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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**FOR**

**MAGDALENA ESTATES**

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

## AND RESTRICTIONS

### FOR

## MAGDALENA ESTATES

This Declaration of Covenants, Conditions and Restrictions for Magdalena Estates (the "Declaration") is made this 23<sup>rd</sup> day of May, 2005, by South Mountain Corporation, a Nevada corporation (the "Declarant").

### ARTICLE I 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 pursuant to Section 6.2 of this Declaration.

**1.2** "Architectural Review Committee" means the committee of the Association to be created pursuant to Section 5.11 of this Declaration.

**1.3** "Areas of Association Responsibility" means (i) all Common Area; (ii) all real property, and the Improvements situated thereon, located within the boundaries of a Lot that the Association is specifically obligated to maintain, repair and replace pursuant to the terms of this Declaration, the Plat or the terms of another Recorded document executed by the Association; and (iii) all real property, and the Improvements situated thereon, within the Project or adjacent to the Project and located within dedicated rights-of-way with respect to which the State of Arizona or any county, municipality or other third party has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county, municipality or other third party has accepted all responsibility for the maintenance, repair and replacement of such areas.

**1.4** "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

**1.5** "Assessable Property" means any Lot, except such Lots or parts thereof that may from time to time be Exempt Property.

**1.6** "Assessment" means an Annual Assessment or a Special Assessment.

**1.7** "Assessment Lien" means the lien created and imposed by Article 6 of this Declaration.

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

1.9 **“Association”** means Magdalena Estates Community Association, an Arizona nonprofit corporation, or such other Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

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

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

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

1.13 **“City”** means the City of Phoenix, Arizona.

1.14 **“Common Area”** means all real property, together with all Improvements situated thereon, that 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, except that Common Area shall not include any Lot that the Association may acquire through foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

1.15 **“Common Expenses”** means the actual or estimated expenses incurred, or anticipated to be incurred, by the Association, together with any allocations to reserves.

1.16 **“Declarant”** means South Mountain Corporation, a Nevada corporation, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.17 **“Declarant Party” or “Declarant Parties”** means collectively Declarant, its members and the affiliates and subsidiaries of Declarant and its members, the officers, directors and employees of all of the foregoing, and as to Section 9.15, to the extent such Persons agree to be bound by Section 9.15, any contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Project.

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

1.19 **“Design Guidelines”** means the rules and guidelines adopted by the Architectural Review Committee pursuant to Section 5.11 of this Declaration, as amended or supplemented from time to time.

1.20 **“Exempt Property”** means (i) all real property and improvements owned by, or dedicated to and accepted by the United States, State of Arizona, the County of Maricopa, or any political subdivision thereof, so long as such entity or political subdivision is the owner thereof or for so long as said dedication remains effective; (ii) all Common Area; and (iii) until the

Transition Date, all Lots or other real property within the Project owned by Declarant or any affiliate of Declarant, except for property owned by Declarant or such a subsidiary that is subject to a contract for the conveyance of real property subject to the provisions of A.R.S. §33-741 et seq.

**1.21** **“First Mortgage”** means any mortgage, deed of trust or contract for sale pursuant to the provisions of A.R.S. §33-741 et seq. encumbering a Lot that has priority over all other mortgages, deeds of trust and contracts for sale on the same Lot.

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

**1.23** **“Improvement”** means any Residential Unit, building, fence, wall or other structure (including any basketball poles/hoops, play structures, patio covers, balconies, light fixtures and light poles), and any swimming pool, road, driveway, parking area (paved or unpaved), irrigation facilities, drainage facilities, trees, plants, shrubs, grass and other landscaping improvements of every type and kind.

**1.24** **“Include” or “Including”** means include or including, without limitation.

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

**1.26** **“Lot”** means a portion of the Project intended for independent ownership and use for residential purposes and designated as a lot on the Plat and as described on Exhibit A attached to this Declaration and, where the context indicates or requires, shall Include any building, structure or other Improvements situated on the Lot.

**1.27** **“Maintenance Standard”** means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

**1.28** **“Member”** means any Person who is a Member of the Association that holds a “Membership” created pursuant to Article 5.

**1.29** **“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. 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 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 contracts that are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots subject to a deed of trust Recorded pursuant to A.R.S. §33-801, et seq., the trustor shall be deemed to be the Owner. In the case of the 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.



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

1.31 **“Plat”** means the final plat of Magdalena Estates Recorded in Book 694 of Maps, page 7, and all amendments, supplements and corrections thereto.

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

1.33 **“Project Documents”** means this Declaration, the Articles, the Bylaws, the Association Rules and the Design Guidelines.

1.34 **“Purchaser”** means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots; or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant’s rights under this Declaration and in such assignment is declared not to be a Purchaser.

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

1.36 **“Resident”** means each natural person occupying or residing in a Residential Unit.

1.37 **“Residential Unit”** means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.38 **“Special Assessment”** means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.39 **“Transition Date”** means the first to occur of:

(i) the day on which title to the last Lot in the Project owned by Declarant is conveyed to a third party for value, other than as security for the performance of an obligation, or

(ii) the expiration of any seven (7) year period during which title to no Lot in the Project is conveyed by Declarant to a third party for value, other than as security for the performance of an obligation, or

(iii) the date twenty (20) years after the date this Declaration is Recorded, or

(iv) such earlier date as Declarant declares to be the Transition Date in a Recorded instrument.

**1.40** “Visible From Neighboring Property” means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of an adjoining Lot, Common Area or street.

## **ARTICLE 2**

### **PLAN OF DEVELOPMENT; CERTAIN PROJECT DISCLOSURES**

**2.1** Property Subject to the Declaration. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement 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 hereby declares that all 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 the Property, and which shall run with the Property. Declarant further declares that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, 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 or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his 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 scheme for the development, sale, lease and use of the Property and hereby evidences his intent 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, its successors, assigns and grantees, covenant and agree 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 its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

**2.2** Views Not Guaranteed. Although certain Lots in the Project at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot or Residential Unit. Neither Declarant Parties nor Association makes any representation or warranty whatsoever, express or implied, concerning the view that any Lot or Residential Unit will have whether as of the date this Declaration is Recorded or thereafter. Any view that exists at any point in time for a Lot or a Residential Unit may be impaired or obstructed by further construction within or outside the Project, Including by construction of Improvements (Including landscaping) by Declarant, construction by third parties (Including other Owners and Residents) and by the natural growth of landscaping. No third party, Including any broker or salesperson, has any right to bind Declarant or the Association

with respect to the preservation of any view from any Lot or Residential Unit constructed thereon or any view of a Lot or Residential Unit constructed thereon from any other property.

**2.3 Adjacent Police Uses.** The Project is located in the vicinity of property that is currently operated as a police firing range and training facility. Activities that may be conducted in this facility Include weapons training, target practice, firearm safety classes and other related uses. As a result, Persons residing or visiting within the Project may experience noise, dust, fumes, and other annoyances typically associated with police training facilities. By becoming an Owner, each Owner (on behalf of itself and its guests and invitees) acknowledges and accepts this adjacent use and releases the Association and Declarant Parties from all claims, loss and damage arising from or relating to the location of the Project near the police firing range and training facility.

**2.4 Disclaimer of Implied Covenants.** Nothing contained in this Declaration and nothing that may be represented to a Purchaser by real estate brokers or salespersons shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any Property subject to this Declaration.

**2.5 Disclaimer of Representations.** Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

### 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 Review Committee.

**3.1.2** No Improvement that would be Visible From Neighboring Property at the time it is constructed or would be Visible From Neighboring Property with the passage of time (such as trees or large bushes and shrubs) shall be constructed or installed on any Lot without the prior written approval of the Architectural Review Committee. No addition, alteration, repair, change or other work that in any way alters the exterior appearance, Including the exterior color scheme, of any part of a Lot or any Improvement located thereon that is Visible From Neighboring Property from its appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Review Committee. Accordingly, approval of the Architectural Review Committee is not required for the construction, installation, addition, alteration or repair of any Improvement situated in the back yard of a Lot unless such Improvement is or would be with the passage of time Visible From Neighboring Property. Any Owner desiring approval of the Architectural Review Committee for the construction, installation addition, alteration, repair, change or replacement of any Improvement that is or would be with the passage of time Visible From Neighboring Property shall submit to the Architectural Review Committee a written request for approval specifying in detail the nature

and extent of the addition, alteration, repair, change or other work that the Owner desires to perform, including the distance of such work from neighboring properties, if applicable. Any Owner requesting the approval of the Architectural Review Committee also shall submit to the Architectural Review Committee any additional information, plans and specifications that the Architectural Review Committee may request. If the Architectural Review Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with any fee payable pursuant to Section 3.1.6 of this Declaration and all supporting information, plans and specifications requested by the Architectural Review Committee have been submitted to the Architectural Review Committee, such application will be deemed to have been disapproved. The approval by the Architectural Review Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

**3.1.3** In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work that must be approved by the Architectural Review Committee, the Architectural Review 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 Review Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work that must be approved by the Architectural Review Committee pursuant to this Section 3.1 if the Architectural Review Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Review Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect another Owner or the appearance of the Project; or (vi) the proposed construction, installation, addition, alteration, repair, change or other 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 Review Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Review 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 Review Committee or as set forth in the Design Guidelines.

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

**3.1.6** The Architectural Review Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 3.1, which fee shall be payable at the time the application for approval is submitted to the Architectural Review 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 onto any Lot.

**3.1.8** The provisions of this Section do not apply to, and approval of the Architectural Review Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant, any member of Declarant or any Person affiliated with or controlled by Declarant.

**3.1.9** The approval required of the Architectural Review Committee pursuant to this Section 3.1 shall be in addition to, and not in lieu of, any approvals or permits that may be required under any federal, state or local law, statute, ordinance, rule or regulation, Including any such approvals and permits as set forth on the Plat. The approval by the Architectural Review Committee of any construction, installation, addition, alteration, change or other work pursuant to this Section 3.1 shall not be deemed a waiver of the Architectural Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, change or other work subsequently submitted for approval.

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

**3.1.11** The Architectural Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications (other than Declarant who shall not be subject to the provisions of this Subsection) to furnish to the Association a bond or other security acceptable to the Architectural Review Committee in an amount determined by the Architectural Review Committee to be reasonably sufficient to: (i) 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, (ii) remove any construction debris from a Lot that is permitted to accumulate in violation of Section 3.3 of this Declaration, and (iii) to repair any damage that might be caused to any Area of Association Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Owner upon: (a) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Review Committee; and (b) the Owner's written request to the Architectural Review Committee, provided that the Owner has satisfactorily corrected any condition described in (i), (ii) and (iii) above that may have existed during construction.

3.1.12 If the plans and specifications pertain to an Improvement that is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Architectural Review Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

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

3.3 **Nuisances; Construction Activities.** No animal waste, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Common Area, and no odors, fumes, dust, smoke, glare, heat, vibration, electromechanical disturbances, electromagnetic disturbances, radiation, danger of fire or explosion or loud noises shall be permitted to exist, 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 other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. 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 Review 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 Review Committee, which may also require screening of the storage areas. The Architectural Review Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

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

3.5 **Antennas.** Except as permitted by law, and except for antennas one meter or less in diameter or diagonal measurement which are permitted in accordance with the Design Guidelines, no antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation (a

“Device”) proposed to be erected, used or maintained outdoors on any portion of the Project, whether attached to a Residential Unit or structure or otherwise, shall be erected or installed without the prior written consent of the Architectural Review Committee. Even though an Owner may not be required to obtain written approval from the Architectural Review Committee for a Device, an Owner is required to comply with the Design Guidelines to the extent that the Design Guidelines set forth guidelines, standards and procedures applicable to such Device. Failure by an Owner to comply with the Design Guidelines with respect to a Device shall be deemed a violation of this Declaration in the same manner as if an Owner had not obtained the prior written approval from the Architectural Review Committee for a Device that does require prior written approval.

**3.6 Mineral Exploration.** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, 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 that are approved by the Architectural Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. The Board shall have the right to adopt rules and regulations regarding garbage, trash, trash containers and collection. No outdoor incinerators shall be kept or maintained on any Lot or other property. The Board shall have the right to contract with or designate one or more third parties (including a municipality) to collect garbage, trash, or recyclable materials for the benefit of the Owners and Residents, with any costs to be a Common Expense or billed separately to the Owners at the sole discretion of the Board.

**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 so as to be Visible From Neighboring Property.

**3.9 Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Review Committee. 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 Review Committee or constructed by Declarant, an affiliate of Declarant or an affiliate of a member of Declarant.

**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 other 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. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) 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 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 any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to persons other than the Residents of a provider's Residential Unit 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 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.

**3.12 Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that no more than a reasonable number of generally recognized house or yard pets ("Permitted Pets") may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All Permitted Pets shall be confined to an Owner's Lot except that a dog may be permitted to leave the Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible From Neighboring Property without the prior written consent of the Architectural Review Committee. Upon the written request of any Owner, Lessee or Resident, the Board shall determine, in its sole and absolute discretion, whether, for the purposes of this Section (i) a particular Permitted Pet is a nuisance or making an unreasonable amount of noise, (ii) a particular pet is a Permitted Pet, and (iii) the number of Permitted Pets kept on a Lot is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Owner, Resident or other person who brings or permits a pet to be on the Common Area or any Lot or street shall be responsible for immediately removing any feces deposited by said pet. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Project.

**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 (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment that Declarant or the Association may require for the operation and maintenance of the Project. Lawn and garden equipment may be kept on a Lot provided such



equipment is housed and stored in a building approved by the Architectural Review Committee or not Visible From Neighboring Property.

**3.14 Signs.** No signs whatsoever (Including commercial, "for sale," "for rent," "for lease" and similar signs) that are Visible From Neighboring Property shall be erected or maintained on any Lot or other parcel within the Property without the prior written approval of the Architectural Review Committee except:

(i) Signs required by legal proceedings;

(ii) Political signs; however, the Architectural Review Committee reserves the right to disallow and/or regulate the size and number of political signs to the extent permitted by law;

(iii) Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Review Committee; and

(iv) Until expiration of the Class B Membership, "For Sale," "For Rent," "For Lease," "Open House" and similar signs shall not be permitted on any portion of the Property. After expiration of the Class B Membership, the Board shall establish within the Association Rules guidelines and standards for "For Sale," "For Rent," "For Lease," "Open House" and similar signs. Such guidelines and standards may include, but not be limited to, the size, materials, color and format of such signs; provided that the Board also may continue the prohibition of such signs if the Board deems the prohibition to be in the best interests of the Project.

**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 the Declarant and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant. Two or more Lots shall not be combined into fewer Lots than originally shown on the Plat without the prior written approval of the Architectural Review Committee. If two or more Lots are combined into fewer Lots than originally shown on the Plat pursuant to the prior written approval of the Architectural Review Committee and the approval of any other governmental authority, the provisions of Article 5 and Article 6 of this Declaration shall apply to such Lots as originally shown on the Plat, and no diminution of voting rights or decrease in Assessments shall be applicable to the Lots so combined. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee, or other Person other than the Declarant against any part of the Property without the provisions thereof having been first approved in writing by the Architectural Review 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 the Declarant unless the application has been approved by the Architectural Review Committee and the proposed use otherwise complies with this Declaration.

**3.16 Motor Vehicles, Trucks, Commercial Vehicles, Campers and Boats.** No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, commercial vehicle or other similar equipment or vehicle may be

parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area so as to be Visible From Neighboring Property, except for: (i) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Review Committee; (ii) boats and motor vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; or (iii) motor vehicles not exceeding seven (7) feet in height and eighteen (18) feet in length that are not used for commercial purposes and that do not display any commercial name, phone number or message of any kind and that are parked in the garage or on the concrete driveway situated on a Lot, provided that such vehicles shall not be parked in such a manner as to block the sidewalks or impede pedestrian traffic in any way. **Parking on streets is prohibited, except for automobiles or motor vehicles of guests of Owners that may be parked on a street for short periods of time (but not overnight), and except as permitted by law.**

**3.17 Repair of Motor Vehicles.** Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project so as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked on any such Lot or other property so as to be Visible From Neighboring Property.

**3.18 All-Terrain Vehicles and Motorized Scooters.** All-terrain vehicles and motorized scooters are prohibited from operating within the Project.

**3.19 Towing of Vehicles.** The Board shall have the right to have any mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, truck, motorcycle, motorbike, or other motor vehicle that is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of Assessments.

**3.20 Garages and Driveways.** Garages situated on Lots shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Review Committee. Garages may be used for the storage of material so long as the storage of material does not result in inadequate parking for the motor vehicles of the Residents of a Lot.

**3.21 Drainage.** No structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the 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. No Person shall alter the grading of a Lot or alter

the natural flow of water over and across a Lot without the prior written approval of the Architectural Review Committee.

**3.22 Mechanical Equipment.** No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building on a Lot so as to be Visible From Neighboring Property, and any such equipment installed on the ground shall be screened from adjacent Lots, Common Areas and streets.

**3.23 Violation of Law or Insurance.** No Owner shall permit anything to be done or kept in or upon a Lot that will result in the cancellation or increase in premium, or reduction in coverage, of insurance maintained by any Owner or the Association or that would be in violation of any law.

**3.24 Lights and Noise; Offensive Activities.** Any lights installed on a Lot shall comply with the applicable City ordinances, provided that no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot that in any manner will allow light to be directed or reflected unreasonably upon any other Lot. No radio, television or other speakers or amplifiers shall be installed or operated on any Lot so as to be audible from other Lots, the Common Area or streets. No loud music or other loud noises or vibrations originating from inside or outside a Residential Unit shall be allowed if such music, noise or vibration disturbs neighboring Owners, and no exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed within the Project without the prior written approval of the Board. No nuisance shall be permitted to exist or operate within the Project, and no activity shall be conducted within the Project that is detrimental to any portion of the Project or any Owner, Lessee or other Resident. Upon the written request of any Owner, Lessee or Resident, the Board shall determine, in its sole and absolute discretion, whether, for the purposes of this Section, any music, noise, vibration or any other condition or activity within the Project is detrimental to an Owner, Lessee or Resident. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

**3.25 Window Coverings.** No window that would be Visible From Neighboring Property shall at any time be covered with aluminum foil, bed sheets, newspapers or any other like materials. No reflective materials shall be installed or used on any Improvement without the prior written consent of the Architectural Review Committee.

**3.26 Landscape Materials.** The Architectural Review Committee shall have the right to limit and prohibit certain landscape materials as may be set forth in the Design Guidelines, subject to compliance with City ordinances.

**3.27 Fire/Building Repair.** In the event that any Improvement is destroyed or partially destroyed by fire, act of God or as the result of any other act or thing, the damage must be repaired and the Improvement reconstructed or razed immediately upon receipt of insurance proceeds but in no event later than twelve months after such damage. Notwithstanding the foregoing, if a dangerous condition shall exist because of such damage, it shall immediately be corrected so as to not cause harm to another Person.

### **3.28 Leasing of Residential Units.**

**3.28.1** Subject to the terms of this Section, an entire Lot may be leased to a Lessee from time to time by an Owner provided that each of the following conditions is satisfied:

(i) The lease or rental agreement must be in writing;

(ii) The lease or rental agreement must be for a term not less than thirty (30) days;

(iii) The lease or rental agreement must contain provisions that the lease or rental agreement is subject to this Declaration and other Project Documents, that any violation of any of the foregoing shall be a default under the lease or rental agreement, and that Lessee has received and agrees to be bound by the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Project Documents; and

(iv) Before commencement of the lease term or rental agreement, the Owner shall provide the Association with the names of the Lessees and each person who will reside in the Residential Unit and the address and telephone number of the Owner.

**3.28.2** Any Owner that leases or rents such Owner's Lot shall keep the Association informed at all times of the Owner's address and telephone number. Any lease or rental agreement shall be subject to the Project Documents, and any breach of the Project Documents shall constitute a default under the lease or rental agreement, regardless of whether it so provides in the lease or rental agreement. If any Lessee breaches any restriction or other term contained in the Project Documents, the Owner, upon demand by the Association, immediately shall take such actions as may be necessary to correct the breach, including, if necessary, eviction of the Lessee. Notwithstanding the foregoing, the Association shall have all rights and remedies provided for under this Declaration and under the Project Documents against Lessees and Owners for violations of the Project Documents.

**3.29 Variances.** The Architectural Review Committee or the Board, as applicable, may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Review Committee or the Board, as applicable, determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete, (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for Residents of the Project, and (iii) the granting of a variance would not violate any federal state or local law, ordinance, rule or regulation. If any restriction set forth in this Article 3 is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable. After the Transition Date, any variance granted by the Architectural Review Committee or the Board

shall be subject to review and approval of the Declarant so long as Declarant owns any Property within the Project.

## ARTICLE 4 EASEMENTS AND DEVELOPMENT RIGHTS

### 4.1 Easement for Use of Common Area.

4.1.1 Every Owner, Lessee and Resident shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area (Including the right to use any streets that may be part of the Common Area for ingress and egress to the Owner's Lot) which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.12 of this Declaration.

(ii) The rights and easements granted to the Declarant in this Declaration, including the rights and easements granted to the Declarant in Sections 4.3 and 4.4 of this Declaration.

(iii) 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.

(iv) The right of the Association to suspend the right of an Owner to use the Common Area 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 provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation. Any suspension of an Owner's right to use the Common Area shall also extend to the Lessees and Residents of the Owner's Lot and their guests and invitees.

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, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including 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 but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area except as initially designed, approved and constructed by the Declarant or as approved by the Board.

4.3 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales, leasing and management offices (which may be housed in

portable buildings or trailers), model homes and parking areas (collectively, "Sales and Construction Facilities") throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned or leased by Declarant. Declarant reserves the right to place Sales and Construction Facilities on any Lots owned or leased by Declarant and on any portion of the Common Area 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.

**4.4 Declarant's Easements.** Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots owned by Declarant for construction or renovation related purposes, Including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures and the performance of work respecting the Project, and also Including the use of any such areas for temporary construction roadways. The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the 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 Easement in Favor of Association.** The Lots (except for the interior of a Residential Unit or other buildings) 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 inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

**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 Review 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, Lessees and Residents, and their family members, invitees and licensees.

**4.6 Easement for Unintended Encroachments.** To the extent that any Improvement upon a Lot or Common Area, Including any wall or fence, encroaches on any other Lot or Common Area as a result of the original construction shifting or settling, or alteration or restoration authorized by this Declaration or any other reason other than the intentional encroachment on a Lot or Common Area by an Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

**ARTICLE 5  
THE ASSOCIATION;  
ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS;  
COMMON AREA**

**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. Until the Transition Date, the directors of the Association shall be appointed by and may be removed by the Declarant. After the Transition Date, directors shall be elected by the Members in accordance with the Articles and 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, any Resident of the Owner's Lot or by any guests or invitees of the Owner, Lessee or Resident, and to impose late charges for payment of such fines if such fines remain unpaid fifteen (15) or more days after the due date, provided that the late charge shall not exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid fine, or such greater amount as permitted under applicable law. Notwithstanding the foregoing, to the extent applicable law from time to time (i) provides for any shorter period of time after which fines may or shall become delinquent, such shorter period of time may be established by the Board to apply in lieu of the time period set forth in this Section, and (ii) provides for an increased amount to be charged as a late charge for fines, such amount may be modified by the Board to apply in lieu of the late charge set forth in this Section.

**5.3 The Association Rules.** The Board may, from time to time, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility, including any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for any maintenance of Lots; (iii) the health, safety or welfare of the Owners, Lessees and Residents, or (iv) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. 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. After the Transition Date, the adoption, amendment and repeal of any rules and regulations by the Board shall be subject to review and approval of Declarant so long as Declarant owns any Property within the Project.

**5.4 Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee member or officer of the Association; 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 (i) the Declarant and (ii) the Owners of Lots that are Assessable Property. An Owner of a Lot that is Assessable Property 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 his ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to (a) each Lot owned by the Declarant, and (b) each Lot that is Assessable Property (with one (1) Membership allocated to each such Lot) and may not be separately assigned, transferred or conveyed.

**5.7 Classes of Members and Voting Rights.** No Members other than the Declarant shall have any voting rights until the Transition Date. After the Transition Date, the Association shall have the following two classes of voting Memberships:

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

(ii) Class B. Class B Memberships shall be all Memberships allocated to Lots owned by the Declarant. The Declarant shall be entitled to three (3) votes for each Class B Membership held by the Declarant. The Class B Memberships shall expire when the Declarant no longer owns any Property within the Project.

**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 or votes for each such 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 or entity 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 or votes representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he 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.

**5.9 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.



**5.10 Transfer of Membership.** The rights and obligations of any Member other than the 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 to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of Record, or such other legal process as 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 to 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 such purchase within ten (10) days after becoming the Owner of a Lot.

**5.11 Architectural Review Committee.** The Association shall have an Architectural Review Committee to perform the functions of the Architectural Review Committee set forth in this Declaration. The Architectural Review Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Property within the Project, the Declarant shall have the sole right to appoint and remove the members of the Architectural Review Committee. At such time as the Declarant no longer owns any Property within the Project, the members of the Architectural Review Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Review Committee, and in that event the Declarant may require, for so long as the Declarant owns any Property within the Project, that specified actions of the Architectural Review Committee, as described in a Recorded instrument executed by the Declarant be approved by the Declarant before they become effective. The Architectural Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include provisions regarding: (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) placement of Residential Units and other buildings; (iii) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (iv) requirements concerning exterior color schemes, exterior finishes and materials; (v) signage; and (vi) perimeter and screen wall design and appearance. The decision of the Architectural Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

**5.12 Conveyance or Encumbrance of Common Area.** Except as permitted in this Section 5.12, the Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Members of the Association. The Board shall have the right to change the size, shape or location of the Common Area upon (i) adoption of a resolution by the Board stating that in the Board's opinion the change proposed shall not substantially adversely affect the Residents and Owners, and (ii) the approval of such resolution by Declarant as long as the Declarant owns any Property within the Project. The Declarant, so long as the Declarant owns any Property within the Project, and thereafter the Board, without obtaining the approval or consent of any other Owner, may grant easements over or convey portions of the Common Area:

(i) to the City, Maricopa County, State of Arizona or any other governmental or quasi-governmental authority;

- (ii) to a trust or private entity for the purpose of nature conservancy;
- (iii) to any Person for the purpose of correcting areas of unintentional encroachment;
- (iv) to any Person so long as such conveyance or easement shall not have a material adverse affect on the Members and Residents.

Any such conveyances or granting of easements may reserve to the Association and its Members any rights, privileges and duties determined by the Declarant or the Board, whichever is applicable, to be appropriate for the enjoyment and use of the Property.

**5.13 Procedure for Change of Use of Common Area.** Upon (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Members and Residents, and (ii) the approval of such resolution by Declarant as long as the Declarant owns any Property within the Project, the Board shall have the power and right to change the use of such property (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (a) shall be for the benefit of the Members and Residents, as determined by the Board, and (b) shall be consistent with any deed restrictions, zoning and other governmental regulations restricting or limiting the use of the land.

**5.14 Contracts with Others for Performance of Association's Duties.** Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member employed by or otherwise connected with Declarant may be counted in determining the existence of a quorum at any meeting of the Board or committee of which such person is a member that shall authorize any contract or transaction described above or grant or deny any approval sought by Declarant, its affiliated companies or any competitor thereof and may vote at the meeting to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

## ARTICLE 6 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

**6.1 Creation of Lien and Personal Obligation of Assessments.** Declarant and each Owner, 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 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. Each Assessment, together with interest and all costs, Including 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, unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title.

## **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 to perform its 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 that is Assessable Property an Annual Assessment, which shall be allocated to each Lot in accordance with Section 6.3 below. The total amount to be assessed against the Lots as an Annual Assessment shall be the amount that is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses taking into account other sources of funds available to the Association.

**6.2.2** The Board shall 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 to meet all Common Expenses for any reason, Including 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. Notwithstanding anything contained in this Section 6.2 to the contrary, the Board shall not impose an Annual Assessment in any Assessment Period in excess of that amount permitted by law; however, to the extent that the law shall permit any increase in the Annual Assessment that requires the approval of the majority of Members, such increase shall be implemented only upon approval of the majority of Members and the prior written consent of Declarant so long as Declarant owns any Lot in the Project.

**6.3 Rate of Assessment.** The amount of the Annual Assessment for each Lot that is Assessable Property shall be the amount obtained by dividing the total budget of the Association contemplated upon completion of the Project by the total number of Lots in the Project.

**6.4 Obligation of Declarant for Deficiencies.** Until the Transition Date, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board with reasonable notice, such funds as may be necessary, when added to the Annual Assessments then collected by the Association, to pay all Common Expenses of the Association as they become due. Notwithstanding the foregoing sentence, Declarant shall not be obligated to pay to the

Association pursuant to this Section any funds for the establishment of replacement and maintenance reserves.

**6.5 Special Assessments.** The Association may levy against each Lot that is Assessable Property 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 an Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment is approved by Members having more than two-thirds (2/3) of the votes in each Class of Membership entitled to be cast by Members present 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 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.** Upon the commencement of the first Assessment Period, each Lot that is owned by a Class A Member, and thereafter, each Lot that is conveyed to a Person other than Declarant, shall be subject to assessment; provided that after the Transition Date, all Lots shall be subject to assessment.

**6.8 Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a monthly or quarterly basis or such other basis as may be selected by the Board. Special Assessments may 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 his 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 thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a 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 (or such longer period of time as required by applicable law) shall be deemed delinquent and shall bear interest from the date on which such Assessment or installment of the Assessment became due at the rate of twelve percent (12%) per annum. In addition, the Board may establish a late fee, not to exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid Assessment or installment thereof (but in no event an amount greater than permitted under applicable law), 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, to the extent applicable law from time to time provides for any shorter period of time after which Assessments or any other amounts payable hereunder may or shall become delinquent, such shorter period of time may be established by the Board to apply in lieu of the time period set forth in this Section, and to the extent applicable law from time to time provides for any greater amount of late fee or other amount to be charged to any Owner deemed delinquent in the payment of any Assessment, or any installment of an Assessment, such greater amount may be established by the Board to apply in lieu of the late fee set forth in this Section.

**6.9.2** The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot with respect to Assessments; and (iii) 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 with respect to the Assessments. Notwithstanding anything contained herein to the contrary, no lien shall apply to any interest, lien fee, late charge or other fees, charges and costs not permitted by law. 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 and all other amounts due to the Association by such Owner. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) 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 to be set from time to time by the Board.

**6.9.3** The Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any First Mortgage on the Lot, or as otherwise provided from time to time 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, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot that became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot that 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 as to any portion of Assessments past due until all such delinquent Assessments, interest, lien fees,

reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot with respect to Assessments have been paid in full. In no event shall such release of past due Assessments release the lien of this Declaration as to all other Assessments to become due hereunder.

**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 with respect to Assessments, in any manner allowed by law Including: (i) 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 securing the delinquent Assessments, and (ii) 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.

**6.9.6** In addition to the Assessment Lien described in Subsection 6.9.2, the Association also shall have a lien on each Lot and parcel within the Property for all monetary penalties and the fees, attorneys' fees, court costs, charges, late charges and interest charged with respect to such monetary penalties (the "Penalty Charges") after the entry of a judgment in a civil suit for such Penalty Charges from a court of competent jurisdiction and the Recording of such judgment as otherwise provided by law (the "Penalty Lien"). The Penalty Lien may not be foreclosed and is effective only on conveyance of any interest in the Lot or other parcel within the Property except as otherwise may be permitted by law.

**6.10 Evidence of Payment of Assessments.** Upon receipt of a written request from a lienholder, Member or Person designated by a Member, to the extent required by law, the Association shall issue, or cause to be issued, within the time period required by applicable law, a statement setting forth the amount of any unpaid Assessment or other fee or charge against the Lot. The Association may impose a reasonable charge for the issuance of such statements, which charge shall be payable at the time the request for any such statement is made. Any such statement, when duly issued as herein provided, shall be conclusive and binding on the Association with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

**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 (i) discharging and performing the Association's duties and obligations under the Project Documents; (ii) exercising the rights and powers granted to the Association by the Project Documents, and (iii) 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, Lessees and Residents. Notwithstanding any other provision of this Declaration to the contrary, funds of the Association

may not be used for the initial construction of Improvements on the Common Area until after the Transition Date.

**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 ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person acquiring a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Annual Assessment payable by Owners of Lots that are Assessable Property. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses 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 any Assessments levied by the Association pursuant to this Declaration.

**6.14 Reserve Fund.** To ensure that the Association shall have adequate funds reserved for repair and replacement of the Improvements within the Areas of Association Responsibility, each Person acquiring a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the then current Annual Assessment payable by Owners of Lots that are Assessable Property. Funds paid to the Association pursuant to this Section shall be deposited in the Reserve Account established pursuant to Section 6.15. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**6.15 Reserves.** Each budget adopted by the Board shall include reasonable amounts as determined by the Board to be collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Area. All amounts collected as reserves, whether pursuant to this Section or otherwise, 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. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. Withdrawal of funds from the Association's reserve account shall require the signatures of either (i) two (2) members of the Board, or (ii) one (1) member of the Board and an officer of the Association who is not also a member of the Board. The Board shall obtain an initial reserve study and then provide updates thereto at least once every five years. The reserve study shall at a minimum include (a) identification of the major components of the Common Area that the Association is obligated to repair, replace, restore or maintain, which, as of the date of the study, have a remaining useful life of less than thirty (30) years, (b) identification of the probable remaining useful life of the identified major components

as of the date of the study, (c) an estimate of the cost of repair, replacement, restoration or maintenance of the identified major components during and at the end of their useful life, and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. Provided that the Board acts in good faith in determining the amount to be collected as reserves, the Declarant Parties shall not be liable to the Association or any Member if the amount collected as reserves proves to be inadequate to pay for all required periodic maintenance, repair and replacement that was intended to be funded from reserves.

**6.16 Transfer Fee.** Each Person acquiring a Lot shall pay to the Association, or to its managing agent, if directed to do so by the Board, immediately upon becoming the Owner of the Lot, a transfer fee in such amount as is established from time to time by the Board.

## 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 that any Owner, governmental entity or third party 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 Common Area or alter, modify or remove any Improvements situated on the Common Area without the approval of the Board. No Owner, Resident or other Person shall remove, add to or modify any plants, trees or other Improvements in the part of their Lot that constitutes an Area of Association Responsibility except in accordance with the provisions of this Declaration. 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. The Association shall be responsible for the control, maintenance and payment of ad valorem taxes and liability insurance on the Common Area.

**7.2 Lots.** Each Owner of a Lot shall be responsible for maintaining, repairing and replacing his Lot and the Residential Unit and all landscaping or other Improvements situated thereon, including any landscaping situated between the boundary of such Lot and the pavement of a street, except for any portion of the Lot that is an Area of Association Responsibility. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair in accordance with the Maintenance Standard. All grass, hedges, shrubs, vines and plants of any type shall be irrigated (to the extent necessary to produce healthy plant material), mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass that die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property.



**7.3 Assessment of Certain Costs of Maintenance and Repair.** If the need for maintenance or repair of an Area of Association Responsibility, or any Improvement situated thereon, is caused through the willful or negligent act of any Owner, Resident, Lessee or their guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand. The decision of the Board shall be final and binding as to whether any need for repair is caused by any willful or negligent act of any Owner, Resident, Lessee or their guests or invitees.

**7.4 Improper Maintenance and Use of Lots.** If any portion of any Lot is not maintained in accordance with the Maintenance Standard, or if any portion of a Lot is being used in a manner that violates this Declaration; or if the Owner of any Lot is failing to perform any of his obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions that exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost of such action shall be paid by such Owner to the Association upon demand.

**7.5 Hold Harmless.** Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (Including strict liability) due to any nuisance, inconvenience, disturbance, injury to persons (Including death) or damage to property arising out of or relating to the Association and its employees, agents, contractors and subcontractors entering upon a Lot to perform any maintenance, repair and replacement of Improvements required by this Declaration.

**7.6 Boundary Walls.**

**7.6.1** Each wall or fence that is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 7.6, the general rules of law regarding boundary walls shall apply.

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

**7.6.3** The adjoining Owners shall each have the right to perform any necessary maintenance, repair or replacement of the wall and the cost of such maintenance, repair or replacement shall be shared equally by the adjoining Owners except as otherwise provided in this Section; provided, however, that if an Owner elects to paint and/or stucco the side of the wall that faces his Lot, such Owner shall be solely responsible for the cost thereof.

**7.6.4** If a boundary wall is damaged or destroyed through the act of an Owner, its agents, Lessees, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners.

7.6.5 If a boundary wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, Lessees, licensees, guests or family (Including ordinary wear and tear and deterioration from lapse of time), then all adjoining Owners shall rebuild or repair the wall at their joint and equal expense.

7.6.6 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.

7.6.7 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.

7.6.8 If a 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 who share the boundary wall.

#### 7.7 Maintenance of Walls Other Than Boundary Walls.

7.7.1 Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

7.7.2 Walls (other than walls described in Subsection 7.7.3 below) located on Areas of Association Responsibility shall be maintained, repaired and replaced by the Association.

7.7.3 Any wall that is placed on the boundary line between a Lot and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the surface of the wall that faces the Area of Association Responsibility. The Association shall have no responsibility for any structural repair and maintenance that would require rebuilding all or a portion of any such wall. In the event any such wall encroaches upon the Area of Association Responsibility or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

7.7.4 Any wall that is placed on the boundary line between a Lot and public right-of-way and that was constructed by the Declarant in a decorative manner (i.e., patterned and colored block, painted stucco or wrought iron) shall be maintained, repaired and replaced by the Owner of the Lot except that the Association shall be responsible for the repair and replacement of the surface of the wall that faces the public right-of-way. The Association shall have no responsibility for any structural repair and maintenance that would require rebuilding all or a portion of any such wall, including any portion of the wall constructed with wrought iron.

7.7.5 Any wall that is placed on the boundary line between an Area of Association Responsibility and public right-of-way or any other property dedicated to the public shall be maintained, repaired and replaced by the Association.

7.7.6 If the Association deems it necessary to trim, cut or remove vines, plants, trees, bushes, shrubs or other landscaping planted on a Lot in order for the Association to be able to perform its maintenance responsibilities under this Section, the Association shall give notice to the Owner of the applicable Lot identifying the work that must be done in order for the Association to be able to perform its maintenance responsibilities and the date by which such work must be completed. If the Owner does not perform the work identified in the notice within the time period set forth in the notice, then the Association shall have the right to perform the necessary work and charge the Owner for all costs incurred by the Association in the performance of the work. Any such amounts that become payable by an Owner to the Association pursuant to this Subsection shall be paid by the Owner within fifteen (15) days after receipt of a billing, invoice or other demand from the Association for payment of such amount. The Association shall not be liable to the Owner of a Lot or to any other Person for any loss or damage to the landscaping or for any change in appearance of a Lot as a result of any work performed by the Association on a Lot pursuant to this Subsection. The Association shall be liable to the Owner of a Lot for any damage to a wall caused by the Association in the exercise of the Association's rights under this Subsection 7.7.6.

7.8 **Installation of Landscaping.** Unless installed by Declarant, within one hundred eighty (180) days after conveyance of a Lot from the Declarant to an Owner, each Owner shall install trees, plants or other landscaping Improvements (together with any sprinkler system or drip irrigation system sufficient to adequately water the trees, plants or other landscaping Improvements) on the part of the Lot that is between the street adjacent to the Lot and the exterior walls of the Residential Unit situated on the Lot, except for any side or back yard of the Lot that is completely enclosed by a wall or fence and not Visible From Neighboring Property. Prior to installing the landscaping, an Owner shall maintain all such yard areas in a weed free and attractive manner. All landscaping installed by an Owner or such Owner's contractors must be approved by the Architectural Review Committee prior to installation.

## ARTICLE 8 INSURANCE

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

8.1.1 Commercial general liability insurance, Including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or relating to the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project that the Association is obligated to maintain under this Declaration, and shall also include hired and non-owned automobile liability coverages with cross-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 such 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** Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

**8.1.4** Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering the directors and officers of the Association against claims arising out of or relating to the administration of the Association.

**8.1.5** Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

**8.1.6** The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, against Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance that may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) 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; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

**8.2** **Certificates of Insurance.** An insurer that has issued an insurance policy pursuant to Section 8.1 of this Declaration 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 canceled 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 Common Area 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 Common Area.

**8.5** **Repair and Replacement of Damaged or Destroyed Property.** Any portion of an Area of Association Responsibility that is damaged or destroyed shall be repaired or replaced

promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all such Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to such damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition that 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 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 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 any Owner to enforce the provisions of the Project Documents or in any other manner arising out of or relating to 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 attorney 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 levy reasonable monetary penalties 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, provided the Owner is given notice and an opportunity to be heard.

**9.2 Termination.** This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing ninety percent (90%) or more of the votes in the Association, and by the holders of First Mortgages, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If termination is proposed after the Transition Date, such termination shall require the written consent of Declarant so long as Declarant owns any Property in the Project. 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 Subsections 9.3.2 or 9.3.4 of this Declaration, and subject to the provisions of Subsection 9.15.8 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than seventy-five percent (75%) of the votes in the Association.

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

**9.3.3** So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

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

**9.3.5** At any time after the Transition Date, any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 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, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant prior to the Transition Date or pursuant to Subsection 9.3.2 or 9.3.4 of this Declaration shall be signed by the Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

**9.4 Rights of First Mortgagees.** Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) 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 (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

**9.5 Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and Property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall

control. In the event of any conflict between the Bylaws and the Association Rules or Design Guidelines, 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 (i) those that would be used in determining the validity of the challenged interest, plus (ii) 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 against a Lot a written notice of a violation with respect to any violation of the Project Documents by the Owner, Lessee or Resident of the Lot. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps that must be taken by the Owner, Lessee or Resident 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 that 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 Review 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 Project 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 instrument and his heirs, executors, administrators, 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. Owners shall only be responsible for damage to the Common Area caused by the Owners' negligence or intentional acts.

**9.15 Dispute Notification and Resolution Procedure.** All actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Owner(s) against any one or more of the Declarant Parties, or (iii) by both the Association and any Owner(s) against any one or more of the Declarant Parties, other than claims covered under any limited warranty (a "Limited Warranty") provided by Declarant to an Owner pursuant to a purchase agreement, arising out of or relating to the Project, including the Declaration or any other Project Documents, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Residential Units) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this Section 9.15. Except as provided in Subsection 9.15.9 of this Declaration, Declarant and each Owner acknowledge that the provisions set forth in this Section 9.15 shall be binding upon current and future Owners of the Project and upon the Association, whether acting for itself or on behalf of any Owner(s).



**9.15.1 Notice.** Any Person (Including the Association) with a Dispute claim shall notify the applicable Declarant Party (the "Notified Declarant Party") in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

**9.15.2 Right to Inspect and Right to Corrective Action.** Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Notified Declarant Party and the claimant shall meet at a mutually acceptable place within the Project to discuss the claim. At such meeting or at such other mutually agreeable time, the Notified Declarant Party and the Notified Declarant Party's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by the Notified Declarant Party (provided the Notified Declarant Party shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Subsection 9.15.2. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Notified Declarant Party elects to take any corrective action, the Notified Declarant Party and the Notified Declarant Party's representatives and agents shall be provided full access to the Project and the property that is the subject of the claim to take and complete corrective action.

**9.15.3 No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in Subsection 9.15.2 shall be construed to impose any obligation on the Notified Declarant Party to inspect, test, repair or replace any item of the Project for which the Notified Declarant Party is not otherwise obligated under applicable law or any limited warranty provided by Declarant to an Owner in connection with the sale of any Lot and/or the Improvements constructed thereon. The right of the Notified Declarant Party to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in Recordable form executed and Recorded by the Notified Declarant Party.

**9.15.4 Mediation.** If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in Subsection 9.15.2 above within ninety (90) days after delivery of the Claim Notice, the matter shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (except as such procedures are modified by the provisions of this Subsection 9.15.4) or such other mediation service selected by the Notified Declarant Party. The Person who delivered the Claim Notice shall have until one hundred twenty (120) days after the date of delivery of the Claim Notice to submit the Dispute to mediation. If the Person who delivered the Claim Notice fails to timely submit the Dispute to mediation, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against the Notified Declarant Party or any Declarant Party without complying with the procedures described in this Subsection 9.15.4.

(i) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute, consistent with the Construction Industry Mediation Rules of the American Arbitration Association. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Notwithstanding the foregoing, applicable contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Project designated by a Notified Declarant Party may attend mediation sessions and may be made parties to the mediation. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

**9.15.5 Arbitration.** Should mediation pursuant to Subsection 9.15.4 above not be successful in resolving any Dispute, then the Person who delivered the Claim Notice shall have ninety (90) days after the date of termination of the mediation to submit the Dispute to binding arbitration. If timely submitted, such claim or dispute shall be resolved by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Subsection 9.15.5. If the Person who delivered the Claim Notice fails to timely submit the Claim to arbitration within the ninety (90)

day period, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. A Person with any Dispute may only submit such Dispute in arbitration on such Person's own behalf. No Person may submit a Dispute in arbitration as a representative or member of a class, and no Dispute may be arbitrated as a class action. All Declarant Parties and any Person(s) submitting a Claim Notice, together with any additional Persons who agree to be bound by this Section 9.15, such as contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Project (collectively, the "Bound Parties"), agree that all Disputes that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Subsection 9.15.5, and waive the right to have the Dispute resolved by a court, Including the right to file a legal action as the representative or member of a class or in any other representative capacity. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this Subsection 9.15.5, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Project is located.

(ii) Arbitrator. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the demand for arbitration on all respondents named therein.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, Including destructive or invasive testing; and (vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Subsection 9.15.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) Motions. The arbitrator shall have the power to hear and dispose of motions, Including motions to dismiss, motions for judgment on the pleadings and summary

judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law Including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(vii) Arbitration Award. Unless otherwise agreed by the parties, the arbitrator shall render a written arbitration award within thirty (30) days after conclusion of the arbitration hearing. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held., or as applicable, pursuant to the Federal Arbitration Act (Title 9 of the United States Code).

#### **9.15.6 WAIVERS**

**NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROPERTY, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 9.15 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 9.15. SPECIFICALLY, AND WITHOUT LIMITATION, EACH SUCH PERSON WAIVES THE RIGHT TO SUBMIT A DISPUTE IN ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS AND TO HAVE SUCH DISPUTE ARBITRATED AS A CLASS ACTION AND WAIVES ALSO THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A COURT, INCLUDING THE RIGHT TO FILE A LEGAL ACTION AS THE REPRESENTATIVE OR MEMBER OF A CLASS OR IN ANY OTHER REPRESENTATIVE CAPACITY. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 9.15, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.**

**9.15.7 Statutes of Limitation**. Nothing in this Section 9.15 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

**9.15.8 Required Consent of Declarant to Modify**. Neither this Section 9.15 nor Section 9.16 below may be amended except in accordance with Subsection 9.3.1 of this Declaration and with the express written consent of the Declarant.

**9.15.9 Limited Warranty Dispute Resolution**. Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of a Limited Warranty provided by Declarant to an Owner pursuant to a purchase agreement. Any and all claims, disputes and

controversies arising out of or relating to the Limited Warranty, including any claim of breach of contract, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of a purchase agreement, and breach of any alleged duty of good faith and fair dealing, shall be resolved pursuant to any applicable mediation, arbitration and/or other dispute resolution provisions contained in any such Limited Warranty. To the extent that any (or any portion of any) claim, dispute or controversy is not covered by the Limited Warranty, the provisions of this Section 9.15 shall apply.

**9.16 Required Consent of Owners for Legal Action.** Any action or claim instituted by the Association (which action or claim shall be subject to the terms of Section 9.15) against any one or more of the Declarant Parties, arising out of or relating to the Project, including the Declaration or any other Project Documents, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Residential Units) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements, shall have first been approved by Owners representing seventy-five percent (75%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose.

**9.16.1 Notice of Owners.**

(i) Prior to obtaining the consent of the Owners in accordance with Section 9.16, the Association must provide written notice to all Owners, which notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "Claim"), (2) a description of the attempts of Declarant to correct such Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against Declarant and the source of the funds that will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against Declarant, and (9) an affirmative statement from the Board that the action is in the best interest of the Association and its Members.

(ii) In the event the Association recovers any funds from Declarant (or any other Person) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

**9.16.2 Notification to Prospective Purchasers.** In the event that the Association commences any action or claim, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Subsection 9.16.1.

9.17 **Limitation on Declarant's Liability.** Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting any interest in any portion of the Property and becoming an Owner, acknowledges and agrees that neither Declarant (Including any assignee of the interest of Declarant hereunder) nor any affiliate, partner, officer, director or shareholder of Declarant (or any partner of shareholder in any such assignee) shall have any personal liability to the Association, or any Owner, Member or any other Person, arising out of or relating to (Including an action or failure to act with respect to) this Declaration or the Association except, in the case of Declarant (or its assignee), to the extent of its interest in the Property and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets or be a lien upon such other assets of the judgment debtor.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first set forth above.

DECLARANT:

SOUTH MOUNTAIN CORPORATION, a Nevada corporation

By: [Signature]

Its: PRESIDENT

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

Acknowledged before me this 3<sup>rd</sup> day of June, 2005, by AAREN WALLACE, the PRESIDENT of SOUTH MOUNTAIN CORPORATION, a Nevada corporation, on behalf of the corporation.

[Signature]  
Notary Public

My Commission Expires:  
07/16/06



CONSENT

Baseline Nevada, LLC, a Nevada limited liability company, as owner of the real property set forth on **Exhibit A** herein, hereby approves the foregoing Declaration of Covenants, Conditions and Restrictions for Magdalena Estates.

Dated this 31<sup>st</sup> day of MAY, 2005

BASELINE NEVADA, LLC, a Nevada limited liability company

By: MOBILITY, INC., a Nevada corporation  
Managing Member

By: ERNEST Snyder  
Its: Pres.

STATE OF ARIZONA )  
County of MARICOPA ) ss.

Acknowledged before me this 31 day of MAY, 2005, by ERNEST F. SNYDER, the PRESIDENT of MOBILITY, INC., a Nevada corporation, as Managing Member of BASELINE NEVADA, LLC, a Nevada limited liability company, on behalf thereof.

Jacqueline L. Rivera  
Notary Public

My Commission Expires:

07/16/06



**EXHIBIT A**

**PROPERTY**

Lots 1 through 26, inclusive, and Tracts A through F, inclusive, MAGDALENA ESTATES, according to the plat recorded in Book 694 of Maps, page 7, Official Records of Maricopa County Recorder, Maricopa County, Arizona.