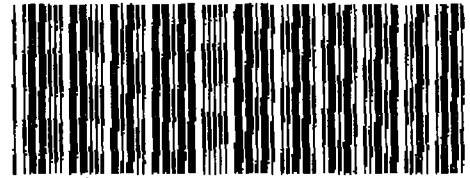


When recorded return to:  
Kevin Nelson / Century Title  
c/o Continental Homes, Inc.  
7001 N. Scottsdale Road, Suite 2050  
Scottsdale, AZ 85253



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2004-0301812 03/24/04 14:00  
3 OF 3

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

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SANTUARIO**

This Declaration of Covenants, Conditions, Restrictions and Easements (as amended from time to time, the "Declaration") is made on the 22<sup>nd</sup> day of March, 2004, by CHI Construction Company, an Arizona corporation (the "Declarant").

**RECITALS**

A. Declarant is the owner and developer of certain real property (the "Parcel") located in the City of Scottsdale, Maricopa County, Arizona, described as follows:

Lots 1 through 16, inclusive, and Tracts A through C, inclusive, of Santuario, according to that certain plat of subdivision (the "Plat") recorded in Book 654 of Maps, at page 18, in the official records of Maricopa County, Arizona.

B. Declarant desires and intends that the Parcel, and any land annexed to it as provided herein, and all buildings and other Improvements now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which, collectively, constitute the "Property"), shall be subject to the reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens provided for herein, that are for the purpose of protecting the value and desirability of, and that shall run with, the Property and be binding on all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each "Owner" provided for herein.

C. Declarant desires and intends that an Arizona nonprofit corporation be formed to be the "Association" provided for herein, to manage and operate the Property and to perform other duties provided for herein as a homeowners' association.

**DECLARATIONS**

NOW, THEREFORE, Declarant hereby declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the provisions of this Declaration.

## ARTICLE 1

### DEFINITIONS

- 1.1 "Alleged Defect" is defined in ARTICLE 15.
- 1.2 "Alleged Defect Costs" is defined in Section 15.3.
- 1.3 "Annexable Property" means any other land within one mile of the Parcel.
- 1.4 "Architectural Committee" means the committee established by the Board pursuant to Section 7.1 of this Declaration.
- 1.5 "Architectural Committee Rules" means any rules adopted by the Architectural Committee.
- 1.6 "Area of Association Responsibility" means any area that is not owned, leased or otherwise held by the Association (and, therefore, is not part of the Common Area) but for which the Association has maintenance, repair and/or operational responsibility by the terms of this Declaration, or Supplemental Declaration, or any other applicable real property covenants, requirements of governmental authorities, or by contract.
- 1.7 "Articles" means the Articles of Incorporation of the Association that have been or will be filed with the Arizona Corporation Commission, as they may be amended from time to time.
- 1.8 "Assessment" means any annual, special, or neighborhood Assessment levied and assessed against a Lot pursuant to ARTICLE 5 of this Declaration.
- 1.9 "Assessment Lien" means the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable to the Association under the Project Documents.
- 1.10 "Association" means the Arizona nonprofit corporation organized or to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "Santuario Homeowners Association," but if that name is not available, Declarant may organize the Association under such other name as Declarant deems appropriate.
- 1.11 "Association Rules" (or "Rules") means the rules and regulations adopted by the Association, as amended from time to time.
- 1.12 "Board" means the Board of Directors of the Association.
- 1.13 "Bylaws" means the bylaws of the Association, as amended from time to time.

1.14 "Claimant" means any person asserting a claim about an alleged defect in the construction of Improvements, as described in Section 15.1.

1.15 "Common Area" means all real property owned, leased, or otherwise held by the Association for the common use and enjoyment of the Owners. Initially, the Common Area shall consist of the following:

Tracts A through C, inclusive, as shown on the Plat.

Any land described as being "common areas" in any Supplemental Declaration, or subdivision plat, shall be deemed to be included in the term "Common Area" for purposes of this Declaration.

1.16 "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

1.17 "Declarant" means CHI Construction Company, an Arizona corporation, and its successors and assigns, or any person to whom Declarant's rights hereunder are assigned in whole or in part by recorded instrument, or any mortgagee of Declarant that acquires title to or succeeds to the interest of Declarant in any Lot or other portion of the Property by reason of the foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under any Mortgage. An assignment by recorded instrument of part of Declarant's rights shall vest in the assignee all of Declarant's rights hereunder on the same terms that they were held by Declarant. An assignment by recorded instrument of part of Declarant's rights shall vest in the assignee the specific rights named in the instrument of assignment on the same terms they were held by Declarant. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Declarant's rights, or a sharing of those rights, shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of Declarant's rights hereunder. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successor Declarant, in which event the preceding Declarant shall be released from liability.

1.18 "Declaration" means this instrument, as amended from time to time.

1.19 "Developer" means any of those persons identified in ARTICLE 15.

1.20 "Dispute" is defined in Section 15.4.

1.21 "Disputing Party" is defined in Section 15.4.2.

1.22 "First Mortgage" means any mortgage, deed of trust, or contract for deed on a Lot that has priority over all other mortgages, deeds of trust and contracts for deed on the same Lot. A contract for deed is a recorded agreement whereby the purchaser of a Lot acquires possession of the Lot but does not acquire legal title to the Lot until a deferred portion of the purchase price for the Lot has been paid to the seller.

1.23 "First Mortgagee" means the holder of any First Mortgage.

1.24 "Improvement" means buildings, structures, roads, driveways, parking areas, fences, walls, decorative rocks, hedges, plantings, planted trees and shrubs, grading or shaping of the land, and all other structures or landscaping of every type and kind.

1.25 "Lot" means any subdivided lot shown on a Plat. Any reference to a "Lot" shall be understood to include any residence, garage, and other Improvements located on the land. Notwithstanding anything to the contrary herein, if a portion of the Property shown as a Lot on a Plat is owned by the Association and used for open space or other purpose generally benefiting the Owners, it shall be considered part of the Common Area (as that term is defined herein) notwithstanding its designation on the Plat.

1.26 Majority of Members means the Members holding more than 50% of the total votes entitled to be cast by all Members (including, unless otherwise specified herein, by Declarant).

1.26.1 Any specified fraction or percentage "of the Members" means the Members holding that fraction or percentage of the total votes entitled to be cast by Members (including, unless otherwise specified herein, by Declarant).

1.26.2 A "Majority of a Quorum of Members" means the Members holding more than 50% of the total votes entitled to be cast by the Members (including, unless otherwise specified herein, by Declarant) who are present (in person or by proxy) at a meeting at which a quorum of Members (as defined in the Bylaws) is present. In the event votes are taken by written ballot in lieu of a meeting, a "Majority of a Quorum of Members" means the Members holding more than 50% of the total votes entitled to be cast by the Members (including, unless otherwise specified herein, by Declarant) who complete and return a written ballot when written notice is given to all Members and at least a quorum of written ballots is returned.

1.26.3 Unless otherwise specified herein or in the Bylaws, any provision hereof requiring the consent or approval of the Members means the consent or approval of a "Majority of a Quorum of Members."

1.27 "Member" means any person, corporation, partnership, limited liability company, joint venture or other legal entity that is a member of the Association.

1.28 "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration (that is not a fraudulent conveyance under Arizona law) as security for the performance of an obligation including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.29 "Notice of Alleged Defect" means the notice from a Claimant required by Section 15.1.1.

1.30 "Occupant" means any person occupying the Residential Unit on a Lot as a tenant, guest or otherwise with the permission of the Owner.

1.31 "Owner" means the record owner, except as provided below, whether one or more individuals or entities, of fee simple title to any Lot including, but not limited to, one who is buying a Lot under a recorded contract, but excluding others having an interest merely as security for the performance of an obligation. If fee simple title is vested of record in a trustee pursuant to a trust agreement, the beneficiary entitled to possession shall be deemed to be the Owner. The term "Owner" shall not be deemed to refer to any Occupant occupying a Lot but not holding title to it.

1.32 "Parcel" means the real property described in the Recitals hereof.

1.33 "Plat" means the final plat of Santuario recorded in Book 654 of Maps, Page 18, Recording Number 2003-1382725, in the official records of Maricopa County, Arizona, and any amendments thereto, and any other recorded subdivision plat applicable to any portion of the Property.

1.34 "Preferred Builder" means a person that constructs or causes the construction of homes on one or more Lots within the Property for sale to Purchasers that Declarant elects, in its sole and absolute discretion, to name as a "Preferred Builder" in a written notice to the Association. In any written notice naming a Preferred Builder, Declarant shall specify what special rights, privileges, obligations and exemptions of Declarant that particular Preferred Builder will have pursuant to the Project Documents. Declarant may revise, alter, supplement or rescind the rights, privileges, obligations and exemptions previously given to a Preferred Builder by delivering written notice to the Association detailing any revisions, alterations, supplements, or rescissions.

1.35 "Project" means the Property together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

1.36 "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules and Architectural Committee Rules.

1.37 "Purchaser" means any person other than Declarant, who by means of a voluntary transfer becomes the Owner of a Lot except for (i) an Owner who purchases a Lot and then leases it to Declarant for use as a model in connection with the sale of other Lots or (ii) an Owner who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.38 "Related Parties" means subsidiaries, parent entities, and other affiliates of Declarant.

1.39 "Residential Unit" means any building, house or dwelling unit, including any appurtenant garage or storage area, situated upon a Lot that is designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

1.40 "Single Family" shall mean an individual living alone, a group of 2 or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than 3 persons not all so related, together with their domestic servants, who maintain a common household in a Residential Unit.

1.41 "Single Family Residential Use" shall mean the occupation or use of a Residential Unit by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.42 "Supplemental Declaration" means a declaration of covenants, conditions and restrictions, or similar instrument, annexing land to the Property and subjecting it to this Declaration as provided herein.

1.43 "Termination of Negotiations" is defined in Section 15.4.2.

1.44 "Transition Date" means the date on which any of the following events first occurs: (a) ninety (90) days after Declarant conveys to a third-party purchaser the last Lot that Declarant owns; (b) Declarant voluntarily converts Class B memberships and voting rights to Class A memberships and voting rights; or (c) December 31, 2014.

1.45 "Visible from Neighboring Property" means that an object is or would be visible to a person 6 feet tall standing on a neighboring Lot or street at an elevation not greater than the elevation at the base of the object being viewed.

## ARTICLE 2

### PLAN OF DEVELOPMENT

This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the land within the Property, whether originally or when added by annexation pursuant to the terms hereof, shall be held, sold and conveyed subject to this Declaration. Each person accepting a deed or acquiring any interest in any of the Property subject to this Declaration, binds himself, and 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 (including any amendments hereof). In addition, each such person acknowledges that this Declaration sets forth a general plan for the development and use of the Property and evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof.

## ARTICLE 3

### THE ASSOCIATION; RIGHTS AND DUTIES

3.1 Rights, Powers and Duties. The Association shall be an Arizona nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents, together with such other rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

3.2 Board of Directors and Officers. On or before the Transition Date, Declarant shall have the sole right to appoint and remove all members of the Board. On or before the Transition Date, Declarant may elect, at Declarant's sole discretion, to have one or more of the members of the Board elected by the Class A Members. After the Transition Date, the members of the Board shall be elected by a majority of the Class A Members. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws.

3.3 Association Rules. The Board may, from time to time (subject to the provisions of this Declaration), adopt, amend and repeal rules and regulations (all of which, collectively, while effective shall constitute the "Association Rules" regardless of whether they are so labeled). The Association Rules may restrict and govern the use of any area by any Owner, by the family of an Owner, or by any invitee, licensee or lessee of an Owner except that the Association Rules may not discriminate among similarly situated Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. A copy of the current Association Rules shall be available for inspection at any reasonable time in the offices of the Association or such other location as the Board may reasonably designate. When any addition, amendment, or repeal of the Association Rules is adopted, a copy thereof shall be mailed or otherwise provided to each Owner.

3.4 Termination of Contracts and Leases. A contract for any of the following, if entered into by the Association prior to the expiration of the Class B membership in the Association, may be terminated by the Association at any time after the expiration of the Class B membership on 30 days written notice to the other party:

3.4.1 Any management contract, employment contract or lease of recreational or parking areas or facilities.

3.4.2 Any contract or lease, including franchises and licenses, to which Declarant or any affiliate of Declarant is a party.

3.5 Association Spending. The Association shall not be obligated to spend in any year all sums received by it in that year, regardless of the source. The Association may carry forward as additional working capital or reserves any remaining balances. The Association shall not be obligated to reduce the amount of Assessments for the following year if a surplus exists from a prior year, and the Association may carry forward from year to year any surplus that the Board, in its discretion, determines to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

3.6 Designated Service Providers. The Board shall have the authority to designate exclusive providers of services to Owners within the Property when the Board deems it necessary or advisable to do so for reasons of obtaining better rates or terms of service or for other reasons deemed reasonable by the Board. If the Board makes such a designation, the Association may enter into an agreement with the designated service provider. The cost of services purchased by the Board from a designated service provider shall be considered a common expense of the Association and shall be included in the Assessments payable by each



Owner provided, however, that the Board may allocate such costs between improved and unimproved properties, or among neighborhoods within the Property, in such manner as the Board deems equitable. Notwithstanding any designation and negotiation with a service provider, each Owner may contract separately with the designated service provider to receive services in excess of those provided to the Property pursuant to the service provider's agreement with the Association, and the cost of the additional services shall be paid separately by the Owner and shall not be an Assessment under this Declaration. Any service provider designated by the Board pursuant to this Section shall have an easement over the Common Area to the extent necessary or convenient for the efficient delivery of the designated services.

3.7 Rights of Enforcement. The Board shall have the exclusive right to enforce the Project Documents and any other documents applicable to the Property that indicate their terms are intended to be enforced by or to benefit the Association. If the Board fails or refuses to enforce any such document for an unreasonable period of time after receiving written request from an Owner to do so, then the Owner (at the Owner's expense) may enforce them on behalf of the Association by any appropriate legal action, whether at law or in equity. Notwithstanding any other provision of this Declaration or any of the other Project Documents, Declarant shall have no obligation to undertake any such enforcement actions and shall not be deemed a guarantor of enforcement.

3.8 Change of Common Area Use.

3.8.1 On or before the Transition Date, Declarant shall have the power and right to change the use of any of the Common Areas (and in connection therewith to take whatever actions are required to accommodate the new use) without needing to obtain the approval of any of the Class A Members or any other Person, provided such new use shall be consistent with any applicable zoning regulations

3.8.2 After the Transition Date and upon (i) adoption of a resolution by the Board stating that the then current use of a specified part of the Common Areas is no longer in the best interests of the Owners and Members, and (ii) the approval of such resolution by a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose where a quorum of Members is present (in person or by proxy), the Board shall have the power and right to change the use thereof (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use: (x) also shall be for the common benefit of the Owners, and (y) shall be consistent with any recorded tract declaration, deed restrictions or zoning regulations. Alternatively, the Board upon satisfaction of item (i) above may, in lieu of calling a meeting, notify in writing all Members of the proposed transaction and of their right to object thereto and, if not more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

3.9 Transfer of Common Area.

3.9.1 On or before the Transition Date, Declarant shall have the right to dedicate or transfer, at Declarant's sole and absolute discretion, all or any part of the Common Areas to

any public authority or utility without needing to obtain any approval from any of the Class A Members or any other Person. On or before the Transition Date, Declarant shall have the right to change the size, shape or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas, and to abandon or otherwise transfer Common Areas (to a non-public authority) without needing to obtain any approval from any of the Class A Members or any other Person.

3.9.2 After the Transition Date, the Board shall have the right to dedicate or transfer all or any part of the Common Areas to any public authority or utility (i) if the transfer or dedication does not have a substantial adverse effect on the enjoyment of the Common Areas by the Members or the residents, or (ii) if required by a recorded subdivision plat, a zoning stipulation or an agreement with the City of Scottsdale, effective prior to the date hereof. Except as authorized in items (i) or (ii) above, no such dedication or transfer shall occur after the Transition Date and be effective without the approval of a majority of the vote of each class of Members, voting in person or by proxy at a meeting called for such purpose. After the Transition Date, the Board shall have the right to change the size, shape or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas, and to abandon or otherwise transfer Common Areas (to a non-public authority) upon (x) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Areas is no longer in the best interests of the Owner and Members, and that the change desired shall be for their benefit and shall not substantially adversely affect them, and (y) the approval of such resolution by a majority of the votes of each class of Members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board upon satisfaction of item (x) above may, in lieu of calling a meeting pursuant to item (y) above, notify in writing all Members of the proposed transaction and of their right to object thereto and, if no more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

3.10 Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Project Documents by any Owner or an Owner's lessees, licensees and invitees. No fine shall be imposed without first providing a written notice to the affected Owner and a reasonable opportunity for hearing, pursuant to procedures adopted by the Board and applied equitably. Any fine levied by the Board shall be due at such time as may be specified by the Board, but in no event less than 30 days following imposition, and shall constitute a lien on all Lots owned by the Owner if not paid when due. Failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any Assessments under ARTICLE 5.

3.11 Indemnification. To the fullest extent permitted by law, the Association shall indemnify the following persons against all expenses and liabilities including, but not limited to, attorneys' fees, witness fees (including expert witness fees), costs and litigation-related expenses reasonably incurred by or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of being or having served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or Architectural Committee), or any settlement of any such proceeding:

3.11.1 Every director and officer of the Association;

3.11.2 Every member of the Architectural Committee and other committees of the Association;

3.11.3 Declarant; and

3.11.4 The employees of the Association.

Any agent of the Association may, in the discretion of the Board and subject to the findings described below, also be indemnified by the Association. Any person described in the enumerated subsections above shall be entitled to indemnification whether or not that person is a director, officer, member of a committee or serving in any other specified capacity at the time the expenses are incurred. Notwithstanding anything to the contrary in this Declaration, before any person is entitled to indemnity pursuant to this Section, the Board shall determine, in good faith, that the person to be indemnified did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of the person's duties. These rights of indemnification shall be in addition to, and not exclusive of, all other rights to which the person may be entitled at law or otherwise.

#### ARTICLE 4

##### MEMBERSHIP AND VOTING RIGHTS

4.1 Identity of Members. Membership in the Association shall be limited to Owners of Lots that are subject to Assessments. 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 ownership of the Lot ceases for any reason, at which time the Owner's membership in the Association shall automatically cease and pass to the succeeding Owner of the same Lot.

4.2 Transfer of Membership. Membership in the Association shall be appurtenant to the Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the conveyance of a Lot and then only to the new Owner of the Lot. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

4.3 Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all of the Owners, except Declarant until the termination of the Class B membership. Each Class A Member shall be entitled to 1 vote for each Lot owned.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to 3 votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the Transition Date.

4.4 Joint Ownership. When more than 1 person is the Owner of any Lot, all such persons shall be Members. The vote for any such jointly owned Lot shall be exercised as the collective Owners determine, but in no event shall more than 1 ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that 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 casts a ballot representing a certain Lot, it will be conclusively presumed for all purposes that the person casting the vote was acting with the authority and consent of all other Owners of the same Lot. In the event more than 1 ballot is cast for a particular Lot, none of the votes shall be counted and the votes shall be deemed void.

4.5 Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other legal entity, the corporation, partnership or entity shall be a Member and shall designate an individual to have the power to vote for the Owner. Until such a designation is made, the Owner shall not have the power to vote the membership. Any such Owner shall have the right to change its designation of a voting representative from time to time by written notice to the Association, subject to such limitations on frequency and other matters as the Board may reasonably impose.

4.6 Suspension of Voting Rights. No Owner shall be entitled to exercise voting rights as a Member of the Association during any period in which the Owner is delinquent in the payment of Assessments or other sums payable to the Association pursuant to the Project Documents including, but not limited to, any costs of collection.

4.7 Approval of Members. Unless otherwise specifically provided in the Project Documents, any provision of the Project Documents that requires the vote or assent of the Members shall be deemed satisfied as follows:

4.7.1 The vote in person or by proxy of the specified percentage of votes cast at a meeting of Members that is duly called and noticed pursuant to the terms of the Project Documents; or

4.7.2 The written consent of the specified percentage of votes cast by written ballot following notice to Members in accordance with the terms of the Project Documents.

4.7.3 If no percentage of votes is otherwise specified, the vote or written consent of a Majority of a Quorum of Members shall be required.

## ARTICLE 5

### COVENANT FOR MAINTENANCE ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant covenants for each Lot, 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 to the Association: (1) Annual Assessments, (2) Benefited Assessments and (3) Special Assessments for capital improvements or any other assessments to defray the operating cost of the Association in any one given year said assessment is assessed, such assessments to be established and

collected as hereinafter provided. A Lot owned by the Association, pursuant to Section 5.13 or otherwise, shall not be subject to any Assessment.

5.2 Capital Reserve Fund. To ensure that the Association shall have adequate funds to meet its reserve amounts, each purchaser of a Lot (other than Declarant or any Designated Developer) shall pay to the Association immediately upon becoming the Owner of a Lot an additional sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot ("Capital Reserve Fee"). Funds paid to the Association pursuant to this Section 5.2 are to be used by the Association for the purpose of establishing reserves. Such funds may only be used to establish a replacement and repair reserve account or to apply towards repair and reconstruction of improvements within Areas of Association Responsibility. Payments made pursuant to this Section 5.2 shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

5.3 Transfer Fee. In addition to the Capital Reserve Fee referred to in Section 5.2, each purchaser of a Lot (other than Declarant or any Designated Developer) shall pay to the Association immediately upon becoming the Owner of the Lot, other than the first Owner of the lot, a transfer fee in such amount as is established from time to time by the Board to cover the expenses of the Association (or its management/accounting company) to change its records, to administer the change in ownership, and to pay any ancillary expenses related thereto.

5.4 Reserve Studies. The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however, (i) no such report or study shall be required until at least three (3) years have elapsed following the date Assessments begin to accrue; and (ii) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (iii) in establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (a) the past incidences of required repairs at the Property; and (b) projected funds available to the Association pursuant to future Capital Reserve Fees paid pursuant to Section 5.2 of this Declaration.

5.5 Purpose of Assessments. All Assessments levied by the Board shall be used to promote the recreation, health, culture, safety and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Association and all other expenses that are the responsibility of the Association, and otherwise to further interest of the Association.

5.6 Maximum Annual Assessment. Until December 31, 2004, the maximum Annual Assessment shall be One Thousand Six Hundred Eighty Dollars and No/100 (\$1,680.00) per Lot. The Annual Assessment shall be payable annually, semi-annually, quarterly, or monthly as determined by the Board. The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum.

5.6.1 From and after January 1, 2005, the maximum Annual Assessment shall automatically increase effective January 1 of each year without a vote of the members by an

amount which is equal to the greater of (i) ten percent (10%) of the maximum Annual Assessment for the previous year, or (ii) a percentage equal to the average rate of change of the Consumer Price Index (the "CPI") for the most recent past twelve (12) months. For the purposes hereof, CPI shall mean the Monthly Labor Review by the United States Department of Labor Statistics, designated "Consumer Price Index U.S. City Average for Urban Wage Earners and Clerical Workers, 1982-84 Equals 100, All Items." The maximum Annual Assessment automatically increases each year even if the actual Annual Assessment does not increase.

5.6.2 In addition to Section 5.6.1 above, the maximum Annual Assessment during each fiscal year of the Association shall be automatically increased by the amounts of any increases in water or other utility charges or any increases to insurance rates charged to the Association subject to any limitations imposed by applicable laws; and

5.6.3 From and after January 1, 2006, the maximum Annual Assessment may be increased above the amount indicated in Section 5.6.1 above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.7 Special Assessment for Capital Improvements. In addition to the Annual Assessments authorized above, the Board may levy in any assessment year other Special Assessments to defray the cost of operating the Association; provided, however, that any such Special Assessments shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

5.8 Notice and Quorum for any Action Authorized Under Sections 5.6 and 5.7. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.6 and 5.7 shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast thirty percent (30%) 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.9 Benefited Assessments. The Board may levy a Benefited Assessment on certain Lots to recover the cost, including overhead and administrative expenses, of providing benefits, items or services to such Lot(s) or their Owners which are not included in the expenses that are common to all Lots and Owners. Benefited Assessments under this Section may be levied in advance and payment of the Benefited Assessment may be a condition of providing the benefit, item or service. The Board may also levy a Benefited Assessment to cover the cost of bringing any Lot (or its Owner) into compliance with the requirements of this Declaration, the Rules, the Architectural Committee Rules, or the Bylaws. Before any Benefited Assessment is levied pursuant to this Section, the Owner(s) affected by the Benefited Assessment shall be given notice and an opportunity to be heard by the Board (or by a committee designated for the purpose by the Board).

5.10 Uniform Rate of Annual Assessment. Except as provided herein, the Annual Assessments and Special Assessments (but not the Benefited Assessments) must be fixed at a uniform rate for all Lots and may be collected on an annual, semi-annual, quarterly, or monthly

basis, as designated by the Board. Notwithstanding the above, any Person who buys one or more unimproved Lots from Declarant shall pay twenty-five percent (25%) of the Annual Assessments for each Lot which such Person owns or leases and which is not being occupied for residential purposes until the earlier of (a) the date on which such Person obtains a certificate of occupancy from the applicable governmental entity for such Lot, or (b) the date that occurs six (6) months after the date on which such Person acquired title to the unimproved Lot. Any Owner renting or leasing a Lot to Declarant which is not being occupied for residential purposes shall pay twenty-five percent (25%) of the Annual Assessment for such Lot.

5.11 Date of Commencement of Annual Assessments: Due Date. The Annual Assessments provided for herein shall commence as of the first day of the month following the conveyance of the first Lot. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be established by the Board of Directors. The Board shall, upon demand, and for a reasonable charge, furnish a certificate signed by a representative of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate by the Board as to the status of Assessments on a Lot is binding upon the Association as to the matters described therein. If the amount of the Annual Assessment is not fixed by the Board thirty (30) days prior to the next fiscal year, then the current Annual Assessment shall be used until the Board establishes the next Annual Assessment. Failure by the Board to notify the Owners of the new Annual Assessment shall not relieve said Owners of Assessments due the Association.

5.12 Effect of Non-Payment of Assessments: Remedies of the Association. Any Assessment not paid within fifteen (15) days after the due date shall be subject to a late payment charge equal to the greater of Fifteen Dollars (\$15.00) or ten percent (10%) per annum interest on the amount unpaid (the "Late Payment Charge"), which shall be assessed on the amount owing from the date of delinquency until such time as it is paid, but in no event exceeding the maximum rate or amount allowed by law. The Board may, from time to time, increase or decrease the Late Payment Charge by approving a written resolution pertaining to a modification of the Late Payment Charge so long as such modification is in accordance with applicable law. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or abandonment of his Lot. In addition, the Board may, in its discretion, require an Owner and any predecessor in interest who was in arrears at the time of a voluntary conveyance to pay a late charge, in an amount to be determined by the Board, but in no event exceeding the maximum rate or amount allowed by law, for delinquency in the payment of Assessments which are fifteen (15) days or more overdue.

5.12.1 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 to enforce each such Assessment obligation. Unless otherwise stated in a written resolution approved by the Board and subject to applicable law, any judgment rendered in any such action shall include the amount of the delinquency together with interest thereon at the rate of ten percent (10%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, from the date of delinquency, court costs, reasonable attorneys' fees, late fees, collection costs and lien fees in such amount as the court may adjudge against the delinquent Owner

5.12.2 Enforcement by Lien. There is hereby created a claim of lien on each and every Lot within the Property to secure payment to the Association of any and all Assessments (including any Late Payment Charge) levied against any and all Owners of Lots covered by this Declaration, together with interest thereon at the rate of ten percent (10%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, 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 or 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 ten (10) days after delivery of such demand, or even without such a written demand being made, the Board may elect to file such claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such claim of lien 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 the claim of lien is made; (3) the total interest thereon, collection costs, and reasonable attorneys' fees; (4) a statement that the claim of lien is made by the Board pursuant to this Declaration, and (5) a statement that a lien is claimed against such Lot in an amount equal to the amount stated.

5.12.3 Upon recordation of a duly executed original or copy of such claim of lien, and mailing a copy thereof to the defaulting Owner, the lien claimed shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien, except only tax liens for real property taxes and liens which are specifically described in this Section 5.12. 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 Board shall have the power to bid in at any foreclosure or trustee's sale and to purchase, acquire, hold, lease, mortgage, and convey any such Lot. In the event of such foreclosure or trustee's sale, reasonable attorneys' fees, court costs, trustee's fees, 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 of this lien in this manner.

5.13 Declarant's Assessments and Deficiency Contributions. Exempt Property shall be exempt from all Annual Assessments, Special Assessments and Benefited Assessments created herein for as long as it continues to qualify for Exempt Property. Notwithstanding the foregoing sentence, on or before the Transition Date, Declarant may elect annually by notice to the Board whether to pay any Annual Assessments, Special Assessments or Benefited Assessments (as applicable) on all of its Lots or to pay an amount (the "Deficiency Contribution") for the fiscal year calculated in accordance with this Section 5.13. The Deficiency Contribution shall be an amount calculated as follows:



5.13.1 The estimated total of all income and revenue of any kind received (or, in the case of any assessments, receivable) by the Association for the fiscal year budget including, but not limited to, Annual Assessments, Special Assessments, Benefited Assessments, use fees, transfer fees, advances made by Declarant, and income from all other sources (as applicable) ("Gross Income") shall be calculated.

5.13.2 Estimated expenses and expenditures for the Association budget for the year shall be determined, excluding non-cash items such as depreciation and amortization, expenditures and reserve contributions for capital improvements or capital assets, and expenditures from reserved funds ("Gross Expenses").

5.13.3 Gross Income shall be deducted from Gross Expenses and the shortfall (if any) shall constitute the amount of the Deficiency Contribution due from Declarant; provided, however, that Declarant's obligation shall never exceed the total amount that would have been payable by Declarant if Declarant were paying Annual Assessments, Special Assessments and Benefited Assessments (as applicable) rather than the Deficiency Contribution.

5.13.4 The Board may (but is not obligated to) enter into contracts or agreements with Declarant for "in kind" contributions of services, materials, or a combination of services and materials, in lieu of cash payments.

If Declarant does not otherwise elect by written notice to the Board at least sixty (60) days before the beginning of a fiscal year, Declarant shall be deemed to have elected to pay the Deficiency Contribution in lieu of any Annual Assessments, Special Assessments or Benefited Assessments (as applicable). After the Transition Date, Declarant shall pay Annual Assessments, Special Assessments and Benefited Assessments (as applicable) in the same manner as any other Owner of Lots.

5.14 Subordination of the Lien to First Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, foreclosure or trustee's sale, or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any Assessments thereafter becoming due or from the lien thereof.

5.15 No Offsets. All Assessments and charges shall be payable in the amount specified in the Assessment or by notice and no offsets against the specified amount shall be permitted for any reason, including, but not limited to, a claim that (a) the Association, the Board, or Declarant is not properly exercising its duties and powers as provided in this Declaration; (b) Assessments for any period exceed expenses for the Association; or (c) an Owner has made, or elects to make, no use of the Common Areas or Areas of Association Responsibility.

## ARTICLE 6

### USE RESTRICTIONS

6.1 Residential Use: Except as otherwise provided herein, all Lots shall be improved and used only for Single Family Residential Use. No gainful occupation, profession, trade or other commercial activity shall be conducted on any Lot; provided, however, Declarant may use the Lots for such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale of Residential Units, including, but not limited to, a business office, storage areas, construction yards, signs, a model site or sites, and a display and sales office. Notwithstanding the foregoing, home businesses are permitted on the Lots provided they comply with the requirements of this Section.

6.1.1 Those business activities permitted by the preceding limitations shall include only those where:

(a) The existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Residential Unit;

(b) The business activity conforms to all applicable zoning ordinances and other applicable governmental requirements;

(c) The business activity does not involve persons coming on the Lot or the door-to-door solicitation of Owners or Occupants in the Property; and

(d) The business activity is consistent with the residential character of the Property and does not constitute a nuisance or hazardous or offensive use or threaten security or safety of any portion of the Property or other Owners.

Compliance with the requirements of this Section 6.1.1 shall be determined by the Architectural Committee in its sole and absolute discretion.

6.1.2 The terms "trade" or "business" as used in this Section 6.1 shall be construed to have the ordinary, generally accepted meanings and shall include, but not be limited to, any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to persons, for which the provider receives a fee, compensation, or other form of consideration, regardless of any of the following:

(a) The activity is engaged in full or part time;

(b) The activity is intended or does generate a profit; or

(c) A license is required for the activity.

6.1.3 Nothing in this Section 6.1 shall be deemed to prevent the leasing of any Lot with the Residential Unit on it to a Single Family from time to time by the Owner of the Lot, subject to the applicable provisions of the Project Documents. Any lease for a Lot must (a) be in writing, (b) be for an entire Residential Unit and Lot, and (c) have a minimum term of at least 30

days. A copy of each lease agreement for a Lot must be provided to the Association. Any lease agreement for a Lot must clearly obligate the tenant to comply with the requirements of the Project Documents. This Section shall not apply to model homes, offices, sales offices, or construction trailers.

6.2 Building Type and Size: No building shall be constructed or permitted to remain on any Lot other than one detached Residential Unit. Unless otherwise approved in writing by the Architectural Committee, all buildings shall be of new construction and no prefabricated structure shall be placed upon any Lot if Visible from Neighboring Property; storage structures and/or a sales office may be maintained upon any Lot or Lots by Declarant or a building contractor for the purpose of erecting and selling dwellings on the Property or for the purpose of constructing Improvements on the Common Area, but such temporary structures shall be removed upon completion of construction or selling of a dwelling or the Common Area, whichever is later. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any Lot at any time as a Residential Unit, either temporarily or permanently. Declarant and contractors for Declarant shall have the right to place temporary construction trailers and store materials on the Common Area for the purpose of constructing Improvements on the Common Area.

6.3 Signs: No signs shall be displayed on any Lot except the following:

6.3.1 signs used by Declarant to advertise the Lot and Residential Unit thereon for sale or lease;

6.3.2 one temporary "for sale" or "for rent" sign with a total face area of 5 square feet or less (and otherwise meeting such standards as the Architectural Committee may reasonably impose);

6.3.3 such signs as may be required by law or the prohibition of which is unlawful;

6.3.4 one residential identification sign not exceeding 9 inches by 30 inches; and

6.3.5 signs approved by the Architectural Committee.

All signs must conform to applicable municipal ordinances. The restrictions of this Section shall not apply to signs used by (or at the direction of) the Association in the furtherance of its functions.

6.4 Noxious and Offensive Activity: No activity that the Board reasonably deems to be noxious or offensive shall be allowed on the Lots nor shall anything be done thereon that may be, or may become, an unreasonable annoyance or nuisance to the neighborhood, or that shall in any material way interfere with the quiet enjoyment of each of the Owners and tenants of their respective Lots and Residential Units. Without limiting the generality of the foregoing, no rubbish or debris shall be placed or permitted to accumulate on any Lot, no unreasonably offensive odors or loud noises shall be permitted to arise or emit from any Lot, and no speakers, horns, whistles, bells, sirens or other sound devices, except security devices used exclusively for

security purposes, shall be located or used on a Lot. In no event shall any Lot or activity thereon be permitted to be unsanitary, unsightly, unreasonably offensive, or otherwise unreasonably detrimental to any other Lot or the Common Area. Normal construction activities shall not be construed as a violation of this Section but Lots shall be kept reasonably neat and tidy during any period of construction. Supplies or building materials and construction equipment shall be stored only in such areas and in such manner as may be approved by the Architectural Committee or Declarant.

#### 6.5 Motor Vehicles:

6.5.1 No motor vehicle with a manufacturer's rating in excess of 1 ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat trailer or other similar equipment or other motor vehicle of any kind shall be parked, kept or maintained on any Lot, street, or Common Area so as to be Visible from Neighboring Property except for (i) trucks with a manufacturer's rating of not more than 1 ton capacity (with or without camper shells), provided that the height of the truck and camper shell does not exceed 7 feet, (ii) mini motor homes or other recreation vehicles that do not exceed 7 feet in height or 18 feet in length; provided that any vehicle covered by (i) or (ii) is used on a regular and recurring basis for basic transportation.

6.5.2 Except for emergency vehicle repairs, no automobile, motorcycle, motorbike, motorized hang glider, or other motor vehicle of any kind shall be constructed, reconstructed or repaired on any Lot or the Common Area. No inoperable vehicle or vehicle deemed unsightly or detracting from the appearance of the Project, in the sole opinion of the Architectural Committee because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance, shall be stored, parked or kept on any Lot (so as to be Visible from Neighboring Property) or the Common Area.

6.6 Parking: It is the intent of Declarant to eliminate on-street parking as much as reasonably possible. All vehicles of Owners and of their lessees, employees, guests and invitees shall be kept in garages, carports, and residential driveways of the Owners (or such other portions of the Property, if any, as may be designated by the Association) wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot. However, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle. No vehicle that is Visible from Neighboring Property may be parked on gravel, grass, landscaped or other non-concrete portions of a Lot, or within 5 feet of any side boundary of a Lot. Limited, short-term parking on streets will be permitted (subject to such rules as the Association may adopt) solely for the following purposes: (i) loading and unloading of non-commercial items for use on the Lot; (ii) temporary visits by guests or invitees of an Owner that do not include overnight parking; and (iii) temporary parking of the Owner's vehicles for special events that do not involve overnight parking and do not occur on a frequent or repetitive basis.

6.7 Towing of Vehicles: The Association shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle,

motorbike, or other motor vehicle that is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment towed is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and his Lot and be payable on demand, and the cost shall be secured by the Assessment Lien.

6.8 Machinery and Equipment: No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use or maintenance of Improvements constructed by Declarant or approved by the Architectural Committee, and as may be required or appropriate for performance of the rights or responsibilities of Declarant or the Association.

6.9 Miscellaneous Structures: Slides, playground equipment, basketball poles and hoops, outdoor decks, gazebos and other such miscellaneous structures will be allowed so long as they are approved by the Architectural Committee. Without limiting the approval rights of the Architectural Committee, any basketball pole and hoop must be located a minimum of 20 feet from all side and rear property lines of the Lot.

6.10 Restrictions on Further Subdivision: No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner other than the Declarant, and no portion less than all or an undivided interest in all of any Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written consent of the Board. Notwithstanding the foregoing and subject to compliance with any applicable governmental ordinances, a vacant Lot may be split between the Owners of the Lots adjacent to the Lot so that each portion of the divided Lot would be held in common ownership with another Lot adjacent to that portion. No Lot may be converted into a condominium, cooperative, fractional interest or other similar legal structure without the prior written consent of the Board. No application for rezoning, zoning variance, or use permit shall be valid without the prior written consent of the Board included in it, and then only if it does not materially conflict with the Covenants set forth herein.

6.11 Windows: No reflective materials, including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows.

6.12 HVAC and Solar Panels: Except as initially installed by the Declarant, no heating, air conditioning, evaporative cooling or solar energy collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee.

6.13 Garages and Driveways: Garages shall be used only for the parking of vehicles and the storage of supplies and materials and shall not be used for or converted to living quarters or recreational activities after the initial construction thereof without the prior written approval of the Architectural Committee.

6.14 Installation of Landscaping:

6.14.1 Within 6 months after becoming the Owner of a Lot, the Owner shall install landscaping and irrigation Improvements in compliance with the xeriscape principles and other applicable requirements set forth in the applicable municipal zoning ordinances in that portion of his Lot that is between the street(s) adjacent to his Lot and the exterior wall of his Residential Unit or any wall separating the side or back yard of the Lot from the front yard of the Lot. The landscaping and irrigation Improvements shall be installed in accordance with plans approved in writing by the Architectural Committee. Prior to installation of any such landscaping, the Owner shall maintain the front yard of his Lot in a weed-free condition. Once installed, lawns must be neatly mowed and trimmed, bushes must be neatly trimmed, and dead plants, trees, grass and other landscape material must be removed and replaced. Lots must be maintained in a reasonably neat and weed free condition at all times following initial conveyance of the Lot to a Purchaser.

6.14.2 If any Owner fails to landscape the front yard of his Lot within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon the Owner's Lot to install such landscaping Improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

6.14.3 This Section 6.14 shall not apply to Declarant or any Purchaser with respect to any Lot or any other property that has not been conveyed to an Owner with a Residential Unit already constructed thereon.

6.15 Leasing Restrictions: Any lease or rental agreement must be in writing and shall be subject to this Declaration. All leases must be for an entire Residential Unit and Lot and must have a minimum term of 30 days. This Section shall not apply to model homes, offices, sales offices, or construction trailers.

6.16 Animals: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure thereon except that dogs, cats or other common household or yard pets may be kept on or within the Lots, nor may any permitted animal type be kept, bred or maintained for any commercial purpose, or in unreasonable numbers as determined by the Architectural Committee. Notwithstanding the foregoing, no animals or fowl may be kept on any Lot in such a manner that results in a nuisance to, that is an unreasonable annoyance to, or that are obnoxious to other Owners or tenants in the vicinity. All pets must be kept within a fenced yard or on a leash under the control of the Owner at all times. No structure for the care, housing or confinement of any animal or fowl may be located on any Lot so as to be Visible from Neighboring Property.

6.17 Drilling and Mining: No Lot may be used in any manner to explore for or to remove water, oil or other hydrocarbons, or minerals or other earth substances. This Section shall not be construed to prohibit excavation of soil incident to construction of permitted structures.

6.18 Refuse: All refuse, including, but not limited to, all animal wastes, shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Refuse containers shall be kept clean, sanitary and free of noxious odors. Refuse containers shall be maintained so as to not be Visible from Neighboring Property, except to make them available for collection and then only for the shortest time reasonably necessary to effect collection. No incinerator may be kept or used on any Lot.

6.19 Overhangs: No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any Common Area from ground level to a height of 12 feet without the express approval of the Architectural Committee.

6.20 Clothes Drying: Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any of the Property unless they are within a fenced service yard or otherwise not Visible from Neighboring Property.

6.21 Antennas and Dishes: Any antenna, satellite television dish, and other device, including any poles or masts for such devices, for the transmission or reception of television or radio signals or any other form of electromagnetic radiation ("Receivers") may be placed, installed, constructed or maintained upon any Lot ("Receiver Installation"), provided that the Receiver Installation complies with the Architectural Committee Rules. The Architectural Committee Rules shall conform with all applicable federal, state or local laws, ordinances or regulations relating to Receivers (including without limitation the provisions of Title 47, Section 1.4000 of the Code of Federal Regulations), as may be amended or modified from time to time ("Receiver Laws").

6.21.1 Notwithstanding any contrary provision herein, no Receiver Installation for any Receiver that is not subject to the Receiver Laws (including without limitation a Receiver having a mast in excess of the size permitted under the Receiver Laws) shall be permitted, unless approved in writing by the Architectural Committee, with such screening and fencing as the Architectural Committee may require.

6.21.2 The Architectural Committee Rules shall provide, among other things, that a Receiver that is subject to the Receiver Laws shall be placed so as not to be Visible from Neighboring Property if such placement will not (A) unreasonably delay or prevent installation, maintenance or use of the Receiver, (B) unreasonably increase the cost of installation, maintenance or use of the Receiver, or (C) preclude the reception of an acceptable quality signal.

6.21.3 Guidance should be sought from the Architectural Committee prior to the placement and installation of a Receiver when an Owner or Occupant is uncertain whether he, she or it is complying with these provisions.

6.22 Utility Services: Subject to any applicable limitations imposed by law from time to time, all lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee. Temporary power or telephone

structures incident to construction activities approved by the Architectural Committee are permitted.

6.23 Diseases and Insects: No Owner or Occupant shall permit any thing or condition to exist upon the Property that will induce, breed or harbor infectious plant diseases or noxious insects.

6.24 Health, Safety and Welfare: In the event uses, activities or facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or other residents of the Property, the Board may make rules restricting or regulating their presence as a part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots as a part of the Architectural Committee Rules.

6.25 Declarant's Exemption: Nothing contained in this Declaration shall apply to or prohibit, or be construed to prevent, Declarant or its duly authorized agents from erecting or maintaining model homes, structures, Improvements or signs necessary or convenient to the construction, development, identification, or sale or lease of Lots or other real property within the Project. The Association shall take no action that would interfere with access to or use of model homes.

6.26 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Declaration or any Supplemental Declaration if the Board determines in its discretion that (i) either (a) a restriction will create an unreasonable hardship or burden on an Owner or other permitted user of the Property, or (b) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete, and (ii) that the activity or use permitted under the variance will not have any substantial adverse effect on the Owners and is consistent with the high quality of life intended for residents and Owners of the Property.

## ARTICLE 7

### ARCHITECTURAL CONTROL

7.1 Architectural Committee. The Board shall establish an Architectural Committee consisting of either 3 or 5 regular members, as the Board may determine, and 2 alternate members to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board.

7.1.1 No member of the Architectural Committee shall be required to be a licensed architect or to meet any other particular qualifications. A member of the Architectural Committee may be, but shall not be required to be, a member of the Board or an officer of the Association.

7.1.2 In the event of the absence or disability of any regular member of the Architectural Committee, the remaining regular members (even if less than a quorum) may designate either of the alternate members to act as a substitute for the absent or incapacitated regular member. Any action taken by the Architectural Committee including any alternate



member shall be deemed to be action by the properly constituted Committee even though 1 or more of the members are alternate members acting in a temporary capacity.

7.1.3 Members of the Architectural Committee shall serve until they resign, are removed or are replaced.

7.1.4 So long as Class B membership exists, the Board may, if it so elects, perform the duties and exercise the powers of the Architectural Committee without appointing a separate group of individuals to constitute the Architectural Committee. In that event, any reference to the Architectural Committee herein or in any other Project Document shall be construed to mean the Board.

7.1.5 So long as Declarant owns any Lot, Declarant shall have the right to appoint and remove members of the Architectural Committee. [If there is more than one Declarant, the appointment and removal of members of the Architectural Committee shall be determined by a majority vote of the Declarants, with each Declarant entitled to 1 vote for each Lot owned.] At such time as Declarant no longer owns any Lot, the Board shall have the right to appoint and remove members of the Architectural Committee.

#### 7.2 Meetings and Compensation:

7.2.1 The Architectural Committee shall meet from time to time as necessary, in the Committee's reasonable judgment, to perform its duties in a timely manner. Subject to the provisions of Section 7.1.2, the vote or written approval of a majority of the Architectural Committee regular members, at a meeting or otherwise, shall constitute the act of the Committee unless a higher percentage of approval is expressly required for a particular matter or type of matter by any of the Project Documents.

7.2.2 The Architectural Committee shall keep a written record of the Committee's actions at meetings or otherwise.

7.2.3 Members of the Architectural Committee may be entitled to compensation for their services if the Board so determines.

7.3 Architectural Committee Rules: The Architectural Committee shall adopt, and may, from time to time in its sole discretion, amend and repeal by unanimous vote or written consent, the Architectural Committee Rules. The Architectural Committee 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 recommended or required for use within the Property.

#### 7.4 Approval Requirements:

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

7.4.2 No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

7.4.3 No addition, alteration, repair, change or other work that in any way alters the exterior appearance, including, but not limited to, the exterior color scheme, of any Lot, or the Improvements located thereon, shall be made or done without the prior written approval of the Architectural Committee.

7.4.4 Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement that would alter the exterior appearance of the Improvement, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or replacement of any Improvement that the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications that the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove a request for approval within 45 days after the request, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval.

7.4.5 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

7.4.6 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who requested the approval shall proceed to perform, construct or make the construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed by the Architectural Committee.

7.4.7 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved by the Architectural Committee's failure to act, must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

7.4.8 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval pursuant to this Section 7.4, which fee shall be payable at the time the request for approval is submitted to the Architectural Committee.

7.4.9 The approval of the Architectural Committee required by this Section shall be in addition to, and not in lieu of, any approvals, consents or permits required under the

ordinances or rules and regulations of any county or municipality having jurisdiction over the Project.

7.4.10 The provisions of this Section shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

7.5 Liability: Neither the Architectural Committee, nor any member thereof, shall be liable to the Association, any Owner, or to any other person on account of (i) the approval or disapproval of any plans, drawings, or specifications, or similar documents, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (iii) the overall development of the Property, or (iv) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that the member acted in good faith, on the basis of the information possessed by the individual at the time of the decision, and without gross negligence or willful misconduct. Without in any way limiting the generality of the foregoing, the Architectural Committee and its members may, but is not required to, consult with or listen to the views of the Association or any Owner with respect to any proposal submitted to the Architectural Committee for approval.

## ARTICLE 8

### RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to resubdivide and replat any Lot or Lots that Declarant then owns.

## ARTICLE 9

### PARTY WALLS

9.1 General Rules of Law to Apply: Each wall or fence, any part of which is placed on or adjacent to a dividing line between separate Lots shall constitute a "Party Wall". Each adjoining Owner's obligation with respect to party walls shall be determined by these covenants and restrictions and, if not inconsistent, by Arizona law.

9.2 Sharing Repair and Maintenance: Each Owner shall maintain the exterior surface of a party wall facing his Lot. Except as provided in this Article, the cost of reasonable repair shall be shared equally by adjoining Lot Owners.

9.3 Damage by One Owner: If a party wall is damaged or destroyed by the act of one adjoining Owner, or his guests, tenants, licensees, agents or family members (whether or not such act is negligent or otherwise culpable), then that Owner shall immediately rebuild or repair the party wall to its prior condition without cost to the adjoining Owner and shall indemnify the adjoining Owner from any consequential damages, loss or liabilities.

9.4 Other Damage: If a party wall is damaged or destroyed by any cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), then the adjoining Owners shall rebuild or repair the party wall to its prior condition, equally sharing the expense; provided, however, that if a party wall is damaged or destroyed as a result of an accident or circumstances that originate or occur on a particular Lot (whether or not such accident or circumstance is caused by the action or inaction of the Owner of that Lot, or his agents, tenants, licensees, guests or family members), then the Owner of that particular Lot shall be solely responsible for the cost of rebuilding or repairing the party wall and shall immediately repair to the former condition of such party wall.

9.5 Right of Entry: Each Owner shall permit the Owners of adjoining Lots, or their representatives, to enter his Lot for the purpose of installations, alteration, or repairs to a party wall on the Property of such adjoining Owners, provided that other than for emergencies, requests for entry are made in advance and that entry is at a time reasonably convenient to the Owner of the adjoining Lot. An adjoining Owner making entry pursuant to this Section shall not be deemed guilty of trespassing by reason of the entry. Any such entering Owner shall indemnify the adjoining Owner from any consequential damages sustained by reason of such entry.

9.6 Right of Contribution: The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

9.7 Consent of Adjoining Owner: In addition to meeting the requirements of this Declaration and of any applicable building code and similar regulations or ordinances, any Owner proposing to modify, alter, make additions to or rebuild the party wall, shall first obtain the written consent of the adjoining Owner. Surfaces of walls generally accessible or viewable only from an Owner's Lot may be planted against, painted and otherwise used (so long as use does not affect the structural integrity of the wall) as the Owner of the Lot may elect. If any such surfaces are Visible from Neighboring Property, the appearance and use of the wall may not be changed without the prior written consent of the Architectural Committee.

9.8 Walls Adjacent to Streets or Common Area: A wall that is adjacent to streets or Common Area shall be treated as though the wall is a party wall with the street or Common Area constituting a Lot owned by the Association, except that any portion of such wall consisting of decorative metal-work that was originally on such wall (or any replacement thereof) shall be the sole responsibility of the Association (subject to an Owner's liability for repairs that would be the Owner's sole responsibility under Section 9.3 or Section 9.4). Notwithstanding the foregoing, (a) the provisions in Sections 9.3 and 9.4 regarding an Owner's sole liability for repair of damage caused by such Owner's guests or licensees shall not apply to damage resulting from guests or licensees of the Association and such damage shall be considered caused by unrelated third parties and (b) the rule in Section 9.4 regarding damage arising from events occurring on a particular Owner's Lot shall not apply to damage arising from events occurring on streets or Common Area. Notwithstanding the foregoing, any damage to a wall that is covered by the Association's casualty insurance shall, to the extent of proceeds actually received from such insurance, be paid for by the Association.

## ARTICLE 10

### MAINTENANCE BY OWNER

Each Owner shall maintain his Residential Unit and Lot in good repair. The yards and landscaping on all improved Lots shall be neatly and attractively maintained, and shall be cultivated and planted to the extent required to maintain an appearance in harmony with other improved Lots in the Property. During prolonged absence, an Owner shall arrange for the continued care and upkeep of his Lot. In the event a Lot Owner fails to maintain his Lot and Residential Unit in good condition and repair or in the event an Owner fails to landscape his Lot as required by this Declaration, the Architectural Committee may have the Lot and Residential Unit landscaped, cleaned and repaired and may charge the Lot Owner for the work. Any repainting or redecorating of the exterior surfaces of a Residential Unit that alters the original appearance of the Residential Unit shall require the prior approval of the Architectural Committee.

## ARTICLE 11

### EASEMENTS

#### 11.1 Owner's Easements of Enjoyment:

11.1.1 Every Owner, and any person residing with the Owner, shall have a right and easement of enjoyment in and to the Common Area, which shall by appurtenant to and shall pass with the title to the Owner's Lot, subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated on the Common Area.

(b) The right of the Association to suspend the voting rights and right to the use of the recreational facilities, if any, located on Common Area by any Owner (a) for any period during which any Assessment against the Owner's Lot remains delinquent; (b) for a period not to exceed 60 days for any other infraction of the Project Documents, and (c) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period.

(c) The right of the Association to dedicate, transfer or encumber 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 Board. No such dedication, transfer, or encumbering of Common Area shall be effective unless an instrument signed by the Owners representing 2/3 of the votes in each class or membership in the Association agreeing to the dedication or transfer has been recorded. Notwithstanding the foregoing sentence, the Board may, without the approval or consent of the Members, (i) make minor boundary adjustments on the Plat with respect to any Lot or (ii) dedicate or transfer any part of the Common Area that may be required by the Plat or the applicable zoning for the Property or where the transfer or dedication does not have a substantial adverse effect on the Owners. If ingress or egress to any

Lot is through the Common Area, any dedication, transfer, or encumbrance of the Common Area shall be subject to the Lot Owner's easement of ingress and egress.

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

11.1.2 If a Lot is leased or rented by the Owner thereof, the Occupants residing on the Lot pursuant to the lease shall have the right to use the Common Area during the term of the lease, and the Owner of the Lot shall have no right to use the Common Area until the termination or expiration of the lease.

11.1.3 The guest and invitees of any Owner or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by the Owner or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

11.2 Drainage Easements: There is hereby created a blanket easement for drainage of ground water on, over and across the Common Area and on, over and across each Lot in such locations as drainage channels or structures are located. An Owner shall not at any time hereafter fill, block or obstruct any drainage easements, channels or structures on his Lot and each Owner shall repair and maintain all drainage channels and drainage structures located on his Lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within the drainage easements that may impede the flow of water under, over or through the easements. Any drainage area on a Lot shall be maintained by the Owner of the Lot.

11.3 Utility Easements: Except as installed by Declarant or approved by the Architectural Committee, and subject to the provisions of Section 6.21, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, cable and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless it is contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure, landscaping or other Improvements shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement that may damage or interfere with the installation and maintenance of utilities. Any such public utility easement area on a Lot, and all Improvements thereon, shall be maintained by the Owner of the Lot unless the utility company or a county, municipality or other public authority maintains the easement area. There is hereby created a blanket easement upon, across, over and under the Property for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems, as such utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Area and affix and maintain wires, circuits and conduits on,

in and under the roofs and exterior walls of buildings thereon. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility or sewer lines may be installed or relocated within the Property except as initially created or approved by Declarant without the prior written approval of, in the case of a Common Area, the Association and the Architectural Committee or, in the case of a Lot, the Owner of the Lot and the Architectural Committee. Nothing contained herein shall entitle Declarant or any utility in exercising the rights granted herein to disturb any Residential Unit constructed in accordance with the requirements hereof. Declarant further reserves temporary construction easements for utility lines, maintenance of storage tanks and facilities and access to and from such facilities.

11.4 Declarant's Easement: Basements over the Lots are hereby reserved by Declarant, together with the right to grant and transfer them, for the installation and maintenance of electric, telephone, cable communications, water, gas, drainage and sanitary sewer or similar or other lines, pipes or facilities:

11.4.1 as shown on the recorded Plat;

11.4.2 as may be hereafter required or necessary to service any Lot (provided, however, no utility other than a connection line to a Residential Unit served by the utility shall be installed in any area upon which a Residential Unit has been or may legally be constructed on the Lot).

11.5 Encroachments: Each Lot shall be subject to an easement for any overhangs and encroachments by walls, fences or other structures upon adjacent Lots as constructed by the original builder or as reconstructed or repaired in accordance with the original plans and specifications or as a result of the reasonable repair, shifting, settlement or movement of any such structure.

11.6 Additional Easements. In addition to the other easements granted or established herein, the Association is authorized and empowered to grant permits, licenses, easements and rights-of-way upon, across or under land owned or controlled by the Association for utility purposes, access or such other purposes as the Association may determine to be reasonably necessary or appropriate to the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from the grant or use of any such rights shall be repaired by the grantee of the rights at its expense.

## ARTICLE 12

### MAINTENANCE

12.1 Maintenance by the Association: The Association shall be responsible for the maintenance, repair and replacement of the Common Area and any Areas of Association Responsibility and may, without any approval of the Owners being required, do any of the following:

12.1.1 Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that the work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of the area);

12.1.2 Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway and parking area;

12.1.3 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 or appropriate for the conservation of water and soil and for aesthetic purposes;

12.1.4 Place and maintain upon any such area such signs, markers and lights as the Board may deem necessary or appropriate for the proper identification, use and regulation thereof;

12.1.5 Construct, maintain, repair and replace landscaped areas on any portion of the Common Area and Areas of Association Responsibility;

12.1.6 Maintain any portion of the Common Area and any Areas of Association Responsibility used for drainage and retention;

12.1.7 Pay all real and personal property taxes and assessments;

12.1.8 Pay all utility charges and related costs; and

12.1.9 Do all such other and further acts that the Board deems necessary or appropriate to preserve and protect the Common Area and any Areas of Association Responsibility and the appearance thereof, in accordance with the general purposes specified in this Declaration.

12.2 Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or Area of Association Responsibility or interfere with the activities of the Association in connection therewith. In the event that the need for maintenance or repair of any Common Area or Area of Association is caused by the willful or negligent act of an Owner, his family, lessee, guests or invitees, any expenses incurred by the Association by reason of any such maintenance or repairs shall be paid by the Owner to the Association, upon demand, and such amounts shall be a lien on any Lots owned by the Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

12.3 Payment of Utility Charges. Subject to the provisions of Section 3.6, each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a Common Expense of the Association and shall be included in the budget of the Association.

12.4 Maintenance by Governmental Entities. No municipality or other governmental entity is responsible for or will accept maintenance for any private facilities, landscaped areas, or Common Area within the Project.

12.5 Landscaping Replacement. Landscaping originally planted on the Common Area may exceed the landscaping that is ultimately planned for Common Area due to over-planting in



anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead or damaged landscaping if, in the reasonable discretion of the Board, (a) the remaining landscaping is acceptable to the Board and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with governmental entities in connection with the Property, even if the location of specific plants is different than the locations shown on such approved landscaping plans.

12.6 Alteration of Maintenance Procedures. Following the termination of the Class B membership and so long as Declarant owns any Lot, the Association shall not, without the written approval of Declarant, alter or fail to follow the maintenance and repair procedures recommended by the Association's management company as of the termination of the Class B membership unless such alteration will provide for a higher level of maintenance and repair. Declarant shall have the right, but not the obligation, to perform any required maintenance or repair not performed by the Association within ten (10) business days following notice from Declarant that such maintenance or repair is required under this Section. If Declarant performs such maintenance or repair, the costs incurred by Declarant shall be reimbursed by the Association within thirty (30) days following written demand therefor accompanied by copies of invoices for such costs. Notwithstanding any contrary provision contained herein, this Section shall not be modified, amended or revoked in any way without the express written consent of Declarant.

12.7 No Duty to Provide Security. Notwithstanding anything to the contrary herein, the Association has no duty to protect Owners or their family members, lessees, guests or invitees from death, bodily injury or property damage caused by unrelated third parties.

## ARTICLE 13

### INSURANCE

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

13.1.1 Casualty insurance on the Common Area and the Association's interest in any Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement cost, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than 100% of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a casualty policy;

13.1.2 Commercial general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Any such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and the Association's interest in any Areas of Association Responsibility, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for

any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

13.1.3 Worker's compensation and insurance to the extent necessary to meet the requirements of the laws of Arizona and employer's liability coverage;

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

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

13.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

13.4 Insurance Obtained by Owners. Each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense covering his Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.

13.5 Payment of Insurance Proceeds. Any loss to the Common Area or Association's interest in any Areas of Association Responsibility, covered by insurance obtained by the Association in accordance with this Article, shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 13.6, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area or Area of Association Responsibility.

13.6 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area or the Association's interest in any Areas of Association Responsibility that is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners owning at least 80% of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire damage is not repaired or replaced, insurance proceeds attributable to the damaged area shall be used to restore the damaged area to a condition that is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot or may be retained by the Association for future expenses, as the Board determines.

## ARTICLE 14

### TERM AND ENFORCEMENT

14.1 Enforcement. Subject to the provisions of Section 14.4 and of ARTICLE 15, the Association, the Architectural Committee or any Owner shall have the right (but not the obligation) to enforce the Project Documents and any amendment thereto.

14.1.1 During reasonable hours and upon reasonable notice to an Owner or Occupant of a Lot, any member or authorized representative of the Architectural Committee or the Board shall have the right to enter upon and inspect any Lot or Improvements thereon, except for the interior portions of occupied Residential Units, to determine if the Improvements are in compliance with the Project Documents. Any such person shall not be guilty of trespass by reason of such an entry.

14.1.2 Failure by the Association, the Architectural Committee or any Owner to enforce the Project Documents shall in no event be deemed a waiver of the right to do so thereafter.

14.1.3 Deeds of conveyance may contain a reference to this Declaration or other Project Documents, but whether or not reference is made in any deed, the Project Documents shall be binding upon the respective grantees.

14.1.4 Violators of any portion of the Project Documents may be restrained by any court of competent jurisdiction and damages may be awarded against violators, provided, however, that a violation of the Project Documents, or any one or more of them, shall not affect the lien of any first mortgage or first deed of trust.

14.1.5 If the Architectural Committee or Board enforces any provision of the Project Documents, the cost of the enforcement shall be paid by the Association but may be recovered through an Assessment against the offending Owner and the Owner's Lot.

14.2 Term: This Declaration, as amended from time to time, shall run with and bind the land for a term of 30 years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of 10 years for so long as the Lots shall continue to be used for residential purposes unless there is a vote to terminate this Declaration by Owners holding not less than 75% of the votes entitled to be cast, not more than 1 year prior to the date otherwise scheduled for commencement of the next extension term. If the necessary votes are obtained, the Board shall cause to be recorded with the County Recorder of the county in which the Property is located a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

14.3 Amendment:

14.3.1 Except as otherwise specifically provided in this Declaration, any proposed amendment of this Declaration only needs to be approved by a majority of the

members of the Board. After the Transition Date, amendments may be adopted only with the affirmative vote or written consent of two-thirds (2/3) of the Class A Members. In all events, the amendment when adopted shall bear the signature of the President and shall be attested by the Secretary of the Association, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording, or at such later date as may be specified in the amendment.

14.3.2 Notwithstanding any foregoing provision, this Declaration may not be amended at any time (either before or after the Transition Date) without the consent of Declarant to diminish any of the rights of Declarant under this Declaration.

14.3.3 Notwithstanding any other provision of this Section 14.3, prior to the Transition Date, Declarant reserves the right to amend this Declaration without the approval of the Board, the Association, the other Owners or any other Person; provided, however, that after the conveyance of the first Lot to a purchaser, Declarant may not amend any of the provisions of the Declaration without the approval of a majority of the Class A Members that would: (a) have the effect of changing the boundaries of an Owner's Lot without the consent of the Owner; (b) increase the maximum Annual Assessment or accelerate the date on which it may begin to increase as set forth in Section 5.6; (c) have the effect of modifying the procedures for the Board to assess Special Assessments under Section 5.7; (d) have the effect of modifying the procedures for the Board to change the use of Common Areas after the Transition Date as set forth in Section 3.8; (e) have the effect of modifying the procedures for the Board to transfer portions of the Common Areas after the Transition Date as set forth in Section 3.9; or (f) affect the rights and procedures to amend this Declaration as set forth under this Section 14.3.

14.3.4 Notwithstanding any contrary provision contained herein, the Declarant, so long as the Declarant owns any portion of the Property, and thereafter the Board, may amend this Declaration, without obtaining the consent or approval of any other Owner or First Mortgagee, in order to correct drafting mistakes contained herein or to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Department of Veterans Affairs or any federal, state or local governmental agency whose approval of the Project, the Plat or any of the Project Documents is required by law or is requested by the Declarant or the Board.

14.3.5 Any amendment to this Declaration shall be recorded with the County Recorder in the county in which the Property is located and shall take effect immediately upon recordation (or on such later date as may be specified in the amendment) regardless of the status of the then current term of the Declaration under Section 14.2. A properly executed and recorded amendment may alter the restrictions in whole or in part applicable to all or any portion of the Property and need not be uniform in application to the Property.

14.4 Approval of Litigation: Except for any legal proceedings initiated by the Association to (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules; (iii) enforce the Architectural Committee Rules; (iv) collect any unpaid Assessments levied pursuant to this Declaration, or (v) enforce a contract entered into by the

Association with vendors providing services to the Association, the Association shall not incur litigation expenses, including, but not limited to, attorneys' fees and costs or liability for costs and fees of an adverse party, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of a Majority of Members, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association that are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by special Assessment and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations. Each Owner shall notify prospective Purchasers of such legal proceedings initiated by the Board and not included in the above exceptions and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with Section 15.3. Nothing in this Section shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (i) enforce the Project Documents; (ii) comply with the statutes or regulations related to the operation of the Association or the Areas of Association Responsibility; (iii) amend the Project Documents as provided in this Declaration; (iv) grant easements or convey Common Area as provided in this Declaration; or (v) perform the obligations of the Association as provided in this Declaration. Subject to the exceptions in the first sentence of this Section, with respect to matters involving property or Improvements, the Association (or Board of Directors) additionally shall not initiate legal proceedings or join as a plaintiff in legal proceedings unless (1) the property or Improvement is owned either by the Association or jointly by all members of the Association, (2) the Association has the maintenance responsibility for the property or Improvements pursuant to this Declaration, or (3) the Owner who owns the property or Improvements consents in writing to the Association initiating or joining the legal proceeding.

14.5 Annexation of Additional Property: Until the later of (a) 7 years following recordation of this Declaration or (b) termination of the Class B membership, Declarant shall (subject to the provisions of Section 16.4) have the right to annex any real property that is adjacent to any real property that is then subject to this Declaration. Property shall be deemed adjacent if contiguous at any point or if separated only by a street, alley, right-of-way or easement. Annexation shall be effective upon recordation by Declarant of a signed and acknowledged Supplemental Declaration stating that the adjacent real property has been annexed to this Declaration. No consent or approval of any such annexation by the Board or Members of the Association shall be necessary for an annexation by Declarant. Upon annexation, the annexed real property shall have the same rights, privileges and obligations as property originally subject to the terms of this Declaration, including membership in the Association, except that such rights, privileges and obligations shall not include matters arising or accruing prior to annexation. Annual Assessments shall be prorated for annexed property through the date of annexation.

14.6 De-Annexation of Property: Subject to Section 16.4, Declarant shall have the right from time to time, in its sole discretion and without the consent of any person (other than consent of the owner of the property being de-annexed), to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, provided, however, that a portion of the Property may not be deleted from this Declaration unless at the time of deletion and removal no Residential Unit or material Common Area Improvements have been constructed thereon (unless the de-annexation is for the purpose of accomplishing minor adjustments to the

boundaries of Lots or the Property). No deletion of any portion of the Property shall occur if the deletion would terminate access to any right-of-way or utility line unless reasonable alternative provisions are made for access. No deletion of any portion of the Property shall affect the Assessment Lien on the deleted portion of the Property for Assessments accruing prior to deletion. Any deletion of a portion of the Property hereunder shall be made by Declarant recording a notice thereof.

## ARTICLE 15

### CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

It is intended that the Common Area, each Lot, and all Improvements constructed on the Property by persons ("Developers") in the business of constructing Improvements will be constructed in compliance with all applicable building codes and ordinances and that all Improvements will be of a quality that is consistent with the good construction and development practices in the area where the Project is located for production housing similar to that constructed within the Project. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding alleged defects ("Alleged Defects") in any Improvements on any Lot or Common Area will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers (including Declarant), the Association, the Board, and all Owners shall be bound by the following claim resolution procedures. In the event of a conflict between the terms and provisions of this ARTICLE 15 and any agreement entered into by and between a Developer and an Owner, the terms and provisions of such agreement shall prevail.

15.1 Right to Cure Alleged Defect: If a person ("Claimant") claims, contends, or alleges an Alleged Defect, each Developer shall have the right to inspect, repair and/or replace the Alleged Defect as set forth herein.

15.1.1 Notice of Alleged Defect: If a Claimant discovers an Alleged Defect, the Claimant shall give written notice of the Alleged Defect ("Notice of Alleged Defect") within 15 days after discovery to the Developer that constructed the Improvement.

15.1.2 Right to Enter, Inspect, Repair and/or Replace: Within a reasonable time after the receipt of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, the Developer shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter onto or into the Common Area, Areas of Association Responsibility, any Lot or Residence, and/or any other Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by the Developer in its sole discretion, repairing and/or replacing the Alleged Defect. In conducting such an inspection, testing, repair and/or replacement, the Developer shall be entitled to take any actions it deems reasonable and necessary under the circumstances.

15.2 No Additional Obligations; Irrevocability and Waiver of Right: Nothing set forth in this Article shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which the Developer is not otherwise obligated under

applicable law or any warranty provided by the Developer in connection with the sale of the Lots and/or the Improvements constructed thereon. The right reserved to each Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to the Developer except by a written document executed by the Developer and recorded with the County Recorder in the county in which the Property is located.

15.3 Legal Actions: Any legal action initiated by a Claimant must be brought in accordance with, and subject to, Section 14.4 and Section 15.4 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging (1) damages for costs of repairing an Alleged Defect ("Alleged Defect Costs"), (2) the diminution in value of any real or personal property resulting from an Alleged Defect, or (3) any consequential damages resulting from an Alleged Defect, any judgment or award in connection therewith shall first be used to correct and/or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by the Claimant in correcting and/or repairing the Alleged Defect. If the Association, as a Claimant, recovers any funds from a Developer (or any other person) to repair an Alleged Defect, any excess funds remaining after repair of the Alleged Defect shall be paid into the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer including, at a minimum, (1) a description of the Alleged Defect; (2) a description of the attempts of the Developer to correct the Alleged Defect and the opportunities provided to the Developer to correct the Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Arizona that the Alleged Defect exists along with a description of the scope of work necessary to cure the Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer and a description of the relationship between the attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between the attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer and the source of the funds that will be used to pay the fees and expenses; (8) the estimated time necessary to conclude the action against the Developer; (9) a good faith estimate of the fees and costs the Association may be required to pay to the Developer in the event that the Association's claim is unsuccessful; and (10) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

15.4 Alternative Dispute Resolution: Any dispute or claim between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner or the Association on the other hand; or (b) any Owner and another Owner; or (c) the Association and any Owner, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration or the other Project Documents; (ii) the design or construction of any portion of the Project, or (iii) an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 15.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

15.4.1 Negotiation: Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with any such negotiation.

15.4.2 Mediation: If the parties cannot resolve their Dispute pursuant to the procedures described in Section 15.4.1 within such time period as may be agreed upon by the parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have 30 days after the Termination of Negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which the person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within 30 days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of the Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to persons who are not a party to the proceedings.

(a) Position Memoranda; Pre-Mediation Conference: Within 10 days after the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within 10 days following submittal of the memoranda to the mediator and shall conclude within 15 days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Maricopa County or such other place as may be mutually acceptable to the parties to the Dispute.

(b) Conduct of Mediation: The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining the expert advice as provided below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

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



(d) Parties Permitted at Sessions: Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute, or by witnesses in the course of the mediation, shall be kept confidential. There shall be no stenographic record of the mediation process.

(e) Expenses of Mediation: The expenses of witnesses for either side shall be paid by the party producing the witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless otherwise agreed. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such mediation.

15.4.3 Final and Binding Arbitration: If the parties cannot resolve their Dispute pursuant to the procedures described in Section 15.4.2, the Disputing Party shall have 30 days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to final and binding arbitration in substantial conformance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as modified or as otherwise provided in this Section 15.4.3; however, the arbitration need not be conducted by or through the AAA. If the Disputing Party does not submit the Dispute to arbitration within 30 days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of the Dispute; provided, nothing herein shall release or discharge any party from any liability to persons who are not a party to the proceedings.

The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Developer shall be required to participate in the arbitration proceeding if all parties against whom the Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 15.4.3, the arbitrator shall have the authority to try all issues, whether of fact or law.

(a) Place: The arbitration proceedings shall be heard in Maricopa County.

(b) Arbitration: A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the American Arbitration Association with experience in relevant matters that are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within 10 days after service of the initial complaint on all defendants named therein.

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

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

(e) Discovery: The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The Developer shall also be entitled to conduct further tests and inspections as provided in Section 15.1. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(f) Limitation on Remedies/Prohibition on the Award of Punitive Damages: Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

(g) Motions: The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(h) Expenses of Arbitration: Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by the party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

15.5 Statutes of Limitations: Nothing in this Article shall be considered to toll, stay, reduce, or extend any applicable statute of limitations.

15.6 Enforcement of Resolution: If the parties to a Dispute resolve the Dispute through negotiation or mediation in accordance with Section 15.4.1 or Section 15.4.2, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Section 15.4.3 and any party to the Dispute thereafter fails to comply with such resolution or award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of the negotiation, mediation, or award without the need to again comply with the procedures set forth in this Article. In that event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such

parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, but not limited to, attorneys' fees and court costs.

15.7 Amendment of this Article: Notwithstanding any contrary provision contained herein, no provision of ARTICLE 15 shall be modified, amended or revoked in any way without the express written consent of the Declarant.

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

## ARTICLE 16

### GENERAL PROVISIONS

16.1 Severability: Judicial invalidation of any part of this Declaration shall not affect the validity of any other provisions so long as the remainder fairly reflects the general intentions of the original instrument.

16.2 Construction: The Article and Section headings have been inserted for convenience only and shall not be considered in resolving questions of interpretation or construction. All terms and words used in this Declaration regardless of the number and gender in which they are used shall be deemed and construed to include any other number, and any other gender, as the context or sense requires. In the event of any conflict or inconsistency between this Declaration, the Articles, and/or the Bylaws, the provisions of this Declaration shall control over the provision of the Articles and the Bylaws and the provisions of the Articles shall prevail over the provisions of the Bylaws.

16.3 Notices: Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail, postage prepaid; if to an Owner, addressed to that Owner at the address of the Owner's Lot or if to the Architectural Committee, addressed to that Committee at its normal business address. If notice is sent by mail, it shall be deemed to have been delivered 48 hours after it is deposited in the United States mail, postage pre-paid. If personally delivered, notice shall be effective on receipt. Notwithstanding the foregoing, an application for approval, plans, specifications and any other communication or documents shall not be deemed to have been submitted to the Architectural Committee unless it is actually received by the Committee. Any vote, election, consent or approval of any nature by the Owners or the Board of Directors, whether hereunder or for any other purpose, may, in the discretion of the Board of Directors and in lieu of a meeting of members, be held by a mail-in ballot process pursuant to such reasonable rules as the Board may specify.

16.4 VA/HUD Approvals: If the Project or this Declaration has been approved by the Veterans Administration ("VA") or the United States Department of Housing and Urban

Development ("HUD"), then so long as there is a Class B membership in the Association, the following actions will require the prior approval of the VA or HUD:

16.4.1 annexation of any additional properties;

16.4.2 dedication of Common Area,

16.4.3 amendment of the Declaration, and

16.4.4 dissolution of the Association or the merging or consolidation of the Association with any other entity.

HUD or VA approval of an action requiring such an approval shall be deemed given if (a) application for approval is made in writing together with written certification complying with HUD/VA guidelines stating that the Property, including the Declaration and other Association documents, will continue to comply with applicable HUD/VA requirements and (b) HUD and/or VA does not remove the Property from its list of approved projects or otherwise object to the application within 30 days following the application.

**CHI CONSTRUCTION COMPANY,**  
an Arizona corporation

By: *Bill Hoy*

Its: *Vice President*

STATE OF ARIZONA        )  
  ) s.s.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me this 20<sup>th</sup> day of March, 2004  
by Brett Hopper, the Vice President of CHI Construction  
Company, for and on behalf thereof.

Lisa Casas  
Notary Public

My commission expires:

January 29, 2007

