

WHEN RECORDED, MAIL TO:
Beth Mulcahy
Mulcahy Law Firm, P.C.
3001 E. Camelback Road, Suite 130
Phoenix, Arizona 85016

Colony Biltmore-Greens Homeowners Association, Inc.

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR COLONY BILTMORE GREENS HOMEOWNERS ASSOCIATION, INC.**

Colony Biltmore-Greens Homeowners Association, Inc.

INSERT INDEX

~~Colony Biltmore-Greens Homeowners Association, Inc.~~

~~FIRST AMENDMENT TO AMENDED AND RESTATED
DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COLONY BILTMORE-GREENS HOMEOWNERS ASSOCIATION, INC.~~

RECITALS

~~Pursuant to the provisions of Article X, Section 3 of that certain Declaration of Covenants, Conditions and Restrictions hereinafter referred to as the "Declaration" as previously recorded in the office of the County Recorder of Maricopa County, Arizona, in Docket 12098, pages 1134-1173, and re-recorded in Docket 12099, pages 1028-1068, the Declaration is hereby amended in its entirety as follows:~~

~~THIS DECLARATION, made on the date hereinafter set forth by DIVIDEND DEVELOPMENT CORPORATION, a California corporation, formerly known as DIVIDEND INDUSTRIES, INC., hereinafter referred to as "Declarant".~~

WITNESSETH:

~~A. WHEREAS, Declarant Colony Biltmore-Greens Homeowners Association, Inc., is an Arizona non-profit corporation which represents the owners ~~is the owner~~ of certain property in Phoenix, County of Maricopa County, State of Arizona, which is more particularly described as:~~

- ~~(1) Lots 1 thru 26, inclusive, and Tracts A thru F, inclusive, of The Biltmore Greens Unit I, according to Book 187 of Maps, page 38, records of Maricopa County, Arizona, and~~
- ~~(2) Lots 1 thru 27, inclusive, and Tracts A thru G, inclusive, Colony Biltmore Unit I, according to Book 187 of Maps, page 39, records of Maricopa County, Arizona; and~~
- ~~(3) An easement for sewer facilities, fire lane, tennis court, and sidewalk, as recorded on January 27, 1977, in Docket 12052, at pages 1177-1180, records of Maricopa County, Arizona.~~

~~B. The Declaration of Covenants, Conditions and Restrictions for Arizona Biltmore Estates was recorded on February 5, 1976, on Docket No. 11531, on Page 1080-1130; the Supplementary Declaration of Covenants, Conditions and Restrictions for Arizona Biltmore Estates was recorded on January 27, 1977, in Docket No. 12052, on Page 1142-1143; the Second Amendment to Declaration of Covenants, Conditions and Restrictions for Colony Biltmore-Greens was recorded in Docket No. 12464, on Page 1319; the First Amendment to Declaration of Covenants, Conditions and Restrictions for Colony Biltmore-Greens was recorded in Docket No. 12434, on Page 217; 2003-175638?; the Third Amendment to Declaration of~~

Covenants, Conditions and Restrictions was recorded on December 22, 2016, in Document No. 2016-0942515; the Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Colony Biltmore-Greens was recorded on June 30, 2020, at Document No. 2020-0581782; all official records of Maricopa County, Arizona (“Declaration”) and subjected the real property described in the Declaration (and any amendments thereto) to the Declaration and required that the property be held, sold, used, and conveyed subject to the easements, restrictions, covenants and conditions, which run with the title to the real property subject to this Declaration.

~~NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. This Declaration shall be subject to the restrictions recorded in Docket 11531, Pages 1080, Docket 12052, Page 1142, and Docket 12052, page 1144, records of Maricopa County, Arizona, and as to any inconsistency between this Declaration and the prior recorded restrictions, the prior recorded restrictions shall control.~~

~~A. C. The Declaration is binding on all parties having any right, title or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the properties.~~

~~D. The Members of the Association wish to amend the Declaration.~~

~~E. Pursuant to Article X, Section 3 of the Association’s Declaration, an amendment to the Declaration must be recorded in an instrument signed by Owners representing not less than fifty-one percent (51%) of the votes entitled to be cast by each class of Members. The Association has obtained the affirmative vote representing the above-mentioned requirements. Any amendment to this Declaration, past, present or future, shall be subject to a presumption that sufficient notice of such amendment was provided to the Owners by the original Declaration, and that such amendment was reasonable and foreseeable to the Owners at the time of purchase. This amendment to the Declaration does not create any new affirmative obligations for Owners of Lots within the Association; rather, the amendments set forth herein refine the Declaration, correct an error, fill in a gap, and/or change the Declaration in a particular way.~~

~~**NOW, THEREFORE, the Declaration is hereby amended as follows:**~~

ARTICLE I
DEFINITIONS

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article VII hereof.

Section 2. "Architectural Committee Rules" shall mean the rules adopted by the Architectural Committee and the Board of Directors.

Section 3. "Articles" shall mean the Articles of Incorporation of the Association which are, or shall be filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 4. "Association" shall mean and refer to COLONY BILTMORE-GREENS HOMEOWNERS' ASSOCIATION, INC., an Arizona non-profit corporation, its successors and assigns.

Section 5. "Association Rules" shall mean the rules adopted by the Board, as they may be amended from time to time.

Section 6. "Board" shall mean the Board of Directors of the Association.

Section 7. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 8. "Common Area(s)" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area ~~to be~~ owned by the Association ~~at the time of the conveyance of the first Lot~~ is described as follows:

- (1) Tracts A thru F, inclusive, of the Biltmore Greens Unit I, according to Book 187 of Maps, page 38, records of Maricopa County, Arizona; and
- (2) Tracts A thru G, inclusive, Colony Biltmore Unit I, according to Book 187 of Maps, page 39, records of Maricopa County, Arizona; and
- (3) An easement for sewer facilities, fire lane, tennis court, and sidewalk, as recorded on January 27, 1977, in Docket 12052, at pages 1177-1180, records of Maricopa County, Arizona.

~~Section 9. "Declarant" shall mean DIVIDEND DEVELOPMENT Corporation, or any trustee or escrowee which may be designated by Declarant, including its successors and assigns.~~

Section 9~~10~~. "Declaration" shall mean ~~the~~ this Amended and Restated Declaration of Covenants, Conditions and Restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 10~~1~~. "Improvement" shall mean the buildings, roads, roadways, parking areas, lighting fixtures, fences, walls, hedges, plantings, planted trees and shrubs, and all other structures or landscaping of every type and kind.

Section 112. “Lot” shall mean and refer to any separate parcel of real property shown upon any recorded subdivision map of the Property, with the exception of the Common Area. “Class A Lot” shall mean and refer to a Lot in Colony Biltmore Unit I, according to Book 187 of Maps, page 39, records of Maricopa County, Arizona. “Class B Lot” shall mean and refer to a Lot in the Biltmore Greens Unit I, according to Book 187 of Maps, page 38, records of Maricopa County, Arizona.

Section 1123. “Member” shall mean any person, corporation, partnership, joint venture of other legal entity who is a member of the Association.

Section 134. “Owner(s)” shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. “Owner” shall include the purchaser of an executory contract for the sale of property. ~~The foregoing does not include persons or entities who hold an interest in any Lot merely as Security for the performance of an obligation. Except as stated otherwise herein, “Owner” shall not include a lessee or tenant of a Lot. For the purposes of ARTICLES II and IV only, unless the context otherwise requires, “Owner” shall also include the family, guests, invitees, licensees, and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any Lot. “Owner” shall include Declarant so long as Declarant owns any Lot within the Property.~~

Section 14. “Party Wall” or “Party Fence” shall mean each interior or exterior wall or fence which is erected on the dividing line between adjoining property owners and used in common.

Section 15. “Property” or “Properties” shall mean and refer to that certain real, personal, or mixed property hereinabove described which is subject to this Declaration, and such additions hereto as may hereafter be brought within the jurisdiction of the Association.

~~Section 16. “Public Purchaser” shall mean any person or other legal entity who becomes an Owner of any Lot within the Property.~~

Section 167. “Visible From Neighboring Property” shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property or from Common Area or streets at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II PROPERTY RIGHTSEASEMENTS

Section 1. Owners’ Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, for the purposes for which the Common Area is intended, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right to the Association to charge reasonable fees for the use of any facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the facilities by an Owner for any period during which any assessment against his Lot remains unpaid or for any infraction of this Declaration or the Rules;
- (c) the right of the Association to dedicate, transfer or convey, all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members hereinafter provided. No such dedication, transfer, or conveyance shall be effective unless an instrument, signed by Owners representing two-thirds (2/3) of the Lots agreeing to such dedication, transfer, or conveyance, has been recorded.
- ~~(d) the right of Declarant and its agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to non-exclusive use, without charge, of the Common Area for maintenance of sales facilities, and display and exhibit purposes.~~

Section 2. Delegation of Use. Any Owner may delegate, in accordance with this Declaration, his right of enjoyment to the Common Area to the members of his family, his tenants, lessees, guests, and invitees, provided such delegation is for a reasonable number of persons and at reasonable times.

Section 3. Owner's Easement of Enjoyment Limitations.

- (a) An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot and such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.
- ~~(b) The Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.~~
- ~~(c) Each Owner, tenant and occupant of a Lot, and the invitees, tenants, agents and employees of such Owner, may use the Common Area in common with the Owners, invitees, tenants, agents and employees of the other Lots in accordance with the purposes for which it is intended without hindering or encroaching upon the lawful right of such others.~~
- (b) No Owner will be exempted from liability for assessments with respect to the Common Area by waiver of the enjoyment of the right to use the Common Area or by abandonment of his Lot or otherwise.

~~(d)~~

Section 4. Utility Easement. There is hereby created a blanket easement upon, across, over and under the above described Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, irrigation lines, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said

Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said Property except as approved by the Board. This easement shall in no way affect any other recorded easements on said Property. Owner shall be notified, whenever feasible, regarding installation or repairs.

Section 5. Drainage Easement. There is hereby created a blanket easement for drainage of groundwater on, over and across the property. No Owner shall obstruct, divert, alter or interfere in any way with the drainage of groundwater upon, across or over any portion of the Property. Each Owner shall, at his or her own expense, maintain the drainageways and channels on his or her Lot in proper condition free from obstruction. The Association shall have the right, after thirty (30) days notice to an Owner, to repair or otherwise maintain the drainageway or channel on said Owner's Lot, which the Board, in its sole discretion, determines has not been maintained by the Owner in compliance with this provision. All costs and expenses, including reasonable attorney's fees incurred by the Association shall be borne by the Owner, and shall be paid to the Association on demand, plus interest at the maximum lawful rate for contracting parties from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in like manner as assessments levied pursuant to Article VII.

Section 6. Encroachments. Each Improvement shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the same is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Improvements due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Anything herein to the contrary notwithstanding, any such encroachment shall not exceed such size as is approved by the Board.

Section 7. Change of Use. 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 Owners, and (ii) the approval of such resolution by Members casting more than fifty-one percent (51%) of the votes entitled to be cast by Members who are present in person or by mail-in or absentee ballot at a meeting duly called for such purpose and who are entitled to use such Common Area under the terms of this Declaration, the Board shall have the power and right to change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board to accommodate the new use, provided such new use shall be for the benefit of the Owners.

Section 8. Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or

affirmative vote of the Owners representing at least three-quarters (2/4) of the votes entitled to be cast by Members of the Association.

~~Section 4. Title to Common Area. Declarant covenants that it will convey legal title to the Common Area to the Association, free of all encumbrances except current real property taxes and other easements, conditions, reservations and restrictions then of record. The conveyance shall be made to the completion of construction of the Improvements on the Common Area. The term "legal title" as used herein shall mean the fee simple title of Declarant as to Parcels (1) and (2) as referred to on Page 1 of this Declaration, and Declarant's interest in Parcel (3), the easement, as referred to on said Page 1.~~

ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION

~~Section 1. General Declaration. Declarant has developed the Property into various Lots. Declarant intends to sell and convey to Public Purchasers, Lots within the Property so developed subject to this Declaration. Declarant hereby declares that all of the Property subject hereto is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in a furtherance of general plan for the subdivision, improvement and sale of said Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said Property and every part thereof. All of this Declaration shall run with all of said Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest.~~

~~Section 2. Staged Developments. Additional and Improvements within the area described as Parcel No. 31, Arizona Biltmore Estates, as recorded in Book 183, page 35, records of Maricopa County, Arizona, except that property referred to on the first page of this Declaration, may be annexed, from time to time, by the Declarant in its sole discretion without the consent of Members, within five (5) years of the date of this Declaration. Such annexed land may, but shall not necessarily include, additional land for Single Family Residential Use and Common Area. Nothing contained in this Declaration shall obligate Declarant to annex any additional land or improvements to the Association. Effectuation of annexation shall take place when Declarant records a Declaration of Annexation describing the property to be annexed and referring to this Declaration by reference. Upon such Declaration of Annexation being recorded, the Property covered by this Declaration and the Declaration of Annexation shall be deemed to be one single project. On completion of an Annexation, all Owners of Lots shall have equal rights of the use of all Common Areas, and shall be treated as if the entire project had been developed at the same time. A new budget shall be prepared and assessments shall be levied in connection therewith.~~

ARTICLE IIIV LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 1. Permitted Uses and Restrictions. ~~Commercial.~~ The permitted uses, easements, and restrictions for all Property covered by this Declaration, shall be as follows:

A. ~~SINGLE FAMILY RESIDENTIAL USE~~ Residential Use. All Property shall be used, improved and devoted exclusively to ~~Single Family Residential Use.~~ No trade or business may be conducted on any Lot or in or from any Property, except that an Owner or other Resident of a Property may conduct a business activity on a Property so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Property; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Association; (c) the business activity does not involve persons coming on to the Lot other than on an infrequent basis nor does it involve the door-to-door solicitation of Owners or other Residents in the Association; and (d) the business activity is consistent with the residential character of the Association and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Residents in the Association, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended to or does generate a profit; or (c) a license is required for such activity. The leasing of a Property by the Owner thereof shall not be considered a trade or business within the meaning of this Section, provided, however, no lease shall be of less than an entire Lot and all Improvements thereon.

~~No gainful occupation, profession, trade or other non-residential use shall be conducted on any such Property.~~

B. Permitted Structures. No structure whatever, other than one private single family residence, together with a private garage for not more than two (2) cars, shall be erected, placed or permitted to remain on any Lot. The three (3) car garage constructed on the Lot at 5320 N. 26th Street is exempt from this Section.

C. Leasing. No owner of a lot shall rent or lease such lot for a period of less than thirty (30) days, including vacation rentals and short-term rentals. No owner of a Lot shall be permitted to rent less than his/her entire Lot, and no subleases are permitted. Each Owner of a Lot that is being rented or leased shall provide the Board of Directors with documentation of each such existing tenancy within thirty (30) days of adoption of this provision or the date of commencement of the tenancy, whichever is earlier, and thereafter with documentation of each new tenancy within thirty (30) days of commencement of each such tenancy. Such documentation shall include: Name(s) and contact information for any adults occupying the property; the time period of the lease, including the beginning and ending dates of the tenancy; and a description and the license plate numbers of the tenants' vehicles. On request of the foregoing documentation, the managing agent or, if there is no managing agent, the association may charge a fee ~~of no more than twenty five dollars~~ in an amount set by the Board, which shall

be paid within fifteen days after the postmarked request. The fee may be charged for each new tenancy for that unit but may not be charged for a renewal of a lease. In addition, the association may charge a fee or penalty of no more than fifteen dollars for incomplete or late information regarding the above mentioned documentation. It shall be the responsibility of the owner(s) to provide the tenants with current copies of the Declaration of Covenants, Conditions and Restrictions, By-Laws and Rules and Regulations and Amendments thereto. ~~No structure whatever, other than one private single family residence, together with a private garage for not more than three (3) cars, and a guest house, shall be erected, placed or permitted to remain on any Lot. Lots owned by Declarant may be used as model homes, and for sales and construction office for the purpose of enabling Declarant to sell Lots within the Property, until such time as all of the Lots owned by Declarant have been sold to public purchasers.~~

“Vacation rental” or “Short-term rental” means any individually or collectively owned single-family house that is also a transient public lodging establishment or owner-occupied residential home offered for transient use if the accommodations are not classified for property taxation under [section A.R.S. Section 42-12001](#). ~~Vacation rental and short term rental do not include a unit that is used for any nonresidential use, including rental, restaurant, banquet space, event center or another similar use.~~ For the purposes of this provision, transient lodging shall be defined the same way as in ARS [Section §42-5070](#).

BD. ANTENNASAntennas. No antenna or other device for the transmission or reception of television or radio signals including but not limited to television antenna, satellite or microwave dishes, in excess of one (1) meter in diameter or which are Visible From Neighboring Property shall be erected, used or maintained upon any Lot without the prior written approval of the Architectural Committee, which will grant approval for such devices consistent with the Federal Communication Commission’s rule(s) regarding Over-the-Air Reception Devices (“OTARD”). ~~No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Property whether attached to a building or structure or otherwise, unless approved by the Board.~~

EC. UTILITY SERVICEUtility 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 Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on building or other structures approved by the Architectural Committee. ~~ARCHITECTURAL COMMITTEE~~. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee~~ARCHITECTURAL COMMITTEE~~.

D. IMPROVEMENTS AND ALTERATIONS. ~~No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of any Property or the Improvements located thereon from its natural or improved state existing on the date such~~

~~Property was first conveyed or transferred by DECLARANT to a Public Purchaser shall be made or done without the prior approval of the ARCHITECTURAL COMMITTEE, except as otherwise expressly provided in this DECLARATION. No building, fence, wall or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the ARCHITECTURAL COMMITTEE or any committee established by the ARCHITECTURAL COMMITTEE for the purpose. Pursuant to its rulemaking power, the ARCHITECTURAL COMMITTEE shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The ARCHITECTURAL COMMITTEE shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the sustainability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring Property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the ARCHITECTURAL COMMITTEE. No changes or deviation in or from such plans and specifications once approved shall be made without the prior written approval of the ARCHITECTURAL COMMITTEE. All decisions of the ARCHITECTURAL COMMITTEE shall be final and no Lot Owner or other parties shall have recourse against the ARCHITECTURAL COMMITTEE or any of its members, for or with respect to any decision made in good faith.~~

~~E. MAINTENANCE OF LAWS AND PLANTINGS. In addition to the maintenance which the Association shall perform pursuant to Article XI below, the Association shall maintain the lawns and plantings on all Common Areas, and for this purpose, DECLARANT and the ASSOCIATION shall have the right, at any time, to plant, replace, maintain and cultivate landscaping, shrubs, trees, grass and plantings on any Common Area and on such easements over an OWNER'S Lot as may have been granted to DECLARANT or the ASSOCIATION, regardless of whether any OWNER or the ASSOCIATION is responsible hereunder for maintenance of such areas. No OWNER shall remove, alter, injure or interfere in any way with any landscaping, shrubs, trees, grass or plantings placed upon any Common Area by DECLARANT or the ASSOCIATION without the written consent of the ASSOCIATION having first been obtained. The ASSOCIATION or its authorized agents shall have the right to enter upon any Lot, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such landscaping, shrubs, trees, grass or plantings in the Common Area, and shall not be liable for trespass for so doing.~~

~~F. REPAIR OF BUILDINGS. No Improvement upon any Property shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. The Association shall have the right, after thirty (30) days notice to an Owner, to repair, paint, or otherwise maintain the exterior of any Improvement (and without notice in the event of an emergency) which the Association, acting thru its Board, determines in its discretion is in violation of this provision. All costs and expenses, including reasonable attorneys fees, incurred by the Association shall be borne by the~~

~~Owner, and shall be paid to the Association on demand plus interest at the maximum lawful rate for contracting parties from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in a like manner as assessments levied pursuant to Article VII.~~

FG. ~~Trash Containers and Collection.~~RASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or kept on any Property except in covered containers of a type, size and style which are approved by the ARCHITECTURAL COMMITTEEArchitectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property or Street except to make the same available for collection and, then, only the shortest time reasonably necessary to effect such collection. The BOARDBoard shall have the right, in its sole discretion, to require all OWNERSOwners to subscribe to a trash service. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.

GH. ~~Overhangs~~VERHANGS. No tree, shrub, or planting of any kind on any Property shall be allowed to overhang or otherwise to encroach upon any Common Area from ground level to a height of twelve (12) feet, without the prior approval of the Architectural CommitteeRCHITECTURAL COMMITTEE.

HJ. ~~Right of Way~~IGHT OF WAY. During reasonable hours and with prior notice, DECLARANT, any member of the ARCHITECTURAL COMMITTEEArchitectural Committee or Board of Directors,~~any member of the BOARD,~~ or any authorized representative of any of them, shall have the right to enter upon and inspect any Property and the Improvements thereon, except for the interior portions of any building, for the purpose of ascertaining whether or not the provisions of this DECLARATIONDeclaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

IJ. ~~Machinery and Equipment~~ACHINERY AND EQUIPMENT. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or use, maintenance or construction of buildings, improvements or structures which are within the permitted uses of such property, and except that which DECLARANT~~or the~~ AssociationSSOCIATION may require for the operation and maintenance of the Common Area.

JK. ~~Restriction of Further Subdivision~~ESTRICTION OF FURTHER SUBDIVISION. No Lot shall be further subdivided or separated into smaller lots or parcels by any OWNEROwner, and no portion less than all of any such LOTLot, nor any easement or other interest therein, shall be conveyed or transferred by any OWNEROwner,~~without the prior written approval of the BOARD.~~ ~~No Lot may be converted in to a condominium or cooperative or other similar type of entity without the prior written approval of the Board.~~ ~~This provision shall not, in any way, limit Declarant from subdividing or separating into smaller lots or parcels any Property owned by Declarant.~~ ~~No portion of a Lot, but for the entire Lot, together with the Improvements thereon,~~

may be rented or leased, and then only to a single family; provided, however, that no Lot may be leased or subleased without prior written notice to the Board of the names of the lease, and without compliance with such other rules and regulations as may be established by the Board.

~~KL. Signs^{GNS}. No signs whatsoever which are Visible From Neighboring Property shall be erected or maintained on any Lot except: 1) as allowed pursuant to A.R.S. §33-1808, 2) signs required by legal proceedings, or 3) residence identification signs.~~ ~~No signs whatsoever which are Visible From Neighboring Property shall be erected or maintained on any Lot except such signs the nature, number and location of which have been approved in advance by the ARCHITECTURAL COMMITTEE.~~

~~M. UTILITY EASEMENTS. There is hereby created a blanket easement upon, across, over and under the above described Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said Property except as initially developed and approved by the DECLARANT or thereafter approved by the BOARD. This easement shall in no way affect any other recorded easements on said Property. This easement shall be limited to improvements as originally constructed.~~

~~LN. Animals^{NIMALS}. No animals or, birds, ~~fowl, poultry, or livestock~~, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Property covered by this Declaration and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal or, bird, ~~fowl, poultry or livestock~~ 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 animal or, bird, ~~fowl, poultry, or livestock~~ shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal or, bird, ~~fowl, poultry, or livestock~~ is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.~~

~~O. ENCROACHMENTS. Each Improvement shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the same is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Improvements due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Anything herein to the contrary~~

~~notwithstanding, any such encroachment shall not exceed such size as is approved by the BOARD.~~

MP. TEMPORARY OCCUPANCYTemporary Occupancy. No trailer, basement of any incomplete Improvement, building, tent, shack, garage or barn, and no temporary Improvement of any kind shall be used at any time for a residence on any Property either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling or any such Property shall be removed immediately after the completion of construction.

NQ. Trailers and Motor Vehicles~~RAILERS AND MOTOR VEHICLES~~. No mobile home, motorhome, boat, recreational vehicle, trailer of any kind, truck, camper, permanent tent, or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any Property or street (public or private) within the Property, in such a manner as will be Visible From Neighboring Property; provided, however, that the provisions of this paragraph shall not apply to the emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the ARCHITECTURAL COMMITTEEArchitectural Committee. Garages shall be used for parking vehicles and storage purposes only, and shall not be converted for living or recreational activities. ~~without the written consent of the ARCHITECTURAL COMMITTEE.~~ Except as provided above, only automobiles in operating condition shall be parked in uncovered parking areas. Automobiles and other motor vehicles owned by Lot Owners shall not be parked in or on the streets or private drives constituting part of the Common Area.

OR. Nuisances~~UISANCES~~. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Property, and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such Property so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Property.

PS. Clothes Drying Facilities~~LOTES DRYING FACILITIES~~. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.

~~Q7. Mineral Exploration~~~~MINERAL EXPLORATION~~. No property 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.

~~R4. Diseases and Insects~~~~ISEASES AND INSECTS~~. No Owner shall permit any thing or condition to exist upon any Property which shall induce, breed or harbor infectious plant diseases or noxious insects.

~~V. PARTY WALLS AND FENCES~~. The rights and duties of Owners with respect to Party Walls or Party Fences shall be as follows:

- ~~(1) — The Owners of contiguous Lots who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.~~
- ~~(2) — In the event that any Party Wall or Party Fence is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall or Party Fence without cost to the other adjoining Lot Owner or Owners.~~
- ~~(3) — In the event any such Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.~~
- ~~(4) — Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall or Party Fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.~~
- ~~(5) — In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.~~
- ~~(6) — Each Owner shall permit the Owners of adjoining Lots, or their representative, when reasonably required, to enter his Lot for the purpose of repairing or maintaining a Party Wall or Party Fence or for the purpose of performing installations, alterations or repairs to the Property of such adjoining Owners, provided that the requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of~~

~~entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this paragraph shall not be deemed guilty of trespass by reason of such entry.~~

~~(7) Surfaces of Party Walls or Party Fences on Property which are generally accessible or viewable from only the adjoining Property may be planted against, painted, maintained and used by the adjoining Owners. If such surfaces are viewable from public streets on the Common Area, the color scheme shall not be changed without the written consent of the ARCHITECTURAL COMMITTEE.~~

~~W. DRAINAGE EASEMENT. There is hereby created a blanket easement for drainage of groundwater on, over and across the property. No Owner shall obstruct, divert, alter or interfere in any way with the drainage of groundwater upon, across or over any portion of the Property. Each Owner shall at his own expense maintain the drainageways and channels on his Lot in proper condition free from obstruction. The Association shall have the right, after thirty (30) days notice to an Owner, to repair or otherwise maintain the drainageway or channel on said Owner's Lot, which the Association, acting through its Board, determines has not been maintained by the Owner in compliance with this provision. All costs and expenses, including reasonable attorney's fees incurred by the Association shall be borne by the Owner, and shall be paid to the Association on demand, plus interest at the maximum lawful rate for contracting parties from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in like manner as assessments levied pursuant to Article VII.~~

~~X. EASEMENT FOR SUBSEQUENT CONSTRUCTION. There is hereby created an easement running in favor of Declarant, its successors and assigns and its or their agents, employees, or independent contractors, to enter upon any portion of the Property for the purpose of constructing or installing improvements upon any additional land annexed to the Property pursuant to the terms of Article III, Section 2 of this Declaration.~~

~~Y. DECLARANT'S EXEMPTION. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by DECLARANT, or its duly authorized agents, of Improvements or signs necessary and convenient to the development or sale of Lots and the Property.~~

Section 2. Permitted Uses and Restrictions – Common Area. The permitted uses and restrictions for Common Area shall be as follows:

A. Permitted Uses.

(1) Parking in designated parking spaces and parking areas for the purposes of parking vehicles of the Owner, his guests and invitees; limited, however, for

purposes connected with or incidental to any use being made of any portion of any Owner's lot.

- (2) Access for vehicles and pedestrians between public streets and any parking areas situated on the Property and any Owner's Lot; limited, however, for purposes connected with or incidental to any use being made of any portion of any Owner's Lot.
- (3) Access for pedestrians on any sidewalks or walkways, limited, however for purposes connected with or incidental to any use being made of any portion of any Owner's Lot.
- (4) Access for persons engaged in maintaining any portion of the Common Area or any Owner's Lot.
- (5) Such other uses as may be adopted from time to time to time by the Board and set forth in the Association's Rules and Regulations.
- (6) In general, the Common Area shall be used for the benefit of the Owners, for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment to be derived from such reasonable and proper use, without hindering the exercise of or encroaching upon the right of any other Owner to utilize the Common Area, provided that no unlawful use shall be permitted.

B. Restricted Uses.

- (1) The Common Area shall not be used by Owners for storage of supplies, materials or personal property of any kind.
- (2) Such other restrictions as may be adopted by the Board and set forth in the Association's Rules and Regulations.
- (3) In general, no activity shall be carried on nor condition maintained by any Owner upon the Common Area which spoils the appearance of the Property or hinders or encroaches upon the right of any other Owner to utilize the Common Area as reasonably intended.

ARTICLE IV
MAINTENANCE

Section 1. Maintenance by the Association.

€. A. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Area, and all Improvements located thereon, except for any part of

~~the Common Area which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of the Common Area, but the Common Area, 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 obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Area, and the Improvements located thereon. The Association may, at any time, as to any Common Area, conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:~~

- ~~(1) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) in accordance with (a) the last plans thereof approved by the Board, (b) the original plans for the improvement, or (c) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed;~~
- ~~(2) — Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, and parking area;~~
- ~~(3) — Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;~~
- ~~(4) — Place and maintain upon any such area such signs, markers and lights as the Board may deem appropriate for the proper identification, use and regulation thereof, subject to the approval of the Architectural Committee;~~
- ~~(5) — Remove all papers, debris, filth and refuse from the Common Area and wash or sweep paved areas as required; clean and relamp lighting fixtures as needed;~~
- ~~(6) — Repaint striping, markers, directional signs, etc., as necessary;~~
- ~~(7) — Pay all real estate taxes and assessments on the Common Area;~~
- ~~(8) — Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Area;~~
- ~~(9) — Pay for and keep in force at the Association's expense public liability insurance in companies acceptable to the Association in amounts and with limits of liability desired by the Owners or required of the Owners pursuant to any other recorded~~

~~document affecting the Property, such insurance to name the Association or the Owners or both as named insureds;~~

~~(10) — Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration;~~

~~(11) — The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area; and~~

~~A. Nothing herein shall be constructed so as to preclude the Association from delegating its powers set forth above to a manager or agent or to other persons, firms or corporation.~~

B. The Association shall care for and maintain all drainageways, landscaping in the Front Yards of all Lots, and shall keep all shrubs, trees, grass and plantings of every kind thereon neatly trimmed, properly cultivated, and free of trash, weeds, and other unsightly material. No Owner shall remove, alter, injure, or interfere, in any way, with any shrubs, trees, grass, or plantings placed upon any such Property by the Association, without the prior written consent of the Architectural Committee. The Association, and its authorized agents, shall have the right to enter upon such Front Yards at all reasonable times, for such purposes, and they shall not be liable for trespass for so doing. As used herein, the term "Front Yard" shall mean that portion of a Lot which faces toward a private or public street, including side yards on corner Lots, excluding such portions of a Lot that may be enclosed by a fence or wall, arched opening, or other thing dividing a Lot.

C. The Association shall have the right, but not the duty, at any time and from time to time, to undertake the care and maintenance of the following items:

1. All or any portion of the landscaping on any part of the Lots not covered by **Section A** above; and

2. Exterior of the Improvements located on Lots of Owners.

D. Standard of Care. The Board shall use a reasonably high standard of care in providing repairs, management and maintenance of the Common Area, but the Board shall be the sole judge as to the appropriate maintenance of all such areas.

E. Maintenance of Lawns and Plantings. In addition to the maintenance which the Association shall perform pursuant to this Article IV, the Association shall maintain the lawns and plantings on all Common Areas, and for this purpose, the Association shall have the right, at any time, to plant, replace, maintain and cultivate landscaping, shrubs, trees, grass and plantings on any Common Area and on such easements over an Owner's Lot as may have been granted to the Association, regardless of whether any Owner or the Association is responsible

hereunder for maintenance of such areas. No Owner shall remove, alter, injure or interfere in any way with any landscaping, shrubs, trees, grass or plantings placed upon any Common Area by the Association without the written consent of the Association having first been obtained. The Association or its authorized agents shall have the right to enter upon any Lot, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such landscaping, shrubs, trees, grass or plantings in the Common Area, and shall not be liable for trespass for so doing.

(12) —

Section 2. Maintenance by Lot Owners. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing the Owner's Lot, and all buildings, landscaping or other Improvements situated thereon, including, without limitation, any drainage, natural area open space, conservation area, sight distance, and other easements situated on its Lot (to the extent maintenance is appropriate and allowed). All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. No yard equipment, woodpiles or storage areas may be maintained so as to be Visible From Neighboring Property or from streets within the Project.

Section 3. Improper Maintenance and Use of Lots. In the event any portion of any Lot required to be maintained by an Owner is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Association, in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Declaration, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within thirty (30) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said thirty (30) 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 thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

~~D. Section 4. -Damage or Destruction of Common Area By Owners.~~ In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, or agents, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specification of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, ~~to the Association and the Association may enforce collection of the same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments and~~ payment of such amounts shall be secured by the Assessment Lien.

Section 5. Maintenance of Party Walls and Fences. The rights and duties of Owners with respect to Party Walls or Party Fences shall be as follows:

- a. The Owners of contiguous Lots who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
- b. In the event that any Party Wall or Party Fence is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall or Party Fence without cost to the other adjoining Lot Owner or Owners.
- c. In the event any such Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.
- d. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall or Party Fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.
- e. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.
- f. Each Owner shall permit the Owners of adjoining Lots, or their representative, when reasonably required, to enter his Lot for the purpose of repairing or maintaining a Party Wall or Party Fence or for the purpose of performing installations, alterations or repairs to the Property of such adjoining Owners, provided that the requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this paragraph shall not be deemed guilty of trespass by reason of such entry.
- g. Surfaces of Party Walls or Party Fences on Property which are generally accessible or viewable from only the adjoining Property may be planted against, painted, maintained and used by the adjoining Owners. If such surfaces are

viewable from public streets on the Common Area, the color scheme shall not be changed.

ARTICLE V
THE ASSOCIATION

Section 1. Organization.

A. The Association. The Association is an Arizona nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

B. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors of between five (5) and seven (7) members, and such Officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws, as same may be amended from time to time. Board vacancies due only to death, resignation or disqualification will be filled by the Board, and the replacements will only serve until the next election.~~The affairs of the Association shall be conducted by a Board of Directors and such Officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws, as same may be amended from time to time.~~

Section 2. Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth in the Articles and Bylaws, as same may be amended from time to time.

Section 3. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Rules". The Rules may restrict and govern the use of any area by any Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. The Association shall A post a copy of the Bylaws and/or Rules, as they may from time to time be adopted, amended or repealed, on the Association's website a minimum of thirty (30) days prior to their effective date, and shall notify Owners via electronic mail regarding the posted Bylaw or Rule change(s).~~copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded.~~ Said Rules shall have the same force and effect as if they were set forth in and were a part of the Declaration.

Section 4. Personal Liability. No member of the Board or any Committee of the Association, or any Manager, shall be personally liable to any Owner, or to any other party, 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, any Manger, or any other representative or employee of the Association, or the Architectural Committee, or any other

Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

ARTICLE VI MEMBERSHIP AND VOTING RIGHTS

Section 1. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his, her or its ownership ceases for any reason, at which time his, her or its membership in the Association shall automatically cease. ~~Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.~~

Section 2. Class of Members. The Association Shall have ~~three~~ two (2) classes of voting membership:

Class A. Class A Members shall be the Owners, ~~with the exception of the Declarant,~~ of the Class A Lots and each Class A Member shall be entitled to one (1) vote for each Lot owned.

Class B. Class B Members shall be the Owners, ~~with the exception of the Declarant,~~ of the Class B Lots and each Class B Member shall be entitled to one (1) vote for each Lot owned.

~~Class C. Class C Members shall be the Declarant and shall be entitled to seven (7) votes for each Lot owned. The Class C membership shall cease when the total votes outstanding in the Class A and Class B memberships equal or exceed the total votes outstanding in the Class C membership.~~

Section 3. Voting Procedures. When more than one person holds an interest in any Lot, only one (1) person shall be the Member. Such persons holding an interest shall designate the person to be the Member and give written notice thereof to the Association. The vote for such Lot may be exercised as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. The votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint 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 Owner or Owners casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted as said votes shall be deemed void.

~~Section 4. In any election of the members of the Board, every Owner entitled to vote at such an election shall have the right to cumulate his votes and give one candidate, or divide~~

~~among any number of the candidates, a number of votes equal to the number of Lots owned by the Owner multiplied by the number of directors to be elected. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.~~

~~Section 5. Each member shall have such other rights, duties, and obligations as set forth in the Articles and Bylaws, as same may be amended from time to time.~~

Section 46. Transfer of Membership. The Association membership of each Owner of a Lot shall be appurtenant to said Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to the Owner's Lot and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under the provisions of a deed of trust 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. Each Purchaser of a Lot shall notify the Association of the purchase within ten (10) days after the Purchaser becomes the Owner of a Lot.~~Any transfer of ownership to said Lot shall ??? to transfer said membership to the new Owner thereof.~~

Section 5. Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Declaration within thirty (30) days after such payment is due or if any Owner violates any other provision of the Declaration and such violation is not cured within thirty (30) 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.

ARTICLE VII

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 1. Creation of the Lien and Personal Obligation of Assessments. ~~The Declarant, for each Lot owned hereby covenants, and~~ Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collect as hereinafter provided. In addition, Class B memberships shall be subject to an assessment for exterior maintenance. The assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Property and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or her successor in title unless expressly assumed by them.

No Lot shall be sold, transferred or conveyed by any Owner without all assessments having been paid in full, whether or not a lien has been filed or recorded.

Section 2. ~~Purpose Annual of Assessments.~~ 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 expenses to perform the Association's duties and obligations under the Declaration, including the establishment of replacement and maintenance reserves and a contingency fund, the Board, for each Assessment Period, shall assess against each Lot an Annual Assessment. The total amount to be assessed against the Lots as an Annual Assessment shall be the amount which is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses and all other expenses to perform the Association's duties and obligations under the Declaration, including the establishment of replacement and maintenance reserves and a contingency fund, taking into account other sources of funds available to the Association.

~~The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners of the Property and for the improvement and maintenance of the Common Area. Without limiting the generality of the foregoing, such purposes shall include the payment for the following:~~

~~Water, sewer, garbage, electrical, lighting, telephone, gas and other necessary utility service for the Common Area;~~

~~Maintenance and repair of storm drains, sanitary sewers and private streets lying within the Common Area;~~

~~Fire and casualty insurance covering the Common Area and at the election of the Board of Directors, a blanket fire and casualty insurance policy or policies covering the improvements on the Lots.~~

~~Public liability insurance insuring the Association against any liability to the public or to any Owner, their invitees or tenants, incident to their occupation and/or use of the Common Area with such limits of coverage as may be determined by the Board;~~

~~Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws, and any other insurance deemed necessary by the Board of Directors of the Association;~~

~~Standard fidelity bonds covering those certain members of the Board, the officers, and those certain employees of the Association who are authorized to sign checks on behalf of the Association, in such amounts as the Board may determine from time to time;~~

~~Painting, maintenance, repair, and replacement of the Common Area;~~

~~Exterior maintenance of Lots;~~

~~Reserves for repair and replacement of Improvements on the Common Area and for exterior maintenance;~~

~~Reimbursement for reasonable expenses incurred by members of the Board and officers in the discharge of their duties; and~~

~~Such other and further items as may be necessary or required by the Association to carry out its intent and purpose as set forth in this Declaration.~~

Section 3. Notice of Assessments/Maximum Annual Assessments. ~~The Board shall attempt to give notice of the Annual Assessment to each Owner at least forty-five (45) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate for any reason to meet all Common Expenses and expenses to perform the Association's duties and obligations under the Declaration, including the establishment of replacement and maintenance reserves and a contingency fund, including, without limitation, due to nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period and revised Annual Assessment shall commence on the date designated by the Board. The Association shall not impose an Annual Assessment that is more than fifteen percent (15%) greater than the immediately preceding fiscal year's assessment without the approval of the majority of members of the Association. Until January 1 of the year immediately following the conveyance of the first Class A Lot to an Owner, the maximum annual assessment for each Improved Class A Lot shall be \$1,000.00, and five percent (5%) thereof for each Unimproved Class A Lot. Until January 1 of the year immediately following the conveyance of the first Class B Lot to an Owner, the maximum annual assessment for each Improved Class B Lot shall be \$1,500.00, and five percent (5%) thereof for each Unimproved Class B Lot. A Lot shall be deemed "Improved" when a single family residence has been completely constructed thereon, but in no event later than 180 days after start of construction thereon. All other Lots shall be deemed "Unimproved" Lots.~~

~~From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments may be increased by the Board each year not more than fifteen (15%) percent above the maximum assessments for the previous year without a vote of the membership.~~

~~From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments may be increased above fifteen (15%) percent by a vote of the Owners representing two thirds (2/3) of the Lots within the Property, at a meeting duly called for this purpose.~~

~~The Board may increase or decrease the annual assessments and shall fix the assessments annually, but not in an amount not in excess of the maximum.~~

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in ~~any~~ assessment year, ~~for a period not extending beyond ten years,~~ a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of Owners representing ~~two-thirds at least two-thirds~~ ~~(52/31%)~~ of the Lots within the Property, represented in person or by absentee ballot, at a meeting duly called for this purpose. Once a special assessment for a specific capital project has been approved by the owners, the Association shall have the right to finance the project for which the special assessment was approved by the owners by encumbering future assessments.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members in person or by mail-in/absentee ballot ~~of proxies~~ entitled to cast fifty-one (51%) percent of all the votes ~~of each class of membership~~ shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half sixty-five percent (1/265%) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Capital Improvement Fee.

(a) Except as provided in Subsection (b), immediately upon becoming the Owner of an Lot, each Person or Entity who purchases or otherwise becomes the Owner of a Lot on or after the date of recordation of this amendment shall pay to the Association a Capital Improvement Fee in the amount of (i) one half of one percent (0.5%) of the gross purchase price, or (ii) one-half of one percent (0.5%) of the gross transfer value (gross transfer value shall be determined based upon the available recorded transfer documentation, or as otherwise reasonably determined in the sole discretion of the Board of Directors), whichever (i) or (ii) is applicable, as of the date that the Person or Entity becomes the Owner of the Lot.

(b) No Capital Improvement Fee shall be payable with respect to: (i) the transfer or conveyance of a Lot by devise or intestate succession; (ii) a transfer or conveyance of a Lot for estate planning purposes; or (iii) a transfer or conveyance to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment for the

Capital Improvement Fee in which event a Capital Improvement Fee shall be payable with respect to such transfer or conveyance.

(c) Capital Improvement Fees shall be non-refundable and shall not be considered as an advance payment of assessments.

(d) Capital Improvement Fees shall only be used for capital projects or to fund the Association's reserves,, as may be determined from time to time by the Board of Directors, in its sole discretion. Capital Improvement Fees shall not be used for the operating costs of the Association. The Capital Improvement Fee shall be deemed to touch and concern the land in accordance with A.R.S. Section 33-442.

(e) The Capital Improvement Fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1806 and, therefore, the Capital Improvement Fee shall be in addition to the fee which the Association is entitled to charge and collect pursuant to A.R.S. § 33-1806.

Section 76. Uniform Rate of Assessment. Except as provided in Section 3 above, both annual and special assessments must be fixed at a uniform rate for all Lots of the same class and may be collected on a monthly, quarterly, or annual basis.

Section 8. Operating Net Losses. Effective January 1, 2023, if an Operating Net Loss is incurred in a calendar year, the Board may elect to borrow funds from the General Reserves account provided such funds are repaid to the General Reserves account within three years. Funds owed may be offset by calendar year Operating Net Income deposited in the General Reserves account in the subsequent three years.

Section 9. Financial Advisory Committee

The Board shall appoint a Financial Committee of three (3) to five (5) members to provide advice on the Annual Budget and all annual and special assessment fees, the Reserve Fund Study, and large Reserve and Capital Improvement Fee expenditures. The Treasurer shall chair the committee, whose members shall be appointed by the Board for one-year terms. The Committee's reports will be posted to the community website.

~~Section 7. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to Class A Lots, on the first day of the month following the conveyance of the first Class A Lot to an Owner other an Declarant and as to Class B Lots, on the first day of the month following the conveyance of the first Class B Lot to an owner other~~

~~than Declarant; provided, however, that annual assessments on Class A Lots and Class B Lots owned by Declarant shall not commence until the Common Area is conveyed to the Association pursuant to Article II, Section 4 of this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year as of the date of commencement of the applicable assessment. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.~~

Section 810. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date is subject to a late fee. Such late fee is limited to the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid Assessment and may be imposed only after the Association has provided notice that the Assessment is overdue or provided notice that the Assessment is considered overdue after a certain date. The Association shall have a lien on each Lot for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments, 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. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to: (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, or (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.

~~Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and condition of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:~~

~~A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member to enforce~~

~~each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of ten (10%) percent per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner or Member.~~

~~B. Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot within the Property to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots covered by the Declaration, together with interest thereon at the rate of ten (10%) percent per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand of claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within 10 days after delivery of such demand, or even without such a written demand being made, the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:~~

- ~~1. The name of the delinquent Owner;~~
- ~~2. The legal description and street address of the Lot against which claim of Lien is made;~~
- ~~3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys' fees (with any proper offset allowed);~~
- ~~4. That the claim of lien is made by the Association pursuant to the Declaration and~~
- ~~5. That a lien is claimed against said Lot in an amount equal to the amount stated.~~

~~Upon recordation of a duly executed original copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 9~~

~~hereinafter. Any such lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a realty mortgage or by the exercise of a power of sale in the manner provided by law under a trust deed, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event of such foreclosure, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot hereby expressly waives any objection to the enforcement and foreclosure and of this lien in the manner.~~

Section 119. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Purposes for which Association's Funds May be Used. The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (a) discharging and performing the Association's duties and obligations under the Declaration; (b) exercising the rights and powers granted to the Association by the Declaration; and (c) the common good and benefit of the Association 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 Association, which may be necessary, desirable or beneficial to the general common interests of the Association, the Owners, the Lessees and the Residents.

Section 13. Fines. In accordance with any procedure which may be set forth in the Bylaws, under Arizona law or adopted by the Board, the Association shall have the power to levy reasonable fines against any Owner, after providing the Owner notice and opportunity to be heard, who violates any provision of the governing documents.

Section 14. Disclosure Fees. The Association is permitted to charge a disclosure fee to compensate the Association for the costs incurred in the preparation of a disclosure statement furnished by the Association pursuant to A.R.S. Section 33-1806.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Improvements and Alterations. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of any Property or the Improvements located thereon shall be made or done without the prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Committee. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the sustainability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring Property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the Architectural Committee. No changes or deviation in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. All decisions of the Architectural Committee may be appealed to the Board of Directors.

Section 2. Review Fee. The Architectural Committee shall have the right to charge a fee for reviewing request(s) for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, if after preliminary review of the submission, it is determined that expert assistance is required for reviewing the request(s).

Section 3. Variances. The Architectural Committee shall have the right to grant variances as to any of the provisions of the Architectural Rules or waive any such provisions if in its discretion, the owner presents compelling reasons to show that enforcement of the restrictions would result in undue hardship on the owner.

Section 4. Organization, Power of Appointment and Removal of Members. There shall be an Architectural Committee, organized as follows:

A. Committee Composition. The Board shall appoint an Architectural Committee, which shall consist of ~~three~~ five regular members, one of whom must be a member of the Board and who must chair the committee, ~~and two alternate members.~~ ~~None of such members shall be required to be an architect or to meet any to other particular qualifications for membership.~~ A member need not to be, but may be, a member of the Board or an officer of the Association.

~~B. Alternate Members. In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.~~

~~C. Initial Members. The following persons are hereby designated as the initial members of the Architectural Committee:~~

~~Office No. 1 — S. John Robinson~~

~~Office No. 2 — Douglas Watson~~

~~Office No. 3 — Jeffrey Cornoyer~~

~~The Board May act the Architectural Committee if so determined by the majority vote of the members of the Association at a duly called meeting for this purpose.~~

~~D. Terms of Office. Unless the initial members of the Architectural Committee have resigned or been removed, their terms of office shall be for a period of one year, or until the appointment of their respective successors. Thereafter, the term of each Architectural Committee member appointed shall be for a period of one year, or until the appointment of their respective successors. Thereafter, the term of each Architectural Committee member appointed shall be for a period of one year and until the appointment of his successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed.~~

~~E. Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Committee at any time, shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Architectural Committee by the Board except by the vote or written consent of fifty one percent of all of the members of the Board. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the recordation of a declaration identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed therefrom.~~

~~F. Resignations. Any regular or alternate member of the Architectural Committee may at any time resign from the Committee by giving written notice thereof to Declarant or to the Board, whichever then has the right to appoint Committee members.~~

~~G. Vacancies. Vacancies on the Architectural Committee however caused, shall be filed by the Declarant or the Board, whichever then has the power to the appoint Committee members. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.~~

~~Section 2. Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted ????? pursuant to the terms hereof, to adopt Architectural Committee Rules, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.~~

~~Section 3. Meetings and Compensation. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of Paragraph B of Section 1 above, the vote or written consent of any two regular members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee shall not be entitled to compensation for their services.~~

Section 54. Architectural Committee Rules. The Architectural Committee may, from time to time, ~~and in its sole and absolute discretion,~~ adopt, amend and repeal, ~~by unanimous vote or written consent, rules and regulations, to be known as~~ “Architectural Committee Rules”. Said Rules shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use within the Property. The Architectural Committee must solicit owner input regarding any proposed changes to the Rules by publishing them on the Association’s website for at least thirty (30) days, and the Board must approve any changes to the Rules.

Section 56. Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

Section 76. Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any Property or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a

member, such member has acted in good faith on the basis of such information as may be possessed by him. ~~Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee.~~

Section 87. Time for Approval. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been complied with. If the Board, or its designated committee, engages the services of an outside consultant to assist in reviewing an Owner's submitted plans, additional time will be allowed for approval or denial of such plans. An appeal to the Board of Directors by the Owner or an immediately affected neighbor must be made within ten (10) days after the Committee's decision. The Board must hear the appeal at its next regularly scheduled meeting or a special meeting called for the purpose of hearing the appeal.

Section 9. Consultation With Immediately Affected Neighbors. The applicant shall share proposed expansion of structures or other major improvements or changes with immediately affected neighbors on all sides of his/her Lot, and provide the Committee with the input gathered from immediately affected neighbors and/or the Owner's efforts to contact them.

ARTICLE IX INSURANCE

Section 1. Scope of Coverage. The Association shall maintain, to the extent reasonably available, the following insurance coverage:

A. Comprehensive general liability insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all claims for bodily injury and property damage arising out of the use, ownership or maintenance of the Common Area or other properties the Association maintains. Deductible amounts, if applicable, shall be determined in the sole discretion of the Board;

B. Property insurance on facilities and physical assets of the Association insuring against all risk of direct physical loss in an amount equal to the insurable replacement value of the facility or asset as determined by the Board. Deductible amounts shall be determined in the sole discretion of the Board;

C. Automobile liability insurance, including hired and non-owned automobile coverage, in an amount not less than \$1,000,000;

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

E. Directors and Officers liability insurance in an amount to be determined by the Board; and

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

Section 2. Association Responsibility for Insurance Claims. The Association is authorized to adjust all claims arising under insurance policies purchased by the Association, to execute releases upon the payment of claims, and to perform all other acts reasonably necessary to accomplish these responsibilities. The Board in its discretion may appoint an authorized representative or committee to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Area shall be used to repair or replace the damaged property unless the Board adopts a resolution not to repair or replace the damaged property. Any excess proceeds shall be retained by the Association to accomplish the purposes of the Association.

Section 3. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Article IX, Section 1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

Section 4. No Association Liability. The Association and the Board members shall not be liable to any person or entity if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of the insurance is not adequate.

Section 5. Individual Responsibility. It shall be the responsibility of each Owner, Resident and Tenant to secure his or her own personal insurance on his individual property interests within the Association including, but not limited to, all structures, furnishings, personal property, and personal liability, including liability for the operation of automobiles. The Association and Board members shall not be liable to any person or entity if any risks or hazards are not covered by the personal insurance obtained by an Owner on his or her individual property interests within the Association or if the amount of his or her insurance is not adequate.

ARTICLE IX EXTERIOR MAINTENANCE

~~Section 1. The Association shall care for and maintain all landscaping on the Front Yards of all Lots, and shall keep all shrubs, trees, grass and plantings of every kind thereon neatly trimmed, properly cultivated, and free of trash, weeds, and other unsightly material. No Owner shall remove, alter, injure, or interfere, in any way, with any shrubs, trees, grass, or plantings placed upon any such Property by Declarant, or the Association, without the written consent of the ARCHITECTURAL COMMITTEE having been first obtained. Declarant, and the Association, and their authorized agents, shall have the right to enter upon such Front Yards at all reasonable times, for such purposes, and they shall not be liable for trespass for so doing. As~~

~~used herein, the term "Front Yard" shall mean that portion of a Lot which faces toward a private or public street, including side yards on corner Lots, excluding such portions of a Lot that may be enclosed by a fence or wall, arched opening, or other thing dividing a Lot.~~

~~Section 2. The Association shall have the right, but not the duty, at any time and from time to time, to undertake the care and maintenance of the following items:~~

- ~~(a) All or any portion of the landscaping on any part of the Lots not covered by Section 1 above;~~
- ~~(b) Exterior of the Improvements located on Lots of Owners; and~~
- ~~(c) Roofs of all Improvements located on Lots of Owners.~~

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association is entitled to collect any attorneys' fees or costs incurred in the enforcement of any provision of the Declaration, regardless of whether or not a lawsuit was filed

~~Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.~~

Section 32. Amendment. ~~The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period and thereafter~~ by an instrument signed by Owners representing fifty-one (51%) of the votes entitled to be cast by Members of the Association. Any amendment must be recorded.

Section 34. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association, or any Owner or Owners of Lots within the Property. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of this Declaration.

Section 45. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in said Declaration.

Section 56. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

~~Section 7. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, at P.O. Box 15692, Phoenix, AZ 85018; if to the Architectural Committee, at P.O. Box 15692, Phoenix, AZ 85018; if to an Owner, to the address of any Lot within the Property owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association; and if to Declarant, at P.O. Box 15692, Phoenix, AZ 85018; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.~~

~~Section 8. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, 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 improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by the various subsequent and future owners.~~

~~Section 9. Annexation. Except as provided in Article III, Section 2, of this Declaration, additional property (both land and Improvements) may be annexed to the Association and covered by this Declaration, with the consent of two-thirds (2/3) of each Class of Members of the Association, by the recordation of a declaration of restrictions referring by reference to this Declaration and to an intent to annex such property.~~

~~IN WITNESS WHEREOF, the undersigned, being the Declarant herein, and representing one hundred percent (100%) of the votes entitled to be cast by each Class of Members of the Association, has hereunto set its hand and ???? this 6th day of September, 1977.~~

|