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DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR
HABITAT ON PARADISE LANE

THIS DECLARATION INCLUDES IMPORTANT ALTERNATIVE DISPUTE RESOLUTION PROCEDURES THAT GOVERN HOW DISPUTES AND CLAIMS RELATING TO THE COVERED PROPERTY (INCLUDING LOTS) COVERED BY THIS DECLARATION ARE TO BE SUBMITTED AND RESOLVED. SEE ARTICLE XIII FOR DETAILS.

Dated: October 11, 2023

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR
HABITAT ON PARADISE LANE**

This Declaration of Covenants, Conditions, Restrictions and Easements for Habitat on Paradise Lane ("**Declaration**") is executed this 11th day of October, 2023, by Habitat for Humanity Central Arizona, an Arizona nonprofit corporation ("**Declarant**").

RECITALS

A. Declarant is the owner of certain real property located in Maricopa County, Arizona, being a legal subdivision of Maricopa County and located within the corporate limits of the City of Surprise, and as further described on **Exhibit A** attached hereto and incorporated herein.

B. The real property described in **Exhibit A** is referred to hereinafter as the "**Covered Property**."

C. Declarant desires to see that the Covered Property be developed as a residential community, with certain open spaces and other features and characteristics, all as provided herein, and Declarant desires and intends that the Covered Property will be held, sold and conveyed subject to the provisions hereof, which are for the purpose of protecting the value, desirability, attractiveness and character of the Covered Property and which runs with all of the property. This Declaration is binding on all Persons having any right, title or interest in the Covered Property, or any part thereof, and inures to the benefit of the aforementioned parties and their successors and assigns.

D. Declarant has formed, or will form, an Arizona nonprofit corporation known as "Habitat on Paradise Lane Owners Association, Inc.," or to be known by any other designated name, for the purposes of, among other things: (i) holding title in fee or otherwise to certain Common Areas; (ii) fostering the efficient preservation of the Covered Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and enforcing the Governing Documents; and (iii) establishing, collecting, disbursing and enforcing the Assessments as set forth herein.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

**ARTICLE I
DEFINITIONS**

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

1.1 "**Additional Covenants**" means the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any other instrument approved by Declarant or as otherwise provided herein, including those which may be adopted pursuant to Section 17.1.

1.2 "**Administrative Fee**" has the meaning set forth in Section 8.13.3.

1.3 "**Agency**" means the Federal Housing Administration (FHA), Veterans Affairs (VA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), and any other

governmental agency or financial institution insuring or guaranteeing residential loans or purchasing such loans on the secondary market.

1.4 “**Annual Assessments**” means the annual assessments levied by the Board pursuant to Section 8.5.

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

1.6 “**Assessment Lien**” means the charge and continuing servitude and lien against a Lot for payment of Assessments as described in Section 8.1.

1.7 “**Assessment Period**” means each period for which Assessments are to be levied against a Lot pursuant to this Declaration, as more particularly described in Section 8.2.

1.8 “**Assessments**” means all Annual Assessments, Maintenance Assessments, Special Assessments, Utility Assessments, and Enforcement Assessments, and includes any charges or fines hereunder which are stated to be secured by the Assessment Lien.

1.9 “**Association**” means “Habitat on Paradise Lane Owners Association, Inc.,” an Arizona nonprofit corporation, its successors and assigns, or an association given another available name and serving the purposes of the Association hereunder.

1.10 “**Association Rules**” means the rules, regulations and procedures adopted by the Association pursuant to Section 11.2.

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

1.12 “**Bylaws**” means the Bylaws of the Association, as amended or restated from time to time. The Bylaws contain the operational procedures of the Association. “**City**” means the City of Surprise.

1.14 “**City Guidelines**” has the meaning set forth in Article IV.

1.15 “**Class A Member**” has the meaning set forth in Section 7.4.1.

1.16 “**Class B Member**” has the meaning set forth in Section 7.4.2.

1.17 “**Common Area**” means Tracts A, B, and C as shown on the Plat, and all Improvements or amenities thereon, including all structures, and all easements and licenses, and all other real property and personal property which will from time to time be owned, controlled or operated by the Association within the Covered Property (including, but not limited to, any area used for landscaping, flood control, drainage, active or passive recreational areas, if any, open space, walkways, and pedestrian and vehicular ingress and egress which the Association in its discretion may elect to accept), or with respect to which the Association has undertaken administrative, maintenance, or other similar responsibilities.

1.18 “**Common Expenses**” means the expenses incurred or to be incurred by the Association, as estimated by the Board, for the benefit of the Members and Owners within the Covered Property, generally, including reasonable reserves, and which are, in the sole and absolute discretion of the Board, determined

to be properly chargeable by Assessments to all Owners and Members, and including the cost of all maintenance, repair and other activity, all taxes, utility charges in relation to Common Area, the Management Fee and other fees, and the cost of all insurance, bonds, and fidelity bonds, and all general and overhead expense.

1.19 “**Covered Property**” has the meaning set forth in Recital B above.

1.20 “**Declarant**” means Habitat for Humanity Central Arizona, an Arizona nonprofit corporation, and any assignee who has received an express written assignment of the rights and duties granted or reserved to Declarant herein, which assignment may be in whole or in part.

1.21 “**Declarant Control Period**” means the earlier of:

(a) the period of time expiring one hundred twenty (120) days after all Lots within the Covered Property have been conveyed to Persons other than Declarant;

(b) such date as Declarant relinquishes all rights which may be exercised during the Declarant Control Period; or

(c) December 8, 2043.

Should annexations of other real property occur, or should other events cause Declarant to own portions of the Covered Property after the Declarant Control Period has first expired, the Declarant Control Period will revive subject to the provisions above.

1.22 “**Declarant Party**” or “**Declarant Parties**” means, collectively, Declarant, Declarant’s builders, general contractors, or brokers, or their agents or employees.

1.23 “**Declaration**” means this Declaration of Covenants, Conditions, Restrictions and Easements, as amended, restated, or supplemented from time to time.

1.24 “**Delinquent Amount**” means any Assessment, or installment thereof, not paid when due.

1.25 “**Dwelling Unit**” means any building, or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.26 “**Eligible Insurer or Guarantor**” means an insurer or governmental guarantor of a First Mortgage for whom an Owner has provided the information as required under Section 14.1 or who has requested notice of certain matters from the Association in accordance with Section 14.1.

1.27 “**Eligible Mortgage Holder**” means a First Mortgagee for whom an Owner has provided the information as required under Section 14.1 or who has requested notice of certain matters from the Association in accordance with Section 14.1.

1.28 “**Enforcement Assessments**” means the assessments, if any, levied by the Board pursuant to Section 8.9.

1.29 **“Event of Foreclosure”** means the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee’s deed at a trustee’s sale in regard to a mortgage, deed of trust or other encumbrance inferior in priority to an Assessment Lien.

1.30 **“Exempt Transfer”** means any transfer:

- (a) to Declarant;
- (b) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;
- (c) to the Owner’s estate, surviving spouse, or heirs at law upon the death of the Owner;
- (d) to an entity wholly owned by the Owner or to a family trust created by the Owner for the direct benefit of the Owner and their spouse and/or heirs at law; provided, any subsequent transfer of an ownership interest in such entity will not be an Exempt Transfer;
- (e) to a corporation, limited liability company, partnership or other entity in which the Owner owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Fund Contribution and Reserve Fund Assessment;
- (f) to an institutional lender as security for the performance of an obligation pursuant to a mortgage or pursuant to a foreclosure sale; or
- (g) to the Association pursuant to a foreclosure sale and resale.

1.31 **“First Mortgage”** means any mortgage or deed of trust on any Lot with the first priority over any other mortgage or deed of trust encumbering such Lot.

1.32 **“First Mortgagee”** means the holder of any First Mortgage.

1.33 **“Governing Documents”** means this Declaration, the Articles, and the Bylaws of the Association, and the Association Rules, as same may from time to time be amended.

1.34 **“Home Occupation”** has the meaning set forth in Section 5.20.

1.35 **“Improvement”** means any structure or improvement, including any Dwelling Unit or modification thereof, any patio, outbuilding, pool, wall, path, driveway, excavation, fixture, antenna, satellite system, fence, coping, awning, sunshade, flagpole, or other structure or improvement or appurtenance, and including decorative or aesthetic changes, such as color changes or changes to materials, and also includes any and all landscaping, including any addition or removal of plants.

1.36 **“Invitee”** means any Person whose presence within the Covered Property is approved by or is at the request of any Owner or Occupant, including family members, guests, employees, and contractors.

1.37 **“Lot”** means Lots 1 through 4, inclusive, shown on the Plat, and any Lot shown on any Plat of real property annexed under the purview hereof.

1.38 “**Maintenance Assessments**” means the assessments, if any, levied by the Board pursuant to Section 8.6.

1.39 “**Member**” means any Owner or Person entitled to Membership, including Declarant for so long as Declarant is a Class A or Class B Member and whether or not Declarant owns any Lot.

1.40 “**Membership**” means the rights and duties of Members, including Declarant so long as Declarant is a Class A or Class B Member, with respect to the Association.

1.41 “**Occupant**” means any Person, other than an Owner, residing in a Dwelling Unit, or any portion thereof, at the request of or with the consent of the Owner of such Dwelling Unit.

1.42 “**Owner**” means the record holder of legal title to the fee simple interest in any Lot or, in the case of a recorded “contract” (as that term is defined in A.R.S. § 33-741(2)), the holder, of record, of the purchaser’s or vendee’s interest under said contract, but excluding others who hold such title merely as security, such as any trustee under a deed of trust. An Owner includes any Person who holds record title to a Lot in joint ownership or as an undivided fee interest.

1.43 “**Person**” means a corporation, partnership, limited liability company, joint venture, natural person, or individual, trust, or any other legal entity.

1.44 “**Plat**” means the recorded plat for the Covered Property, and any amendment or resubdivision thereof, and in the event of successive plats for portions of the Covered Property, the term includes all such plats unless the context clearly indicates otherwise.

1.45 “**Reserve Fund Assessment**” has the meaning set forth in Section 8.13.2.

1.46 “**Single Family**” means a group of persons related by blood, marriage or legal adoption, or a group of not more than three (3) unrelated persons maintaining a common household. “Single Family” use does not include any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, except that this prohibition does not apply those certain limited kinds of group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

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

1.48 “**Streets**” means the street(s) shown on the Plat for the Covered Property.

1.49 “**Utility Assessments**” means the assessments, if any, levied by the Board pursuant to Section 8.8.

1.50 “**Vehicle**” means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, “trekker” van, or similar class B van, motorcycle, all-terrain vehicle, utility vehicle, pickup truck, or other motor vehicle, and including any travel trailer, tent trailer, trailer, camper shell, boat trailer, or other similar equipment and vehicles.

1.51 “**Working Capital Fund Contribution**” has the meaning set forth in Section 8.13.1.

**ARTICLE II
PROPERTY AND PERSONS BOUND BY THIS DECLARATION**

2.1 General Declaration. Declarant desires to facilitate development of the Covered Property in accordance with this Declaration which establishes a general plan of development for the planned community known as Habitat on Paradise Lane. This Declaration provides for the overall development, administration, maintenance and preservation of the Covered Property, and a reasonable mechanism for enforcement of the provisions hereof. Nothing in this Declaration should be construed to prevent or limit Declarant's right to modify or change the plan for the development of the Covered Property, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot or Common Area.

2.2 Owners and Occupants Bound. Upon the recording of this Declaration, this Declaration is binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Lot to or from such Owners or Occupants, and the provisions hereof are covenants running with the land.

**ARTICLE III
EASEMENTS; RIGHTS OF ENJOYMENT IN THE COMMON AREA**

3.1 Owner's Easements and Rights of Enjoyment. There is hereby established for each Owner a nonexclusive easement for use and enjoyment in and to the Common Area, which nonexclusive easement is appurtenant to and passes with the title to each Owner's Lot. All Occupants are granted a nonexclusive, nontransferable temporary license to use and enjoy the Common Area so long as they remain Occupants. Without limiting the foregoing, each Owner has a right and nonexclusive easement of use, access, and enjoyment in and to, over, and across any private Streets for the purpose of vehicular access, ingress, and egress to and from such Owner's Lot and the public right-of-way.

The foregoing grants and rights are subject to the following limitations, in addition to all other limitations and reserved powers set forth in this Declaration:

3.1.1 Right to Modify and Change. The rights, duties, and obligations of the Association, and the reserved right of Declarant, and of the Association, to modify the use of Common Area, or to convey same free of claims or rights of the Owners or Members, subject to provisions of zoning, applicable law, or other instruments of record;

3.1.2 Restrictions on the Plat. All easements granted on the Plat are subject to specific restrictions and limitations noted on the Plat;

3.1.3 Suspension of Rights. The right of the Association, after such notice and hearing as may be required by law, to suspend the voting rights and the rights to the use and enjoyment of the Common Area (other than roads) by any Owner or Occupant, as the case may be, for any period during which an Assessment remains delinquent, or for a period not to exceed sixty (60) days for any single infraction of this Declaration or the Association Rules (provided such suspension will not be limited if the infraction remains uncured). Furthermore and notwithstanding anything herein to the contrary, in no event will an Owner's or Occupant's right to use any private roadway within the Covered Property to access such Owner's Lot be suspended;

3.1.4 Limitation of Invitees. The right of the Association to limit the number of Invitees of an Owner or Occupant who may use the Common Area; and

3.1.5 Regulation, Liens, and Conveyances. The right of the Association to regulate use of the Common Area in accordance with this Declaration, and to mortgage or convey portions of Common Area subject to the unanimous affirmative vote or written consent, with or without a meeting, of Declarant and Owners.

3.2 Utility Easement. There is hereby created an easement upon, across, over, and under the Common Area for the benefit of Declarant and its contractors and the utility companies providing utility service to the Covered Property for reasonable ingress, egress, installation, replacing, repairing, or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, high-speed internet, cable television, and electricity. By virtue of this easement, it is expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area, but no sewers, electrical lines, water lines, cable lines, high-speed internet lines, or other utility or service lines may be installed or located on the Common Area except as designed, approved, and constructed by Declarant or as otherwise approved by the Board.

3.3 Easement in Favor of Association. The Lots (except for the interior of a Dwelling Unit or other buildings) are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees, and independent contractors:

(a) for inspection of the Lots in order to verify the performance by Owners, their Occupants, and Invitees of all items of maintenance and repair for which they are responsible;

(b) for inspection, maintenance, repair and replacement of the Common Area reasonably accessible only from such Lots;

(c) for correction of emergency conditions in, under, upon or over one (1) or more Lots;
and

(d) for inspection, maintenance, repair, and replacement of walls and fences which the Association is obligated to maintain.

3.4 Easement for Encroachments. To the extent that any Improvements on Lots or Common Area encroaches on any other Lot or Common Area as a result of original construction, shifting, settling, or movement of any Improvement or alteration or restoration authorized by this Declaration, or any other reason, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted and created; provided such encroachment resulting from any such original construction, alteration, or restoration does not materially affect the square footage of any other Owner's Lot, interfere with any other Owner's ability to operate their Lot or construct Improvements on their Lot or otherwise adversely affect such Owner's value of or quiet enjoyment of their Lot.

3.5 Broad Reserved Powers of Declarant. Notwithstanding anything to the contrary herein, during the Declarant Control Period, Declarant may cause the Association to convey, and the Association, with the consent of Declarant during the Declarant Control Period, may convey minor, insignificant, or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors, and other such matters), and portions of Common Area determined by

Declarant to be more burdensome or costly to own than the concomitant benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board, with the consent of Declarant during the Declarant Control Period, determine that such conveyance or transfer is in the best interests of the Association or Covered Property.

Any sale, disposition, or resubdivision of the Common Area will serve to extinguish any interests therein of Owners pursuant to the provisions hereof.

In addition, the Association will in all cases have the right, with the consent of Declarant during the Period of Declarant Control and during such time as it owns any Lot, to convey and dedicate to the public lands and interests such as public roads, streets, drainageways, culverts, parks, sewer facilities (if any), and other Common Area, and such action does not require the approval of any other Owners or Members of the Association.

3.6 Delegation of Use. Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate their rights of use and enjoyment in the Common Area to their Occupants or Invitees subject to the limitations set forth herein and in the Association Rules. Without limitation, the Association Rules may limit the number of Invitees and/or prescribe restrictions on certain types of gatherings or events.

3.7 Waiver of Use. No Owner is or will be exempt from personal liability for Assessments, except Declarant as provided herein, nor does any Owner have any right to release a Lot from the liens or charges arising under this Declaration by waiver of the right of use and enjoyment of Common Area or for any other reason, and no Owner in any fashion or by any means has a right of set-off of claims against any sum owed to the Association.

3.8 Acceptance of Certain Common Area and Other Areas. Declarant has the absolute right to require that the Association accept title to certain areas that Declarant in its discretion determines will be Common Area, including areas shown upon any plat or other instrument pertaining to the Covered Property. Such right of Declarant, without limitation, extends to all property that Declarant determines is appropriate for Common Area designation or otherwise appropriate for Association control and maintenance. Common Area to be accepted by the Association at Declarant's direction may include, without limitation, such open spaces, landscaped areas, trails and recreational areas, if any, and other areas or facilities, but no representation or warranty is made as to any such facilities or which will be offered or included in the Covered Property or within Common Area. Further, Declarant may at any time in writing elect, in its sole discretion, to convert any Lot or portion thereof to Common Area, and to convey same to the Association, but no commitment or representation of any nature exists in that regard.

ARTICLE IV DESIGN GUIDELINES

All development within the Covered Property is subject to all applicable City codes and ordinances then in effect, including, without limitation, design requirements for the Surprise Heritage District in which the Covered Property is located. All proposed site changes must be reviewed and approved by the City prior to any building permit approval issuance. No development, construction, grading, improvement, landscaping or other work or alteration of any land, nor any Improvement, as defined, shall be commenced unless such use is permitted and not in violation of the City's then current development requirements, which must be obtained from the City.

ARTICLE V PERMITTED USES AND RESTRICTIONS

5.1 Covenants, Conditions, Restrictions, and Easements Governing Use. The following covenants, conditions, restrictions, and reservations of easements and rights apply to all Lots.

5.2 Prohibited Uses. The following uses are prohibited:

(a) any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation, or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is otherwise materially injurious to the perceived value of any Lot; and

(b) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, Maricopa County, the City, or any other governmental entity having jurisdiction over the Covered Property.

5.3 Plat Notes and Zoning Conditions. In addition to the restrictions contained herein, the Covered Property is subject to all applicable rezoning conditions and to the restrictions and limitations set forth on the Plat for the Covered Property. All such restrictions are incorporated herein by reference as if fully set forth and need not be repeated verbatim.

5.4 On-Site Drainage. No water may be drained or discharged from any Lot, or building thereon, except in accordance with approvals of the City and with all applicable ordinances. Nothing herein prohibits natural storm drainage from leaving a Lot and entering upon adjacent property in the course of natural drainage patterns or incidental runoff typical of any improved property.

Each Owner agrees that neither Declarant, its members, shareholders, or beneficiaries, the Board, the Association, nor any member or shareholder thereof, nor any director or officer of the Association, nor any management company will in any way be liable or responsible for any drainage, storm water, or flooding event, and each Owner for themselves and their successors does hereby release the all said parties as well as the City from any claim, cost, expense, demand, damage, injury (including injury to any Dwelling Unit), or death in any way relating to drainage, storm water, or flooding, and does hereby fully agree to indemnify and defend the all said parties as well as the City.

5.5 Overhead Encroachment. No tree, shrub, or planting of any kind is allowed to overhang or encroach upon any public right-of-way, private drive, bicycle path, or any other pedestrian way from ground

level to a height of six (6) feet, without the prior written approval of Declarant or the Board. The Association has the right to cause an Owner to trim any offending tree, shrub, or planting.

5.6 Permissible Encroachments. Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, Improvements, and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by an Owner may from time to time encroach in minor degree upon the Common Area or other Lots in the Covered Property. Such minor and incidental encroachments, such as those caused by good faith survey error, are deemed permissible, particularly where removal of Improvements would cause gross economic waste. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

5.7 Restriction on Further Subdivision, Property Restrictions and Rezoning.

5.7.1 During the Declarant Control Period, all subdivision plats and Additional Covenants must be submitted to and approved by Declarant before being recorded or approved by the City, as applicable. Except for property owned by Declarant, after a subdivision plat has been approved, no Lot, or any portion of a Lot, may be further subdivided and no portion less than all of the Lot may be conveyed or transferred by any Owner without the prior written approval of Declarant. The combining of a Lot or Common Area with an adjacent Lot or Common Area, where no additional Lot is created, and which is approved by Declarant or is not a resubdivision for purposes of the foregoing requirements.

5.7.2 No proposed application for rezoning, variance, or use permit for any portion of the Covered Property may be made, filed, submitted to, or recorded with Maricopa County or any other governmental authority or agency unless it has first been approved by Declarant.

5.7.3 Subsections 5.7.1 and 5.7.2 do not apply to portions of the Covered Property owned by Declarant or to subdivision plats or Additional Covenants submitted or proposed by Declarant and pertaining to portions of the Covered Property owned by Declarant. Declarant may at any time, of its own volition, and with no other consent or approval required, resubdivide all or any portion of the Lots or Common Area, subject only to provisions of law or local ordinance.

5.7.4 Declarant may at any time in writing relinquish all or a portion of its approval rights under this Section. After the Declarant Control Period, or after Declarant may have relinquished its rights under this Section, the Board will succeed to the right to approve of subdivision plats or Additional Covenants, unless Declarant has assigned such right to one (1) or more Persons, in which case the Board will succeed to such rights only after such Persons no longer own any portion of the Covered Property.

5.8 Nuisances; Dust Control; Construction Activities. No rubbish or debris of any kind is permitted to accumulate upon or adjacent to any Lot so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly, or offensive. Each Lot must be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent Covered Property. Although normal construction activities are not considered a nuisance nor otherwise prohibited, Lots must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity may be carried on or permitted on any Lot, nor may anything be done thereon which is an annoyance or nuisance to Persons or property in the vicinity of such Lot or which interferes with the quiet enjoyment of

each of the Owners and Occupants. The Association may, but is not required to, take action to abate what any Owner may consider a nuisance.

5.9 Vehicles and Parking.

5.9.1 No Vehicle may be parked, kept, or stored on the Common Area or on any Lot or on the Streets, provided that Vehicles may be parked, kept and stored fully within such Lot's garage or respective driveway subject to the provisions of this Section 5.9. Notwithstanding the foregoing:

(a) Temporary parking of Vehicles of Declarant and its contractors and subcontractors, or Vehicles of contractors and subcontractors of others, as approved by Declarant, is permitted on Lots or Common Area, including Streets, during periods of construction of Improvements.

(b) Temporary, short-term parking of delivery Vehicles designed or used for carrying merchandise, supplies, or equipment for commercial purposes is permitted on the Common Area or on a Lot for the purposes of package or other delivery.

(c) Vehicles owned by an Invitee of an Owner or Occupant may be parked in the garage or driveway on a Lot.

5.9.2 No Vehicle may be constructed, reconstructed, or repaired on any Lot in such a manner as to be visible within the Covered Property, and no inoperable Vehicle may be stored or parked on any Lot in such a manner as to be visible within the Covered Property. Except for emergency repairs, no Vehicle may be constructed, reconstructed, or repaired on the Streets or any other part of the Common Area.

5.9.3 The Board has the right and power to adopt Association Rules governing and further restricting the parking of Vehicles on Lots and implementing the provisions of this Section, and to establish certain exceptions that may in certain cases be warranted.

5.9.4 This Section does not prohibit the parking of vehicles protected by A.R.S. § 33-1809. Further, in the event of dedication of the Streets to the City or other governmental entity, the provisions of A.R.S. § 33-1818 will control.

5.10 Driveways and Garages. All driveways must be maintained in a neat, clean, and sightly condition. To the extent permitted, garages must be used solely for parking of Vehicles, and may not be used or converted for living or recreational activities.

5.11 Health and Welfare. In the event uses of, activities on, or facilities upon a Lot are deemed by the Board to be a nuisance or to adversely affect the health or welfare of Owners or Occupants, the Board may adopt Association Rules restricting or regulating their presence.

5.12 Incidental Uses. The Board may approve, regulate, and restrict incidental uses of property. By way of example and not of limitation, the Board may adopt Association Rules governing recreational facilities, if any, or other facilities.

5.13 Antennas and Dishes; Solar Devices. No television, radio, or other electronic towers, aerials, antennae, satellite dishes, or device of any type for the reception or transmission of radio or television broadcasts or other means of communication will hereafter be erected, constructed, placed, or permitted to

remain on any Lot or upon any Improvements thereon, except that this prohibition does not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association may adopt Association Rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of Declarant or the Board, which will give due regard to state law restricting the limitation of such devices.

5.14 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes will be placed on any Lot without the prior written consent of the Board unless they are not visible from neighboring property.

5.15 Mineral Exploration, Withdrawal of Water, Etc. No Lot will be used in any manner to explore for, quarry, mine, remove, or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, and no well may be drilled within the Covered Property.

5.16 Diseases and Insects. No Owner or Occupant will permit any thing or condition to exist upon any Lot which induces, breeds, or harbors infectious plant or animal diseases or noxious insects.

5.17 Single Family Use. No structure whatsoever, other than one (1) private, detached Single Family residence per Lot, together with such private garage, guest facilities, recreational and storage facilities which may be approved in advance by Declarant or the Board in accordance with this Declaration, may be erected, placed, or permitted on any Lot. No mobile home, manufactured home, modular home, or prefabricated home are permitted on any Lot.

5.18 Yard and House Walls. All Owners, and the Association with respect to Common Area, must repair and maintain the exterior visible surfaces of any patio wall, rear or side yard wall located within such Owner's Lot, or Common Area, as applicable, or other surface or façade visible within the Covered Property so that such walls are neat and clean, free from graffiti, and otherwise in sound condition meeting all aesthetic standards of the Covered Property.

5.19 Party Walls. Except as hereinafter provided, the rights and duties of Owners of contiguous Lots which have shared walls or fences along or immediately adjacent to the dividing property line between such Lots ("**Party Walls**") are as follows:

5.19.1 Each Owner has the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof. Owners are responsible for the landscaping located on their Lots inside the Party Walls, and Owners will maintain the landscaping in a manner so as not to grow over, under, or through a perimeter wall. Owners must not allow landscaping to impede or otherwise interfere with the maintenance and repair of a Party Wall.

5.19.2 If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, or Invitees, the Owner is obligated to rebuild and repair the Party

Wall at the Owner's sole expense. Any dispute over an Owner's liability will be resolved as provided in Section 5.19.4 below.

5.19.3 In the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, or Invitees, or deteriorates from ordinary wear and tear, it is the joint obligation of all Owners whose Lots adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots on the damaged or destroyed Party Wall.

5.19.4 In the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners must submit the dispute to the Board, whose decision is binding and final.

5.19.5 In the case of Party Walls between Common Area and Lots, the Association, as the owner of the Common Area on which a Party Wall is located, has the rights and obligations of an Owner of a Lot as set forth in this Section 5.19.

5.20 Commercial Use. No gainful occupation, profession, trade, or other nonresidential use may be conducted on any Lot except as set forth herein. Notwithstanding any other provision of this Declaration to the contrary, Declarant may maintain sales offices, construction offices, administrative offices, and sales models on the Lots and Common Area within the Covered Property, as well as associated and ancillary services and facilities in connection therewith, including parking areas and open spaces. An Owner or Occupant may carry on a "Home Occupation" as provided below. A "**Home Occupation**" as permitted hereby means work within the Dwelling Unit (such as the performance of accounting work, creation of artwork, etc.) provided that:

(a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from inside of the Dwelling Unit indicating the conduct of business is detectable outside of the Dwelling Unit;

(b) the business activity conforms to all zoning requirements;

(c) the business activity does not involve door-to-door solicitation of other Owners and Occupants;

(d) the business activity does not generate drive-up traffic or customer or client parking; and

(e) the business activity is lawful and consistent with the residential character of the neighborhood, does not constitute a nuisance or hazard or offensive use within the Covered Property, and does not threaten the security or safety of other Owners and Occupants as determined in the discretion of the Board.

If the Board determines that the Home Occupation violates the provisions hereof, then the Board has the authority to require that the Home Occupation in question cease immediately. In no event will any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, be permitted within the Covered Property, except that this

prohibition does not apply to group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

5.21 Restriction on Leasing. In order to achieve a stabilized community of Owner-occupied Dwelling Units, to avoid artificial inflation of prices caused by resales by speculators and to prevent scarcity caused by vacant homes awaiting resale by speculators, and to further the purpose of Declarant's mission to provide affordable Owner-occupied housing, each Owner must use and occupy their Dwelling Unit as such Owner's principal place of residence immediately upon the close of escrow of such Lot and Dwelling Unit and must continue to so use and occupy the Dwelling Unit for such Owner's duration of ownership. No Owner may lease or rent the Dwelling Unit, Lot, or any portion thereof at any time and for any reason. For purposes hereof, leasing or renting is defined as the regular, exclusive occupancy of a Dwelling Unit or portion thereof by any Person other than the Owner and such Owner's Single Family, for which the Owner received any consideration or benefit including, without limitation, any fee, service, gratuity, or compensation, and further includes, without limitation, short term rental arrangements offered directly by the Owner or through third parties such as, by way of example only and without limitation, Airbnb, Vrbo, and similar.

5.22 Animals and Wildlife. No animal, livestock, poultry, or fowl of any kind other than a reasonable number of generally recognized house pets will be maintained on any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets are permitted to make an unreasonable amount of noise or create a nuisance, nor are house pets allowed to roam free outside of an Owner's Lot. No structure for the care, housing, or confinement of any permitted pet may be visible from within the Covered Property. The Board has the right by Association Rule or otherwise to determine what will constitute a generally recognized house pet, and what a reasonable number of such pets will, in any instance, constitute.

Notwithstanding the foregoing, no permitted pets may be kept on any Lot which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets must be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is an Invitee. The Board has the right, after notice and the opportunity for a hearing, to require the removal of any pet which the Board, in its sole discretion, has determined is a nuisance. The Board may adopt further Association Rules governing pets and avoidance of nuisances caused by pets.

Capturing, killing, or trapping wildlife is prohibited within the Covered Property, except for trained professionals in circumstances imposing an imminent threat to the safety of Persons or permitted house pets.

5.23 Machinery and Equipment. No machinery or equipment of any kind may be placed, operated, stored, or maintained upon any Lot, except:

(a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a building, appurtenant structures, or Improvements thereon; or

(b) that which Declarant or the Association may require for the development, operation, and maintenance of the Covered Property or portions of the Covered Property.

5.24 Signs. No signs of whatever nature may be erected or placed within any portion of the Covered Property, except for those signs approved by the Board or by Declarant. Declarant may approve signs without any other consent or approval. The foregoing restriction does not apply to signs required by

legal proceedings or signs which may be permitted by law, or which may not be prohibited by private covenant, including certain political signs, public safety or public service emergency vehicle signs, and “for sale” signs that are protected by A.R.S. § 33-441 or A.R.S. § 33-1808. Further, the Board may enact Association Rules limiting or prohibiting “for sale” or “for lease” signs, but only to the extent permitted by law.

Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across all Common Area for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property. The easement reserved hereby will expire and terminate upon completion of construction and sales activities upon the Covered Property, but in no event later than twenty (20) years after the date this Declaration is recorded.

5.25 Firearms or Other Weapons. The carrying, use, or discharge of firearms or other weapons within the Covered Property is prohibited. The term “firearms or other weapons” includes, without limitation, “B-B” guns, pellet guns, knives, swords, bows, crossbows, and other firearms or other weapons of all types, regardless of size.

5.26 Storage of Goods. Storage (except in approved structures or containers) of any furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Association) or, if not in active and continuous use, any portion of a Lot which is visible from a neighboring Lot or the Common Area is prohibited. No machinery or equipment of any kind may be placed, operated, or maintained on or adjacent to any Lot, except such machinery or equipment (a) as is usual and customary in connection with the use, maintenance, or construction (during the period of construction or modification) of Improvements, and (b) which Declarant or the Association may permit or require for the development, operation, and maintenance of the Covered Property.

5.27 Prohibited Conditions. Notwithstanding anything herein to the contrary, the following conditions, structures, or activities are prohibited on any Lot:

(a) freestanding flagpoles; provided, however, that flags may be displayed using a bracket or other device mounted to the Dwelling Unit, subject to the Association Rules not in conflict with applicable laws relating to the display of the American Flag; and

(b) shacks or other structures of a temporary nature on any Lot, except as may be authorized and approved by Declarant during the initial construction of Improvements within the Covered Property. Temporary structures used during construction or repair of a Dwelling Unit or other Improvements will be removed immediately after the completion of construction or repair.

5.28 Holiday Decorations. Owners may display holiday decorations located or visible from outside their Dwelling Units if the decorations are of the kinds normally displayed in comparable single family residential neighborhoods, are of reasonable size and scope, and do not disturb other Owners and Occupants by excessive light or sound emission, or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed in season only from November 1 to January 1 (for Christmas, Hanukkah, New Years, and other “winter” holiday decorations) and for other nationally recognized holidays, from six (6) weeks before to one (1) week after such holiday.

5.29 Tanks. No tanks of any kind (including, without limitation, above or below-ground tanks used for the storage of fuel or related materials) may be erected, placed, or maintained on any Lot.

5.30 Additional Restrictions by Additional Covenants. Declarant may require prior to the development of any Lot, the imposition of special conditions in Additional Covenants in any case where deemed appropriate in the sole and absolute discretion of Declarant, and may require adequate provision for Assessments and maintenance of the subject property and Improvements and such other provisions as are deemed proper. Without limiting the foregoing, the Association Rules may contain additional rules and restrictions applicable to loud, obnoxious, or unreasonable noises and other emissions, whether emanating from a Lot or from the Common Areas, and further regulating, without limitation, the operating of extremely loud Vehicles within the Covered Property.

5.31 Declarant's Exemption. Nothing contained in this Declaration will be construed to prevent the construction, installation or maintenance by Declarant or its agents during the period of development and construction on the Covered Property of Improvements, landscaping, or signs deemed necessary or convenient by Declarant, in its sole discretion, for the development or sale of property within the Covered Property, and Declarant at all times has an easement over and across all Common Area for all such purposes.

5.32 Savings Clause. The provisions of this Declaration will be construed to be consistent with law, and should any provision violate law, then applicable law governs. Without limitation, no provision hereof will be construed to prohibit the placement of solar heating or other such devices or antennae on Lots, provided such placement conforms to such lawful requirements hereof which do not conflict with law, nor will the provisions hereof prohibit the placement of the American flag or other flags protected by law from regulation or prohibition by recorded covenants, or the parking of public service or other protected vehicles as provided by law, again subject to the Association Rules not in conflict with such laws.

ARTICLE VI ORGANIZATION OF ASSOCIATION

6.1 General Purpose and Charge. The Association is a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. Neither the Articles nor the Bylaws will be amended or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Association will be conducted by the Board and such officers as the Board will elect or appoint in accordance with the Articles and Bylaws. During the Declarant Control Period, the Board will consist of at least one (1) director who must be a Member or individual designated by a corporate, partnership or other non-individual Member, and all directors may be appointed by Declarant during the Declarant Control Period. The initial director appointed by Declarant may serve extended terms as provided in the Bylaws.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Class B Member to the Class A Members. The Board may appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board will determine the compensation to be paid to the manager.

6.3 Personal Liability. No director, officer, committee member, employee or representative of the Association, or the Association, is personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered

or claimed on account of any of their acts, omissions, errors, or negligence, provided, however, that the limitations set forth in this Section do not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.4 Mergers or Consolidations. The Association has the right, power, and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association.

ARTICLE VII MEMBERSHIPS AND VOTING

7.1 Votes of Owners. Every Owner of a Lot, including Declarant, is automatically a Member of the Association and remains a Member for so long as such ownership continues. Each Class A Member has one (1) vote for each Lot owned. The Class B Member has ten (10) votes for each Lot owned.

7.2 Membership is Appurtenant to Ownership. Except for the Class B Membership, each Owner's Membership in the Association is appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There are only the Memberships for each Lot as are described herein. Joint ownership or ownership of undivided interests in any Lot as to which a Membership is established pursuant hereto does not increase the number of Memberships or votes attributable to the Lot. Rather, the votes must be cast together in one (1) unit.

7.3 Declarant. Declarant is a member of the Association for so long as it holds a Class A Membership or Class B Membership.

7.4 Membership Classes. The Association has two (2) classes of Members:

7.4.1 Class A Members. Class A Members are all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member has the number of votes provided in Section 7.1.

7.4.2 Class B Members. The Class B Member is Declarant who has the number of votes provided in Section 7.1. The Class B Membership will terminate and be converted to a Class A Membership if Declarant in writing relinquishes its Class B Membership while it still owns any Lot.

Declarant has the right to assign its rights and privileges as Declarant and as the Class B Member in whole or in part, regardless of whether it transfers its interest in the Lot or Lots it owns. Such assignment may include all special voting and other provisions set forth herein.

Should Declarant elect to relinquish its Class B Membership while it still owns any Lot, Declarant will be a Class A Member entitled to Class A votes for all Lots which it owns, and no such relinquishment or conversion will affect any reserved rights of Declarant as otherwise set forth herein.

7.5 Right to Vote. Class A votes may only be cast by the Owner of the Lot to which such vote is attributable. No change in the ownership of a Lot is effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof, for example, the recorded deed

showing the name of the new Owner of such Lot. The vote for each Member must be cast as a single unit, and solely by the Owner as and when applicable.

In the event that a Lot for which an Owner may vote is owned by more than one (1) Person and such Owners are unable to agree as to how their vote or votes will be cast, they are not entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot all such votes will be deemed null and void.

7.6 Members' Rights. Each Member has the rights, duties, and obligations set forth in this Declaration, the Articles, the Bylaws, and the Association Rules.

7.7 Control by Declarant, and Rights of Declarant. Declarant, as the Class B Member and in all events during Declarant Control Period, has the right to control the Association. Such control exists by virtue of the right, at all times during the Declarant Control Period, to appoint all directors of the Association, as well as their replacements in the event of death, removal, resignation or otherwise. Additionally, Declarant may amend this Declaration, may amend the Articles and Bylaws of the Association, and may veto amendments proposed to be made by the Class A Members. The Class B Member and Declarant have such additional and other rights and powers as are set forth herein or in other Governing Documents, including the right to disapprove of actions of the Board.

7.8 Transfer of Membership. The rights, duties, and obligations of a Class A Member cannot and must not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of such Class A Member's Lot, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a non-approved form of transfer is void. Any transfer of ownership in a Lot transfers the associated Class A Membership appurtenant to ownership to the new Owner.

ARTICLE VIII ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Lien; Personal Obligation of Lot Owner. Each Owner by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree to pay to the Association the Assessments when due. The amount and time for payment of the Assessments will be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Assessments, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years, and the Board is entitled to establish such reasonable reserves for the Association as it deems appropriate.

Assessments, together with interest thereon and late charges and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, are a charge and continuing servitude and lien upon the Lot against which such Assessments are made and, in addition, are the personal obligation of the Owner of such Lot at the time

when such Assessments become due and payable. This provision is subject to such limitations as are imposed by A.R.S. § 33-1807.

8.2 Annual Assessment Period. Except as otherwise provided herein below, the Assessment Period is the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. Unless Declarant determines otherwise, the initial Assessment Period commences upon conveyance of the first Lot from Declarant (or from its predecessors) to an Owner other than Declarant and terminates on December 31 of the same year. The Annual Assessments will be prorated for the initial Assessment Period.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the Delinquent Amount of any Assessment, as provided herein, and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. To the extent permitted by law, delinquent payments apply first to the principal amount of any delinquent Assessments, then to accrued interest, and then to late fees and other sums due. Owner is also liable for attorneys' fees and legal costs, including litigation related expenses and expert witness fees, if any, incurred in connection with such delinquent payments. To the extent permitted by law, attorneys' fees and costs incurred will be part of the delinquent Assessment and will be secured by the lien therefor. This provision is subject to such limitations as are imposed by A.R.S. § 33-1807.

8.3 Association's Rights in Spending Funds from Year to Year. The Association is not obligated to spend in any year all monies received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association is not obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year. The Board at any time has the right to adjust the Assessment made, and issue invoices for any additional sums due, subject to such limitations as exist at law.

8.4 Rate of Assessment. The amount of the Annual Assessments, Maintenance Assessments, and Special Assessments will be established by the Board, in its sole discretion. In establishing its budget and creating its plan for Assessments each year, the Board will establish an Annual Assessment per Lot payable by the Owner of each Lot.

8.5 Annual Assessments. The Association by and through the Board will determine and levy the Annual Assessments for the purposes set forth in this Declaration. The Annual Assessments levied by the Association may only be used to accomplish the duties and purposes of the Association within the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Area, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. The Annual Assessments will take into account the Common Expenses of the Association.

Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

8.6 Maintenance Assessments. The Association may assess Maintenance Assessments against a Lot (i) to recover costs and expenses incurred by the Association in exercising its step-in or self-

help rights under this Declaration undertaken on behalf of an Owner or (ii) in the event the need for maintenance or repair of areas maintained by the Association is caused through:

(a) the willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law); or

(b) the maintenance of a Lot by an Owner, or failure to maintain, so as to present a nuisance, or to substantially detract from or negatively affect the appearance or quality of any neighboring Lot or other area; or

(c) the maintenance of a Lot by an Owner, or failure to maintain, so as to violate this Declaration; or

(d) any use of, or activity on, or special condition of any Lot that causes maintenance or repair costs incurred or to be incurred by the Association with respect to Common Area to be substantially greater than those costs which would typically be incurred in relation to such Common Area, whether such use or activity is of a continuing nature or an isolated event.

In any such case, the Board may, depending upon the circumstances, give notice to the Owner of such Lot that unless specified corrective action is taken within a specified time period, the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action.

If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, at the Owner's sole cost, the Board is authorized and empowered, subject to such notice and hearing as may be required by law, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys' fees, will be charged to the Owner as a Maintenance Assessment.

The Maintenance Assessment will be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot is subject, will be secured by the Assessment Lien, and will be due fifteen (15) days after written demand or notice by the Board.

In no case may any form of Maintenance Assessment be levied or charged with respect to Lots owned by Declarant. All provisions of this Section are subject to limitations established at law.

8.7 Special Assessments. In addition to the Annual Assessments, the Board may levy a Special Assessment for the purpose of: (a) constructing Improvements to Common Area; (b) correcting an inadequacy in the Association's accounts; (c) defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital Improvement owned by the Association; or (d) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate, including increased expenses encountered by the Association in connection with increased insurance costs, taxes, or new or expanded Common Area amenities or features. The Board must specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments must be approved by Declarant during the Declarant Control Period.

8.8 Utility Assessments. To the extent utilities (or any single utility) are sub-metered and the Association, in accordance with Section 10.3 below, directly or indirectly pays the utility company for charges

and costs associated with individual Lots, each Owner must pay their allocated share of such cost in accordance with procedures and practices established by the Board in accordance with this Article VIII. Such practices may include, by way of example and without limitation, charging Members a predetermined flat rate for sub-metered utilities and reconciling such amount at the time as submeters are read and actual use is determined. Such utility charges and costs will, for purposes hereof, be deemed a Utility Assessment, part of the Assessments and subject to the provisions of this Article VIII.

8.9 Enforcement Assessments. The Board may levy Enforcement Assessments against particular Lots or Owners for expenses incurred or to be incurred by the Association to cover attorneys' fees and costs incurred in bringing the Lot or Owner into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lots, or their Invitees.

8.10 Fines and Penalties. If any Owner or any Occupant or Invitee violates the provisions hereof, or any provision of any of the Association Rules, the Board after providing the Owner with notice of the violation and an opportunity for a hearing as required by law, may levy a fine upon the Owner, may suspend the violator's right to use the Common Area (other than private ingress egress easement areas), and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorneys' fees and costs incurred. Such violation will also be grounds for the Association, should it wish, to suspend the said rights of the Owner and their Occupants and Invitees.

The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date, may be charged to the Owner of the Lot in question, and may be collected as provided by law.

In no event will any fine be imposed for a default or violation of the Governing Documents, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for hearing and complying with other applicable provisions of law.

8.11 Billing and Collection Procedures. The Board has the right to adopt procedures for the purpose of making, billing, and collecting the Assessments. The failure of the Association to send a bill to an Owner does not relieve such Owner of the Owner's liability for an Assessment. It is the responsibility of the Owner to inform the Association in writing of a change of address. The Association is under no duty to refund any payments received by the Association even if the ownership of a Lot changes during an Assessment Period. Any successor Owner will be given credit for any non-refunded prepayments made by a prior Owner.

8.12 Collection Costs and Interest on Delinquent Amounts. The Board may impose late charges, either in the form of a fixed amount or percentage of the Delinquent Amount, and including interest for Delinquent Amounts not timely paid, all as set forth in the Association Rules. The Owner is liable for all costs, including but not limited to attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount, and such amounts, to the extent permitted by law, are deemed Enforcement Assessments and a part of the Assessment Lien.

8.13 Assessments Upon Transfer.

8.13.1 Working Capital Fund. To ensure that the Association has adequate funds to meet its expenses or to purchase necessary equipment and services, each purchaser of a Lot must pay to the Association immediately upon becoming the Owner of a Lot a sum equal to one-sixth (1/6) of the then-current

Annual Assessment applicable to such Lot ("**Working Capital Fund Contribution**"). Notwithstanding the foregoing, Declarant will pay the Working Capital Fund Contribution for the initial transfer of a Lot by Declarant to the first Owner of such Lot.

A Working Capital Fund Contribution will continue to be payable upon each subsequent sale of a Lot, and the Working Capital Fund Contribution is a covenant touching and concerning the land. Funds paid to the Association as a Working Capital Fund Contribution pursuant to this Section may, without limitation, be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration or the Articles or Bylaws. Payments made pursuant to this Section are nonrefundable and will not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.13.2 Reserve Fund Assessment. To help ensure that the Association has adequate funds reserved for repair and replacement of the Improvements within the Common Areas, each purchaser of a Lot will pay to the Association immediately upon becoming the Owner of the Lot a "**Reserve Fund Assessment**" in an amount established by the Board from time to time. A Reserve Fund Assessment continues to be payable upon each subsequent sale of a Lot. Payments made pursuant to this Section are nonrefundable and will not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Notwithstanding the foregoing, Declarant will pay the Reserve Fund Assessment for the initial transfer of a Lot by Declarant to the first Owner of such Lot.

8.13.3 Administrative Fee. Upon each transfer of title to a Lot, a purchaser must pay to the Association, through its managing agent immediately upon becoming the Owner of the Lot, an "**Administrative Fee**" to cover administrative costs of Membership transfer in such amount as is established from time to time by the Board, not to exceed the amount permitted under applicable law. Notwithstanding the foregoing, Declarant will pay the Administrative Fee for the initial transfer of a Lot by Declarant to the first Owner of such Lot.

8.13.4 Exempt Transfers. Notwithstanding the above, no Working Capital Fund Contribution, Reserve Fund Assessment, or Administrative Fee will be levied upon an Exempt Transfer.

8.13.5 Notice of Transfer. Owner must notify the Association of a pending title transfer at least ten (10) days prior to the transfer. Such notice must include the name of the buyer, the date of title transfer, and such other information as the Board may reasonably require.

8.14 Declarant's Exemption. Anything in this Declaration to the contrary notwithstanding, Declarant is not liable for, nor are they required to pay, Assessments of any nature for Lots owned by them. Nor is Declarant liable for the payment of any Assessments for any Lot that, having been previously sold to a purchaser, has been deeded back to Declarant by foreclosure or deed in lieu of foreclosure.

8.15 Payment of Deficiencies. In consideration for Declarant's exemption from Assessments, Declarant must pay, for any given Assessment Period in which Declarant has paid or contributed to the Association less than the full Annual Assessment for each Lot owned by them, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Area (i.e., only for actual budget deficits), but only in accordance with the terms hereof, and only up to the full Annual Assessment for each such Lot actually owned by Declarant in the Covered Property. A shortfall or deficiency exists if current ordinary and budgeted

expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant is not liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year, which decrease was not approved by Declarant, nor for any shortfall or deficiency incurred after Declarant no longer owns any Lot.

Declarant may at any time at their sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay instead up to the full Annual Assessment for each Lot owned by Declarant. Declarant's obligation to contribute toward a deficiency as provided herein is supported by a lien on Declarant's Lots. Nothing in this Section in any way limits or precludes the Board, whether or not at Declarant's instance, from increasing the Annual Assessment to avoid further deficiencies.

8.16 Management Fee. Declarant, during the Declarant Control Period, and thereafter the Association, will to the extent practicable employ a property manager to manage, repair, replace, and operate the Common Areas; prepare budgets, bill, and collect Assessments; and take similar actions on behalf of the Association, and will compensate such property manager on a reasonable and customary basis for similar properties in the same market area. In the event that, during the Declarant Control Period, it becomes necessary for Declarant to manage the Common Areas on an interim or temporary basis, due to any delay in contracting with a property manager, Declarant is entitled to receive compensation to cover Declarant's overhead and expenses with respect to the management of the Common Areas. Any amount paid to a third party or to Declarant pursuant to this Section 8.16 is referred to herein as the "**Management Fee.**"

8.17 Savings Clause. Notwithstanding the provisions of this Article, or any other provision of this Declaration, any lien of the Association for Assessments and other amounts owed or due by an Owner is subject to such provisions as are established at law or in equity, including such limitations as are established and imposed by A.R.S. § 33-1807.

ARTICLE IX ENFORCEMENT OF THE ASSESSMENT LIEN

9.1 Association Remedies to Enforce Assessments. If any Owner fails to pay any Assessments when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking any and all action available at law or in equity, including:

(a) bringing an action against the Owner to recover judgment against the Owner who is personally liable for the Assessments; and,

(b) foreclosing the Assessment Lien against the appropriate Lot in accordance with then prevailing Arizona law, including such limitations as are established by A.R.S. §§ 33-1801, et seq. Though not required, the Association may record notice of its lien, and all costs of preparation of such notice, recording and releasing same, including attorneys' fees and costs, must be paid by the delinquent Owner, with all expense thereof being a part of the lien of the Assessment.

9.2 Subordination of Assessment Lien. The Assessment Lien has priority from the date of recording of this Declaration, and is superior to all charges, liens, or encumbrances which hereafter are or may be imposed on any Lot, except as provided by law. Without limitation, the Assessment Lien is junior to:

- (a) the lien of any First Mortgage encumbering a Lot; and
- (b) the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

Sale or transfer of any Lot does not affect the Assessment Lien; provided, however, the sale or transfer of any Lot pursuant to any First Mortgage foreclosure or any proceeding in lieu thereof, will extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No other sale or transfer will relieve a Lot, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. No Event of Foreclosure will relieve the Owner whose interest was foreclosed from liability for Assessments payable through the date of such Event of Foreclosure.

In addition, no Event of Foreclosure will impair the Assessment Lien, except that a First Mortgagee obtaining an interest in a Lot through an Event of Foreclosure will take title subject only to such Assessments as they accrue subsequent to the date the Person acquires its interest.

ARTICLE X MAINTENANCE

10.1 Maintenance Obligations of the Association.

10.1.1 Association Duty; Areas of Association Responsibility. Except as provided below, the Association, or its duly delegated representative, will maintain and otherwise manage all Common Area, including Streets, entry way features, and landscaping within Common Area, and further including landscaping in right-of-way areas between sidewalks and the Street curbs on the Owner's Lot, or other public or easement areas adjacent to the Owner's Lot, including walls, any gatehouse and related Improvements, and including any facilities, landscaping, or riparian areas within private rights-of-way, including license or permit areas, for which the Association may be responsible, except that in the event the maintenance of such areas is the responsibility of a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility. The Association, or its duly delegated representative, is also responsible for the installation, maintenance, and repair of the centralized mailbox unit located within the Common Area and ensuring that the centralized mailbox unit complies with all applicable law and United States Postal Service standards. The Association, or its duly delegated representative, is further responsible for the operation, maintenance (including insurance), and, if necessary, the replacement, restoration, or reconstruction of street signs, markers, walls, fences, and curbs and other Improvements originally constructed by Declarant on the Common Areas. Common Area to be maintained by the Association may be identified on recorded subdivision plats approved by Declarant or in deeds from Declarant, but the failure to so identify such areas will not affect the Association's rights or responsibilities with respect thereto.

10.1.2 Landscaping Within Public Rights of Way. In accordance with the Plat and without limiting the obligation contained therein, the Association must maintain landscaping and similar Improvements within public rights of way located within the Covered Property (if any) and adjacent to the Covered Property, including landscaped medians and landscaped areas between the curb and detached sidewalk.

10.2 Maintenance Obligations of Owners.

10.2.1 Owner's Duty of Maintenance. Each Owner must, at such Owner's sole cost and expense, keep such Owner's Lot, including buildings, Improvements, hardscape, private drives, driveways, walkways, and walks (including sidewalks adjacent to the roadways) thereon, in a well-maintained, clean, neat, and attractive condition at all times and must comply in all respects with all governmental health, fire, and safety statutes, ordinances, regulations and requirements. Each Owner is responsible for the maintenance and repair of all utility lines located within such Owner's Lot, and such maintenance obligation includes maintenance and repair of all leaching fields and related Improvements. Each Owner's and Occupant's maintenance obligations also includes the repair and maintenance of all utility connections within the Lot and up to the point of connection to and within the public right of way or public easement area, regardless of whether such point of connection is outside of the Owner's Lot.

No Improvement on any Lot is permitted to fall into disrepair and each such building and Improvement will at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first-class appearance of the Improvement. In the event any building or Improvement is damaged or destroyed, then such building or Improvement must be promptly repaired, rebuilt, or demolished by the Owner. If any Owner fails to make the necessary repairs within a reasonable time period, then the Board may send notice establishing a time period for performance of such repairs. If any Owner fails to make the necessary repairs after receiving notice from the Board of the requirement to perform such repairs within the time period established by the Board, the Board and its agents and representatives are empowered to enter the Lot and to make the necessary repairs. The cost of these corrective measures will be charged to the Owner and collected as Maintenance Assessments. Any such entry will be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

10.2.2 Maintenance of Landscaping and Driveways. Each Owner is responsible for the proper maintenance of all landscaping on the Owner's Lot (including setback areas). Each Owner's maintenance includes but is not limited to keeping the areas neatly trimmed, cultivated, and free of trash, weeds, and unsightly materials.

All trees, shrubs, plants, and ground covers must be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and must be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant, or ground cover must be removed and replaced promptly.

All areas must be kept free of weeds and cultivated periodically as needed. No area may be over watered so as to create a risk of damage to nearby structures or Improvements. Each Owner must maintain in good condition and repair all paved and concrete areas, including driveways, roadways, and parking areas, located on the Owner's Lot.

Any Owner who fails to properly maintain the landscaping upon their Lot will be given a reasonable period to conduct such maintenance. In the event an Owner fails to provide such landscaping maintenance to their Lot after receiving notice from the Board to do so, and after such hearing and notice as may be required by law, the Association is empowered to enter upon the Lot, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges will be collected as Maintenance Assessments.

10.3 Utility Sub-Metering. To the extent reasonably available to the Association, utility services including, but not limited to, electricity, gas, water, sewer, trash removal, heating and air conditioning, cable television, communications, and monitoring systems, may be provided to the Owners through the Association. Declarant reserves the right, for itself and on behalf of the Association, to provide or contract for the provision of such utilities. In the event such utilities are available to the Owners directly, the Association will not have any obligation to provide these utilities and the Owners must arrange such utility installation and billing separately.

The City requires that water utilities to each Lot be provided on a sub-metering basis rather than directly metered to each Lot. To the extent the City does not directly invoice each Owner with a submeter, then the Association will pay all charges for utilities which serve the individual Lots and are subject to a common meter. Such charges will be assessed to and paid by the Owners to the Association in accordance with Section 8.8. It is the duty of each Owner to pay when due all charges for any utility service that is separately metered to such Owner's Lot, either directly to the respective utility or to the Association, as applicable. The Association has the right to contract with a third-party billing/metering company to provide utility billing to the Owners in accordance with an installed metering system.

10.4 Standard of Care. The Association and the Owners must use a reasonably high standard of care in providing for the repair, management, and maintenance of the Common Areas, Lots, and other areas within the Covered Property so that the Covered Property will reflect a high degree of pride of ownership. The Board is the sole judge as to the appropriate level of maintenance of all Common Areas.

ARTICLE XI RIGHTS AND POWERS OF ASSOCIATION

11.1 Rights, Powers, and Duties of the Association. In addition to the rights and powers of the Association set forth in the Governing Documents, the Association has such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Governing Documents will be available for inspection at the office of the Association during reasonable business hours.

11.2 Rules and Regulations. The Association, acting through the Board, may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area, provided, however, that the Association Rules must not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and must not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules are intended to enhance the preservation and development of the Covered Property and the Common Area. In addition to the right to adopt, amend, and repeal Association Rules on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, has the right to adopt, amend, and repeal Association Rules with respect to all other aspects of the Association's rights, activities, and duties, provided such Association Rules are not inconsistent with the provisions of the Governing Documents. Upon adoption, the Association Rules have the same force and effect as if they were set forth herein and may be enforced in the same manner as the provisions of this Declaration. A copy of the Association Rules as adopted, or amended, will be available for inspection at the office of the Association during reasonable business hours. During the Declarant Control Period, Declarant may disapprove of actions of the Board to adopt, amend, or repeal the Association Rules.

11.3 Association's Rights of Enforcement. The Association has the right, but not the obligation, to enforce the provisions of this Declaration and all Additional Covenants that have been executed pursuant to or subject to the provisions of this Declaration.

11.4 Enforcement Methods and Means. The Association, after affording such notice and opportunity for a hearing, or to be heard, and subject to all other provisions of law, may enforce the provisions hereof at law or in equity, including, but not limited to:

- (a) imposing reasonable monetary penalties, which penalties are the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of their Invitees;
- (b) suspending an Owner's right to vote after notice and an opportunity to be heard;
- (c) suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than fifteen (15) days delinquent in paying any Assessment or other charge owed to the Association;
- (d) exercising self-help or taking action to abate any violation of the provisions hereof;
- (e) requiring an Owner at the Owner's expense to remove any offending condition, structure, or Improvement on the Owner's property, and further requiring the Owner to restore their property to the condition in which it previously existed, without such action being a trespass;
- (f) without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee, or other Invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform and further activities on the Covered Property;
- (g) towing Vehicles which are parked in violation of the provisions hereof; and
- (h) filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate.

The Board may weigh financial and other factors, such as possible defenses, legal merit, and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters is final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action does not limit or waive the right of any Owner to pursue proper action nor the right of the Association to pursue action at a future time should it so desire.

11.5 Contracts with Others; Bulk Service Agreements. Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and applicable state law, the Association may enter into contracts with others, including Declarant, and such contracts will not be invalidated by the fact that one (1) or more directors or officers of the Association are employed by or otherwise affiliated with Declarant, provided, however, that such interest be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association must be for a term not exceeding the maximum term permitted by law.

The Association may, without limitation, provide services and facilities for the Members of the Association, their Invitees, and Occupants. The Association is authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or may be funded as otherwise determined by the Board in accordance with this Declaration. In addition, the Board is authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board is permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein will be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. If all Lots within the Covered Property are to be served by a particular bulk service agreement, the Board has the option either to (a) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include such costs in the Assessments for each such applicable year, or (b) separately bill to each Owner their proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly).

ARTICLE XII EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA

12.1 Eminent Domain. In the event of a threatened taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such Persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board must act, in its sole discretion, with respect to any awards made or to be made in connection with the taking and is entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Any awards received on account of the taking will be paid to the Association. In the event of a total taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, and all holders of liens and encumbrances, as their interest may appear of record.

The term "taking" as used in this Section means condemnation by eminent domain or sale under threat of condemnation.

12.2 Condemnation or Insurance Proceeds; Protections of First Mortgagees. No Owner, or any other party, has priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Further, First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Area in the case of lapse of a policy. First Mortgagees making such payments are due prompt reimbursement from the Association.

12.3 Authority to Purchase Insurance. The Association will maintain, as a Common Expense purchase, such property damage and liability insurance upon the Common Area and commercial general liability insurance for all activities of the Association, and such other insurance as the Board, in its absolute

discretion, may determine. The Association will be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, is liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions.

Notwithstanding the foregoing, the Association will obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association as well as all regular and alternate members of the Board, Declarant, and, to the extent such insurance is reasonably available and at the Board's discretion, any property manager under contract with the Association, all in amounts and on terms adequate to permit the Association to indemnify such Persons pursuant to the provisions hereof and pursuant to the provisions of the Articles and Bylaws. Neither the Association nor any Board member nor Declarant is liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

12.4 Individual Responsibility. It is the sole responsibility of each Owner or Occupant to provide insurance for real or personal property or interests owned or held by such Owners or Occupants within the Covered Property, including, but not limited to, homeowners insurance; hazard insurance; fire insurance; casualty insurance; liability insurance; and property damage insurance covering all additions and Improvements to Lots and easement areas held by such Owners or Occupants, furnishings and personal property therein, and personal liability.

Each Owner and Occupant may also procure such other insurance as such Person desires, provided, however, that no Person may maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvements or fixtures on the Common Area. Neither the Association nor any Board member nor Declarant is liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

In case of damage or destruction by fire or other casualty, each Owner must promptly repair and restore the Improvements to the Lot, or clear and restore the Lot to an aesthetically acceptable condition, in either case to the satisfaction of the Board.

12.5 Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association covering Common Area and Improvements thereon, property or interests of the Association, liability of the Association, and other such insurance held by the Association.

Each Owner must execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing.

The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee has authority, to negotiate losses under any policy purchased by the Association.

In the event an Owner (or any other Person for whom such Owner is legally responsible under applicable state law) causes any damage or destruction to the Common Area or Improvements thereon for

which the Association maintains insurance, then at the sole election of the Board, such Owner will be responsible for the payment of any deductible portion of the insurance, which amount may be assessed as a Maintenance Assessment against the Owner and the Lot. Alternatively, if commercially reasonable in the discretion of the Board, in lieu of the Association filing an insurance claim, the Association may assess a Maintenance Assessment as provided in Section 8.6 with respect to the full repair and/or replacement expense resulting from the damage or destruction.

ARTICLE XIII DISPUTE RESOLUTION

13.1 CHOICE OF LAW. THIS DECLARATION IS GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA.

13.2 FORUM SELECTION. ANY DISPUTE OR CLAIM (AS DEFINED BELOW) ARISING OUT OF, RELATING TO, OR CONCERNING THIS DECLARATION OR THE RIGHTS AND OBLIGATIONS OF THE PARTIES AFFECTED BY THIS DECLARATION WILL BE HEARD AND RESOLVED EXCLUSIVELY IN ARBITRATION (PURSUANT TO THE DISPUTE RESOLUTION PROCEDURES SET FORTH BELOW) OR IN A COURT OF COMPETENT JURISDICTION LOCATED WITHIN MARICOPA COUNTY, ARIZONA AND IN NO OTHER FORUM OR VENUE.

13.3 DISPUTE RESOLUTION PROCEDURE. ALL CLAIMS AND DISPUTES (AS DEFINED BELOW) WILL BE ADDRESSED AND RESOLVED PURSUANT TO THE FOLLOWING PROCEDURE.

13.3.1 "DISPUTE" MEANS ANY DISPUTE, DISAGREEMENT, OR GRIEVANCE (OF ANY NATURE) ARISING OUT OF OR RELATING TO THIS DECLARATION, THE COVERED PROPERTY, THE GOVERNING DOCUMENTS, ANY ADDITIONAL COVENANTS, THE IMPROVEMENTS, THE COMMON AREA, A DWELLING UNIT, OR A LOT. DISPUTES INCLUDE BUT ARE NOT LIMITED TO CLAIMS (AS DEFINED BELOW) RELATING TO THE USE OR CONDITION OF THE COVERED PROPERTY, IMPROVEMENTS, COMMON AREAS, DWELLING UNITS OR LOTS, THE DESIGN OR CONSTRUCTION OF (OR ANY CONDITION ON OR AFFECTING) THE COVERED PROPERTY, IMPROVEMENTS, COMMON AREAS, DWELLING UNITS OR LOTS (INCLUDING BUT NOT LIMITED TO ANY ALLEGED DEFECTS WITH THE CONSTRUCTION, SURVEYS, SOILS CONDITIONS, GRADING, SPECIFICATIONS, OR INSTALLATION), AND THE MARKETING AND SALE OF THE COVERED PROPERTY OR ANY DWELLING UNIT OR LOT.

13.3.2 "CLAIM" MEANS ANY CLAIM OR CAUSE OF ACTION (OF ANY NATURE) ARISING OUT OF OR RELATING TO A DISPUTE BETWEEN THE ASSOCIATION OR AN OWNER. CLAIMS INCLUDE ANY DISPUTES ALLEGING (A) NEGLIGENCE OR OTHER TORTIOUS CONDUCT (INCLUDING, BUT NOT LIMITED TO, FRAUD OR MISREPRESENTATION) OR (B) BREACH OF CONTRACT (INCLUDING, BUT NOT LIMITED TO, BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING AND BREACH OF IMPLIED OR EXPRESS WARRANTIES). CLAIMS ALSO INCLUDES ANY ACTION IN WHICH DAMAGES OR ANY OTHER RELIEF (INCLUDING BUT NOT LIMITED TO DECLARATORY, EQUITABLE, OR INJUNCTIVE RELIEF) IS BEING SOUGHT.

13.3.3 STANDING TO ASSERT CLAIMS/DISPUTES. THE ASSOCIATION DOES NOT HAVE STANDING AND MAY NOT PURSUE OR RAISE A CLAIM OR DISPUTE RELATING TO A DWELLING UNIT OR LOT; SUCH CLAIMS AND DISPUTES MUST BE ASSERTED SOLELY BY THE

OWNER OF THE DWELLING UNIT OR LOT AND NO OTHER PERSON. AN OWNER DOES NOT HAVE STANDING AND MAY NOT PURSUE OR RAISE A CLAIM OR DISPUTE RELATING TO THE COVERED PROPERTY, IMPROVEMENTS, OR COMMON AREAS; SUCH CLAIMS AND DISPUTES MUST BE ASSERTED SOLELY BY THE ASSOCIATION AND NO OTHER PERSON.

13.3.4 NOTICE OF ANY DISPUTES OR CLAIMS. ANY PERSON WITH A CLAIM OR DISPUTE (“CLAIMANT”) WILL NOTIFY THE PARTY OR PARTIES AGAINST WHOM THE DISPUTE IS ASSERTED IN WRITING DESCRIBING WITH SPECIFICITY THE NATURE OF THE DISPUTE AND CLAIM AND ANY PROPOSED OR REQUESTED REMEDY (THE “CLAIM NOTICE”). FOR DISPUTES INVOLVING AN ALLEGED CONSTRUCTION DEFECT RELATING TO THE IMPROVEMENTS, COMMON AREAS, DWELLING UNITS, OR LOTS, THE CLAIM NOTICE MUST SPECIFICALLY INCLUDE (A) A DETAILED AND ITEMIZED LIST THAT DESCRIBES EACH ALLEGED DEFECT; (B) THE LOCATION AND DATE(S) THAT EACH ALLEGED DEFECT HAS BEEN OBSERVED BY THE CLAIMANT (INCLUDING WHEN THE ALLEGED DEFECT WAS FIRST OBSERVED); (C) THE ALLEGED IMPAIRMENT TO THE IMPROVEMENTS, COMMON AREAS, DWELLING UNITS, OR LOTS RESULTING FROM THE ALLEGED CONSTRUCTION DEFECT; AND (D) THE REMEDY BEING SOUGHT (E.G., THE SPECIFIC REPAIR, REPLACEMENT OR DAMAGES REQUESTED). THE CLAIM NOTICE MUST INCLUDE ALL CLAIMS AND DISPUTES THEN KNOWN BY THE CLAIMANT AND THE SPECIFIC AMOUNT OR ACTIONS TO BE TAKEN TO SETTLE OR RESOLVE THE CLAIM OR DISPUTE.

(a) **DEADLINE TO ASSERT CLAIMS.** A CLAIMANT MUST SUBMIT THEIR CLAIM NOTICE AS SOON AS PRACTICABLE AFTER A CLAIMANT KNOWS OR REASONABLY SHOULD KNOW ABOUT THE ISSUES GIVING RISE TO THE ALLEGED CLAIM OR DISPUTE BUT IN NO EVENT NO LATER THAN TWELVE (12) MONTHS AFTER CLAIMANT HAS ACTUAL NOTICE OF THE ISSUES GIVING RISE TO THE ALLEGED CLAIM OR DISPUTE. ANY CLAIM OR DISPUTE NOT TIMELY ASSERTED PURSUANT TO THIS PROVISION WILL BE DEEMED WAIVED BY CLAIMANT.

(b) **WAIVER OF UNASSERTED DISPUTES AND CLAIMS.** ANY CLAIMS OR DISPUTES KNOWN TO THE CLAIMANT AT THE TIME OF THE CLAIM NOTICE THAT ARE NOT RAISED IN THE CLAIM NOTICE WILL BE DEEMED IRREVOCABLY WAIVED BY THE CLAIMANT.

13.3.5 NEGOTIATIONS; RIGHT TO INSPECT; RIGHT TO TAKE CORRECTIVE ACTION. FOR DISPUTES INVOLVING DECLARANT THAT ARE GOVERNED BY THE “PURCHASER DWELLING ACT” (A.R.S. §§ 12-1361 ET SEQ.) AND ANY SUBSEQUENT AMENDMENTS THERETO, THE PARTIES WILL PROCEED IN ACCORDANCE WITH THE PURCHASER DWELLING ACT AND AS FURTHER SET FORTH BELOW TO THE EXTENT NOT INCONSISTENT WITH THE PURCHASER DWELLING ACT. FOR ANY DISPUTES NOT GOVERNED BY THE PURCHASER DWELLING ACT, AND TO THE EXTENT APPLICABLE GIVEN THE NATURE OF THE CLAIM OR DISPUTE, THE PARTIES WILL ALSO PROCEED IN ACCORDANCE WITH THIS SECTION.

(a) **GOOD FAITH NEGOTIATIONS MEETING.** WITHIN A REASONABLE PERIOD AFTER RECEIPT BY DECLARANT OF ANY CLAIM NOTICE (NOT TO EXCEED SIXTY (60) DAYS), THE PARTIES TO THE DISPUTE WILL MEET AT A MUTUALLY ACCEPTABLE AND APPROPRIATE PLACE AND TIME TO DISCUSS THE CLAIM NOTICE AND THE ISSUES RAISED THEREIN (THE “GOOD FAITH NEGOTIATIONS MEETING”). THE PARTIES WILL NEGOTIATE IN GOOD FAITH IN AN ATTEMPT TO RESOLVE THE DISPUTE AT THIS MEETING.

(b) **RIGHT TO INSPECT.** AT THE INITIAL GOOD FAITH NEGOTIATIONS MEETING, DECLARANT, DECLARANT'S REPRESENTATIVES, AND OTHER DECLARANT PARTIES WILL HAVE FULL ACCESS TO THE PROPERTY THAT IS THE SUBJECT OF THE CLAIM NOTICE AND WILL HAVE THE RIGHT TO CONDUCT INSPECTIONS, TESTING AND/OR DESTRUCTIVE OR INVASIVE TESTING IN A MANNER DEEMED APPROPRIATE BY DECLARANT IN ITS SOLE DISCRETION (PROVIDED DECLARANT MUST REPAIR OR REPLACE ANY PROPERTY DAMAGED OR DESTROYED DURING SUCH INSPECTION OR TESTING), WHICH RIGHTS CONTINUE UNTIL THE DISPUTE IS RESOLVED. IF DECLARANT ELECTS TO TAKE ANY CORRECTIVE ACTION, DECLARANT AND DECLARANT'S REPRESENTATIVES AND AGENTS WILL BE PROVIDED FULL ACCESS TO THE PROPERTY THAT IS THE SUBJECT OF THE DISPUTE TO TAKE AND COMPLETE CORRECTIVE ACTION.

(c) **NO ADDITIONAL OBLIGATIONS; IRREVOCABILITY AND WAIVER OF RIGHT.** NOTHING SET FORTH IN THIS SECTION 13.3.5 WILL BE CONSTRUED TO IMPOSE AN OBLIGATION ON DECLARANT TO INSPECT, TEST, REPAIR, OR REPLACE ANY ITEM, CONDITION, OR PROPERTY FOR WHICH DECLARANT IS NOT OTHERWISE OBLIGATED UNDER APPLICABLE LAW OR A LIMITED WARRANTY, IF ANY, PROVIDED BY DECLARANT TO AN OWNER. THE RIGHT OF DECLARANT TO ENTER INSPECT, TEST, REPAIR, AND/OR REPLACE RESERVED HEREIN IS IRREVOCABLE AND MAY NOT BE WAIVED OR OTHERWISE TERMINATED EXCEPT BY A WRITING, IN RECORDABLE FORM, EXECUTED AND RECORDED BY DECLARANT IN THE OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

13.3.6 MEDIATION. IF THE PARTIES ARE UNABLE TO RESOLVE THEIR DISPUTE PURSUANT TO THE PROCEDURES SET FORTH ABOVE, THE PARTIES WILL ATTEMPT TO RESOLVE THEIR DISPUTE VIA MEDIATION. THE MEDIATION WILL BE CONDUCTED BEFORE A MEDIATOR, ON A DATE AND TIME AGREED TO BY ALL PARTIES, AND PURSUANT TO A PROCEDURE AND SCHEDULE AGREED TO BY ALL PARTIES TO THE DISPUTE. IF THE PARTIES ARE UNABLE TO AGREE ON A MEDIATOR AND MEDIATION PROCEDURE AND SCHEDULE WITHIN TEN (10) DAYS OF ANY PARTY'S WRITTEN REQUEST FOR A MEDIATION, THE CLAIMANT MAY SUBMIT A DEMAND FOR MEDIATION TO THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), PHOENIX, ARIZONA OFFICE AND THE MEDIATION WILL THEN BE CONDUCTED IN ACCORDANCE WITH THE AAA CONSTRUCTION INDUSTRY ARBITRATION RULES AND MEDIATION PROCEDURES (OR THE AAA RULES FOR MEDIATION MOST APPLICABLE, IN THE AAA'S DISCRETION, TO THE DISPUTE AT THE TIME THE REQUEST FOR MEDIATION IS SUBMITTED TO THE AAA). EACH PARTY TO THE MEDIATION WILL BEAR ITS OWN FEES, COSTS, AND EXPENSES AND THE PARTIES WILL SHARE EQUALLY OR PRO RATA THE FEES AND COSTS CHARGED BY THE AAA AND THE MEDIATOR. NO ACTION WILL BE COMMENCED BY ANY PARTY VIA THE INITIATION OF AN ARBITRATION OR OTHERWISE UNTIL THE PARTIES MEDIATE THEIR DISPUTE AND A MEDIATOR CERTIFIES IN WRITING THAT THE PARTIES WERE UNSUCCESSFUL IN RESOLVING THEIR DISPUTES DESPITE GOOD FAITH EFFORTS TO DO SO AT A MEDIATION.

13.3.7 ARBITRATION. IF MEDIATION PURSUANT TO THE FOREGOING SECTION IS NOT SUCCESSFUL IN RESOLVING ANY DISPUTE, SUCH DISPUTE WILL BE RESOLVED BY BINDING ARBITRATION BEFORE A PRIVATE ARBITRATOR AND PURSUANT TO A SCHEDULE AND PROCEDURE AGREED TO BY ALL PARTIES TO THE DISPUTE. IF THE PARTIES TO THE DISPUTE ARE UNABLE TO AGREE ON A PRIVATE ARBITRATOR AND PROCEDURE AND SCHEDULE FOR AN ARBITRATION, THE DISPUTE WILL BE SUBMITTED AND RESOLVED PURSUANT TO THE AAA CONSTRUCTION INDUSTRY ARBITRATION RULES (OR THE AAA RULES FOR ARBITRATION MOST

APPLICABLE, IN THE AAA'S DISCRETION, TO THE DISPUTE AT THE TIME A DEMAND FOR ARBITRATION IS SUBMITTED TO THE AAA), AS MODIFIED BY THIS SECTION.

(a) **DEMAND FOR ARBITRATION.** AN ARBITRATION MAY BE COMMENCED BY A PARTY'S FILING OF A DEMAND FOR ARBITRATION PURSUANT TO THE APPLICABLE AAA RULES. IF A DISPUTE INVOLVES A CONSTRUCTION DEFECT CLAIM OF ANY KIND, THE DEMAND MUST ALSO CONTAIN THE FOLLOWING INFORMATION: (1) THE IDENTITY OF A PERSON OR PERSONS WHO IS OR ARE QUALIFIED BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION TO EXPRESS AN OPINION REGARDING THE RESPONDENT'S LIABILITY FOR THE DISPUTE (AN "EXPERT"); (2) THE EXPERT'S QUALIFICATIONS TO EXPRESS AN OPINION ON THE RESPONDENT'S LIABILITY FOR THE CLAIMS; (3) THE RESPONDENT'S ALLEGED ACTS, ERRORS, OR OMISSIONS THAT THE EXPERT CONSIDERS TO BE A VIOLATION OF THE APPLICABLE STANDARDS (AND WHAT THE STANDARDS THE EXPERTS BELIEVES TO BE APPLICABLE ARE); AND (4) THE MANNER IN WHICH THE RESPONDENT'S ALLEGED ACTS, ERRORS, OR OMISSIONS CAUSED OR CONTRIBUTED TO THE DAMAGES OR OTHER RELIEF BEING SOUGHT BY THE CLAIMANT.

(b) **SINGLE ARBITRATOR.** ALL DISPUTES SUBJECT TO ARBITRATION AS PROVIDED FOR HEREIN WILL BE HEARD BEFORE A SINGLE ARBITRATOR.

(c) **QUALIFICATION OF ARBITRATOR.** THE ARBITRATOR MUST HAVE AT LEAST TEN (10) YEARS EXPERIENCE SERVING AS AN ARBITRATOR OR JUDGE, BE LICENSED TO PRACTICE LAW IN THE STATE OF ARIZONA, AND HAVE AT LEAST FIFTEEN (15) YEARS OF EXPERIENCE (AS AN ARBITRATOR, JUDGE, OR IN PRIVATE PRACTICE COMBINED) WITH REAL ESTATE TRANSACTIONS AND DISPUTES. IF THE DISPUTE OR CLAIM INCLUDES CONSTRUCTION DEFECT ISSUES, THE ARBITRATOR MUST ALSO HAVE AT LEAST FIFTEEN (15) YEARS EXPERIENCE WITH CONSTRUCTION DEFECT CLAIMS AND DISPUTES.

(d) **SELECTION OF ARBITRATOR.** THE ARBITRATOR MUST BE APPOINTED PURSUANT TO THE AAA RULES. IN ADDITION, THE PARTIES WILL BE PROVIDED A LIST BY THE AAA OF AT LEAST TEN (10) ARBITRATORS MEETING THE QUALIFICATIONS SET FORTH ABOVE FOR CONSIDERATION. EACH PARTY (SIDE) TO THE DISPUTE WILL HAVE THE PEREMPTORY RIGHT TO STRIKE (ON A CONFIDENTIAL BASIS TO THE AAA) TWENTY PERCENT (20%) OF THE NAMES FROM ANY LIST OF POTENTIAL ARBITRATORS PROVIDED TO THE PARTIES BY THE AAA FOR CONSIDERATION. THE PARTIES WILL RANK (ON A CONFIDENTIAL BASIS TO THE AAA) THE REMAINING NON-STRICKEN ARBITRATORS PROVIDED. THE AAA WILL THEN SELECT THE ARBITRATOR BASED ON THE AVERAGE RANKINGS OF THE PARTIES.

(e) **AUTHORITY.** THE ARBITRATOR WILL HAVE THE AUTHORITY TO TRY ALL ISSUES, WHETHER IN FACT OR LAW, AND TO ISSUE ALL RELIEF (INCLUDING EQUITABLE RELIEF) PERMISSIBLE UNDER THE AAA RULES AND ARIZONA LAW. NOTWITHSTANDING THE FOREGOING, THE ARBITRATOR IS NOT AUTHORIZED TO ISSUE ANY AWARDS OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES.

(f) **AWARD.** THE ARBITRATOR MUST ISSUE A REASONED AWARD UNLESS THE ISSUANCE OF A REASONED AWARD IS WAIVED BY ALL PARTIES TO THE ARBITRATION.

(g) **NO JOINDER OR CLASS ARBITRATION.** EACH PARTY SEEKING TO HAVE A CLAIM OR DISPUTE RESOLVED MUST SUBMIT ITS OWN DEMAND FOR ARBITRATION. THERE WILL BE NO JOINDER OF MULTIPLE CLAIMANTS' CLAIMS OR CLASS ARBITRATION. RESPONDENT MAY JOIN OTHER BOUND PARTIES (AS DEFINED BELOW) IN THE ARBITRATION AND BOUND PARTIES AGREE TO BE SO JOINED.

(h) **COMMENCEMENT AND TIMING OF PROCEEDING.** THE ARBITRATOR MUST PROMPTLY COMMENCE THE PROCEEDING AT THE EARLIEST CONVENIENT DATE IN LIGHT OF ALL OF THE FACTS AND CIRCUMSTANCES AND WILL CONDUCT THE PROCEEDING WITHOUT UNDUE DELAY. A PRE-HEARING CONFERENCE WILL BE SET AS SOON AS PRACTICABLE IN THE PROCEEDINGS TO DISCUSS A SCHEDULE FOR THE ARBITRATION AND ALL PRELIMINARY PENDING ISSUES.

(i) **DISCOVERY.** THE PARTIES ARE ENTITLED TO ONLY THE DISCOVERY EXPRESSLY PERMITTED BY THE AAA RULES. IN ADDITION, TO THE EXTENT NOT REQUIRED BY THE AAA RULES, THE PARTIES MUST EXCHANGE (1) WITNESS LISTS (WITHIN THIRTY (30) DAYS OF THE COMMENCEMENT OF THE ARBITRATION AND TIMELY SUPPLEMENTED THROUGHOUT THE PROCEEDINGS); (2) EXPERT WITNESS DISCLOSURES (PRIOR TO ISSUANCE OF REPORTS OR OPINIONS); (3) EXPERT WITNESS REPORTS (AT LEAST SIXTY (60) DAYS BEFORE ANY EVIDENTIARY HEARING); (4) REPORTS OF TESTING OR INSPECTIONS OF ANY PROPERTY THAT IS THE SUBJECT OF THE DISPUTE; AND (5) PRE-HEARING BRIEFS. ANY OTHER DISCOVERY, INCLUDING DEPOSITIONS, IS PERMITTED ONLY UPON A SHOWING OF GOOD CAUSE OR BASED ON THE MUTUAL AGREEMENT OF THE PARTIES. THE ARBITRATOR WILL OVERSEE DISCOVERY AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE COULD ENFORCE SUCH ORDERS IN A PROCEEDING IN THE MARICOPA COUNTY SUPERIOR COURT.

(j) **MOTIONS.** THE ARBITRATOR WILL HAVE THE POWER TO HEAR AND DISPOSE OF MOTIONS, INCLUDING DISPOSITIVE MOTIONS TO DISMISS, MOTIONS FOR JUDGMENT ON THE PLEADINGS, AND MOTIONS FOR SUMMARY JUDGMENT IN THE SAME MANNERS A TRIAL COURT JUDGE COULD IN A PROCEEDING IN THE MARICOPA COUNTY SUPERIOR COURT, EXCEPT THE ARBITRATOR WILL ALSO HAVE THE POWER TO ADJUDICATE SUMMARILY ISSUES OF FACT OR LAW. THE ARBITRATOR MAY SET THE BRIEFING SCHEDULE FOR ANY MOTIONS TO DETERMINE WHETHER ORAL ARGUMENT ON ANY MOTION IS NECESSARY AND APPROPRIATE IN THE ARBITRATOR'S DISCRETION.

(k) **CONFIRMATION OF ARBITRATION AWARD.** THE ARBITRATOR'S AWARD MAY BE CONFIRMED AND ENFORCED AS PROVIDED FOR BY THE ARIZONA REVISED UNIFORM ARBITRATION ACT, A.R.S. §§ 12-3001 ET SEQ., OR SUCH SIMILAR LAW GOVERNING ENFORCEMENT OF ARBITRATION AWARDS IN ARIZONA THAT MAY BE APPLICABLE AT THE TIME OF THE ISSUANCE OF THE AWARD. THE PARTY OBTAINING CONFIRMATION OF THE AWARD MAY RECOVER THOSE FEES AND COSTS INCURRED IN THE CONFIRMATION OF THE AWARD.

13.3.8 WAIVERS OF BOUND PARTIES AND LIMITATIONS ON CLAIMS. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COVERED PROPERTY, EACH PERSON, FOR THEMSELVES AND THEIR HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES, AND ASSIGNS, AGREES TO HAVE ANY

DISPUTE RESOLVED PURSUANT TO THE PROVISIONS OF THIS ARTICLE XIII AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE. THE ASSOCIATION, EACH OWNER AND DECLARANT (EACH, A "BOUND PARTY") ACKNOWLEDGES THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED FOR IN THIS ARTICLE THEY ARE GIVING UP CERTAIN RIGHTS.

(a) LIMITATION OF DAMAGES. EACH BOUND PARTY WAIVES THE RIGHT TO RECOVER INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, AND/OR PUNITIVE DAMAGES AGAINST ANY OTHER BOUND PARTY.

(b) WAIVER OF JURY TRIAL. EACH BOUND PARTY WAIVES THE RIGHT TO A TRIAL BY A JUDGE AND/OR JURY, AND EACH BOUND PARTY WAIVES THE RIGHT TO APPEAL THE DECISION OF AN ARBITRATOR (OTHER THAN APPEALS THAT ARE EXPRESSLY AUTHORIZED BY ARIZONA'S REVISED UNIFORM ARBITRATION ACT).

(c) ATTORNEYS' FEES AND COSTS. EACH BOUND PARTY WILL PAY ITS OWN ATTORNEYS' FEES, EXPERT FEES, AND OTHER COSTS INCURRED IN CONNECTION WITH A DISPUTE.

(d) WAIVER OF MITIGATION OF DAMAGES. WITH RESPECT TO DEFECT CLAIMS, THE CLAIMANT WILL NOT BE ENTITLED TO RECOVER ANY DAMAGES CAUSED BY THE CLAIMANT'S ALLEGED FAILURE TO MITIGATE DAMAGES. CLAIMANT'S DAMAGES, IF ANY, ARE LIMITED TO THE COSTS OF REPAIR OF ANY DEFECT(S), UNLESS REPAIR WOULD CONSTITUTE ECONOMIC WASTE, IN WHICH CASE THE CLAIMANT'S DAMAGES, IF ANY, ARE LIMITED TO THE DIMINUTION IN VALUE OF THE REAL PROPERTY OR APPLICABLE PART THEREOF (E.G., A DWELLING UNIT OR LOT) RESULTING FROM THE DEFECT(S).

13.4 REQUIRED CONSENT OF OWNERS FOR LEGAL ACTION. ANY DISPUTE RELATING TO A CLAIM INSTITUTED BY THE ASSOCIATION AGAINST DECLARANT MUST BE FIRST APPROVED BY OWNERS REPRESENTING EIGHTY PERCENT (80%) OF THE VOTES IN THE ASSOCIATION WHO ARE VOTING IN PERSON OR BY PROXY AT A MEETING DULY CALLED FOR SUCH PURPOSES.

13.4.1 NOTICE TO OWNERS. PRIOR TO OBTAINING THE CONSENT OF OWNERS, THE ASSOCIATION MUST PROVIDE WRITTEN NOTICE TO ALL OWNERS WHICH NOTICE WILL (AT A MINIMUM) INCLUDE (1) A DETAILED DESCRIPTION OF THE NATURE OF THE CLAIM; (2) A DESCRIPTION OF THE ATTEMPTS OF DECLARANT TO CORRECT SUCH CLAIM AND THE OPPORTUNITIES PROVIDED TO DECLARANT TO CORRECT SUCH CLAIM; (3) A CERTIFICATION FROM AN ENGINEER LICENSED IN THE STATE OF ARIZONA (OR OTHER LICENSED PROFESSIONAL WITH EXPERTISE IN THE SUBJECT MATTER IN DISPUTE) THAT THE CLAIM IS VALID, ALONG WITH A DESCRIPTION OF THE SCOPE OF WORK NECESSARY TO CURE SUCH CLAIM AND A RESUME OF THE LICENSED PROFESSIONAL; (4) THE ESTIMATED COST TO REPAIR SUCH CLAIM; (5) THE NAME AND PROFESSIONAL BACKGROUND OF THE ATTORNEY TO BE RETAINED BY THE ASSOCIATION TO PURSUE THE CLAIM AGAINST DECLARANT AND A DESCRIPTION OF THE RELATIONSHIP BETWEEN SUCH ATTORNEY AND ANY MEMBER(S) OF THE BOARD (IF ANY); (6) A DESCRIPTION OF THE FEE ARRANGEMENT BETWEEN SUCH ATTORNEY AND THE ASSOCIATION; (7) THE ESTIMATED ATTORNEYS' FEES AND EXPERT FEES AND COSTS NECESSARY TO PURSUE THE CLAIM AGAINST DECLARANT (AND THE SOURCE OF THE FUNDS

THAT WILL BE USED TO PAY SUCH FEES AND EXPENSES); (8) A DESCRIPTION OF THE ESTIMATED IMPACTS ON THE VALUES OF THE DWELLING UNITS OR LOTS THAT ARE AFFECTED BY THE CLAIM; (9) THE ESTIMATED TIME NECESSARY TO CONCLUDE THE ACTION AGAINST DECLARANT; (10) A COPY OF THE ENGAGEMENT AGREEMENT BETWEEN THE ATTORNEY AND THE ASSOCIATION; AND (11) AN AFFIRMATIVE STATEMENT OF THE BOARD THAT THE ACTION IS IN THE BEST INTERESTS OF THE ASSOCIATION AND ITS MEMBERS.

13.4.2 NOTIFICATION TO PROSPECTIVE PURCHASERS. IN THE EVENT THE ASSOCIATION COMMENCES ANY ACTION OR CLAIM, ALL OWNERS MUST NOTIFY PROSPECTIVE PURCHASERS OF SUCH ACTION OR CLAIM AND MUST PROVIDE SUCH PROSPECTIVE PURCHASERS WITH A COPY OF THE NOTICE RECEIVED FROM THE ASSOCIATION.

13.4.3 USE OF RESERVES FOR AND RECOVERY OF CLAIMS. THE ASSOCIATION MAY NOT USE RESERVES TO FUND THE PROCEDURES SET FORTH IN THE FOREGOING SUBSECTION. THE ASSOCIATION MUST PAY FOR MEDIATION AND/OR ARBITRATION WITH MONIES THAT ARE SPECIFICALLY COLLECTED FOR THAT PURPOSE. IN THE EVENT THE ASSOCIATION RECOVERS ANY FUNDS FROM DECLARANT (OR ANY OTHER PERSON) TO REPAIR A CLAIM, ANY EXCESS FUNDS REMAINING AFTER REPAIR OF SUCH CLAIM MUST BE PAID INTO THE ASSOCIATION'S RESERVE ACCOUNT.

13.5 CONFLICTS. IN THE EVENT OF ANY CONFLICT BETWEEN THIS ARTICLE XIII AND ANY OTHER PROVISION OF THE GOVERNING DOCUMENTS, THIS ARTICLE XIII CONTROLS.

13.5.1 OWNERS' PURCHASE AGREEMENT LIMITED WARRANTIES. NOTHING IN THIS DECLARATION IS INTENDED TO LIMIT, EXPAND, OR OTHERWISE MODIFY THE EXPRESS TERMS OF A LIMITED WARRANTY, IF ANY, PROVIDED BY DECLARANT TO OWNERS PURSUANT TO A PURCHASE AGREEMENT.

13.6 BINDING ON CURRENT AND FUTURE OWNERS. THE PROVISIONS OF THIS ARTICLE XIII ARE BINDING UPON THE ASSOCIATION AND ALL CURRENT AND FUTURE OWNERS OF THE COMMON AREAS AND LOTS. BY TAKING TITLE TO A LOT, EACH OWNER AGREES THAT THE TERMS OF THIS ARTICLE XIII ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS/DWELLING UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE XIII, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE COVERED PROPERTY AND THE LOTS/DWELLING UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS.

13.7 AMENDMENT. THE TERMS AND PROVISIONS OF THIS ARTICLE XIII INURE TO THE BENEFIT OF DECLARANT AND MAY NOT BE AMENDED WITHOUT THE WRITTEN CONSENT OF DECLARANT AND WITHOUT REGARD TO WHETHER DECLARANT OWNS ANY PORTION OF THE COVERED PROPERTY AT THE TIME OF SUCH AMENDMENT. IN ADDITION, THE APPROVAL OF FIRST MORTGAGEES HOLDING FIRST MORTGAGES ON LOTS THE OWNERS OF WHICH HAVE AT LEAST EIGHTY PERCENT (80%) OF THE VOTES IN THE ASSOCIATION ALLOCATED TO OWNERS WHOSE LOTS ARE SUBJECT TO FIRST MORTGAGES WILL BE REQUIRED TO ADD, DELETE, OR AMEND ANY MATERIAL PROVISIONS OF THIS ARTICLE XIII.

**ARTICLE XIV
RIGHTS OF FIRST MORTGAGEES**

14.1 Notification to First Mortgagees. Each Owner must provide the Association with the current correct name and mailing address of any First Mortgagee or insurer or governmental guarantor of a First Mortgage affecting such Owner's Lot. Owners will promptly notify the Association of any changes to such information. A First Mortgagee or insurer or governmental guarantor of a First Mortgage may request notice of matters governed by this Article XIV by informing the Association of its correct name and mailing address and number or address of the Lot to which the request related. The Association shall provide each Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

(a) any condemnation loss or any casualty loss which affects a material portion of the Covered Property or the Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;

(b) any delinquency in the payment of Assessments or charges owed by an Owner subject to a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any obligation under the Governing Documents, which delinquency or default remains uncured for the period of sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in this Declaration; or

(e) any enforcement action.

14.2 Approval Required for Amendment to Governing Documents.

14.2.1 The approval of Eligible Mortgage Holders holding First Mortgages on Dwelling Units the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners whose Dwelling Units are subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern, or regulate any of the following:

(a) voting rights;

(b) Assessments, Assessment Liens, or subordination of Assessment Liens;

(c) reserves for maintenance, repair, and replacement of Common Areas;

(d) insurance or fidelity bonds;

(e) responsibility for maintenance and repairs;

(f) expansion or contraction of the Covered Property, or the addition of property to the Covered Property;

- (g) boundaries of any Lot or Common Area;
- (h) the sale, transfer, or conveyance of any Common Area or portions thereof (except for the initial conveyance to the Association);
- (i) the conversion of Lot(s) or portions thereof into Common Area, or the conversion of Common Area or portions thereof into Lot(s);
- (j) leasing of Lots;
- (k) imposition of any restriction on an Owner's right to sell or transfer its Lot;
- (l) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) restoration or repair of the Covered Property or portion thereof (after hazard damage or partial condemnation) in a manner other than specified in the Governing Documents;
- (n) any action to terminate the legal status of the Covered Property after substantial destruction or condemnation occurs; and
- (o) any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders, or Eligible Insurers or Guarantors.

14.2.2 Any action to terminate the legal status of the Covered Property as a planned unit development and terminate this Declaration for reasons other than substantial destruction or condemnation of the Covered Property must be approved by Eligible Mortgage Holders holding First Mortgages on Dwelling Units the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Dwelling Units subject to First Mortgages held by Eligible Mortgage Holders.

14.2.3 Any First Mortgagee who receives a written request to approve additions or amendments to any of the Governing Documents, which additions or amendments are not material, and who does not deliver or mail to the requesting party a negative response within sixty (60) days will be deemed to have approved such request provided the notice was delivered by certified or registered mail with a "return receipt" requested. Any addition or amendment to the Governing Documents will not be considered material if it is for the purpose of correcting technical errors or for clarification only.

14.2.4 The approvals required by this Article XIV do not apply to amendments that may be executed by Declarant in the exercise of its rights provided for herein, nor to minor or technical amendments, nor to amendments to correct ambiguities or to conform to the regulations of a governmental agency, nor to any other amendments which, by the express terms of the Governing Documents, Declarant or the Association have the right to effectuate without Owner consent.

14.3 Right of Inspection of Records. Any Owner, First Mortgagee, insurer, or governmental guarantor is, upon written request, entitled to (a) inspect the current copies of the Governing Documents and the books, records, and financial statements of the Association during reasonable business hours; (b) receive an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (c) receive written notice of all meetings of the Members of the

Association and be permitted to designate a representative to attend all such meetings. Notwithstanding the foregoing, the Board may withhold from disclosure such books, records, and documents of the Association, or portions thereof, designated under Arizona law.

14.4 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article XIV and any other provision of the Governing Documents, the provisions of this Article XIV will prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article XIV and any other provision of the Governing Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (a) an amendment to the Declaration, Articles, or Bylaws; (b) a termination of the Declaration; or (c) other actions of the Association specified in this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees will, except as otherwise provided in Section 14.2.4 above, prevail.

ARTICLE XV TERM; AMENDMENTS; TERMINATION

15.1 Term; Method of Termination. This Declaration is effective upon its recordation and, as amended from time to time, continues in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting one hundred percent (100%) of the total votes entitled to be cast by the entire Membership. Upon the recording of a Certificate of Termination executed by the President and Secretary of the Association confirming such vote, this Declaration will have no further force and effect and the Association thereupon will be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona. No such termination is effective unless approved in writing by Declarant so long as Declarant owns any portion of the Covered Property, and no such termination may occur unless and until adequate arrangements have been made for the care and maintenance of all Common Area.

15.2 Amendments.

15.2.1 By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may amend this Declaration for any purpose whatsoever, and without the consent or approval of any Owners or Members, or any other Person, regardless of whether any such amendment is uniform in nature, and, without limitation, such amendments may change or impact the provisions hereof regarding voting rights, Assessments, and use restrictions.

In addition to the foregoing, and without limitation, so long as Declarant owns any portion of the Covered Property, Declarant may of its own volition, and without the consent or approval of any Owners or Members, or any other Person, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with applicable law; (b) to satisfy the requirements of any Agency pertaining to lending criteria, or established as conditions for the acceptability or approval of mortgages, mortgage insurance, loan guarantees, or other factors; or (c) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

Any amendment during such time as Declarant owns any Lot requires the written approval of Declarant. Further, so long as Declarant owns any Lot, Declarant may, without any other consent or approval, amend this Declaration to clarify the application of the provisions hereof to any land which may be annexed, or for any other reasonable purpose in connection with any land which may be annexed.

15.2.2 By Association. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of (a) Owners (including Declarant) who in the aggregate own at least seventy-five percent (75%) of the Lots within the Covered Property, and (b) Declarant (i) during the Declarant Control Period or (ii) if Declarant owns any Lot.

ARTICLE XVI PROJECT DISCLOSURES

16.1 View Impairment. Neither Declarant, nor the Association guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot, from adjacent Lots or Common Area will be preserved without impairment. Neither Declarant nor the Association has the obligation to prune, thin, remove, or replace trees or other landscaping except as determined by the Board. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view which exists at any point in time for a Lot may be impaired or obstructed by further construction, including, without limitation, by construction of Improvements (including, without limitation, landscaping) by Declarant or by any third Person (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

16.2 Luke Air Force Base Disclosure and Release. As noted on the Plat, Habitat on Paradise Lane is subject to attendant noise, vibrations, dust, and all other effects that may be caused by overflights and by the operation of aircraft landing at, or taking off from, Luke Air Force Base and Auxiliary Field. Habitat on Paradise Lane will be subject to direct overflights and noise by aircraft in the vicinity. Each Owner acknowledges and agrees that Declarant makes no representations or warranties with respect to the level of noise, dust, odors, smoke, pollution, vibrations, and/or other effects that may be experienced from time to time.

NEITHER THE ASSOCIATION, THE BOARD, THE OFFICERS OF THE ASSOCIATION, THE ASSOCIATION'S MANAGEMENT COMPANY NOR THE DECLARANT OR DECLARANT PARTIES, NOR ANY DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF ANY OF THE FOREGOING, WILL BE LIABLE TO ANY OWNER, OCCUPANT, OR THEIR FAMILIES OR INVITEES FOR ANY CLAIMS OR DAMAGES RESULTING, DIRECTLY OR INDIRECTLY IN CONNECTION WITH FLIGHTS IN, TO, OVER AND THROUGH ALL NAVIGABLE AIRSPACE ABOVE HABITAT ON PARADISE LANE, WHETHER SUCH DAMAGE ORIGINATES FROM ATTENDANT NOISE, VIBRATION, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT THAT ARE OPERATING WITHIN THE NAVIGABLE AIRSPACE WHILE LANDING AT, OR TAKING OFF FROM, OR OPERATING AT, OR IN THE VICINITY OF LUKE AIR FORCE BASE AND AUXILIARY FIELD.

16.3 Assumption of Risk. Neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor Declarant is liable or responsible for, or in any manner a guarantor or insurer of, the health, safety, or welfare of any Owner or Occupant of any Lot, or Invitee of any Owner or Occupant, or for any property of any such persons. Each Owner and Occupant of a Lot and each Invitee of any Owner or Occupant assumes all risks associated with the use and enjoyment of the Covered Property, including all Common Area.

NEITHER THE ASSOCIATION, THE MEMBERS OF THE BOARD, THE OFFICERS OF THE ASSOCIATION, THE ASSOCIATION'S MANAGEMENT COMPANY NOR DECLARANT IS LIABLE OR RESPONSIBLE FOR ANY PERSONAL INJURY, ILLNESS, OR ANY OTHER LOSS OR DAMAGE CAUSED BY THE PRESENCE OR MALFUNCTION OF UTILITY LINES OR UTILITY SUBSTATIONS ADJACENT TO, NEAR, OVER, UNDER, OR ON THE COVERED PROPERTY. EACH OWNER AND OCCUPANT OF A LOT, AND EACH INVITEE OF ANY OWNER OR OCCUPANT ASSUMES ALL RISK OF PERSONAL INJURY, ILLNESS, OR OTHER LOSS OR DAMAGE ARISING FROM THE PRESENCE OR MALFUNCTION OF UTILITY LINES OR UTILITY SUBSTATIONS AND FURTHER ACKNOWLEDGES THAT NEITHER THE ASSOCIATION, THE MEMBERS OF THE BOARD, THE OFFICERS OF THE ASSOCIATION, THE ASSOCIATION'S MANAGEMENT COMPANY, NOR DECLARANT HAVE MADE ANY REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER OR OCCUPANT, OR INVITEE OF ANY OWNER OR OCCUPANT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO THE CONDITION OR IMPACT OF UTILITY LINES OR UTILITY SUBSTATIONS.

NO PROVISION HEREOF, OR OF THE GOVERNING DOCUMENTS, MAY BE INTERPRETED AS CREATING A DUTY OF THE ASSOCIATION, THE MEMBERS OF THE BOARD, THE OFFICERS OF THE ASSOCIATION, THE ASSOCIATION'S MANAGEMENT COMPANY, NOR DECLARANT TO PROTECT OR FURTHER THE HEALTH, SAFETY, OR WELFARE OF ANY PERSON, EVEN IF THE FUNDS OF THE ASSOCIATION ARE USED FOR ANY SUCH PURPOSE.

EACH OWNER (BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE COVERED PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) IS BOUND BY THIS SECTION AND HEREBY WAIVES ANY AND ALL RIGHTS, CLAIMS, DEMANDS, AND CAUSES OF ACTION AGAINST THE ASSOCIATION, THE BOARD, THE ASSOCIATION'S MANAGEMENT COMPANY, AND DECLARANT AND ALL OF THEIR MEMBERS, SHAREHOLDERS, DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY HAS BEEN DISCLAIMED.

ARTICLE XVII MISCELLANEOUS

17.1 Additional Covenants. In furtherance of the orderly sale and development of the Covered Property, and of the protection and enhancement of the value of the Covered Property, Declarant has the right, power, and authority (but not the obligation), where in Declarant's discretion the circumstances so warrant, to execute prior to, with, or after the sale of any portion of the Covered Property by any purchaser, a supplement to this Declaration adding additional covenants or restrictions, qualifying or limiting the application of this Declaration to such land, or entirely excepting such land from the coverage hereof any from all of the restrictions, limitations, or other provisions included herein.

17.2 Owner Enforcement Rights. Whether or not the Association fails or refuses to enforce the provisions of this Declaration or the Additional Covenants after receipt of written request to enforce from any Owner, each Owner (including Declarant, during the Declarant Control Period) has the right, power, and authority, but not the obligation, to enforce the provisions of this Declaration.

17.3 Interpretation of the Covenants. Except for judicial construction and as hereinafter provided, the Association, by its Board, has the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions in Article V hereof. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof will be final, conclusive, and binding as to all Persons and property benefited or bound by this Declaration.

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

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

17.6 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Covered Property can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.

No provision or content of any development plan showing or applicable to the Covered Property will be deemed a representation that any facility, land, or feature will be included either in the Covered Property or the Common Area. Without limitation, nothing herein will be construed as a covenant or obligation to develop all or any portion of the Covered Property, and Declarant may, in its sole discretion, construct or develop the Covered Property in one or more phases of development.

While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants assumes all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

17.7 Successors and Assigns. Any reference in this Declaration to Declarant includes any successors or assignees of all or a specified portion of Declarant's rights and powers hereunder. Any such assignment will be evidenced by a written instrument executed by Declarant whereby such rights and powers (or any specified portion thereof) are specifically assigned.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one (1) of this Declaration.

DECLARANT:

Habitat for Humanity Central Arizona, an Arizona nonprofit corporation

By: Todd Rogers
Name: Todd Rogers
Its: Chief Program & Strategy Officer

STATE OF ARIZONA)
COUNTY OF Maricopa) ss.

The foregoing instrument was acknowledged before me this 04th day of October, 2023, by Todd Rogers, as Chief Program & Strategy Officer of Habitat for Humanity Central Arizona, an Arizona nonprofit corporation, for and on behalf of the corporation.

Diane Sanchez
Notary Public

My commission expires:
10/24/2026

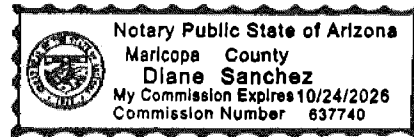


Exhibit A

Covered Property

Lots 1 through 4, inclusive, and Tracts A, B, and C of Habitat on Paradise Lane, a detached single-family planned residential development subdivision subject to single-family design review of Maricopa County, Arizona, recorded in Book 1680 of Maps and Plats at Page 11 thereof, Maricopa County Records.