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OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTTLE

DATE/TIME: 10/13/05 0935
FEE: \$49.00
PAGES: 41
FEE NUMBER: 2005-139279

(The above space reserved for recording information)

CAPTION HEADING

DECLARATION FOR COVENANTS CONDITIONS AND RESTRICTIONS FOR
OCOTILLO TRAILS

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DECLARATION FOR
CONVENANTS, CONDITIONS AND RESTRICTIONS
Ocotillo Trails

THIS DECLARATION is made as of the 10TH day of OCTOBER, 2005 by Maracay Trails, L.L.C., an Arizona limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property (the "Property") located in the Pinal County, Arizona, which is more particularly described in the Plat as Lots 1 through 82, inclusive, and Tracts A through I, inclusive, **Ocotillo Trails**, according to ~~Book~~ F, ~~page~~ 111, records of Pinal County, Arizona. CABINET SLIDE

WHEREAS, Declarant will form a nonprofit corporation (the "Association") for the purpose of acquiring, constructing, operating, managing and maintaining any Common Areas on the Property, establishing, levying, collecting and dispersing the assessments and other charges imposed hereunder, and administering and enforcing this Declaration and enforcing the use and other restrictions imposed on various parts of the Property.

WHEREAS, Declarant desires to impose certain covenants, conditions and restrictions upon the property in order to establish a general scheme for the development, sale, use and enjoyment of the Property for the purpose of enhancing and protecting the value, desirability and quality of life within said Property;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, developed, sold and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration that are for the purpose of protecting the value and desirability of, and that shall run with said Property and be binding on all parties having any right, title or interest in said Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

- 1.1 "Alleged Defect" shall mean alleged defect(s) caused by the negligence of Developers, or their respective agents, consultants, contractors or subcontractors, in the planning, design, engineering, grading, construction, or other development of any portion of the Common Areas, any Lot or residence, and/or any Improvements constructed within the Property.
- 1.2 "Architectural Committee" means the committee established by the Board pursuant to Section 3.4 of this Declaration.
- 1.3 "Architectural Committee Rules" means the rules, if any, adopted by the Architectural Committee.
- 1.4 "Articles" means the Articles of Incorporation of the Association that will be filed in the Office of the Corporation Commission of the State of Arizona, and as said Articles may be amended from time to time.

- 1.5 "Assessments" means the annual and special assessments levied and assessed against each Lot pursuant to this Declaration.
- 1.6 "Association" means the Arizona nonprofit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of Trailside Village Homeowners Association, but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.
- 1.7 "Association Rules" means the Rules and Regulations adopted by the Association, as the same may be amended from time to time.
- 1.8 "Board" means the Board of Directors of the Association.
- 1.9 "Bylaws" means the Bylaws of the Association, and as such Bylaws may be amended from time to time.
- 1.10 "Common Area" and "Common Areas" shall mean all real property (including easements) and the improvements or amenities thereon, owned, controlled or operated by or created for the benefit of the Association (including without limitation areas identified on the Plat to be used for private streets, landscaping, drainage, flood control, open areas and the like), or other rights running to the benefit of the Association and intended for the use and enjoyment of the Owners and/or Residents of the Property, or with respect to which the Association has administrative, maintenance or other similar responsibilities.
- 1.11 "Declarant" means Maracay Trails, L.L.C., an Arizona limited liability company, or any person or entity to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned. The Declarant's rights shall only be assigned by a written, recorded instrument expressly assigning those rights.
- 1.12 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, and as it may be amended from time to time.
- 1.13 "First Mortgage" means any mortgage or deed of trust with first priority over any other mortgage or deed of trust.
- 1.14 "Improvement" or "Improvements" means buildings, driveways, roads, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.
- 1.15 "Lot" means any parcel or real property designated as a Lot on the Plat and which is covered by this Declaration.
- 1.16 "Member" means any person, corporation, partnership, joint venture, or other legal entity who owns one or more Lots in the Project and is therefore a Member of the Association.
- 1.17 "Membership" shall mean a Membership in the Association and the rights granted to the Owners hereof to participate in the Association

- 1.18 "Never Occupied Lot" is one that is not a Once Occupied Lot.
- 1.19 "Once Occupied Lot" is any Lot with a dwelling thereon:
- (a) that is or has been occupied by someone residing thereon or,
 - (b) that has been conveyed by the Declarant to a Purchaser or regarding which a contract for sale to Purchaser has been recorded in the Office of the Pinal County Recorder.
- 1.20 "Owner" means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot.
- Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions, or similar executory contracts that are intended to control the rights and obligations of the parties to the transaction.
- In the case of Lots the fee simple title to which is vested in a Trustee pursuant to Arizona Revised Statutes, Section 33-801, et. Seq., the Trustor under the deed of trust shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a Trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.
- 1.21 "Person" shall mean a natural person, corporation, business trust, estate, trust, limited liability company, partnership, association, joint venture, municipality, governmental subdivision or agency or other legal or commercial entity.
- 1.22 "Plat" means the plat of survey of Lots 1 through 82, inclusive and Tracts A through I, inclusive, **Ocotillo Trails**, according to Book _____, page _____, records of Pinal County, Arizona and all amendments thereto.
- 1.23 "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules, and Architectural Committee Rules, as set forth in Section 10.5.
- 1.24 "Property" or "Project" means the real property described on the plat together with all buildings and other Improvements located thereon, and all easements, rights and appurtenances belonging thereto.
- 1.25 "Purchaser" means any person other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.26 "Reserves" or "Reserve Funds" shall mean those amounts specifically collected by the Declarant and/or the Association for, and in anticipation of, future expenses associated with (i) the proper operation and maintenance of the Association and (ii) repair, replacement and maintenance of the Common Areas and Improvements thereon. "Reserve Account" shall refer to the account (or, series of accounts) maintained by the Declarant and/or the Association for the segregation and retention of Reserve Funds.

1.27 "Resident" shall mean:

- (a) Each occupant actually residing on any part of the Property; and
- (b) Members of the immediate family of each Owner actually living in the same household with such Owner.

Subject to such rules and regulations as the Association may hereafter specify, the term "Resident" also shall include the guests or invitees of any such Owner, if and to the extent the Board in its absolute discretion by resolution so directs, provided, however, that no guest or invitee may stay with an Owner, in a dwelling unit or on a Lot for more than thirty (30) days in total during any calendar year.

1.28 "Single Family" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

1.29 "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner, Occupant, Resident or any other person is obligated to pay to the Association over, above and in addition to any Annual Assessments, Use Assessments, Special Assessments or Maintenance Charges imposed or payable hereunder.

1.30 "Single Family Residential Use" means the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal statutes, ordinances, rules and regulations.

1.31 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the base of the object being viewed.

ARTICLE 2

PROPERTY SUBJECT TO THE DECLARATION

- 2.1 **GENERAL DECLARATION:** Declarant intends to develop the Property generally in accordance with the Plat and to sell and convey the Lots thereof. Declarant hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that any property owned by or dedicated to a governmental agency or the public shall not be subject to this Declaration while owned by any such governmental entity or the public, except that any restrictions imposed in this Declaration upon the Owners concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. This Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners of the Property and their successors in interest.
- 2.2 **LIMITATION OF RESTRICTIONS ON DECLARANT:** Declarant is undertaking the work of constructing residential dwelling units and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of said dwelling units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and dwelling units constructed on the Lots and the Property established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:
- (a) Prevent the Declarant, its contractors or subcontractors from doing on the Property whatever is necessary or advisable in connection with the completion of said work; or
 - (b) Prevent the Declarant or its representatives from erecting, constructing and maintaining, on any part of the Property, such structures as may be reasonable or necessary for the conduct of the business of completing said work and establishing the Property as a residential community and disposing of the same by sale, lease or otherwise; or
 - (c) Prevent the Declarant from maintaining such sign or signs on any of the Property as may be reasonable or necessary for the sale, lease or disposition thereof, including, but not limited to, such sign or signs as may be required or requested by the institution(s) providing financing for the Project.

The foregoing limitations of the application of the restrictions to the Declarant shall terminate upon the sale of the Declarant's entire interest in the Property. So long as Declarant, its successors and assigns, owns one or more of the Lots, Declarant, its successors and assigns shall, except as specifically provided in this Declaration, be subject to the provisions of this Declaration. Declarant shall use reasonable efforts to avoid disturbing the Owners' use and enjoyment of their Lots while it is completing any work necessary on the Lots and Common Area. In addition, nothing in this Declaration shall be construed to prevent Declarant from modifying the Plat or any portion thereof.

- 2.3 **ASSOCIATION BOUND:** Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

ARTICLE 3

THE ASSOCIATION: RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

- 3.1 **RIGHTS, POWERS and DUTIES:** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors.
- 3.2 **BOARD of DIRECTORS and OFFICERS:** The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and Bylaws.
- 3.3 **ASSOCIATION RULES:** The Board, may from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.
- 3.4 **ARCHITECTURAL COMMITTEE:**
- (a) *Establishment.* The Board shall establish an Architectural Committee and procedural rules and regulations to direct the Architectural Committee in the performance of its duties. The Architectural Committee shall consist of three (3) regular members and an alternate member, each appointed by the Board. The appointees need not be Owners or Residents and need not possess any special qualifications except such as the Board may, in its sole discretion, require. The Board may replace any member of an Architectural Committee at any time with or without cause. In the event of the death or resignation of any member of the Architectural Committee, the Board shall replace said member within ninety (90) days following such death or resignation. Pending the replacement of such deceased or resigned member, the remaining member or members of the Architectural Committee shall have full authority to act as the Architectural Committee under this Declaration. The Board may serve as the Architectural Committee.
- (b) *Purpose.* The purpose of the Architectural Committee is to maintain uniformity of architectural and landscaping standards throughout the Property and thereby enhance the aesthetic and economic value of the Property. The Architectural Committee is hereby empowered to supplement and amend the Design Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary; provided, however, that such modifications are in general conformity with the standards set forth in this Declaration. Neither the Architectural Committee, Declarant nor Association is assuming any liability for the economic value nor structural integrity of any improvement. The Architectural Committee's decisions shall pertain solely to the matters set forth herein

and shall in no way constitute a representation or warranty of economic value or structural integrity. All decisions shall be made in the Architectural Committee's sole discretion and shall be final and conclusive.

- (c) *Operation/Authority.* It shall be the duty of the Architectural Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. An Architectural Committee shall hold regular meetings in accordance with its procedural rules and regulations. A quorum for such meetings shall consist of two (2) members and an affirmative vote of two (2) of the members of the Architectural Committee shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The Architectural Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections. If the Architectural Committee fails to furnish a written decision within sixty (60) calendar days after an application has been submitted or resubmitted to it, then the application shall be deemed approved. The Architectural Committee shall have broad discretionary powers in determining whether an application is in conformance with the Design Guidelines. In addition, the Architectural Committee may disapprove any application if it, in its discretion, believes the applicant has not supplied sufficient or accurate information for the Architectural Committee to exercise the judgment required by this Declaration. The Architectural Committee has the authority to grant variances to the Design Guidelines by an affirmative vote of the majority of the members of the Architectural Committee. The Architectural Committee shall keep complete written records of all applications for approval submitted to it (including one (1) set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Guidelines. All such records shall be maintained for a minimum of three (3) years after approval or disapproval.
- (d) *Fee.* The Board shall have the right, in its sole discretion, to assess against applicants a processing fee to defer the costs incurred by the Architectural Committee in considering any requests for approval submitted to it. If imposed, the fee shall be in such amount and payable in accordance with such schedule as reasonably determined by the Architectural Committee. Any processing fee not paid in full at the time of submittal of the request for approval shall be added to, and become a part of, the Assessment to which the requesting Owner and the Owner's Lot is subject, and shall be secured by a lien.
- (e) *Limited Liability of Design Review Committee Approval.* All plans, drawings and specifications approved by the Architectural Committee are not approved for engineering, design, or architectural competence. Further, Design Review Committee approval is not a substitute for any municipal or county approval that may also be required. Through its approval of such plans, drawings and specifications, the Architectural Committee does not assume liability or responsibility therefor or for any defect in any structure constructed from such plans, drawings and specifications. Declarant, members of the Architectural Committee and members of the Board shall not be liable to the Association, any Owner or any other entity for any damage, loss or prejudice suffered or claimed because of:

- (i) the approval or disapproval of any plans, drawings or specifications, whether or not defective: or
- (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.
- (f) *Waiver.* The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of an Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval.
- (g) *Nonapplicability to Declarant.* The provisions of this Article are not to apply to any Lots owned by Declarant.

3.5 IDENTITY of MEMBERS: Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership shall automatically cease.

3.6 TRANSFER of MEMBERSHIP: Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

3.7 CLASSES of MEMBERS: The Association shall have two (2) classes of voting membership.

CLASS A shall be all Owners of Lots, with the exception of the Declarant until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned, subject to the authority of the Board to suspend such voting rights as provided herein.

CLASS B shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B membership shall cease and be converted to Class A membership with the Declarant being entitled to one (1) vote for each Lot owned by the Declarant on the happening of the earlier of the following:

- (a) The date on which seventy-five percent (75%) of the Lots have been conveyed to Class A Members; or
- (b) When the Declarant notifies the Association in writing that it relinquishes its Class B membership; or
- (c) December 31, 2015

3.8 JOINT MEMBERSHIP: When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event

that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void. Each lot may not hold more than one Board seat.

- 3.9 **CORPORATE OWNERSHIP:** In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such general partner or chief executive officer of such corporation, partnership or association shall have the power to vote for that membership.
- 3.10 **SUSPENSION of VOTING RIGHTS:** In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be automatically suspended and shall remain suspended until all payments, including accrued interest, late charges and attorney's fees, are brought current. In addition, the Board may suspend an Owner's right to vote for a period not to exceed sixty (60) days for any other infractions of the Project Documents.
- 3.11 **PERSONAL LIABILITY:** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 3.11 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.
- 3.12 **FUNDS:** All funds received by the Association and the titles of all properties acquired by the Association shall be held in trust for the Members of the Association in accordance with this Declaration, the Articles and the Bylaws.

ARTICLE 4

CONVENANT FOR MAINTENANCE ASSESSMENTS

- 4.1 **CREATION of the LIEN and PERSONAL OBLIGATION of ASSESSMENTS:** The Declarant, for each Lot owned by the Declarant, hereby covenant, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual assessments, special assessments, fines and other charges as set forth herein. The Assessments, together with interest, fines, late fees, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, late fees, costs and reasonable attorney's fees, also shall be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

- 4.2 **PURPOSE of the ASSESSMENT:** The Assessments levied by the Association shall be used exclusively for (a) the upkeep, maintenance and repair of Common Area; (b) promoting the health, safety and welfare of the Owners and residents of Lots within the Project; (c) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents; and (d) the upkeep maintenance and repair of property assigned by the Pinal County as Association responsibility including, but not limited to, all landscaping within the open spaces, collector and arterial street right-of-ways. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or the Board to take some action or perform some function under this Declaration, the Articles, Bylaws or any other controlling document, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.
- 4.3 **ANNUAL ASSESSMENTS:** Annual Assessments shall include a reasonable Reserve Fund for taxes, insurance, maintenance, repairs and replacement of the Common Areas and all other areas for which the Association is responsible. All Reserve Funds collected by the Association shall be deposited into one (1) or more federally insured bank accounts ("Reserve Account(s)") and shall be segregated from the Association's general operating account(s).
- (a) *Annual Budget; Delivery to Membership.* The Board shall annually determine and fix the amount of the Annual Assessment against each Lot and shall notify the Owner of each Lot, in writing, as to (i) the amount of such Annual Assessment and (ii) the fractional payment cycle for the Annual Assessment (e.g., quarterly or monthly). The written notice shall be provided to each Owner not less than thirty (30) days prior to the date that such Annual Assessment is to commence. Along with such notification, the Board shall provide the Owners with a proposed budget for the next fiscal year. In addition to including amounts for the estimated common expenses and cash requirements of the Association, each budget shall also provide for a reserve for contingencies and a reserve for replacements, all in such amounts as shall be determined by the Board to be reasonably adequate, taking into account the number and nature of replaceable property within the Common Areas and other areas for which the Association is responsible, the expected life of such item and each item's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause a copy of the budget and statement of the amount of the Annual Assessment to be levied against the Owner's Lot for the fiscal year in question to be delivered or mailed to each Owner. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of the fiscal year, then until and unless a budget is adopted, the budget (and the amount of the Annual Assessment provided for therein) for the year immediately preceding shall remain in effect.
- (b) *Initial Annual Assessment.* Initial annual assessments shall be established by the Board in Accordance with Arizona statues. The annual assessment shall be prorated throught the date of the close of escrow for each Lot based on the number of full and partial months remaining in the relevant billing cycle (e.g., quarterly).
- (c) *Maximum Increase in Annual Assessment.* Except as to the first Annual Assessment, the Annual Assessment may be neither increased by more than twenty percent (20%) above,

nor decreased by more than twenty percent (20%) below the Annual Assessment for the previous year, without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to twenty-five percent (25%) of the Members are present in person or by proxy. Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to cover any increase over the preceding fiscal year for: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; (ii) taxes on the Common Areas or (iii) charges for utility services necessary to the Association's performance of its obligations under this Declaration. If item (i), (ii) or (iii) in the preceding sentence results in an increase in the maximum Annual Assessment, such increase shall be permitted notwithstanding the fact that the resulting increase in maximum Annual Assessment is at a rate greater than otherwise permitted by the preceding portions of this Section. Nothing herein shall obligate the Board to levy, in any fiscal year, an Annual Assessments in a full amount of the maximum Annual Assessment for the fiscal year, and the election by the Board not to levy Annual Assessments in a full amount of the maximum Annual Assessment for the fiscal year shall not prevent the Board from levying Annual Assessments in subsequent years in the full amount of the maximum Annual Assessments for the subsequent fiscal year (as determined in accordance with this Section). In the event that for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the maximum Annual Assessment for the fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during the same fiscal year so long as the total of the Annual Assessments levied during the fiscal year have not exceeded the maximum Annual Assessment for such fiscal year.

- (d) *Reserve Studies.* The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however, (i) no such report or study shall be required until at least three (3) years have elapsed following the date Assessments begin to accrue; and (ii) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (iii) in establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (a) the amount of Annual Assessments for the Property as compared to other comparable developments; (b) the past incidences of required repairs at the Property; and (c) projected funds available to the Association pursuant to the Working Capital Fees paid pursuant to this Declaration.
- (e) *Exemption for Declarant.* So long as there is a Class B membership in the Association, the Class B Member shall not be required to pay any Assessment for Lots owned by the Class B Member but instead may pay the operating deficiencies of the Association as set forth herein. When the Class B membership ceases, Declarant shall pay the Assessments for Lots owned by Declarant as is payable for Lots owned by Class A Members. If a Lot ceases to qualify for the exemption granted herein to Declarant during the period to which an Assessment is attributable, the Assessment shall be prorated between the applicable rates on the basis of the number of months in the applicable Assessment period that Lots owned by Declarant qualified for each rate.

(f) *Obligation of Declarant for Deficiencies.* Unless Declarant elects to waive its exemption from paying Assessments as provided herein while it is a Class B Member, so long as there is a Class B membership in the Association, the Class B Member shall pay and contribute to the Association, as such funds are required by the Association, such funds as may be necessary when added to the Annual Assessments levied by the Association on all Class A Members, to pay all common expenses of the Association as they become due; provided, however, the obligation of the Class B Member to pay such amounts shall not exceed the amounts that otherwise would have been assessed against Lots owned by the Class B Member if the Class B Member had been a Class A Member. Amounts paid direct by the Class B Member to Association creditors, or assets purchased by a Class B Member of the Association, shall apply against the obligations of the Class B Member to pay its share of deficiencies in common expenses. Furthermore, Declarant's payment obligations under this Section may be satisfied in the form of "in kind" contributions of services or materials, or a combination of both.

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

4.5 WORKING CAPITAL FUND: To insure that the association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each purchaser of a lot shall pay to the Association immediately upon becoming the Owner of the Lot, a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the project Documents. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessment levied by the Association pursuant to this Declaration.

4.6 TRANSFER FEE: Each purchaser of a Lot, shall pay to the Association and/or management company immediately upon becoming the Owner of the Lot a transfer fee in an amount previously agreed to by the Board. Said amount shall be used by the Association in connection with such transfer and to supplement the Association's Reserve Fund. The transfer fee shall be in addition to, and shall not be offset against or considered as an advance payment of, any Assessment levied by the Association pursuant to this Declaration, and the payment of such transfer fee shall not entitle an initial purchaser to the return of any working capital and reserve payments made to the Association.

4.7 SPECIAL ASSESSMENTS: In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least two thirds (2/3) of the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

- 4.8 NOTICE and QUORUM for ANY ACTION AUTHORIZED UNDER SECTIONS 4.3 (a) or 4.4: Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 (a) or 4.4 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) in advance of the meeting. At the first such meeting called, the presence of Members or of Proxies entitled to cast twenty-five (25%) percent of all votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice shall be one-half (1/2) of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- 4.9 DATE of COMMENCEMENT of ANNUAL ASSESSMENTS; DUE DATES; Unless otherwise determined by the Board, annual assessments shall be paid within thirty (30) days of written notice of annual assessment dues. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid and through what date they are paid.
- 4.10 UNIFORM RATE of ASSESSMENT: Except as provided herein, both annual and special assessments must be fixed at a uniform rate for all assessable once Occupied Lots and at a uniform rate for all assessable Never Occupied Lots. The rate for Never Occupied Lots (NOL's) shall be twenty-five (25%) percent of the rate for Once Occupied Lots. The status of a Lot as Never Occupied or Once Occupied shall be determined as of the date an assessment is due. As long as there is a Class B membership, Declarant shall not be subject to assessments for Lots not sold to individual Purchasers, but instead shall be required to pay the difference between actual operating costs for the Association and all income from assessments and other sources. When the Class B membership ceases as prescribed in Section 3.7 herein, Declarant shall become a Class A member and shall be subject to assessment for each Lot owned by Declarant as described in this Section.
- 4.11 USE ASSESSMENTS: If the Board determines that certain services provided by the Association benefit the Lots in a disproportionate manner or if a Member or Members owning one or more Lots contract with the Association for the Association to provide particular services with regard to such Lots, the Board shall be entitled to assess use assessments against such benefited Memberships. The amount of any use assessments shall be determined in a manner consistent with the Board's determination of the respective benefits each Lot receives from such service.
- 4.12 EFFECT of NONPAYMENT of ASSESSMENTS; REMEDIES of the ASSOCIATION: Any Assessment, or any installment of an assessment, not paid within fifteen (15) days after the Assessment or the installment of the Assessment, first became due. There shall be a late fee of fifteen (\$15.00) dollars per month for each month any Assessments or installments thereof remain delinquent or ten percent (10%), whichever is greater or as regulated by law.

Any Assessment, or any installment of an Assessment, that is delinquent shall become a continuing lien on the Lot against which such Assessment was made.

The lien shall be perfected by the recordation of a "Notice of Claim of Lien" that shall set forth: (1) the name of the delinquent Owner as shown on records of the Association; (2) the legal description or street address of the Lot against which the claim of lien is made; (3) the amount claimed as of the date of the recording of the notice including interest, late fees, fines, demand fees, lien recording fees, small claims fees, and reasonable attorney's fees; and (4) the name and address of the Association. The Association's lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration except for tax liens for real property

taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens that are specifically described in Section 4.10 of this Declaration.

Before recording a lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with interest and other allowable charges, stating the date due and the amount of the delinquency through that date. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, fines, demand fees, interest, late charges, lien fees, collection costs and reasonable attorney's fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

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

- 4.13 SUBORDINATION of the LIEN to MORTGAGES: The lien of the Association for delinquent Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessment as to payments that become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any Assessments thereafter becoming due or from the lien thereof.
- 4.14 EXEMPTION of OWNER: No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.
- 4.15 NO OFFSETS: All Assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in Project Documents.

ARTICLE 5

PERMITTED USES AND RESTRICTIONS

- 5.1 COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS APPLICABLE TO THE PROPERTY: The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all portions of the Property (unless otherwise specifically indicated) and the Owners thereof.
- 5.2 RESTRICTIONS ON FURTHER PROPERTY RESTRICTIONS: No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Occupant or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void.
- 5.3 HEALTH, SAFETY AND WELFARE: In the event any uses, activities and facilities on any Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, the Board may make rules restricting or regulating their presence within the Property, or may direct the Architectural Committee to make rules governing their presence on Lots as part of the Architectural Committee Rules.
- 5.4 RESIDENTIAL USE: All Lots shall be used, improved and devoted exclusively to Single Family residential use. No gainful occupation, profession trades or other nonresidential use shall be conducted on any Lot. All Lots shall be used, improved, and devoted exclusively to Single Family residential use. No trade or business may be conducted on any Lot, except that an Owner or resident may conduct a business activity within a residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot for purposes other than U.S. Mail or normal parcel delivery; (iv) the business activity does not involve the door-to-door solicitation of Owners or other residents in the Project; (v) the business activity does not violate any provision of this Declaration, the Architectural Committee Rules, the Design Guidelines, or the Association Rules; and (vi) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation of other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of an entire residence by the Owner thereof shall not be considered a trade of business within the meaning of this Section.
- 5.5 ANIMALS: No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure

for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable to the same extent as other restrictions contained in this Declaration.

No Owner or any lessee or guest of an Owner shall permit any dog or other pet to relieve itself on another Owners' Lot or on any part of the Common Area. It shall be the responsibility of an Owner to remove immediately any droppings from pets. No pet shall be permitted to run at large, and each pet shall be confined entirely to an Owner's Lot except that a pet shall be permitted to leave an Owner's Lot if such pet is at all times kept on a leash not to exceed six (6) feet in length and is under the direct control of the Owner.

5.6 ANTENNAS: Subject to the provisions of applicable law, no antenna, satellite television dish antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but without limitation, Citizen's Band or Amateur "Ham" Radio signals shall be erected, used or maintained outdoors on any Lot without the prior written approval of the Architectural Committee. Subject to the provisions of applicable law, any satellite dish must be ground mounted and not Visible From Neighboring Property.

5.7 UTILITY and DRAINAGE EASEMENTS: No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, unless otherwise approved by the Board or the Declarant.

No structure, landscaping or other Improvement shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement that may damage or interfere with the installation and maintenance of utilities or that may change the direction of flow of drainage channels in such easement areas or channels in such easement areas. Such public utility easement areas, and all improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless such easement area is maintained by the utility company or a county, municipality or other public authority.

5.8 TEMPORARY OCCUPANCY: No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence on any Lot, either temporary or permanent. Temporary buildings or structures used during the construction of a residence or other structure on a Lot shall be removed immediately after the completion of construction.

5.9 TRAILERS AND MOTOR VEHICLES: No motor vehicle classed by manufacturer rating as exceeding one ton, mobile home, mini-motor home, travel trailer, recreational vehicle, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked or maintained, constructed, reconstructed or repaired on any Lot so as to be Visible From Neighboring Property, the Common Areas or the streets. Such vehicles may, however, be concealed in attractively screened areas with prior written approval by the Architectural Committee. The provisions of this Section shall not apply to pick-up trucks of less than one-ton capacity with camper shells not exceeding seven feet in height measured from

ground level. No mobile home, mini-motor home, boat, recreational vehicle, trailer (of any kind) truck, camper, permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired upon any Property; provided however that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during and used exclusively in connection with the construction of any Improvement approved by the Architectural Committee. Except as provided above only vehicles in operating condition shall be parked in residential driveways. Non-operating vehicles are not permitted in residential driveways unless repairs are imminent.

- 5.10 NUISANCES: No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupant or which shall in any way interfere with the quiet enjoyment of each of the Owners of their respective Lots and residences. Without limiting the generality of the forgoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except fire detection and security devices used exclusively for such purposes, shall be located, used or placed on the exterior of any property.
- 5.11 CONSTRUCTION ACTIVITIES: No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Temporary toilets shall be located in reasonable proximity to each Lot upon which construction has commenced and shall be maintained in such locations during the entire course of such construction, and all construction workers shall be required to use such toilets. Such toilets shall be maintained in presentable, safe, clean, sanitary and odor-free condition and removed immediately after completion of construction. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, fireworks, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but all Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Architectural Committee. All trash and construction debris shall be immediately deposited in an enclosed metal container maintained by the Owner on the Lot. Such container shall be emptied with sufficient frequency to prevent the accumulation of trash and debris. Each Owner shall be responsible for immediately removing any dirt, mud or debris collecting in public streets as a result of the Owner's construction activities. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Architectural Committee. The Architectural Committee may also require screening of said storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.
- 5.12 REPAIR of BUILDINGS: No building, landscaping or other Improvement upon any Lot shall be permitted to fall into disrepair, and each such building, landscaping or other Improvement shall at all times be kept in good condition and repair by the Owner thereof as designated by published guidelines of the Board or Architectural Committee.

- 5.13 TRASH CONTAINERS and COLLECTION: No garbage, rubbish or trash shall be placed or kept on any Lot except in covered containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No incinerators shall be kept or maintained on any Lot.
- 5.14 SCREENING and FENCING: All clotheslines, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot, unless in the rear yard and unless they are erected, placed or maintained in such a manner as to not be Visible From Neighboring Property.
- 5.15 ENCROACHMENTS: No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other adjacent area from ground level to a height of eight (8) feet. The Common Area and all Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots and Common Area as constructed by the Declarant or as reconstructed or repaired in accordance with the original plans and specifications or as a result of repair, shifting, settlement or movement of any such structure.
- 5.16 MACHINERY and EQUIPMENT: No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or repair of a residence, appurtenant structures, or other Improvements constructed by the Declarant or approved by the Architectural Committee.
- 5.17 RESTRICTION on FURTHER SUBDIVISION: No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot or an undivided interest in all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant.
- 5.18 SIGNS: Unless otherwise approved by the Architectural Committee, no signs whatsoever (including, but without limitation, commercial, political, "for sale," "for rent" and similar signs) shall be erected or maintained on any Lot except:
- (a) One residential identification sign with a total face area of eighty square inches or less;
 - (b) Such signs as may be required by legal proceedings;
 - (c) One "security sign" with a total face area of eighty square inches or less;
 - (d) One "for sale" or "for rent" sign with a total face area of five square feet or less; and
 - (e) Any signs approved or installed by the Declarant.
- 5.19 DECLARANT'S EXEMPTION: Nothing contained in this Declaration, the Design Guidelines, or the Architectural Committee Rules shall be construed to prevent or materially impair the erection, operation, maintenance, replacement and repair by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, administration, management, sale, operation, maintenance and repair of model homes or other

property within the Property. Without limiting the generality of the forgoing, the Declarant shall be exempt from the requirements of all architectural control provisions contained herein or in the Articles or Bylaws. Any provisions of this Declaration which prohibit non-residential use of Lots and regulate parking and vehicles shall not prohibit the construction and operation of model homes (including, without limitation, any use in whole or in part as sales offices) (collectively, the "Models") by Persons engaged in the construction of homes on the Property and parking available to the visiting of such Models so long as construction, operation and maintenance of such Model parking will otherwise comply with all of the provisions of this Declaration. The Declarant may also permit Lots in other areas to be used for parking in connection with the showing of Models. Any homes or other structures constructed as Models shall cease to be used as Models at any time that the Owner thereof is not actively engaged in the construction and sale of homes within the Property or within other properties being developed by Declarant within a reasonable proximity to the Property regardless of whether such other properties are part of this Association. Neither the provisions of this Section nor the provisions of any other Section in this Declaration shall restrict or prohibit the right of Declarant or an affiliate of Declarant to construct, operate and maintain Models within the Property.

- 5.20 MINERAL EXPLORATION: No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind and no derrick or other equipment designed or intended for any such activity shall be erected, placed, constructed or maintained on any Lot.
- 5.21 DISEASES and INSECTS: No Owner shall permit anything or condition to exist upon any property that could induce, breed or harbor infectious plant diseases or noxious insects.
- 5.22 IMPROVEMENTS and ALTERATIONS: No addition, alteration, repair, change or other work that in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date the Lot was conveyed by the Declarant to a Purchaser shall be made or done without the prior written approval of the Architectural Committee. This shall also include but not be limited to patio additions, and storage sheds.

Any Owner desiring approval of the Architectural Committee for any addition, alteration, repair, change or other work that alters the exterior appearance of his Lot, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work including construction plans with material specification that the Owner desires to perform.

Any Owner requesting the approval of the Architectural Committee also shall submit to that Committee any additional information that the Architectural Committee may request. All plans submitted to the Committee shall bear the approval of the Pinal County if required by law or ordinance, and shall be sent by certified mail or personal delivery.

In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been received by it, approval shall be deemed granted.

The approval by the Architectural Committee of any addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right

to withhold approval of any similar addition, alteration, repair, change or other work subsequently submitted for approval. If the Owner fails to receive Architectural approval the Architectural Committee shall have authority to request the removal of such building, shed, alteration at the Owner's expense if installed prior to approval.

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

5.23 COMMON WALLS: Common walls are walls separating the yards between two Lots, which do not constitute a portion of a dwelling unit. The rights and duties of Owners Of Lots with respect to common walls shall be as follows:

- (a) The Owners of contiguous Lots who have a common wall shall both equally have the right to use such wall provided that such use by the Owner does not interfere with the use and enjoyment of same by the other Owner;
- (b) In the event that any common wall is damaged or destroyed through the act of an Owner, or his agents, tenants, licensees, guests or family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to promptly rebuild and repair the common wall without cost to the other Owner or Owners;
- (c) In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including wind damage, ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good a condition as formerly at their joint and equal expense; Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any common wall to be exposed to the elements shall bear the who cost of furnishing the necessary protection against such elements;
- (d) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;
- (e) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein whether by way of easement or in fee;
- (f) In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners; In the event any common wall encroaches upon Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots that share such common wall.

- 5.24 OUTDOOR BURNING: There shall be no outdoor burning of trash or other debris; provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills.
- 5.25 FUEL TANKS: No fuel tanks of any kind shall be erected, placed or maintained on the Property except for propane or similar fuel tanks permitted under the ordinances of the Pinal County, Arizona and approved by the Architectural Committee.
- 5.26 WINDOWS: Within sixty (60) days of occupancy each Owner shall install permanent draperies or suitable window treatments on all windows facing the street or common areas. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows.
- 5.27 HVAC and SOLAR PANELS: Except as initially installed by the Declarant, no heating, air conditioning, evaporative cooling or solar energy collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee. Solar panels, while they may be permitted, must be submitted to the Architectural Committee prior to installation.
- 5.28 GARAGES and DRIVEWAYS: The interior of all garages situated on any Lot shall be maintained in a neat, clean and sightly condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and material and shall not be used or converted for living quarters or recreational activities without the prior written approval of the Architectural Committee. All driveways shall be of concrete construction. Garage doors shall be opened only as needed for ingress and egress or when in use.
- 5.29 LEASING RESTRICTIONS: Any lease or rental agreement must be in writing and be subject to the requirements of the Project Documents. All leases must be for an entire residence and Lot and must have a minimum term of thirty (30) days. An Owner must notify the Board of any lease and must provide the Board the Following information: (a) name of tenant, (b) date and term of the lease, and (c) current address of the Owner or be subject to fines.
- 5.30 DEVELOPMENT GUIDELINES: Notwithstanding anything to the contrary herein, the development of the Project and the construction of Improvements shall be subject to applicable Ordinances adopted by the Pinal County.
- 5.31 LOT SETBACKS: All Lots shall comply with the minimum Lots sizes and setbacks in the Pinal County Zoning Code.
- 5.32 BASKETBALL GOALS AND FLAG POLES: Homeowners must submit an application to the Committee for approval prior to the installation of a basketball goal. Pole mounted goals only will be allowed as a permanent installation in front yards only adjacent to the driveway. No permanent goals will be approved in rear or side-rear yards and portable goals are prohibited. Strict guidelines will be adhered to regarding the quality of equipment and installation and special attention will be paid to placement of the pole on the Lot. Backboards may be transparent or a standard type, however, highly visible logo material is prohibited. Only nylon or similar cord nets are acceptable. Metal or chain nets are not acceptable. All equipment must be constantly maintained. Broken backboards, disfigured or bent rims, ripped or torn nets, chipped and /or peeling paint, etc. constitute grounds for fines and/or removal. No lighting designed to illuminate basketball goals shall be installed without prior written approval of the Committee.

The owner of the home with the basketball pole backboard is fully responsible for ball containment on his property. Any damage to neighboring property or landscaping from basketballs shall be the property owner's (with the goal or standards) responsibility to repair or replace.

- 5.33 LANDSCAPING: Each Owner of a Lot shall keep all landscaping, including but not limited to all shrubs, trees, hedges, ground coverings and plantings of every kind located on its Lot or in a landscaped tract adjacent to such Lot neatly trimmed, property cultivated and free of trash, weeds and other unsightly material. In addition to the above, all front yard landscape and landscaping of right-of-way areas adjacent to the respective Lot must be approved in writing by the Architectural Committee prior to installation and such installation must be completed within ninety (90) days from the close of escrow. All rear yard landscaping must be completed within one hundred and eighty (180) days from close of escrow. In the event an Owner fails to complete such landscaping within said time period, the Board may by resolution make a finding to such effect and pursuant thereto give notice thereof to the Owner that unless landscaping is commenced within fourteen (14) days and thereafter diligently pursued to completion, the Board may cause such landscaping to be accomplished at said Owner's expense. If at the expiration of said fourteen (14) day period of time such landscaping has not been commenced and thereafter diligently pursued to completion, the Board shall be authorized and empowered to cause such landscaping to occur and the cost thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, and shall be secured by a lien. Both front and rear yard landscaping shall be in accordance with all applicable Pinal County Ordinances and/or community Architectural Committee Rules or Design Guidelines whichever is more restrictive.
- 5.34 OUTDOOR LIGHTING: All exterior lighting not installed by the Declarant must receive prior written approval of the Architectural Committee. All outdoor lighting must be in compliance with the Pinal County's Ordinances or Codes whichever is more restrictive.
- 5.35 ENVIRONMENTAL PROTECTIONS: Neither the Lot nor any facilities on the Lot shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this paragraph, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," or "toxic substances" in: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

ARTICLE 6

EASEMENTS

- 6.1 **UTILITY EASEMENT:** There hereby is created a blanket casement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities approved by the Declarant, or the Board, including, but not limited to, water, sewer, gas, telephone, electricity and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain any necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated within the Property except as initially created or approved by the Declarant without the prior written approval of, in the case of a Common Area, the Association and the Architectural Committee or, in the case of a Lot, the Owner of such Lot and the Architectural Committee.
- 6.2 **EASEMENTS for INGRESS and EGRESS:** Easements for ingress and egress hereby are reserved to the Declarant, the Owners, and their families, guests, tenants and invitees for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the common Area, and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.
- 6.3 **ASSOCIATION'S RIGHT of ENTRY:** During reasonable hours, any member of the Architectural Committee, any member of the Board, or any authorized representative of the Association or Architectural Committee shall have the right to enter upon and inspect any Lot, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules, the Design Guidelines and the Architectural Committee Rules are being complied with by the Owner of said Lot.
- 6.4 **ASSOCIATION'S EASEMENT for PERFORMING MAINTENANCE RESPONSIBILITIES:** The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and for performing all of the Association's other rights, duties and obligations under the Project Documents.
- 6.5 **DECLARANT'S EASEMENT:** An easement hereby is reserved by the Declarant over the Lots and Tracts for the purpose of constructing, maintaining, and/or repairing all dwelling units and other Improvements.
- 6.7 **USE and DRAINAGE:** Each Lot shall be subject to an easement for the drainage and/or retention of water from other Lots, Common Area or other property in accordance with the drainage plans for the Property or for any Lot as shown on the drainage plans on file with the Pinal County Wherever drainage, as estimated by the Declarant, flows from one (1) Lot under or through one (1) or more other Lots, said drainage flow shall not be impeded, diverted, or otherwise changed. These easements shall include, but are not limited to, receiving the runoff from roofs and drainage under and through garden walls. An owner may not alter the finished grade of his lot or otherwise alter the drainage on his lot without the approval of the architectural committee and any applicable city or county jurisdictions.

- 6.8 **NO LIABILITY:** In no event is Declarant making any representation or warranty regarding the adequacy of any drainage onto or off of any Lot, Common Area or other part of the property and Declarant is assuming no responsibility or liability for drainage of water over, under, or across the Lots, Common Area or any other part of the Property (whether such drainage is from neighboring property or other parts of the Property) nor for any damage, loss, costs, expenses or fees incurred as a result of any debris, silt, erosion, or other incidental consequences thereof.

ARTICLE 7

PROPERTY RIGHTS

- 7.1 **OWNERS' EASEMENT of ENJOYMENT:** Every Owner, and each person residing with such Owner, shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:
- (a) The right of the Association to adopt reasonable rules and regulations governing the use of the common Area and facilities located thereon;
 - (b) The right of the Association to suspend the rights of an Owner (and his family, tenants and guests) to use the recreational facilities located on the Common Area for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Project Documents;
 - (c) The right of the Association to dedicate or transfer (including, but not limited to, mortgage) all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that (1) no such dedication or transfer (except utility easements) shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members (excluding the Declarant) and (2) all such dedications and transfers shall be subject to easements in favor of Owners for ingress and egress through the common area to their respective Lots;
 - (b) The right of Declarant, and their agents and representatives, in addition to the rights set forth elsewhere in this declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales and leasing facilities, and display and exhibit purposes.
 - (c) The right of the Association to charge reasonable admission and other special use fees for the use of the Common Areas or any facilities constructed thereon. Any such special use fees shall be set by the Board from time to time, in its discretion. Special use fees shall be charged only for actual entry upon or utilization of those Common Areas determined by the Board to be subject to a special use fee.
 - (e) The right of the Association to change the use of the Common Areas in accordance with this Declaration.
 - (f) The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common

Areas and to abandon Common Areas so long as, in each case, either (i) the Board determines that the Members are not materially or adversely affected, or (ii) two-thirds (2/3) of each class of Memberships has/have executed an instrument agreeing to such change in size, shape or location, exchange or abandonment.

- 7.2 LESSEES: If a Lot is leased or rented by the Owner thereof, the lessee and members of his family residing with such lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.
- 7.3 GUESTS and INVITEES: The Board shall have the right to regulate and limit the use of the Common Area by guests and invitees.
- 7.4 LIMITATIONS: An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement of enjoyment. No Owner may exempt himself from personal liability for Assessments, nor release the Lot owned by him from the liens or charges arising under this Declaration by waiver of his use and enjoyment of the Common Areas.
- 7.5 DECLARANT EASEMENTS: Declarant shall have the right and an easement on, over and under the Common Area for the purpose of maintaining and correcting drainage of surface or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.
- 7.6 CHARACTERISTICS OF ADJACENT PROPERTIES
- (a) *Adjacent Land Uses.* It is understood that adjacent properties are or may be used for agricultural activities and the properties subject to this document are also subject to an Agricultural Spray Easement to the benefit of adjacent agricultural property. This easement is limited to applications as necessary to sustain crops in the immediate vicinity and does not extend to allow the application of agricultural chemicals on this property. Any overflight or aerial applications are subject to appropriate regulation by the Federal Aviation Administration and other agencies with jurisdiction over agricultural flights.
 - (b) *Change to Adjacent Land Uses.* Land uses are subject to change from time to time and it is the responsibility of each Owner, Occupant and Resident to verify with applicable City or County agencies to its own satisfaction whether an existing or proposed land use in the vicinity of the Property is a potential nuisance or affects them in any way.
 - (c) *Release and Waiver.* Each Owner, Occupant and Resident hereby releases Declarant and the Association and their respective directors, officers and agents from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting from current land uses or future changes in land uses as described in this Section 7.8.

ARTICLE 8

MAINTENANCE

- 8.1 MAINTENANCE of COMMON AREA by the ASSOCIATION: The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may without any approval of the Owners being required, do any of the following:
- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof located on the Common Area;
 - (b) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway or parking area;
 - (c) Replace injured and diseased trees or vegetation in the Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for drainage or the conservation of water and soil and for aesthetic purposes;
 - (d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof, and
 - (e) Pay, before delinquent, ad valorem real property taxes assessed against the Common Area; and
 - (f) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.
- 8.2 CITY DISCLAIMER: The Pinal County is not responsible for maintenance of any Association retention facilities, landscaped areas, or Common Area of any kind within the Project.
- 8.3 MAINTENANCE by ASSOCIATION of LANDSCAPING on COMMON AREAS: The Association shall maintain, repair and replace the grass, plants, trees and other landscaping improvements situated on the Common Area. In the event the need for maintenance, repair or replacement of any portion of the Common Area that is being maintained by the Association pursuant to this Section is caused by the willful or negligent act of an Owner, his family, guest, invitees or animals for whom he is legally responsible under Arizona law, the Association shall cause the maintenance or repair to be performed and the cost of the maintenance or repairs shall be paid to the Association by the owner, upon demand. The cost of the maintenance and repair shall be a lien on the Owner's Lot, and the Association shall enforce collection of such costs in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.
- 8.4 MAINTENANCE of LOTS by OWNERS: Each Owner shall be solely responsible for the maintenance, repair and replacement of his Lot, and the residence and all Improvements located thereon (including, but not limited to, the roofs of the residence and other structures situated on his Lot) and the landscaping improvements to both front and rear yards. Any improvements or landscaping that restricts, impedes or alters the free flow of storm water on any Lot will be a violation of this Declaration. Landscaping in the area between the side of the home and the side yard fence, when that distance is less than five (5) feet, is limited to granite landscaping only.

The area between the side of the home and the side yard fence is designed to transport storm water from either the front yard to the back yard or the back yard to the front yard as required per approved Pinal County drainage plans.

- 8.5 DAMAGE or DESTRUCTION of COMMON AREA by OWNERS: No owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefore under Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association shall enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.
- 8.6 NONPERFORMANCE by OWNERS: If any Owner fails to maintain any portion of his Lot, and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by the Owner of the Lot, upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot and the Association shall enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.
- 8.7 PAYMENT of UTILITY CHARGES: Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a common expense of the Association and shall be included in the budget of the Association.

ARTICLE 9

INSURANCE

- 9.1 SCOPE OF COVERAGE: Commencing not later than the time of the first conveyance of a Lot to a person or entity other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:
- (a) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from a property policy;
 - (b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to

an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a part;

- (c) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;
- (d) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, members of the Board and Architectural Committee, or the Owner;
- (e) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:
 - (i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;
 - (ii) No act or omission by any Owner, unless acting outside the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;
 - (iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;
 - (iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other owners; and
 - (v) The association shall be the named insured.

9.2 FIDELITY BONDS: The Association may maintain blanket fidelity bonds as the Board deems appropriate or necessary for officers, directors, trustees and employees of the Association and any other persons handling or responsible for funds of or administered by the Association, whether or not they receive compensation for their services. The total amount of any fidelity bond maintained by the Association shall be based upon the best business judgement of the Board.

9.3 PAYMENT of PREMIUMS: The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

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

9.5 PAYMENT of INSURANCE PROCEEDS: With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the

loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.6 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

- 9.6 REPAIR and REPLACEMENT of DAMAGED or DESTROYED PROPERTY: Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

ARTICLE 10

RIGHTS AND POWERS OF ASSOCIATION

- 10.1 ASSOCIATION'S RIGHTS AND POWERS AS SET FORTH IN ARTICLES AND BYLAWS: In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.
- 10.2 ASSOCIATION'S RIGHTS OF ENFORCEMENT OF PROVISIONS OF THIS AND OTHER INSTRUMENTS: The Association, as the agent and representative of the Owners, shall have the right to enforce the covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.
- 10.3 CONTRACTS WITH OTHERS FOR PERFORMANCE OF ASSOCIATION'S DUTIES: Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one (1) or more directors or officers of the Association, or members of any committee, is employed by, or otherwise connected with, Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer

or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

- 10.4 RESERVATION OF TRADE NAME: Declarant hereby reserves all right, title and interest in the name of the Association for the uses set forth herein and any other use as Declarant may choose. The Association and all Owners shall be entitled to the non-exclusive use of such name only with reference to, and in connection with, the Property, the Association or its authorized activities. Any officer of the Association, each acting alone without the other, is hereby authorized to execute on behalf of the Association such consents, approvals, confirmations, acknowledgments and other instruments as Declarant may request in order to evidence and confirm the rights and interests of Declarant in such name.
- 10.5 APPROVAL OF LITIGATION: Except for any legal proceedings initiated by the Association to (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules; (iii) enforce an Architectural Guidelines; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) enforce a service contract for services to be rendered to the Association, the Association shall not incur litigation expenses, including without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is jointed as a plaintiff in legal proceedings, without the prior approval of a majority of the Members of the Association entitled to vote, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use Reserve Funds, or use monies collected for other specific Association obligations. Each Owner shall notify prospective purchasers of Lots of such legal proceedings initiated by the Board and not included in the above exceptions. Nothing in this Section 10.5 shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (i) enforce the Declaration, the Articles, the Bylaws, the Association Rules, the Design Guidelines, the Architectural Committee Rules or any other document, agreement or covenant pertaining to the Property (collectively the "Project Documents"); (ii) comply with the statutes or regulations related to the operation of the Association; (iii) amend the Project Documents as provided in this Declaration; (iv) grant easements or convey Common Area as provided in this Declaration; or (v) perform the obligations of the Association as provided in this Declaration.

ARTICLE 11

GENERAL PROVISIONS

- 11.1 ENFORCEMENT: The association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any owner found to be in violation of this Declaration shall be responsible for the costs of enforcement of this Declaration including reasonable attorney's fees required to obtain compliance.
- 11.2 SEVERABILITY: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.
- 11.3 DURATION: The covenants and restrictions of this Declaration shall run with and bind the property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be extended automatically for successive periods of ten (10) years. This Declaration may be terminated at anytime by the written approval or the affirmative vote of Owners representing not less than seventy-five percent (75%) of the Lots. Any termination of this Declaration shall be evidenced by a Declaration of Termination signed by the President or Vice President of the Association and recorded with the County Recorder of Pinal County, Arizona.
- 11.4 AMENDMENT:
- (a) Except for amendments that may be executed by the Board or the Declarant pursuant to Subsection (b) of this Section, the Declaration or the Plat may only be amended by the written approval or the affirmative vote of Owners of not less than seventy-five percent (75%) of the Lots.
 - (b) Either the Board or the Declarant may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal Nation Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or is requested by the Declarant.
 - (c) So long as the Declarant owns any Lot, any amendment that would delete or modify any right granted to the Declarant by this Declaration must be approved in writing by the Declarant.
 - (d) So long as there is a Class B membership in the Association, any amendment to this Declaration or the Plat must conform to the requirements or guidelines of the Veterans Administration or the Federal Housing Administration.
 - (e) Any amendment approved pursuant to subsection (a) above or by the Board pursuant to the Subsection (b) above shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Pinal County, Arizona. Any such amendment shall certify that the amendment has been approved as required by

this Section. Any amendment made by the Declarant pursuant to Subsection (b) above shall be executed by the Declarant and shall be recorded with the County Recorder of Pinal County, Arizona.

- 11.5 VIOLATIONS and NUISANCE: Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Declarant, the Association or any Owner.
- 11.6 VIOLATION of LAW: Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.
- 11.7 REMEDIES CUMULATIVE: Each remedy provided herein is cumulative and not exclusive.
- 11.8 DELIVERY of NOTICES and DOCUMENTS: Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association or the Architectural Committee, to the current Association Statutory Agent which is on file with the Corporate Commission. If to the Declarant, to 15160 N. HAYDEN ROAD, SCOTTSDALE, ARIZONA 85260; if to an Owner, to the address of his Lot or to any other address last furnished by the Owner to the Association; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association.

Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address. Notwithstanding the forgoing, plans, specifications and other documents shall not be deemed to have been submitted to the Architectural Committee unless actually received by said Committee.

- 11.9 FHA/VA APPROVAL: As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication, mortgaging or conveyance of the Common Area, amendment of this Declaration and/or the Articles of the Association, and dissolution, merger or consolidation of the Association.
- 11.10 BINDING EFFECT: By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof.

In addition, each such person or entity by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof.

Furthermore, each such person or entity fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer to the Lot.

- 11.11 **MANAGEMENT AGREEMENTS:** Any agreement for professional management of the Association or the Project or any other contract providing for services of the Declarant, or other developer, sponsor or builder of the Project shall not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.
- 11.12 **GENDER:** The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.
- 11.13 **TOPIC HEADINGS:** The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or this Declaration.
- 11.14 **SURVIVAL of LIABILITY:** The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.
- 11.15 **INTERPRETATION:** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, the provisions of this Declaration shall prevail. The Board's interpretation of the Articles, Bylaws, Association rules, Architectural Committee Rules and this Declaration is final.
- 11.16 **JOINT and SEVERAL LIABILITY:** In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.
- 11.17 **ATTORNEYS' FEES:** In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees incurred in any action.
- 11.18 **NEGOTIATION:** Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving the Dispute by good faith negotiation before resorting to any legal proceedings or any other dispute resolution procedure. Upon receipt of a written

request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the Dispute by negotiation.

- 11.19 **DECLARANT'S RIGHT to USE SIMILAR NAME:** The Association hereby irrevocably consents to the use by any other non-profit corporation that may be formed or incorporated by Declarant of a corporate name that is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation.

Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Association.

- 11.20 **RIGHT to REPLAT:** Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Members, to re-subdivide and re-plat any Lot or Lots that the Declarant then owns and has not sold.

- 11.21 **TRACT DECLARATIONS:** As the Project is developed and subdivided, it is anticipated that parcels of the Property may be sold separately to different purchaser ("Parcel Holders"). At the option of the Parcel Holders, the Parcel Holders, or any of them, may prepare and cause to be recorded separate declarations for their/its respective parcel (s) ("Tract Declarations"), that may further encumber and impose further conditions and restrictions on the development and use of the respective parcel (s). Tract Declarations shall be permitted in the Project, provided that the terms and provisions of the Tract Declarations are not less restrictive than those of this Declaration. To the extent that the terms and provisions of the Tract Declarations shall be less restrictive than those of this Declarations, the terms and provisions of this Declaration shall govern and control. In no event shall any Tract Declarations violate or conflict with applicable rules or regulations of the Federal Housing Administration or the Veterans Administration.

- 11.22 **INDEMNIFICATION/ACKNOWLEDGMENT:** THE OWNERS, AS DEFINED HEREIN, ACKNOWLEDGE THAT: (1) THE PROPERTY SUBJECT TO THIS DECLARATION CONTAINS COMMON AREAS; (2) THE COMMON AREAS ARE INTENDED SOLELY FOR AESTHETIC PURPOSES AND LIMITED RECREATIONAL USE; (3) THE COMMON AREAS POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS AND OTHERS; (4) NO SAFETY PERSONNEL WILL PATROL THE COMMON AREAS AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS OR OTHERS; AND (5) THE OWNERS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, INJURIES, DAMAGES, EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES, INCURRED BY OR CLAIMED AGAINST THE DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS UNDER ANY LAWS ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE COMMON AREAS.

EVERY DIRECTOR, OFFICER AND AGENT OF THE ASSOCIATION (WHETHER OR NOT SUCH AGENCY RELATIONSHIP RESULTS FROM APPOINTMENT, ELECTION OR

EMPLOYMENT) SHALL BE INDEMNIFIED BY THE ASSOCIATION (AND THE ASSOCIATION SHALL DEFEND AND HOLD HARMLESS SUCH PERSON(S)) AGAINST ALL EXPENSES AND LIABILITIES, INCLUDING ATTORNEYS' FEES, INCURRED BY OR IMPOSED UPON HIM OR HER IN CONNECTION WITH ANY PROCEEDING TO WHICH HE OR SHE MAY BE A PARTY, OR IN WHICH HE OR SHE MAY BECOME INVOLVED, BY REASON OR SUCH PERSON BEING OR HAVING BEEN A DIRECTOR, OFFICER OR AGENT OF THE ASSOCIATION, OR ANY SETTLEMENT THEREOF, WHETHER OR NOT SUCH PERSON IS A DIRECTOR, OFFICER OR AGENT AT THE TIME SUCH EXPENSES ARE INCURRED, TO THE FULLEST EXTENT THAT SUCH INDEMNIFICATION IS SPECIFICALLY PROVIDED FOR BY A.R.S. § 10-3202(B) OR BY THE LAWS OF THE STATE OF ARIZONA THEN IN EFFECT. THE FOREGOING RIGHTS OF INDEMNIFICATION SHALL BE IN ADDITION TO AND NOT EXCLUSIVE OF ALL OTHER RIGHTS TO WHICH SUCH DIRECTORS, OFFICERS OR AGENTS MAY BE ENTITLED.

ARTICLE 12

CLAIM AND DISPUTE RESOLUTION

It is intended that the Property, the Common Areas, each Lot and all Improvements constructed on the Property will be constructed in compliance with all applicable building codes and ordinances and that all Improvements will be of a quality that is consistent with good construction and development practices in the area where the Property is located for production housing similar to that constructed within the Property. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefore. It is intended that all disputes and claims regarding Alleged Defects will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers, the Association, the Board, and all Owners and Residents shall be bound by the following claim resolution procedures.

12.1 **RIGHT TO CURE ALLEGED DEFECT:** If a Claimant claims, contends, or alleges an Alleged Defect, each Developer shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

- (a) *Notice of Alleged Defect.* If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, Claimant shall give Notice of Alleged Defect to the Developer constructing the Improvement with respect to which the Alleged Defect relates.
- (b) *Right to Enter, Inspect, Repair and/or Replace.* Within a reasonable time after the receipt by a Developer of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, any Lot or Dwelling Unit, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Developer at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

- 12.2 NO ADDITIONAL OBLIGATIONS; IRREVOCABILITY AND WAIVER OF RIGHT: Nothing set forth in this Article 12 shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which such Developer is not otherwise obligated under applicable law or any warranty provided by such Developer in connection with the sale of the Lots and dwelling units and/or the Improvements constructed thereon. The right reserved to Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to a Developer except by a written document executed by such Developer and recorded.
- 12.3 LEGAL ACTIONS: All legal actions initiated by a Claimant shall be brought in accordance with and subject to Section 12.4 and Section 10.5 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging (1) damages for Alleged Defect costs, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from a Developer (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer(s) which notice shall include at a minimum (1) a description of the Alleged Defect; (2) a description of the attempts of the Developer(s) to correct such Alleged Defect and the opportunities provided to the Developer(s) to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer(s) and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (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 the Developer(s) and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the action against the Developer(s); and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.
- 12.4 ALTERNATIVE DISPUTE RESOLUTION: Except as to any claim brought by the Association against an Owner or Owners, in which event the Association may pursue any and all legal Processes pursuant to Arizona law and this Declaration, any dispute or claim between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors or employees) on the one hand, and any Owner(s) or the Association on the other hand; or (b) any Owner and another Owner; or (c) the Association and any Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of the Property; (iii) or an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 12.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

- (a) *Negotiation.* Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such negotiation.
- (b) *Mediation.* If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 12.4(a) above within such time period as may be agreed upon by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have thirty (30) days after the termination of negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.
- (i) Position Memoranda: Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Pinal County or such other place as is mutually acceptable by the parties to the Dispute.
- (ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Subsection 12.4(b)(v) below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

- (iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.
 - (iv) Parties Permitted at Sessions. Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.
 - (v) Expenses of Mediation. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear its/their own attorneys' fees and costs in connection with such mediation.
- (c) *Final and Binding Arbitration*. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 12.4(b) above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Subsection 12.4(c). If the Disputing Party does not submit the Dispute to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Developer shall be required to participate in the arbitration proceeding if all parties against whom a Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Subsection 12.4(c), the arbitrator shall have the authority to try all issues, whether of fact or law.

- (i) Place. The arbitration proceedings shall be heard in Pinal County.
- (ii) Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association form panels maintained by the Association with experience in relevant matters which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

- (iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.
- (iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.
- (v) Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The Developer shall also be entitled to conduct further tests and inspections as provided in Section 12.1 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (vi) Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.
- (vii) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.
- (viii) Expenses of Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

12.5 STATUTES OF LIMITATIONS: Nothing in this Article 12 shall be considered to toll, stay, reduce, or extend any applicable statute of limitations.

12.6 ENFORCEMENT OF RESOLUTION: If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Subsection 12.4(a) or Subsection 12.4(b) above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if the parties accept an award of arbitration in accordance with Subsection 12.4(c) and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file

suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or the award without the need to again comply with the procedures set forth in this Article 12. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation or mediation or the award including, without limitation, attorneys fees and court costs.

12.7 CONFLICTS: Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article 12 and any other provisions of the Articles, the Bylaws, the Association Rules or the Design Guidelines, this Article shall control.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the day and year first above written.

Maracay Trails, L.L.C., an Arizona limited liability company

By: Maracay Homes Arizona I, LLC,
an Arizona limited liability Company
Its: Manager

By: *J. Anderson*
Its: Manager

STATE OF ARIZONA)
) ss.
County of MARICOPA)

The foregoing instrument was acknowledged before me this 3 day of OCTOBER, 2005

by *Jeffrey J. Anderson* the Manager of Maracay Homes Arizona I, L.L.C., an Arizona limited liability company on behalf of Maracay Trails, L.L.C. an Arizona limited liability company.

In witness whereof I hereunto set my hand and official seal.

Jill D Forbus
Notary Public

My Commission Expires: MAY 10, 2006



Notary Public State of Arizona
Maricopa County
Jill D Forbus
Expires May 10, 2006

Rev 7.28.05