuant to this Section are secured by the Assessment Lien and are in addition to any other fees provided for in the Project Documents and any other fees to be paid at the close of escrow.

6.16 Reserves. The Board shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of Association Responsibility. The reserves may be funded from regular Assessments, the working capital contributions paid pursuant to Section 6.13, the Reserve Contributions paid pursuant to Section 6.15 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 Areas of Association Responsibility, 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. Notwithstanding any other provision of this Section to the contrary, any funds held in the Reserve Account which are in excess of the funds reasonably necessary for the future repair and replacement of the major components of the Areas of Association Responsibility, as determined by the Board in its sole discretion, may be used for the construction of new improvements on the Common Area.

ARTICLE 7

MAINTENANCE

7.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity, quasi-governmental entity or a utility company is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility, but all Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board and the Architectural Committee. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility, and the Improvements located thereon.

7.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing and replacing the (a) Owner's Lot except for any portion of the Lot which is an Area of Association Responsibility, (b) all buildings, Residential Units, landscaping (including cutting all grass at least once a week or as is otherwise required by the Board) or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association Responsibility, and (d) routine maintenance, repair, cleaning and painting of the side facing the Owner's Lot of all walls on or adjacent to the Owner's Lot which walls border a Common Area or street. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. An Owner shall be required to complete landscaping of the Owner's front, side and rear yards within ninety (90) days of the earlier of (i) the closing of a purchase by an Owner other than Declarant, Developer or a Designated Homebuilder of a Lot improved with a residence, (ii) Owner's occupancy of the residence on a Lot, or (iii) the issuance of a certificate of occupancy for the residence on a Lot. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals and no less frequently than expressly required by this Section 7.2 so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind or other foliage on an approved plant list, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or from streets within the Project. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner or the Owner's family, lessees, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.4 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract (other than during any period of construction by Declarant or a Designated Homebuilder) from the appearance or quality of the surrounding Lots or other areas of the Project, in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen (15) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken (including, without limitation, having the Association perform any maintenance obligations not being properly performed by the Owner) and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.5 Boundary Walls.

7.5.1 Each wall or fence which is located between two Lots (other than a wall which constitutes an Area of Association Responsibility) shall constitute a boundary wall and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary walls shall apply.

7.5.1.1 The Owners of contiguous Lots who have a boundary wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

7.5.1.2 In the event that any boundary wall is damaged or destroyed through the act of an Owner or the Owner's agents, lessees, licensees, guests or family members, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners.

7.5.1.3 In the event any boundary wall is damaged or destroyed by some cause other than the act of an Owner or the Owner's agents, lessees, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), it shall be the joint obligation of all Owners whose Lots adjoin such

boundary wall to rebuild and repair such wall, with the expense to be divided among the Owners in accordance with the lineal frontage of their Lot on the boundary wall.

7.5.1.4 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.5.1.5 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary wall shall first obtain the written consent of the adjoining Owners.

7.5.1.6 In the event any boundary wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share such boundary wall.

7.5.1.7 In the event adjoining Owners cannot agree on issues involving the maintenance, repair or rebuilding of, or other matters relating to, a common boundary wall, the Board shall have the right, but not the obligation, to resolve the disagreement and, in connection therewith, to levy a Special Assessment against an Owner for the Owner's required contribution to the cost of such maintenance, repair, rebuilding or other matter.

7.5.1.8 Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any boundary wall without the prior written consent of the Board.

7.5.1.9 Each Owner shall permit the Owners of adjoining Lots, or their representatives, when reasonably required, to enter his Lot for the purpose of repairing or maintaining a boundary wall, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this Section shall not be deemed guilty of trespass by reason of such entry.

7.5.1.10 Surfaces of boundary walls which are generally accessible or viewable from only the adjoining Property may be painted, maintained and used by the adjoining Owners. If such surfaces are viewable from public streets or the Common Area, the color scheme shall not be changed without the prior written consent of the Architectural Committee.

7.5.2 With respect to a wall which borders a Common Area, an Owner with a Lot adjacent to same shall be responsible for routine maintenance, repair, cleaning and painting of the side of such wall facing the Owner's Lot; provided, however, that all

wrought iron portions of such wall shall remain an Area of Association Responsibility. With respect to a wall that separates contiguous Lots, each Owner shall be responsible for routine maintenance, repair, cleaning and painting of the side of such wall facing that Owner's Lot and of all wrought iron portions.

7.5.3 Walls located on a Lot which are not boundary walls or walls located within or which constitute an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of a Lot.

7.6 Community Mailboxes.

7.6.1 The community mailbox unit located on Tract C (the "CMU") shall be an Area of Association Responsibility. The Association shall be responsible for maintaining, repairing and replacing same, with the costs thereof to be a Common Expense, except as otherwise provided in this Declaration. The Association may retain the services of a mailbox contractor or other agent or independent contractor for purposes of performing some or all of such duties. For safety and security reasons, no maintenance, repair or replacement of any portion of the CMU shall be performed by any person or entity other than the Association or its designated mailbox contractor, agent or independent contractor.

7.6.2 Generally, the key(s) to a mailbox will be delivered either by the United States Postal Service ("USPS") or by the Association, or its duly delegated representative, to the first retail purchaser of a Lot from Declarant or a Designated Homebuilder. Subject to any rules or regulations adopted from time to time by the USPS, and subject to any Association Rules, upon subsequent transfers of ownership or occupancy rights with respect to any Lot, the parties to such transfer shall be responsible for arranging for the transfer of any and all keys to the mailbox assigned to such Lot. Neither Declarant, Designated Homebuilders nor the Association shall have any responsibility for any such subsequent transfers of keys, failure to transfer keys, or misdelivery or theft of mail resulting from subsequent transfers of keys or failure to transfer keys.

7.6.3 Each Owner shall be responsible for reporting to the Association any lost or damaged keys to the mailbox assigned to such Owner's Lot. Each Owner shall bear any and all costs of obtaining a replacement key, rekeying of the Owner's mailbox, and any necessary related repairs to the CMU. No locksmith or other person (including, without limitation, the Owner of the Lot to which the mailbox at issue is assigned), other than the Association or its designated mailbox contractor, agent or other independent contractor shall do any work on or with respect to the CMU or any mailbox therein, including, without limitation, rekeying any mailbox, making replacement or additional keys for any mailbox, or repairing or servicing the CMU or any mailbox therein.

7.6.4 For the security of all Owners, Lessees and Residents, each Owner, Lessee and/or Resident shall report promptly to the Association and to the USPS any and all mail theft discovered by such Owner, Lessee or Resident and any vandalism or other damage to the Owner's, Lessee's or Resident's mailbox or to the CMU. Unless resulting solely from the gross negligence or willful misconduct of the Association in the maintenance or repair of the CMU, the Association shall have no responsibility or liability for any mail theft or misdelivery of mail, nor shall the Association have any responsibility with respect to vandalism or other damage to an Owner's mailbox or to the CMU unless such vandalism or other damage has been reported to the Association, in which event the Association, in its sole discretion (but subject to applicable USPS rules and regulations), may elect to restore the CMU and any applicable mailbox to its condition immediately prior to the vandalism or other damage. To the extent that the need for any repair, replacement, maintenance or other work is attributable to the actions of any particular Owner, Lessee or Resident, the Association may, in its sole discretion, seek to recover from such Owner all costs suffered or incurred by the Association in performing such repair, replacement, maintenance or other work, which costs shall bear interest at the rate of twelve percent (12%) per annum from the date incurred by the Association until such costs and interest have been fully repaid by the applicable Owner, and which costs and interest shall be secured by the Assessment Lien against the applicable Owner's Lot.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.2 Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement

cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners; and

8.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (a) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (b) no act or omission by any Owner will void the policy or be a condition to recovery on the policy; (c) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (d) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; and (e) a statement of the name of the insured as the Association.

8.2 **Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association.

8.3 **Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 **Payment of Insurance Proceeds.** With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

8.5 **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or

replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (a) be retained by the Association as an additional capital reserve, or (b) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the total authorized votes in the Association.

ARTICLE 9

GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or by any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Board shall have the power to impose reasonable monetary penalties (not in excess of the maximum amount allowed by law) against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or a Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

9.2 Term; Method of Termination. This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if but only if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this

Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 Amendments.

9.3.1 Except for amendments made pursuant to Section 9.3.2 or 9.3.4 of this Declaration, the Declaration may be amended at any time by but only by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots and, to the extent required by Section 9.3.3, Declarant.

9.3.2 Declarant, so long as Declarant owns any Lot, and, thereafter, the Board may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by Declarant or the Board.

9.3.3 Notwithstanding anything herein to the contrary, so long as Declarant is the Owner of any Lot, any amendment to this Declaration must be approved in writing by Declarant.

9.3.4 Declarant, so long as Declarant is the Owner of any Lot, and, thereafter, the Board may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in this Declaration.

9.3.5 So long as Declarant is the Owner of more than seventy-five percent (75%) of the Lots subject to this Declaration, any amendment to this Declaration shall be signed by Declarant and recorded in the records of Maricopa County, Arizona. At any time Declarant is not the Owner of at least seventy-five percent (75%) of the Lots subject to this Declaration, any amendment approved pursuant to Section 9.3.1 of this Declaration or by the Board pursuant to Section 9.3.2 or 9.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by Declarant pursuant to Section 9.3.2 or 9.3.4 of this Declaration shall be signed by Declarant and recorded with the County Recorder of Maricopa County, Arizona. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

9.4 Rights of First Mortgagees.

9.4.1 Any First Mortgagee will, upon written request, be entitled to: (a) inspect the books and records of the Association during normal business hours; (b) receive, within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.4.2 No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot in addition to all other approvals required hereunder or by applicable law.

9.4.3 No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

9.4.4 Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

9.5 Interpretation. Except for judicial construction, the 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 Board'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. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict or inconsistency between the Articles and the Bylaws, the Articles shall control. In the event of any conflict or inconsistency between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

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

9.7 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus

(b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.8 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.

9.9 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner, Lessee or Resident of any provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Project Documents; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner, Lessee and Resident, and any subsequent purchaser of the Lot that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

9.10 Laws, Ordinances and Regulations.

9.10.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, ordinances and regulations.

9.10.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

9.11 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions, and

restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any such instrument and the grantee-Owner's heirs, executors, administrators, personal representatives, successors and assignees.

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

9.13 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

9.14 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or Lots caused by the Owners' negligence or intentional acts.

ARTICLE 10

DISCLOSURES

10.1 Disclosures. Each Owner, by accepting a deed to a Lot, shall be deemed to have fully investigated the issues related to the following disclosures and shall be deemed to have agreed that neither Declarant, Developer, nor any of their respective affiliates shall have any liability or obligation whatsoever with respect to any of the following matters nor for any adverse consequences, circumstances or conditions which may at any time arise as a result thereof.

10.1.1 Airport Proximity. The Project is located within the area impacted by the operation of Sky Harbor International Airport (the "Airport"). The Project is subject to overflights of aircraft operating from the Airport which may bring significant levels of airplane traffic and noise. All Owners, Lessees and Residents are advised that people are often irritated by repeated overflights regardless of the actual sound level at the overflight site. The Airport is a busy hub airport. Forecasts predict that Airport operations will increase in the future, and extended flight trances and traffic patterns may extend several miles beyond the Airport boundary. Further information concerning the operation of the Airport and the effect the operation of the Airport may have upon the Project, Owners, Residents and other persons may be obtained by contacting the Airport.

10.1.2 Agricultural Uses. Each Owner, Lessee and Resident understands and acknowledges that the Project is (a) located in the vicinity of, or is adjacent to, various properties that are farmed or otherwise used for agricultural purposes including, but not limited to, farming, the production of crops, livestock products, poultry products or other agricultural commodities, and the keeping, breeding, raising, feeding, boarding and transporting of livestock (including horses and cows) (collectively "Agricultural Properties"); and (b) the Property is subject to attendant noise during various times of the day, odors, dust, flies, pollen, the migration of pesticides, fertilizers, and other chemicals, and to all other effects that may be caused by or result from the operation and use of the Agricultural Properties for farming or other agricultural purposes which may vary depending on a number of factors, including, without limitation, wind direction, weather conditions and seasonal factors. In connection with the foregoing, each Owner, Lessee and Resident on behalf of itself and all of his, her or its family members, permittees, guests and invitees, covenants and agrees that they knowingly and voluntarily assume all risks associated with these uses including but not limited to risks of nuisance, noise, disturbance, inconvenience, property damage, and personal injury or sickness; and that Declarant, Developer, each Designated Homebuilder and the Association (and their respective shareholders, officers, members, directors, partners, employees and agents) and any owner(s) or operator(s) of all or any portion of the agricultural properties (and their respective employees, agents, invitees, licensees, contractors, officers, directors, shareholders, affiliates, successors and assigns) shall not be responsible or accountable for, and shall have no liability for any claims, causes of action, losses, damages, costs or expenses arising in connection with or associated with any nuisances, disturbances, noise, inconvenience, property damage or other damage, or personal injury or sickness, directly or indirectly related to, caused by, or associated with the operation and use of the Agricultural Properties for farming or other agricultural purposes.

10.1.3 Access Gates. Declarant has installed access gates at the entry areas of the Project in order to limit access and provide more privacy for the Owners, Lessees and Residents. Such access gates shall be maintained, repaired and replaced by the Association. Each Owner, Lessee and Resident acknowledges and agrees that the access gates do not guarantee the safety or security of the Owners, Lessees or Residents or their

guests or guarantee that only authorized persons will gain access to the Project. Each Owner, Lessee and Resident, and their families, guests and invitees, acknowledge and agree to assume the risk that the access gates may restrict or delay entry into, or access within, certain areas by police, fire department, ambulances and other emergency vehicles or personnel. Neither Declarant, Developer, a Designated Homebuilder, the Association nor any director, officer, member, agent or employee of Declarant, Developer, a Designated Homebuilder, or the Association shall be liable to any Owner, Lessee or Resident or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence, operation or maintenance of the access gates. The gates may remain open at such times as deemed necessary or appropriate by Declarant (so long as Declarant is constructing any Improvements at the Project) in order to provide access to contractors, subcontractors and suppliers providing labor and/or materials for the construction of Improvements in the Project, and otherwise as determined by the Board.

10.1.4 Construction Nuisance. Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, traffic, and other construction-related "nuisances." Each Owner acknowledges and agrees that it is purchasing a Residential Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial level of construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out.

10.1.5 Expected Minor Flaws. Residential subdivision and home construction is an industry inherently subject to variations and imperfections, and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading; touch-up painting; discoloration or irregular lightening of, or deposits on, walls; damage to or need for replacement of, any tree or other plant; structural or cosmetic damage caused by sprinkler overspray or overwatering; damage to pipes and fittings, or leaks in the sprinkler system, caused by maintenance or traffic; frost damage or frozen pipes and sprinkler systems; minor flaws or corrective work; and like items) and not constructional defects, and are not covered by warranty.

10.1.6 Roadways. The Project is or may be located adjacent to or near expressways and/or arterial or major roadways, and subject to levels of traffic thereon and noise, dust, and other nuisance from such roadways and vehicles. Also, each Residential Unit is located in proximity to streets and other Residential Units in the Project, and subject to substantial levels of sound and noise.

10.1.7 Model Homes. Model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant or any Designated Homebuilder to deliver the Residential Unit in conformity

with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded carpet, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to a Purchaser.

10.1.8 Restriction of Traffic. Declarant reserves the right, until the close of escrow of the last Residential Unit in the Property, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Property, in Declarant's sole discretion, to accommodate Declarant's and any Designated Homebuilder's construction activities, and sales and marketing activities.

By acceptance of a deed to a Lot, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant, Developer and the Association specifically disclaim any and all representations and warranties, express and implied, with regard to any of the disclosed or described matters; and (b) to fully and unconditionally release Declarant, Developer, and the Association, and their respective officers, directors, members, managers, agents, employees, suppliers and contractors, and their successors and assigns, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, illness or damage resulting from or pertaining to all and/or any one or more of the conditions, activities or occurrences described in this Article 10.

ARTICLE 11

ALTERNATIVE DISPUTE RESOLUTION

11.1 Alternative Method for Resolving Disputes. Declarant, Developer, Designated Homebuilders, the Association, and their respective members, officers, and directors, and all Owners, and other parties subject to this Declaration (each a "Bound Party") agree to encourage the amicable resolution of disputes involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 11.2 (collectively, "**Claims**") to the procedures set forth in Section 11.3.

11.2 Claims. Unless specifically exempted below, all claims and causes of action arising out of or relating to the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration or relating to the planning, design, condition, construction, engineering, grading or development of the Project ("**Claims**") shall be subject to the provisions of Section 11.3. Notwithstanding the foregoing sentence, unless all parties thereto

otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 11.3 (collectively “**Claims Exempt from Dispute Resolution**”):

11.2.1 any suit or action by the Association against any Bound Party for delinquent assessments or to enforce any restriction, law or regulation relating to public safety or health;

11.2.2 any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to act under and enforce the provisions of Article 3;

11.2.3 any suit between or among Owners, which does not include Declarant, Developer, a Designated Homebuilder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration;

11.2.4 any suit in which any indispensable party is not a Bound Party; and

11.2.5 any suit as to which any applicable statute of limitations has expired or would expire within one hundred eighty (180) days of giving the Notice required by Section 11.3.

11.3 Mandatory Procedures.

11.3.1 Notice. Any Bound Party initiating a Claim (“Claimant”) against any other Bound Party (“Respondent”) (the Claimant and the Respondent referred to herein being individually referred to as a “Party,” or collectively referred to as the “Parties”) shall notify each Respondent in writing (the “Notice”), stating plainly and concisely:

(a) the nature of the Claim, including the persons involved and Respondent’s role in the Claim;

(b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) the proposed remedy; and

(d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

11.3.2 Negotiation and Mediation.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services with substantial experience with comparable disputes.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, 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; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.\

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation**"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(e) Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Section 10.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 11.3. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

11.3.3 Termination of Mediation. Upon Termination of Mediation, Claimant shall thereafter be entitled to submit the matter to binding arbitration. Any arbitration proceeding will (i) proceed in Phoenix, Arizona; (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code); and (iii) be conducted in

accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). Any arbitration proceeding will be before a single arbitrator. The parties shall use reasonable efforts to agree upon a single arbitrator within ten (10) days after written notice from one party to the other requesting arbitration. If the parties are unable to agree upon an arbitrator within such ten (10) day period, at any time thereafter either party may require that the arbitrator be selected according to the Commercial Arbitration Rules of the AAA. The arbitrator will be neutral and impartial, fully active in such arbitrator’s occupation, 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 from acting as the arbitrator. The arbitrator will determine whether or not an issue is arbitrable and will give effect to the statutes of limitation in determining any Claim. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. In any arbitration proceeding, the arbitrator will decide (by documents only or with a hearing at the arbitrator’s discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. In any arbitration proceeding, discovery will be permitted and will be governed by the Arizona Rules of Civil Procedure. All discovery must be completed no later than twenty (20) days before the hearing date and within one hundred eighty (180) days of the commencement of arbitration proceedings. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party’s presentation and that no alternative means for obtaining information is available. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with the provisions of this Declaration. The laws of the State of Arizona shall apply in any arbitration proceeding, without regard to its conflict of laws rules.

11.4 Member Approval of Association Claims and Actions. Notwithstanding anything contained herein to the contrary and in addition to any requirements prescribed by law, the Association may not submit a Claim against Declarant or an affiliate of Declarant to binding arbitration upon Termination of Mediation, and (if the provisions of Section 11.3 do not apply) may not file any action against Declarant or an affiliate of Declarant arising out of or related to the design, construction, condition, planning, engineering, grading, development or sale of any part of the Property or any Improvements thereon, until all of the following have occurred:

11.4.1 In advance of the meeting described in Subsection 11.4.2 below, the Board has provided full disclosure in writing to all Members of all material information relating to the Claim or action. The material information shall include, without limitation, a statement that describes the manner in which the action will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable.

11.4.2 The Association has held a duly called meeting of its Members and the Board, at which Owners representing seventy-five percent (75%) or more of the votes in the Association, voting in person or by proxy, authorize the submittal of the Claim to arbitration or the filing of the action, as applicable.

11.4.3 The Board has authorized the submittal of the Claim to arbitration or the filing of the action, as applicable.

11.5 Waiver.. Each Bound Party, by execution of this Declaration or by accepting a deed for the Association property or a Lot, as the case may be, agrees to have any dispute resolved according to the provisions of this Article 11 and waives their respective rights to pursue any dispute in any manner other than as provided in this Article 11. Such parties acknowledge that by agreeing to resolve all disputes as provided in this Article 11, they are giving up their respective rights to have such disputes tried before a court or jury.

IN WITNESS WHEREOF, this Declaration has been executed as of the day and year first above written.

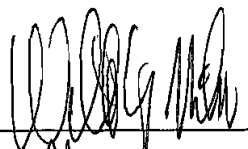
DECLARANT:

JOSEPH CARL HOMES, LLC, an Arizona
limited liability company

By 
Its CEO

DEVELOPER:

ARBOLEDA RANCH 31, LLC, an Arizona
limited liability company

By 
Its Manager

ARBOLEDA RANCH 31, LLC, an Arizona
limited liability company

By [Signature]

Its Manager

STATE OF Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 24th day of August, 2009, by Carl Mulac, as CEO of JOSEPH CARL HOMES, LLC, an Arizona limited liability company, on behalf of the limited liability company

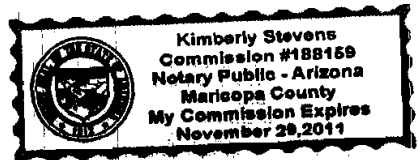
[Signature]
Notary Public

My Commission Expires:
4 March 2010



STATE OF Arizona)
) ss.
County of Maricopa)

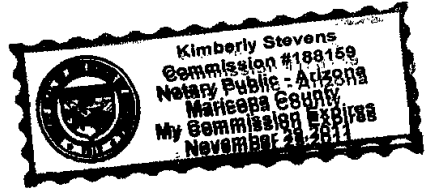
The foregoing instrument was acknowledged before me this 19th day of August, 2009, by William J. Milne, as Manager of ARBOLEDA RANCH 31, LLC, an Arizona limited liability company, on behalf of the limited liability company.



[Signature]
Notary Public

My Commission Expires:

11/29/2011



STATE OF Arizona)
County of Maricopa) ss.

The foregoing instrument was acknowledged before me this 20th day of August, 2009 by Scott Curtis, as Manager of ARBOLEDA RANCH 31, LLC, an Arizona limited liability company, on behalf of the limited liability company.

Kimberly Stevens
Notary Public

My Commission Expires:

11/29/2011



EXHIBIT A

Lots 1 through 31, inclusive, and Tracts A, B and C of Arboleda Ranch, recorded in Book 966 of Maps, Page 35, official records of the Maricopa County, Arizona Recorder.