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APR 25 2016

ACC CORPORATIONS DIVISION
COVER SHEET

ARIZONA GOVERNMENT COMMISSION
CORPORATIONS DIVISION

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Sent via facsimile to Corporate Filings (602-542-4100) on 4/25/16 Total pages (including this cover sheet): 10

ARE YOU FILING: New Entity Change to Existing Entity Re-submission/Correction

Type in Corp/LLC Name: RITTENHOUSE RANCH HOMEOWNERS ASSOCIATION

ACC# 2083670-0

(G&B's File No. 7522-32)

FILING TYPE	REGULAR SERVICE FEE	w/EXPEDITED SERVICE FEE
<input type="checkbox"/> Articles of Domestication	<input type="checkbox"/> \$100.00	<input type="checkbox"/> \$135.00
<input type="checkbox"/> Articles of Incorporation (Profit)	<input type="checkbox"/> \$60.00	<input type="checkbox"/> \$95.00
<input checked="" type="checkbox"/> Articles of Incorporation (Non Profit)	<input type="checkbox"/> \$40.00	<input checked="" type="checkbox"/> \$75.00
<input type="checkbox"/> Articles of Organization (Limited Liability Company)	<input type="checkbox"/> \$50.00	<input type="checkbox"/> \$85.00
<input type="checkbox"/> Application for Authority (Business)	<input type="checkbox"/> \$175.00	<input type="checkbox"/> \$210.00
<input type="checkbox"/> Application to Conduct Affairs (Non Profit)	<input type="checkbox"/> \$175.00	<input type="checkbox"/> \$210.00
<input type="checkbox"/> Application for New Authority	<input type="checkbox"/> \$175.00	<input type="checkbox"/> \$210.00
<input type="checkbox"/> Application for Registration	<input type="checkbox"/> \$150.00	<input type="checkbox"/> \$185.00
<input type="checkbox"/> Articles of Amendment	<input type="checkbox"/> \$25.00	<input type="checkbox"/> \$60.00
<input type="checkbox"/> Articles of Amendment & Restatement	<input type="checkbox"/> \$25.00	<input type="checkbox"/> \$60.00
<input type="checkbox"/> Articles of Correction	<input type="checkbox"/> \$25.00	<input type="checkbox"/> \$60.00
<input type="checkbox"/> Articles of Merger/Share Exchange	<input type="checkbox"/> \$100.00	<input type="checkbox"/> \$135.00
<input type="checkbox"/> Articles of Merger (Limited Liability Company)	<input type="checkbox"/> \$50.00	<input type="checkbox"/> \$85.00
<input type="checkbox"/> Affidavit of Publication	<input type="checkbox"/> \$0.00	<input type="checkbox"/> \$35.00
<input type="checkbox"/> CORPORATIONS - Certified Copies	<input type="checkbox"/> \$5.00 each	<input type="checkbox"/> \$40.00
<input type="checkbox"/> LLCs - Certified Copies	<input type="checkbox"/> \$10.00 each	<input type="checkbox"/> \$45.00
<input type="checkbox"/> GOOD STANDING CERTIFICATE	<input type="checkbox"/> \$10.00 each	<input type="checkbox"/> \$45.00
<input type="checkbox"/> Other:	<input type="checkbox"/> Regular Fee	<input type="checkbox"/> Expedite Fee

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FOR ARIZONA CORPORATION COMMISSION USE ONLY

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COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



JODI JERICH
Executive Director

PATRICIA L. BARFIELD
Director
Corporations Division

ARIZONA CORPORATION COMMISSION

April 28, 2016

THOMAS J MCDONALD
GAMMAGE & BURNHAM, PLC
2 N CENTRAL AVE, 15TH FLOOR
PHOENIX, AZ 85004

RE: RITTENHOUSE RANCH HOMEOWNERS ASSOCIATION
File Number: 20836700

We are pleased to notify you that the Articles of Incorporation for the above-referenced entity HAVE BEEN APPROVED.

You must publish the Articles of Incorporation in their entirety. The publication must be in a newspaper of general circulation in the county of the known place of business in Arizona for three consecutive publications. A list of newspapers is available on the Commission website, <http://www.azcc.gov/Divisions/Corporations/Newspaper-list-for-publishing.pdf>.

Publication must be completed WITHIN 60 DAYS after April 28, 2016, which is the date the document was approved for filing by the Commission. The corporation may be subject to administrative dissolution if it fails to publish. You will receive an Affidavit of Publication from the newspaper, and you may file it with the Commission.

Corporations are required to file an Annual Report with the Commission. Your Annual Report is due on 04/11/2017, and on the anniversary of that date each subsequent year. It is your responsibility to file the corporation's Annual Report by the deadline each year. You can file it electronically through our website at <http://ecorp.azcc.gov>, or you can complete the form online, print it, and mail it in, or you can call the Annual Reports section at 602-542-3285.

TO SUBSCRIBE TO THE ANNUAL REPORT EMAIL REMINDER SERVICE, GO ONLINE TO <http://ecorp.azcc.gov>. USE THE SERVICE FEATURE AND SELECT "SUBSCRIBE TO EMAIL REMINDER TO FILE ANNUAL REPORT." YOU CAN ALSO SUBSCRIBE USING THE SEARCH FEATURE TO FIND YOUR CORPORATION'S RECORD, THEN CLICK ON THE BUTTON FOR "ANNUAL REPORT EMAIL REMINDERS." IF YOU CHOOSE NOT TO SUBSCRIBE, YOU WILL NOT RECEIVE ANY REMINDER AT ALL FROM THE COMMISSION.

Corporations must notify the Commission immediately, in writing, if they change their corporate address, statutory agent, or statutory agent address. Address change orders must be signed by a duly authorized corporate officer. A forwarding order placed with the U.S. Postal Service is not sufficient to change your address with the Commission.

We strongly recommend you periodically monitor your corporation's record with the Commission, which can be viewed at <http://ecorp.azcc.gov>. If you have questions or need further information please contact us at (602) 542-3026 in Phoenix, or Toll Free (Arizona residents only) at 1-800-345-5819.

ARIZONA CORP. COMMISSION
FILED

APR 18 2016

FILE NO. 2083670-0 ARTICLES OF INCORPORATION
OF
RITTENHOUSE RANCH HOMEOWNERS ASSOCIATION

The undersigned, for the purpose of forming a nonprofit corporation under the laws of the State of Arizona, hereby adopts the following Articles of Incorporation ("Articles").

1. Name. The name of the nonprofit corporation is "RITTENHOUSE RANCH HOMEOWNERS ASSOCIATION" (the "Association").

2. Nonprofit Corporation. The Association is organized as a nonprofit corporation pursuant to the Arizona Nonprofit Corporation Act (Title 10, Chapters 24 through 40, inclusive, of the Arizona Revised Statutes, as amended) (the "Nonprofit Corporation Act"). The Association shall have no stock; no dividends, gains, or pecuniary profits shall be declared or paid to its Members, directors or officers; and no part of the net earnings of the Association, if any, shall inure (other than by promoting social and recreational activities for Members, by a rebate of excess membership dues, fees or Assessments, or by acquiring, constructing or providing management, maintenance and care of Association property) to the benefit of any Member of the Association or other individual. All income and earnings of the Association shall be used to further the purposes and objectives of the Association. Nothing contained herein, however, shall prohibit payments by the Association to Members, directors, officers, or agents of the Association as reasonable compensation or reimbursement for services rendered to the Association.

3. Limitations Upon 501(c)(4) or 501(c)(7) Election. Notwithstanding any other provisions of these Articles, if the Association elects to qualify under Section 501(c)(4) or Section 501(c)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), the Association shall not conduct or engage in any activity which would or could result in the revocation of its status as a corporation qualified under such Section of the Code.

4. Principal Place of Business. The Association's principal or known place of business is located at 1600 W. Broadway Road, Suite 147, Tempe, Arizona 85282, but the Association may establish other places of business and other offices at such other places as the Board may from time to time determine.

5. Character of Affairs / Purpose and Powers of Association.

A. The specific character of affairs and primary purposes for which the Association is formed are to: (i) hold title to, operate, manage, and maintain the Common Areas and other designated areas in or around the Property, including, but not limited to, the Association Maintained Areas; (ii) establish, levy, collect, and disburse the Assessments and other charges imposed under the Declaration; (iii) as the agent and representative of the Members of the Association, and of the Owners and the Residents of the Property, administer and enforce the Declaration and enforce the use and other restrictions imposed on various parts of the Property; and (iv) otherwise fulfill all of the Association's duties and obligations under the Declaration.

AZ CORPORATION COMMISSION
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AZ CORPORATION COMMISSION
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7522-32-00438.1

APR 25 2016

APR 11 2016

FILE NO. 20836700

FILE NO. 2083670-0

B. In furtherance of the specific character of affairs and primary purposes set forth in Article 5(A) of these Articles, but subject to and limited by the terms of the Declaration, the Association shall have all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Act by law may now or hereafter have or exercise, including, but not limited to, the powers set forth in A.R.S. § 10-3302, as amended, and which are consistent with the foregoing purposes and the nonprofit character of the Association.

6. Membership. The Association shall have members, which are referred to in the Declaration as "Members". A Person shall become a Member upon the conditions set forth in the Declaration. The (i) number and qualifications of Members of the Association, (ii) the different classes of Membership (if any), (iii) the property, voting, dissolution, redemption, transfer, and other rights and privileges of Members, and (iv) the Members liability for Assessments and the method of collection thereof, shall all be as set forth in the Declaration and the other Community Documents, the applicable provisions of which are hereby incorporated into the Articles by this reference. Without limiting the foregoing, Members are hereby notified that the Declarant has certain special voting and other rights under the Declaration that are not give not all Members.

7. Board. The affairs of the Association shall be controlled and managed by the Board consisting of not less than three (3), nor more than nine (9), directors. The initial Board, the members of which shall serve until their successors are elected or appointed in accordance with the Declaration and the Bylaws, is as follows:

James Alexander
1600 W. Broadway Road, Suite 147
Tempe, Arizona 85282

Bridget Linderman
1600 W. Broadway Road, Suite 147
Tempe, Arizona 85282

Chris Brindle
1600 W. Broadway Road, Suite 147
Tempe, Arizona 85282

Subject to the provisions of the Declaration, the Bylaws of the Association shall prescribe the terms of office and manner of election of the directors. In no event shall the Board consist of an even number of directors

8. Officers. Except for the initial officers designated in these Articles, the officers of the Association shall be elected by the Board in accordance with the Bylaws and other Community Documents. The initial officers of the Association shall be as follows:

<u>Name</u>	<u>Office</u>
James Alexander	President
Bridget Linderman	Vice President
Chris Brindle	Secretary/Treasurer

9. Liability of Directors, Officers, Committee Members, and Declarant.

A. To the fullest extent permitted by applicable law, including, but not limited to, A.R.S. § 10-3202, as amended from time to time, (i) no director and/or officer of the Association; (ii) no member of the Architectural Committee and/or other committees of the Association; and (iii) no Declarant and/or any of such Declarant's officers, directors, managers, members, or employees ((i) through (iii) collectively the "Indemnified Persons") shall be liable to any Member, any Owner, the Association, or any other Person for any damage, loss, liability or prejudice suffered or claimed by such Person on account of any decision, course of action, action, inaction, omission, error, negligence, or the like which any one or more of the Indemnified Persons (a) made in good faith, (b) made in compliance with applicable standards, if any, imposed by law, and (c) reasonably believed to be with the scope of their respective duties.

B. Each Owner and other Person having any interest in the Property or entering upon or using any portion of the Property is deemed to acknowledge and accept the following:

- (i) No Indemnified Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner or other Person entering upon or making use of any portion of Property. Each Owner and other Person assumes all risks associated with the use and enjoyment of the Property including but not limited to any recreational facilities upon or within the Property.
- (ii) No Indemnified Persons shall be liable for or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property. Each Owner and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property.
- (iii) No provision of these Articles or any other Community Documents shall be construed or interpreted as creating a duty by any of the Indemnified Persons to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

C. Any repeal or modification of this Article 9 shall not adversely affect any right or protection of any Indemnified Persons with respect to anything occurring prior to or at the time of such repeal or modification. The provisions of this Article 9 shall not apply to: (a) any director and/or officer of the Association or any member of the Architectural Committee and/or other committees of the Association in such Person's separate capacity as a Member, Owner, or Resident.

10. Indemnification.

A. To the fullest extent permitted by law, but subject to any mandatory limitations imposed by A.R.S. § 10-3202, A.R.S. §§ 10-3850 through 10-3858, inclusive, or other applicable law, the Association shall indemnify all Indemnified Persons against all expenses and liabilities including, but not limited to, attorneys' fees, witness fees (including expert witness fees), costs and litigation-related expenses reasonably incurred by or imposed upon any such Indemnified Persons in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of their being or having appointed, removed or controlled, or failed to control members of the Board or the Architectural Committee), or any settlement of any such proceeding.

B. Any other agent or employee of the Association may, in the discretion of the Board, also be indemnified by the Association.

C. Notwithstanding anything to the contrary in these Articles, before any Person is entitled to indemnity pursuant to this Article 10 the Board must determine, in good faith and in accordance with A.R.S. § 10-3855, that the Person to be indemnified has met the standard of conduct set forth in A.R.S. § 10-3851.

D. The rights of indemnification set forth herein shall be in addition to and not exclusive of all other rights to which the Persons to be indemnified may be entitled at law or otherwise.

E. Any repeal or modification of this Article 10 shall not adversely affect any right or protection of any Persons with respect to anything occurring prior to or at the time of such repeal or modification. The provisions of this Article 10 shall not apply to: (a) any director and/or officer of the Association or any member of the Architectural Committee and/or other committees of the Association in such Person's separate capacity as a Member, Owner, or Resident or (b) the Declarant's or any Designated Builder's (if any) obligation to pay Deficiency Assessments as set forth in the Declaration.

11. Dissolution. The Association shall not be dissolved, liquidated, or wound up unless another entity has agreed to assume the obligations of the Association under the Declaration or the Declaration is terminated in accordance with the provisions thereof. In the event of dissolution, liquidation, or winding up of the Association (other than incident to a merger or consolidation), the Association shall pay or adequately provide for the debts and obligations of the Association and otherwise comply with the Nonprofit Corporation Act. The directors or Persons in charge of the liquidation shall dedicate the assets of the Association to an appropriate public agency to be used for purposes similar to those for which this Association was created, or if such dedication is refused, then such assets may be granted, transferred or conveyed to any nonprofit corporation, association, trust, or other organization devoted to similar purposes. If such actions are not feasible, said directors or other Persons in charge of the liquidation shall divide the remaining assets among the Members in accordance with their respective rights therein as set forth in the Declaration, except as otherwise required by law.

12. Amendments. No Members (other than the Declarant as set forth below) shall have the right to vote on, or propose, any amendments to the Articles. During the Declarant Control Period, these Articles may only be amended by (i) the written consent of the Declarant, whose mandatory consent is permitted by A.R.S. § 10-11030, of the amendment and (ii) the adoption of the amendment by the Board, or as otherwise required by applicable law. After the termination of the Declarant Control Period, these Articles may only be amended by the adoption of the amendment by the Board, or as otherwise required by applicable law; provided, however, that no amendment to the Articles shall be made that would be inconsistent with the provisions of the Declaration, as amended, without obtaining all necessary consents under the Declaration.

13. Incorporator. The name and address of the Incorporator of the Association, who shall have no liability whatsoever in connection with the filing of these Articles, is:

Andrew Compton
Gammage & Burnham, PLC
2 N. Central Ave., 15th Floor
Phoenix, AZ 85004

14. Statutory Agent. The name and street address of the initial Statutory Agent for the Association is:

Thomas J. McDonald
Gammage & Burnham, PLC
2 N. Central Ave., 15th Floor
Phoenix, AZ 85004

The Board may, at any time, appoint another agent for such purpose, and filing of such other appointment shall revoke this or any other previous appointment of such agent.

15. Declaration and Defined Terms. As used herein, the term "Declaration" means that certain Declaration of Covenants, Conditions, and Restrictions for Rittenhouse Ranch, which has been or will be recorded in the office of the Maricopa County Recorder, as the same may be amended, supplemented, or modified from time to time. Except as otherwise provided herein, capitalized terms used in these Articles, and which are defined in the Declaration, shall have the meanings set forth in the Declaration.

16. Conflict with Declaration. To the extent that any part or provisions of these Articles is contrary to or inconsistent with the provisions of the Declaration, the terms and provisions of the Declaration shall prevail. No amendment hereof, nor any action taken by the Association pursuant hereto, shall be contrary to, or in conflict with, the limitations set forth in the Declaration, and any such amendment or action shall be void to the extent of such inconsistency.

IN WITNESS WHEREOF, for the purpose of forming this Association under the laws of the State of Arizona, the undersigned, being the Incorporator of this Association, has executed these Articles of Incorporation this 11th day of April, 2016.



Andrew Compton, Incorporator

on behalf of Gammage & Burnham, P.L.C.

ACCEPTANCE OF APPOINTMENT BY STATUTORY AGENT

The undersigned hereby acknowledges and accepts appointment as Statutory Agent of Rittenhouse Ranch Homeowners Association effective this 11 day of April, 2016,


Thomas J. McDonald, Statutory Agent
on behalf of Gammage & Burnham, P.L.C.

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACCESS ONLY.

CERTIFICATE OF DISCLOSURE

Read the Instructions C003I

1. **ENTITY NAME** - give the exact name of the corporation in Arizona:

RITTENHOUSE RANCH HOMESOWNERS ASSOCIATION

2. **A.C.C. FILE NUMBER** (if already incorporated or registered in AZ):

Find the A.C.C. file number on the upper corner of filed documents OR on our website at: <http://www.azcc.org/Divisions/Corporations>

3. Check only one of the following to indicate the type of Certificate:

- Initial (accompanies formation or registration documents)
 Annual (credit unions and loan companies only)
 Supplemental to COD filed _____ (supplements a previously-filed Certificate of Disclosure)

4. FELONY/JUDGMENT QUESTIONS :

Has any person (a) who is currently an officer, director, trustee, or incorporator, or (b) who controls or holds over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation been:

4.1	Convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven year period immediately preceding the signing of this certificate?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4.2	Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the seven-year period immediately preceding the signing of this certificate?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4.3	Subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven-year period immediately preceding the signing of this certificate, involving any of the following: a. The violation of fraud or registration provisions of the securities laws of that jurisdiction; b. The violation of the consumer fraud laws of that jurisdiction; c. The violation of the antitrust or restraint of trade laws of that jurisdiction?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4.4	If any of the answers to numbers 4.1, 4.2, or 4.3 are YES, you MUST complete and attach a Certificate of Disclosure Felony/Judgment Attachment form C004.		

5. BANKRUPTCY QUESTION:

5.1 Has any person (a) who is currently an officer, director, trustee, incorporator, or (b) who controls or holds over twenty per cent of the issued and outstanding common shares or twenty per cent of any other proprietary, beneficial or membership interest in the corporation, served in any such capacity or held a twenty per cent interest in any other corporation (not the one filing this Certificate) on the bankruptcy or receivership of the other corporation?

Yes

No

5.2 If the answer to number 5.1 is YES, you MUST complete and attach a Certificate of Disclosure Bankruptcy Attachment form C005.

IMPORTANT: If within 60 days of the delivery of this Certificate to the A.G.C. any person not included in this Certificate becomes an officer, director, trustee or person controlling or holding over ten per cent of the issued and outstanding shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation, the corporation must submit a SUPPLEMENTAL Certificate providing information about that person, signed by all incorporators or by a duly elected and authorized officer.

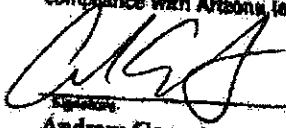
SIGNATURE REQUIREMENTS:

Infil Certificate of Disclosure:	This Certificate must be signed by all incorporators. If more space is needed, complete and attach an Incorporation Attachment form C004.
Foreign corporations:	This Certificate may be signed by a duly authorized officer or by the Chairman of the Board of Directors.
Credit Unions and Loan Companies:	This Certificate must be signed by any 2 officers or directors.

Name: Andrew Compton
 Address 1: Gammage & Burnham, PLC
 Address 2: 2 N. Central Ave., 15th Floor
 Address 3: Phoenix
 City: Phoenix State: AZ Zip: 85004
 Country: UNITED STATES

Name: _____
 Address 1: _____
 Address 2: _____
 Address 3: _____
 City: _____ State: _____ Zip: _____
 Country: _____

SIGNATURE -- see Instructions C003:
 By typing or entering my name and checking the box marked "I accept" below, I acknowledge under penalty of perjury that this document together with any attachments is submitted in compliance with Arizona law.

 I ACCEPT

SIGNATURE -- see Instructions C003:
 By typing or entering my name and checking the box marked "I accept" below, I acknowledge under penalty of perjury that this document together with any attachments is submitted in compliance with Arizona law.

I ACCEPT

Signature: Andrew Compton
 Printed Name: Andrew Compton Date: 04/09/2016

Signature: _____
 Printed Name: _____ Date: _____

- REQUIRED -- check only one:**
- Incorporator - I am an incorporator of the corporation submitting this Certificate.
 - Officer - I am an officer of the corporation submitting this Certificate.
 - Chairman of the Board of Directors - I am the Chairman of the Board of Directors of the corporation submitting this Certificate.
 - Director - I am a Director of the credit union or loan company submitting this Certificate.

- REQUIRED -- check only one:**
- Incorporator - I am an incorporator of the corporation submitting this Certificate.
 - Officer - I am an officer of the corporation submitting this Certificate.
 - Chairman of the Board of Directors - I am the Chairman of the Board of Directors of the corporation submitting this Certificate.
 - Director - I am a Director of the credit union or loan company submitting this Certificate.

Filing Fee: None
 All fees are nonrefundable - see Instructions.

Mail: Arizona Corporation Commission - Corporate Filings Section
 1300 W. Washington St., Phoenix, Arizona 85007
 Fax: 602-542-4100

Please do not check SPECIAL under notice and the information provided herein by public. You should seek legal counsel for such matters that may pertain to the individual needs of your business. All documents filed with the Arizona Corporation Commission are public records and are open for public inspection. If you have questions after reading the instructions, please call 602-542-3006 or (within Arizona only) 800-341-6818.

04/09/16
 PA: 2010

**BYLAWS
OF
RITTENHOUSE RANCH HOMEOWNERS ASSOCIATION**

ARTICLE 1

GENERAL

1.1 **Scope.** These Bylaws shall constitute the Bylaws of the RITTENHOUSE RANCH HOMEOWNERS ASSOCIATION (the "Association"), an Arizona nonprofit corporation formed for the purpose of serving as the property owners' association for RITTENHOUSE RANCH, a planned community in the Town of Queen Creek, Arizona (the "Property"), pursuant to the Declaration of Covenants, Conditions, Restrictions and Easements for Rittenhouse Ranch recorded as Document No. 20170013204 in the Official Records of Maricopa County, Arizona (the "Declaration").

1.2 **Definitions.** Except as otherwise provided herein, capitalized terms used in these Bylaws which are defined in the Declaration, shall have the meanings set forth in the Declaration.

1.3 **Application of Bylaws.** The Association, all present and future Owners and Residents, and any other Persons with any right, title, or interest in any Lot, or who may have a right to use the Common Areas (including, but not limited to, Members), are subject to the provisions of these Bylaws.

1.4 **Association Responsibilities.** The Association, acting through its Board and its Members, shall constitute the property owners' association for the Property. The Board shall be responsible for administering the Declaration and exercising the powers and duties provided for by law and in the Declaration, except for such matters as are reserved to the Members, the Declarant, or other Persons by law or in the Declaration, the Articles of Incorporation of the Association (the "Articles") or these Bylaws.

ARTICLE 2

VOTING RIGHTS

2.1 **Majority Vote.** Members are hereby notified that the Declarant has certain special voting and other rights under the Declaration that are not given to all Members. A majority of the votes of Members eligible to vote and holding voting rights under the Declaration who are present at any meeting and voting, either in person, by mail-in or absentee ballot, or such other methods permitted by law, shall decide any question presented to the Members unless these Bylaws, the Articles, the Declaration, or applicable law shall require or allow otherwise, in which case the voting percentage required or allowed by these Bylaws, the Articles, the Declaration or such applicable law shall apply.

2.2 **Vote Indivisible.** The vote for each Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one Owner and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void. This section is subject to Section 7.2 of the Declaration.

2.3 **Transfer of Membership.** Except as provided in the Declaration, the rights and obligations of an Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot. A transferor of a Lot must notify the Board of the transfer in writing, and remains liable for all obligations hereunder until the transferor so notifies the Board. A transfer of ownership to a Lot may be effectuated by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of Record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of the Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. The foregoing restrictions shall not apply to any transfer by the Declarant of its rights under this Declaration or its designation of a Designated Builder. This section is subject to Section 7.4 of the Declaration.

2.4 **List of Members Entitled to Vote.** The Secretary of the Association shall maintain, at the office of the statutory agent of the Association or the known place of business of the Association set forth in the Articles, a record of the names and addresses of Members entitled to vote.

ARTICLE 3

MEETINGS OF MEMBERS

3.1 **Annual Meetings.** To the extent required by applicable law, including, but not limited to, A.R.S. § 33-1804 (as amended from time to time), the annual meetings of the Members shall be held at a time and place (which must be within the State of Arizona) designated by the Board and shall occur at least once per year. Subject to Declarant's right, under Section 6.2(B) of the Declaration, to appoint and remove all members of the Board prior to termination of the Declarant Control Period and to appoint the first Board after termination of the Declarant Control Period, the Members shall, at each annual meeting of the Members, elect the members of the Board in accordance with the requirements of the Declaration, the Articles, and these Bylaws, and may also transact such other business as may be authorized to be transacted by the Members at annual meetings.

3.2 **Special Meetings.** Subject to the requirements of A.R.S. § 33-1804, special meetings of the Members may be called, for any purpose or purposes, by the President, by a

resolution of the Board signed by a majority of the Board, or upon a written petition filed with the Secretary signed by Members who are entitled to cast twenty-five percent (25%) of all of the votes, which petition must state the specific purpose of the special meeting. For purposes of determining whether the 25% requirement has been met, the record date is the close of business on the 30th day before delivery of the petition for a special meeting. No business shall be transacted at a special meeting except as stated in the notice thereof.

3.3 **Place.** All meetings of the Members shall be held at such date, place, and time as shall be designated by the Board and stated in the notice of the meeting. All meetings must be held in the State of Arizona unless otherwise allowed by applicable law.

3.4 **Notices.** It shall be the duty of the Secretary, or the managing agent on behalf of the Secretary, to deliver to each Member entitled to receive notice as provided in Section 3.5 hereof, a notice of each meeting, whether annual, special, or otherwise. Not fewer than ten (10) nor more than fifty (50) days in advance of any meeting of the Members, the Secretary, or the managing agent on behalf of the Secretary, shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address for each Lot or to any other mailing address designated in writing by a Member. This notice shall state the time and place of the meeting; provided, however, that any notice of a special meeting of the Members shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the Declaration, the Articles, or these Bylaws, changes in Assessments that require the approval of the Members, and any proposal to remove a director or officers. The failure of any Member to receive actual notice of a meeting of the Members does not affect the validity of any action taken at that meeting.

3.5 **Record Date.** The Board may fix in advance a date as the record date for the purpose of determining Members entitled to notice of, or to vote at, any meeting of the Members, or to make a determination of Members for any other proper purpose (the "Record Date"). The Record Date shall be not more than seventy (70) days prior to the date on which the particular action requiring such determination is to be taken, and, in the case of a meeting of the Members, not fewer than ten (10) days prior to the date of the meeting. Unless a different date is set by the Board, the Record Date shall be fifty (50) days prior to the action requiring the determination. An Owner who is delinquent with respect to an Assessment or whose rights as a Member are otherwise under suspension pursuant to the Declaration as of the Record Date shall be entitled to notice of, but shall not be entitled to vote at, any meeting of Members noticed or held during the period of the delinquency or suspension. When a determination of Members entitled to vote at any meeting of the Association has been made as provided in this Section, such determination shall apply to any adjournment thereof. After fixing a record date for a meeting, the Secretary or managing agent on behalf of the Secretary, shall prepare an alphabetical list of the names of all of its Members-who are entitled to notice of the meeting, the address of each Member and the number of votes each Member is entitled to vote at the meeting. The Secretary or managing agent on behalf of the Secretary shall also prepare on a current basis through the time of the meeting another list of Members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting, which list shall be prepared on the same basis and made a part of the list of Members.

3.6 **Quorum.** Except as otherwise provided by applicable law, the Declaration, the Articles, or these Bylaws, at any meeting of the Members, one-tenth (1/10) of the votes entitled to vote at the meeting, whether present in person or represented by mail-in or absentee ballot, shall constitute a quorum for the transaction of business.

3.7 **Proxies.** Unless later permitted by applicable law (and not expressly prohibited by A.R.S. 33-1812 or other applicable law as amended from time to time), after termination of the Declarant Control Period, no Member may cast any vote pursuant to a proxy.

3.8 **Mail-In or Absentee Ballots.** A Member entitled to vote may do so by filing a written mail-in or absentee ballot with the Secretary or other officer or agent authorized to tabulate votes before or at the time of a meeting. All mail-in or absentee ballots must comply with the requirements set forth in A.R.S. § 1812 and other applicable law as amended from time to time. The mail-in or absentee ballot shall be counted for purposes of determining whether a quorum is present. A Membership held by a duly appointed personal representative or by a court appointed receiver may be voted in person or by mail-in or absentee ballot by such representative or receiver without the transfer of such Membership into the name of the personal representative or receiver. The Association may provide for voting by some other form of delivery, including the use of e-mail or fax delivery if approved by the Board or the Members

3.9 **Election of Directors by Members.** When the Members are permitted to elect the members of the Board pursuant to the Declaration, such election of the members of the Board shall be by secret written ballot. At such election the Members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected to the vacant positions. Cumulative voting for directors shall not be permitted.

3.10 **Open Meetings.** To the extent required by applicable law, including, but not limited to, A.R.S. § 33-1804 (as amended from time to time) all meetings of the Members shall be open to all Members of the Association or any Person designated by a Member in writing as the Member's representative.

ARTICLE 4

BOARD OF DIRECTORS

4.1 Number and Qualification of Directors; Term.

(a) The affairs of the Association shall be controlled and managed by the Board appointed or elected in accordance with the Declaration, the Articles, and these Bylaws, and such officers as the Board may elect or appoint in accordance with the Articles and these Bylaws.

(b) In accordance with Section 6.2 of the Declaration, until the termination of the Declarant Control Period, Declarant shall have the right to appoint and remove all members of the Board. After the termination of the Declarant Control Period, Declarant has the right but not the obligation to appoint the first Board comprised of Owners.

(c) The initial Board shall consist of three (3) directors, who may be any Persons chosen by the Declarant. Until the termination of the Declarant Control Period, each successive Board shall consist of at least three (3) directors, who may be any Persons chosen by the Declarant. Until the termination of the Declarant Control Period, the Declarant may increase the size of the Board; provided, however, that (i) there shall be no more than nine (9) directors and (ii) the Board may not consist of an even number of directors.

(d) Commencing with the first annual meeting of the Members after the termination of the Declarant Control Period, the Board shall consist of a minimum of three (3) and a maximum of nine (9) directors, all of whom must be Members (or individuals designated by corporate, partnership or other non-individual Members). In no event shall the Board consist of an even number of directors.

(e) The term of each director shall run until the termination of the Declarant Control Period. Thereafter, the initial terms of the directors may be for different terms as set by the Board to obtain staggered Board terms. In succeeding years, each director shall be elected for a two-year term.

4.2 **Organization.** Subject to Declarant's right, under Section 6.2(B) of the Declaration, to appoint and remove all members of the Board prior to termination of the Declarant Control Period and to appoint the first Board after termination of the Declarant Control Period, at each annual meeting of the Members the number of directors provided for herein shall be elected in accordance with the procedures set forth in these Bylaws. Directors shall take office following the close of the annual meeting at which they are elected and shall hold office until their successors have been duly elected and the first meeting of the new Board has been held. The organizational meeting of a newly elected Board shall be held within thirty (30) days after the annual meeting at which the Board was elected or appointed.

4.3 **Powers and Duties.** Except to the extent set forth in the Declaration, the Articles, and these Bylaws, the Board shall have all responsibility for the control and management of the Association, and shall have all power and authority to act on behalf of the Association and to exercise any and all powers granted to the Association under the Declaration, the Articles, or applicable law.

4.4 **Removal of Directors.** Subject to Declarant's right, under Section 6.2(B) of the Declaration, to appoint and remove all members of the Board prior to termination of the Declarant Control Period, the Members, in order to remove a member of the Board, must follow the procedures set forth in A.R.S. 33-1813 and other applicable law as amended from time to time. If at any time A.R.S. 33-1813 or other applicable law as amended from time to time does not contain specific requirements regarding the removal of directors, a director may be removed at any special meeting called for such purpose. Notwithstanding the foregoing, no director validly appointed by the Declarant under the Declaration can be removed by the Members.

4.5 **Vacancies on Board.** Subject to Declarant's right, under Section 6.2(B) of the Declaration, to appoint and remove all members of the Board prior to termination of the Declarant Control Period, all vacancies on the Board (other than a vacancy created pursuant to Section 4.4 of these Bylaws) shall be filled by a vote of the majority of the remaining directors,

even though less than a quorum. Each person elected to fill a vacancy shall serve as a director until a successor is elected at the next annual meeting of the Members and the first meeting of the new Board has been held.

4.6 **Disqualification and Resignation of Directors.** Any director may resign at any time by sending written notice of such resignation to the Board, its presiding officer, the Association, the Secretary of the Association, or the managing agent. Unless otherwise specified therein, such resignation shall take effect upon delivery of such notice. Except in the case of injury, illness, or similar excusable circumstances as may be approved by a majority vote of the other directors, a director's fourth consecutive absence from duly called regular meetings of the Board shall automatically constitute a resignation by such absent director, effective as of the commencement of the fourth missed meeting. If a director not appointed by the Declarant ceases to be a Member (or, in the case of a director who is an individual designated by a corporate, partnership or other non-individual Member, if such designating Member ceases to be a Member), such Person's directorship shall immediately and automatically terminate. No individual shall continue to serve on the Board if such individual, or the corporate, partnership or other non-individual Member which designated such individual for candidacy as a director, is more than thirty (30) days delinquent in the payment of an Assessment, and such delinquency shall automatically constitute a resignation by such director on the thirty-first (31st) day of the delinquency.

4.7 **Regular Board Meetings.** The Board may hold regular meetings at such date, time, and place, as a majority of the directors shall designate. Notice of regular meetings shall be given to each director personally or by mail, telephone, or facsimile transmission at least five (5) days prior to the date designated for such meeting.

4.8 **Special Board Meetings.** Special meetings of the Board may be called by the President or Secretary or by two-thirds (2/3) of the directors on three (3) days notice to each director, given personally or by telephone or facsimile transmission, which notice shall state the time, place, and purpose of the special meeting.

4.9 **Special Notices and Other Requirements for Board Meetings.**

(a) Notwithstanding anything in these Bylaws to the contrary, including, but not limited to, the notice provisions in Sections 4.7 and 4.8 hereof, and in compliance with A.R.S. § 33-1804, with respect to all meetings of the Board that are held after the termination of the Declarant Control Period, notice to Members of any meeting of the Board shall be given at least forty-eight (48) hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the Board; provided, however, that notice to Members of any meeting of the Board is not required if emergency circumstances require action by the Board before notice can be given. The foregoing notice to the Members shall contain, at a minimum, the time and place of the meeting. The failure of any Member to receive actual notice of a meeting of the Board does not affect the validity of any action taken at that meeting.

(b) Notwithstanding anything in these Bylaws to the contrary, and in compliance with A.R.S. § 33-1804, with respect to all meetings of the Board that are held after the termination of the Declarant Control Period, the Board shall comply with the following: (i)

the agenda of the meeting of the Board shall be available to all Members attending such meeting; (ii) an emergency meeting of the Board may be called to discuss business or take action that cannot be delayed until the next regularly scheduled meeting, provided that the minutes of the emergency meeting shall state the reason necessitating the emergency meeting and the minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the Board; (iii) a quorum of the Board may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows members of the Board and Members to hear all parties who are speaking during the meeting; and (iv) any quorum of the Board that meets informally to discuss Association business, including workshops, shall comply with the open meeting and notice provisions contained in these Bylaws and other applicable law without regard to whether the Board votes or takes any action on any matter at the informal meeting.

(c) The provisions of this Section 4.9 shall be subject to the provisions of A.R.S. § 33-1804 and other applicable law as amended from time to time. Notwithstanding anything to the contrary contained in these Bylaws, the provisions contained in this Section 4.9 shall not be amended or modified unless applicable law, such as A.R.S. § 33-1804, is amended to make some or all of these provisions no longer mandatory, and in such case, the Board by majority vote may amend these provisions provided such amendments are in compliance with then applicable law.

4.10 **Waiver of Notice by a Board Member.** Before, at, or after any meeting of the Board, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by the director of the time and place thereof. If all of the directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

4.11 **Quorum of the Board.** At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board. Except as provided in Section 4.9 with respect to meetings of the Board occurring after the termination of the Declarant Control Period, quorum of the Board may meet by means of a telephone conference or other electronic means if a speakerphone or other electronic device is available in the meeting room that allows members of the Board to hear all parties who are speaking during the meeting.

4.12 **Fidelity Bonds.** The Board may require that all officers and employees of the Association who handle or are responsible for Association funds, and all other Persons designated in the Declaration, shall furnish adequate fidelity bonds or coverage, as determined by the Board. The premiums due on such bonds or coverage shall be paid by the Association.

4.13 **Board Action in Lieu of Meeting.** Unless otherwise expressly restricted by statute, the Declaration, the Articles, or these Bylaws, any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting if all directors or committee members, as appropriate, consent thereto in writing.

4.14 **Compensation.** No compensation shall be paid to directors or officers of the Association for their services as directors or officers. No remuneration shall be paid to a director or an officer for services performed for the Association in any other capacity unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board before the services are undertaken. Directors and officers of the Association may be reimbursed for any reasonable actual expenses incurred on behalf of the Association in connection with their duties as officers or directors.

4.15 **Open Meetings.** To the extent required by applicable law, including, but not limited to, A.R.S. § 33-1804 (as amended from time to time) all meetings of the Board, and any regularly scheduled committee meetings, shall be open to all Members of the Association or any Person designated by a Member in writing as the Member's representative.

4.16 **Annual Audit of the Association.** The Board shall comply with the provisions of A.R.S. § 33-1810 and other applicable law as it may be amended from time to time.

4.17 **Conflicts.** The Board shall comply with the provisions of A.R.S. § 33-1811 and other applicable law as it may be amended from time to time.

ARTICLE 5

OFFICERS

5.1 **Elected Officers.** The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. Following termination of the Declarant Control Period, each officer must either be: (i) an Owner or (ii) a representative designated by a group of Owners in accordance with these Bylaws or an individual designated by a corporate, partnership, or other non-individual Owner. An individual may hold more than one office, except that the offices of President and Secretary, and the offices of President and Vice President, shall not be held by the same individual simultaneously.

5.2 **Election and Term of Office.** The officers of the Association shall be elected annually by the Board at the regular annual meeting of the Board. If such election of officers is not held at such meeting, such election shall be held as soon thereafter as convenient. New offices may be created and filled at any meeting of the Board. Each officer shall hold office at the pleasure of the Board. If any office becomes vacant for any reason, the vacancy shall be filled by the Board at any regular or special meeting of the Board. Each officer shall hold office until his successor shall have been duly elected and qualified.

5.3 **Removal, Resignation, and Disqualification.** Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause. Any officer may resign at any time by giving written notice of such resignation to the Board, the President or the Secretary. Such resignation shall take effect upon delivery of such notice or at any later time specified therein, and unless otherwise provided therein, acceptance of such resignation shall not be necessary to make it effective. Following the termination of the Declarant Control Period, each officer who ceases to be a Member of the Association or who ceases to be in good standing shall be automatically removed from office. The previous sentence

shall also apply to any officer who is a representative designated by a group of Owners or an individual designated by a corporate, partnership, or other non-individual Owner.

5.4 **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filed by the Board for the unexpired portion of the term.

5.5 **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board. The President shall have executive powers and responsibility for general supervision over the affairs of the Association, including, but not limited to, the power to appoint committees from among the Members to assist in the conduct of the affairs of the Association.

5.6 **Vice President.** The Vice President shall take the place of the President and perform all of the duties of the President whenever the President is absent or unable to act. The Vice President shall also perform such other duties as may be imposed upon the Vice President from time to time by the Board.

5.7 **Secretary.** The Secretary shall: (a) issue notices of all meetings of the Members and the Board; (b) attend and keep the minutes of such meetings; (c) have charge of all of the Association's books, records and papers, including the Member list; and (d) perform such other duties as may be imposed upon the Secretary from time to time by the Board.

5.8 **Treasurer.** The Treasurer shall have custody of, and shall keep full and accurate account of, all receipts and disbursements of the Association, in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may be designated from time to time by the Board. The Treasurer may delegate the collection, deposit and disbursement of monies by establishing a reasonable method of accounting that shall be reviewed by the Board on a monthly basis. All books of account shall be kept on a consistent basis in accordance with generally accepted accounting practices. The Treasurer shall also perform such other duties as may be imposed upon the Treasurer from time to time by the Board.

5.9 **Managing Agent.** The Board may hire a managing agent as set forth in Section 6.8 of the Declaration. The managing agent may either be an employee of the Association, an independent professional management company, or an independent contractor. The managing agent shall perform such duties and services as the Board shall authorize.

ARTICLE 6

FISCAL MANAGEMENT

6.1 **Depositories.** The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board from time to time, upon resolutions approved by the Board, and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association or the managing agent as may be designated by the Board.

6.2 **Budget.** The Board shall cause to be prepared an estimated annual budget for the Association in accordance with the provisions the Declaration, including, but not limited to,

Section 8.5 thereof. The estimated annual budget for each year shall be adopted by the Board, and a copy thereof shall be made available to each Owner at the Owner's request.

6.3 **Fiscal Year**. The fiscal year of the Association shall be January 1 to December 31, except that the first fiscal year of the Association shall begin on the date of incorporation of the Association. The commencement date of the fiscal year herein established may be modified by the Board, subject to any necessary approvals by the Arizona Corporation Commission and the Internal Revenue Service.

6.4 **Contracts**. Unless otherwise provided by the Board, all contracts shall be executed on behalf of the Association by either the President or the Vice President. The Board may authorize in writing any officer or agent of the Association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances. Subject to compliance with A.R.S. § 33-1811 and other applicable law as it may be amended from time to time, common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof that authorizes, approves, or ratifies such a contract or transaction.

6.5 **Loans**. No loan shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in the Association's name unless authorized by a resolution of the Board and permitted by the Declaration, the Articles, and applicable law, including, but not limited to, A.R.S. § 33-1801 et seq.

6.6 **Other Provisions**. Other provisions regarding fiscal management, including such matters as Assessments, records and statements of payment, and discharge of Assessment liens, are set forth in the Declaration, the relevant portions of which are incorporated herein by reference.

ARTICLE 7

OBLIGATIONS OF MEMBERS

7.1 **Obligations of Members**. Every Member, Owner and Resident shall have such obligations to the Association and the other Members, Owners and Residents as provided in the Declaration, which is incorporated herein by reference.

7.2 **Use of Common Areas**. The Common Areas shall be used for only such purposes as may be permitted by the Declaration, the Articles, the Association Rules, or these Bylaws. All Members, Owners and Residents shall abide by such rules as the Board may from time to time adopt relating to the time, manner and nature of the use of the Common Areas.

7.3 **Liability Survives Termination of Membership**. The termination of any Membership in the Association shall not (i) relieve or release a former Member from any liability or obligation under the Declaration or in any way connected with the Association, which is incurred by the former Member during the period of Membership, or (ii) impair any rights or remedies the Association may have against the former Member with respect to such liability or obligation.

ARTICLE 8

Amendments

8.1 **Amendments During Declarant Control Period.** Until the termination of the Declarant Control Period, the Bylaws may only be amended by (i) the written consent of the Declarant and (ii) the adoption of the amendment by the Board, or as otherwise required by applicable law.

8.2 **Amendments After Termination of Declarant Control Period.** After the termination of the Declarant Control Period, these Bylaws may only be amended by the adoption of the amendment by the Board, or as otherwise required by applicable law. The Members shall not have the right to amend the Bylaws.

8.3 **Agency Approval.** Notwithstanding Sections 8.1 and 8.2, if required by applicable law, any amendment to these Bylaws must be approved by the appropriate Agency. Further, Declarant reserves the right to amend these Bylaws as may be requested or required by any Agency as a condition precedent to such government agency's approval of these Bylaws. Any such amendment shall be effected by Declarant executing an amendment specifying the Agency requesting the amendment and setting forth the requested amendment. Execution of such any such amendment shall be deemed conclusive proof of the Agency's request or requirement.

8.4 **Content of Amendments.** Notwithstanding the foregoing, these Bylaws shall not be amended to contain any provision which would be contrary to or inconsistent with the Declaration or the Articles as in effect from time to time, without obtaining all necessary consents under the Declaration; and any provision of, or purported amendment to, these Bylaws which is contrary to or inconsistent with the Declaration or the Articles shall be void to the extent of such inconsistency.

ARTICLE 9

Limitation of Liability

Notwithstanding any duty the Association may have to maintain and repair the Common Areas, the Association shall not be liable for injury or damage caused by a latent condition therein or by any Owner or Resident or other Person.

ARTICLE 10

Miscellaneous

10.1 **Conflicts.** Any inconsistencies or conflicts among the provisions of the Declaration, the Articles, these Bylaws, and the Association Rules shall be resolved by giving priority first to the Declaration, second to the Articles, third to these Bylaws, and fourth to the Association Rules.

10.2 **Waiver**. No restriction, condition, obligation, or provision contained in these Bylaws will be deemed to have been abrogated or waived by reason of any failure to enforce it, irrespective of the number of violations and failures to enforce that may occur.

10.3 **Invalidity**. If any provision or provisions of these Bylaws is or are declared invalid, the invalidity will in no way impair or affect the validity, enforceability, or effect of the remaining provisions of these Bylaws.

10.4 **Captions**. Captions are inserted in these Bylaws for convenience and reference only, and will not be taken in any way to limit or describe the scope of these Bylaws or any provision thereof.

ADOPTED BY the Board of the RITTENHOUSE RANCH HOMEOWNERS ASSOCIATION
this _____ day of January, 2017.

BOARD OF DIRECTORS

Mark Moskal, Director

Bridget Linderman, Director

Chris Brindle, Director

When recorded return to:

Gehan Homes of Arizona, L.L.C.
1600 W. Broadway Road, Suite 147
Tempe, Arizona 85282
Attn: Brad Wiley

1483734961724-72-1-1--
Palumboa

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
RITTENHOUSE RANCH**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS.....	2
ARTICLE 2 - PLAN OF DEVELOPMENT	9
2.1 General Declaration	9
2.2 Association Bound	9
2.3 Disclaimer of Representations	9
ARTICLE 3 - EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON	
AREAS	10
3.1 Easements for Use of Common Areas	10
3.2 Easements to Facilitate Development	10
3.3 Utility Easements	11
3.4 Easement for Maintenance of Association Maintained Areas	12
3.5 Easements for Encroachments	12
3.6 Delegation of Use	12
3.7 Dedications and Easements Required by Governmental Authority	12
3.8 No Merger	12
3.9 Assignment of Development Rights/Easements	12
3.10 Easement for Maintenance and Enforcement	12
3.11 Easement for Drainage.....	13
3.12 Emergency Access and Water Easements Shown on Plat	13
ARTICLE 4 - PERMITTED USES AND RESTRICTIONS.....	13
4.1 Residential Purposes	13
4.2 Animals	14
4.3 Temporary Occupancy and Temporary Building	14
4.4 Diseases and Insects.....	14
4.5 Antennas	14
4.6 Mineral Exploration	15
4.7 Garbage, Trash Containers and Collection	15
4.8 Party Walls.....	15
4.9 Overhead Encroachments	17
4.10 Window Coverings	17
4.11 Garages and Driveways	17
4.12 Heating, Ventilating, and Air Conditioning Units	17
4.13 Solar Collection Panels or Devices.....	17
4.14 Basketball Goals	18
4.15 Vehicles.....	18
4.16 Landscaping and Maintenance.....	20
4.17 Prohibited Uses	20
4.18 Dust Control.....	21
4.19 Nuisances; Construction Activities.....	21
4.20 Drainage.....	22
4.21 Health, Safety, and Welfare	22

TABLE OF CONTENTS*(continued)*

	<u>Page</u>
4.22 Leasing; Obligations of Tenants and Other Occupants	22
4.23 Environmental Protections.....	23
4.24 Supplemental Declarations; Additional Property Restrictions	23
4.25 Model Homes.....	23
4.26 Repair of Improvements; Reconstruction	24
4.27 Signs.....	24
4.28 Utility Service	25
4.29 Right of Entry	25
4.30 Crime and Drug Free Community; Restriction on Offenders.....	25
4.31 Sidewalks, Paths, and Walkways.....	25
4.32 Flags and Flagpoles.....	26
4.33 Clothes Drying Facilities	26
4.34 Variances.....	26
4.35 Declarant's Exemption.....	26
ARTICLE 5 - ARCHITECTURAL CONTROL	26
5.1 Approval Required.....	26
5.2 Architectural Committee.....	27
5.3 Owners In Good Standing.....	28
5.4 Review of Plans	29
5.5 Exclusions.....	29
5.6 Non-Liability for Approval of Plans.....	30
5.7 Inspection and Recording of Approval	30
5.8 Governmental Approvals	30
5.9 Fee.....	31
ARTICLE 6 - ORGANIZATION OF ASSOCIATION	31
6.1 Formation of Association.....	31
6.2 Board of Directors and Officers; Management.....	31
6.3 Indemnification	31
6.4 Role of Association.....	32
6.5 The Association Rules	32
6.6 Non-Liability of Officials/Personal Liability.....	33
6.7 Easements	34
6.8 Managing Agent.....	34
6.9 Designated Service Providers	34
ARTICLE 7 - MEMBERSHIPS AND VOTING	34
7.1 Owners of Lots; Identity of Members.....	34
7.2 Right to Vote.....	35
7.3 Membership Rights.....	35
7.4 Transfer of Membership	35
ARTICLE 8 - COVENANT FOR ASSESSMENTS AND CREATION OF LIEN ...	35
8.1 Creation of Assessment Right and Personal Obligation of Assessments ..	35
8.1.1 Right of Assessment	35

TABLE OF CONTENTS*(continued)*

	<u>Page</u>
8.1.2	Obligation to Pay Assessments.....36
8.1.3	Cessation of Obligation to Pay Assessments.....36
8.2	Lien for Assessments; Late Charges; Remedies.....36
8.2.1	Assessment Lien.....36
8.2.2	Late Charges; Collection Costs; Interest.....36
8.2.3	Foreclosure of Assessment Lien; Ownership by Association; Other Remedies.....36
8.2.4	Notice and Perfection of Assessment Lien.....37
8.2.5	Priority of Assessment Lien.....37
8.3	Declarant's Exemption from Assessments; Reduced Assessments for Designated Builders; Deficiency Assessments and Designated Builder's Subsidy.....37
8.3.1	Declarant's Exemption from Assessments.....38
8.3.2	Reduced Assessments.....38
8.3.3	Deficiency Assessments/Designated Builders' Subsidy.....38
8.4	Due Dates; Confirmation of Payment.....38
8.4.1	Due Date and Payment of Assessments.....38
8.4.2	Confirmation of Payment.....39
8.5	Purpose of Annual Assessments; Computation of Annual Assessments; Annual Budget.....39
8.5.1	Right to Impose Annual Assessments.....39
8.5.2	Commencement of Annual Assessments.....39
8.5.3	Preparation of Budget.....39
8.5.4	Notice of Annual Assessment.....39
8.5.5	Inadequate Funds.....39
8.5.6	Maximum Annual Assessment.....39
8.6	Special Assessments and Special Service Area Assessments.....40
8.6.1	Special Assessments.....40
8.6.2	Special Service Area Assessments.....40
8.7	Administrative Transfer Fee.....40
8.8	Working Capital Fund.....41
8.8.1	Payment of Working Capital Contribution.....41
8.8.2	Exemption from Working Capital Contribution.....41
8.9	Capital Reserve Fund; Reserves.....41
8.9.1	Establishment of Capital Reserve Fund.....41
8.9.2	Reserve Contribution.....42
8.9.3	Exemption from Reserve Contribution.....42
8.9.4	Annual Audit.....42
ARTICLE 9 - USE OF FUNDS; BORROWING POWER.....43	
9.1	Purposes For Which Association's Funds May Be Used.....43
9.2	Borrowing Power.....43
9.3	Surplus Funds; Association's Rights in Spending Funds from Year to Year43
ARTICLE 10 – INSURANCE AND EMINENT DOMAIN.....43	

TABLE OF CONTENTS*(continued)*

	<u>Page</u>
10.1 Association Maintained Insurance Coverage.....	43
10.2 Payment of Insurance Proceeds	44
10.3 Repair and Replacement of Damaged or Destroyed Property	44
10.4 Individual Responsibility; Disclaimer of Liability	44
10.5 Eminent Domain	44
 ARTICLE 11 – DISPUTE RESOLUTION PROVISIONS - MANDATORY	
BINDING ARBITRATION	45
11.1 Dispute Resolution.....	45
11.1.1 Consensus for Association Action.....	45
11.1.2 Alternative Method of Resolving Disputes.....	45
11.1.3 Claims	45
11.1.4 Mandatory Procedures	46
11.1.5 No Amendment of Section 11.1.....	49
11.2 Right to Cure Alleged Defect	49
11.3 Conflicts.....	50
11.4 Arizona Statute Compliance	50
11.5 Exclusions.....	51
11.6 Funds of the Association.....	51
11.7 Notices under Article 11	51
11.8 Scope.....	51
 ARTICLE 12 - MAINTENANCE	
12.1 Association Maintained Areas	51
12.2 Assessment of Certain Costs of Maintenance and Repair of Association Maintained Areas	53
12.3 Improper Maintenance and Use of Lots and Common Areas; Association’s Right to Remedy	53
12.4 Conveyance of Common Areas	53
12.5 Procedure for Change of Use of Common Areas	54
12.6 Walls and Fences Between Lots and Common Areas	54
12.7 Mechanic's Liens on Common Area Prohibited	54
 ARTICLE 13 - RIGHTS AND POWERS OF ASSOCIATION; FINES.....	
13.1 Association’s Rights and Powers as Set Forth in Articles and Bylaws	54
13.2 Rights of Enforcement of Provisions of This and Other Instruments.....	55
13.2.1 Enforcement.....	55
13.2.2 Methods of Enforcement.....	55
13.3 Fines.....	56
13.3.1 Right to Impose Fines	56
13.3.2 Procedure to Impose Fine	56
13.3.3 Opportunity to Be Heard.....	57
13.3.4 Late Fees	57
13.3.5 Limitations	57
13.4 Contracts with Others for Performance of Association’s Duties.....	57

TABLE OF CONTENTS*(continued)*

	<u>Page</u>
ARTICLE 14 - ANNEXATION AND DEANNEXATION; REPLAT	58
14.1 Annexation of Annexable Property	58
14.2 Annexation of Other Real Property	58
14.3 Deannexation Without Approval	58
14.4 Declarations of Annexation and Certificates of Deannexation.....	58
14.5 Reservation of Right to Resubdivide and Replat.....	59
ARTICLE 15 - TERM; AMENDMENTS; TERMINATION	59
15.1 Term; Method of Termination	59
15.2 Amendments	59
15.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions.....	60
ARTICLE 16 - MISCELLANEOUS.....	60
16.1 Interpretation of the Covenants; Conflict	60
16.2 Compliance with Applicable Law; Severability	61
16.3 Change of Circumstances	61
16.4 Perpetuities and Restraints on Alienation.....	61
16.5 Laws, Ordinances, and Regulations.....	61
16.6 Rules and Regulations.....	61
16.7 References to the Covenants in Deeds.....	61
16.8 Time is of the Essence	61
16.9 Governing Law	61
16.10 Gender and Number	61
16.11 Captions and Titles	62
16.12 Notices	62
16.13 Waiver.....	62
16.14 No Partition.....	62
16.15 Additional Disclosures.....	62

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
RITTENHOUSE RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR RITTENHOUSE RANCH (this "Declaration") is made as of the 4th day of January 2017, by GEHAN HOMES OF ARIZONA, L.L.C., an Arizona limited liability company (the "Declarant").

RECITALS

A. The Declarant is the current owner of certain real property located in the County of Maricopa, State of Arizona, legally described in *Exhibit "A"* attached hereto (the "Initial Property") and incorporated herein by this reference, which is to be commonly known as "Rittenhouse Ranch".

B. Declarant desires to develop the Initial Property, together with such portions of the Annexable Property as may be subsequently annexed to the Initial Property and subjected to this Declaration, into a planned residential community.

C. As part of the various stages of development of the Property, Declarant intends, without obligation: (i) that portions of the Property may be dedicated to the public for streets, roadways, drainage, flood control, and general public use; (ii) that Lots within the Property may be sold or otherwise conveyed to Builders for the Construction and sale of single-family homes; and (iii) that Supplemental Declarations may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements applicable to the Lots that are subject thereto.

D. Declarant has formed, or will form the Association for the purpose of benefiting the Property, the Owners, and the Residents, which nonprofit corporation will: (i) hold title to, operate, manage, and maintain any Common Areas and other designated areas in the Property, including the Association Maintained Areas; (ii) establish, levy, collect, and disburse the Assessments and other charges imposed hereunder; and (iii) as the agent and representative of the Members of the Association, and of the Owners and the Residents of the Property, administer and enforce this Declaration and enforce the use and other restrictions imposed on various parts of the Property.

E. Declarant has or will prepare the necessary documents for the organization of the Association and may, without obligation, seek approval of the Property by any Agency whose approval Declarant deems necessary and desirable.

F. In order to cause the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements (the "Covenants") to run with the Property and to be binding upon the Property and all Owners and Residents thereof, and their successors and assigns, from and after the date of the Recording of this Declaration, Declarant hereby declares that all conveyances of the Property shall be subject to the Covenants herein set forth.

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

ARTICLE 1
DEFINITIONS

The following words, phrases, or terms used in this Declaration, including the Recitals, shall have the following meanings:

"Affiliate" of a Person shall mean a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the Person in question. The term **"control"** means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Administrative Transfer Fee" has the meaning given to it in *Section 8.7* hereof.

"Agency" means the FHA, the VA, the FNMA, the FHLMC, or any other governmental, quasi-governmental or private agency providing residential loan financing, guarantees or other accommodations.

"Alleged Defect" has the meaning given to it in *Section 11.2* hereof.

"Annexable Property" shall mean any real property within two miles from any portion of the exterior boundary of the Initial Property. No part of the Annexable Property shall be subject to this Declaration until such portion of the Annexable Property is annexed to the Property pursuant to the provisions of this Declaration.

"Annual Assessment" shall mean the Assessments imposed for purposes of paying all Common Expenses of the Association as more specifically provided in *ARTICLE 8* of this Declaration and intended to be the "regular assessments" subject to A.R.S. § 33-1803.

"Architectural Committee" shall mean the committee to be created pursuant to and as set forth in *ARTICLE 5* of this Declaration.

"Architectural Committee Rules" has the meaning given to it in *Section 5.2* hereof

"Articles" shall mean the Articles of Incorporation of the Association, as the same may from time to time be amended or supplemented.

"Assessable Lot" means, during Declarant Control Period, a Lot owned by a Person other than a Declarant or an Affiliate of Declarant. After the termination of Declarant Control Period, all Lots shall be Assessable Lots.

"Assessment" shall mean: (i) the various charges levied and assessed against each Membership pursuant to *ARTICLE 8* hereof, including, but not limited to Annual Assessments, Special Assessments, Deficiency Assessments, Reduced Assessments, Special Service Area Assessments, the Administrative Transfer Fee, Working Capital Contributions, and Reserve Contributions; (ii) Maintenance Charges; and (iii) all fees, fines, penalties and charges due under this Declaration, the Bylaws, the Association Rules, or other Community Documents for late payment of Assessments, including, but not limited to, reasonable collection fees and reasonable attorney fees and costs

incurred with respect to any Assessments. Other charges listed in the other Community Documents in the nature of assessments shall also be included as Assessments.

"Assessment Lien" has the meaning given to it in *Section 8.2.1* hereof

"Assessment Period" means the period for which the Annual Assessment is to be levied, which shall be the calendar year, except that the first Assessment Period shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

"Association" shall mean the Arizona nonprofit corporation organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers, and duties set forth in this Declaration. Declarant hereby reserves the exclusive right to cause such Association to be incorporated. It is the intent of Declarant that the Association shall be named **"Rittenhouse Ranch Homeowners Association"**.

"Association Maintained Areas" shall mean: (i) all of the Common Areas; (ii) any public rights-of-way or portions thereof that are required by the County or the Town, pursuant to applicable law or agreement, to be maintained by the Association; (iii) any areas for which the Association has maintenance, repair, and/or operational responsibility by the terms of this Declaration, any Plat, any Supplemental Declaration, any Declaration of Annexation, or any other applicable real property covenants, by requirements of governmental authorities, or by contract; or (iv) any other areas designated by the Board. Association Maintained Areas can also include portions of Lots (i) if designated in *ARTICLE 12* hereof or (ii) if designated by a Supplemental Declaration or any other Recorded document executed by: (a) the Declarant and the Owner of such Lot if not the Declarant or (b) the Association and the Owner of such Lot.

"Association Rules" shall mean the rules and regulations adopted by the Board, as amended and supplemented, pursuant to *Section 6.5* hereof.

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

"Bound Party" shall have the meaning set forth in *Section 11.1.2* hereof.

"Builder" shall mean (a) an Owner that is in the business of constructing and selling completed Dwelling Units to third parties and that intends to construct and sell Dwelling Units on the Lots it owns or (b) in the case of any Lots within the Property that are: (i) subject to a Recorded option agreement pursuant to which a Person who would be a Builder if it was the Owner of such Lots has the option to purchase such Lots; (ii) owned by a Person who holds title to the Lots in the capacity of a land banker and who has entered into a purchase agreement with a Person who would be a Builder if such Person owned the Lots; (iii) owned by a Person in the business of holding lots without Dwelling Units for investment and selling to Builders; or (iv) owned by a lender to a Builder who has received title pursuant to a foreclosure, trustee's sale or conveyance in lieu of foreclosure or trustee's sale, then in any such event, such Lots shall be deemed to be owned by a Builder under this Declaration. The term Builder includes any Affiliate of a Builder.

"Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

"Capital Improvements" shall mean those items owned, repaired, or maintained by the Association that individually have an expected useful life of three (3) years or greater and exceed \$1,000.00 in value. Similar items that are less than \$1,000.00 individually, shall be considered Capital Improvements when all such items together, multiplied by the single value of one like item, exceed a total of \$1,000.00.

"Capital Reserve Fund" shall have the meaning set forth in *Section 8.9.1* hereof.

"Certificate of Deannexation" shall mean a written document Recorded pursuant to the provisions of *ARTICLE 14* below for the purpose of de-annexing and removing any portion of the Property from the plan of this Declaration.

"Claimant" shall have the applicable meaning or meanings set forth in *ARTICLE 11* hereof.

"Claims" shall have the meaning set forth in *Section 11.1.2* hereof.

"Clear Areas" shall have the meaning set forth in *Section 4.18* hereof.

"Common Area" and **"Common Areas"** shall mean all real property and Tracts, and any Improvements, amenities, or other improvements thereon, that may from time to time be owned or leased by the Association or otherwise held by the Association for the common use and enjoyment of the Owners. Any real property and Tracts, and Improvements, amenities, or other improvements thereon, that are described as "common areas" in a Supplemental Declaration, a Declaration of Annexation, or a Plat shall be deemed to be "Common Areas" for the common use and enjoyment of the Owners, as may be provided, and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration. Common Areas may be abandoned or modified as provided in this Declaration. Common Areas shall not include any Lot the Association acquires by foreclosure of an Assessment Lien unless the Association later agrees to turn such Lot into a Common Area.

"Common Expenses" shall mean the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including, but not limited to, (i) all costs incurred in connection with the acquisition, Construction, Modification, alteration, maintenance, provision, and operation of all land, properties, Improvements, facilities, services, projects, programs, studies, and systems desirable or beneficial to the general common interests of the Property, its Members, and Residents, such as the maintenance of landscaping on Common Areas, public and private rights-of-way and drainage areas, obtaining liability and casualty loss insurance, supplying utilities and other public services, providing for communication and transportation within and dissemination of information concerning the Property, obtaining legal and accounting services for the Association, indemnifying officers and directors of the Association, and providing streetlights and other services for the protection of the health and safety of the Members and Residents of the Association, (ii) any allocations to reserves determined by the Board to be necessary and appropriate, and (iii) all other financial liabilities of the Association. Notwithstanding the foregoing, in no event shall Common Expenses include the cost of Construction of initial Improvements to Common Area or Association Maintained Areas completed by or on behalf of a Declarant.

"Community Documents" shall mean, collectively, this Declaration, all Supplemental Declarations, all Declarations of Annexation, the Bylaws, the Articles, the Association Rules, the Architectural Committee Rules, and the Maintenance Standards, as amended and supplemented from time to time.

"Construction" shall mean any de-vegetation, excavation, or grading work of the Property, anything that would affect the drainage of the Property, or any other construction, erection, or installation of any Improvement.

"County" shall mean Maricopa County, Arizona.

"Covenants" shall have the meaning set forth in *Recital F* hereof.

"Declarant" shall mean and refer to the above recited Declarant and/or any Person or Persons to whom all or a portion of rights reserved to Declarant under this Declaration are assigned pursuant to a written, Recorded document expressly assigning such rights. Notwithstanding anything contained herein to the contrary, an assignment of all or any portion of Declarant's rights or a sharing of those rights with any Builder shall not deprive the assignor of any protections, indemnities, or freedoms from liability that would otherwise exist under this Declaration if the assignor had maintained all of Declarant's rights hereunder. The term Declarant includes any Affiliate of Declarant.

"Declarant Control Period" shall mean the period commencing upon the Recording of this Declaration and ending on the later to occur of: (i) the date that Declarant and all Designated Builders have conveyed the last Lot to a Purchaser or (ii) the date that neither Declarant nor any Designated Builder owns any Lot or other portion of the Property and no longer has an option, whether recorded or unrecorded, to purchase any Lot or other portion of the Property. Notwithstanding the foregoing, the Declarant Control Period shall also terminate upon the date set forth in a written notice from the Declarant to the Association stating that the Declarant Control Period has terminated.

"Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions, as amended or supplemented from time to time as herein permitted.

"Declaration of Annexation" shall mean a declaration Recorded pursuant to the provisions of *ARTICLE 14* below for the purpose of annexing and/or defining and describing any portion of the Annexable Property to the Property.

"Deed" shall mean a deed or other instrument conveying the fee simple title to any portion of the Property from one Owner to another Owner.

"Deficiency Assessments" shall mean Assessments that are imposed against Lots owned by Declarant or a Designated Builder pursuant to the provisions of *Section 8.3.3* hereof.

"Designated Builder" shall mean any Builder that is designated by Declarant as a "Designated Builder" in a Recorded instrument, a Supplemental Declaration or in a written notice given by Declarant to the Association, and by such designation received an assignment of such rights as may have expressly been permitted in this Declaration and set forth in the instrument making such designation.

"Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

"FHA" shall mean the Federal Housing Administration, or any successor agency.

"FHLMC" shall mean the Federal Home Loan Mortgage Corporation, or any successor agency.

"FNMA" shall mean the Federal National Mortgage Association, or any successor agency.

"First Mortgage" shall mean a deed of trust or mortgage Recorded against a Lot that has priority over all other deeds of trust or mortgages Recorded against the same Lot.

"First Mortgagee" shall mean the grantee or beneficiary of a First Mortgage.

"Hazardous Substances" shall have the meaning set forth in *Section 4.23* hereof

"Improvement" shall mean any of the following: (i) any Dwelling Unit, building, fence, or wall; (ii) any swimming pool, tennis court, basketball goal, backboard or sports apparatus, or playground equipment; (iii) any road, driveway, or parking area; (iv) any trees, plants shrubs, grass, or other landscaping improvements of any type or kind; (v) any statuary, fountain, artistic work, craft work, figurine, or ornamentation of any type or kind; (vi) any other structure of any type, kind, or nature; (vii) any grading, earth work, drainage work, and utility improvements or work; or (viii) any other changes in the physical appearance of the Property including exterior paint, which in any way alters the exterior appearance of any part of a Lot or Common Area.

"Indemnified Persons" shall have the meaning set forth in *Section 6.6* hereof.

"Initial Property" has the meaning given to it in *Recital A* hereof.

"In Good Standing" shall mean that the Owner or Member is not delinquent in the payment of any Assessment or any other amounts owed to the Association, and the Owner, as well as any Resident or guest, is not in violation of the Community Documents.

"Lot" shall mean a portion of the Property intended for independent ownership and use and designated as a lot on a Plat and, where the context indicates or requires, shall include any Dwelling Unit. Notwithstanding the foregoing to the contrary, if a Lot is owned by the Association and used for open space or other purposes generally benefiting the Owners, it shall be considered part of the Common Area.

"Lots owned by Declarant" and words of similar import, shall mean all Lots with respect to which the Declarant is the Owner and all Lots with respect to which the Declarant has an option to purchase, whether recorded or unrecorded. **"Property owned by Declarant"** and words of similar import, shall mean all Property with respect to which the Declarant is the Owner and all Property with respect to which the Declarant has an option to purchase, whether recorded or unrecorded.

"Maintenance" shall mean care, inspection, maintenance, operation, repair, repainting, restoration, renovation, replacement, and reconstruction.

"Maintenance Charges" shall mean any and all costs assessed against an Owner or Resident (or their respective family members, guests, tenants, or invitees) pursuant to *ARTICLE 12* hereof.

"Maintenance Standards" shall mean the standards of Maintenance of Improvements situated on Lots established from time to time by the Board or, in the absence of any standards established by the Board, the standards of Maintenance of Improvements situated on Lots generally prevailing throughout the Property or on Common Area.

"Maximum Annual Assessment" shall mean the maximum amount for Annual Assessments allowed by *Section 8.5.6* hereof.

"Member" shall mean any Person holding a Membership in the Association pursuant to this Declaration.

"Membership" shall mean the combination of the rights and duties of Members in the Association as set forth in the Declaration, including, but not limited to, the rights granted to Owners and Declarant pursuant to *ARTICLE 7* hereof to participate in the Association.

"Modification" shall mean any addition, alteration, repair, reconstruction, change, replacement or other work that in is done to any Improvement or in any way alters the exterior appearance of any Improvement.

"Motor Vehicle" as used in *Section 4.15*, shall have meaning given to it in *Section 4.15* hereof.

"Owner" shall mean (when so capitalized) the Record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple title interest of any portion of the Property. An Owner shall include a purchaser under a contract for the conveyance of real property, subject to the provisions of A.R.S. §§ 33-741 *et seq.* An Owner shall not include: (i) Persons having an interest in a Lot merely as a security for the performance of an obligation, (ii) a lessee, or (iii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract that are intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to A.R.S. 33-801 *et seq.*, the trustor 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 any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

"Party Walls" shall have the meaning set forth in *Section 4.8* hereof.

"Person" shall mean a natural person, corporation, partnership, limited liability company, trustee, or any other legal entity.

"Plat" shall mean any subdivision plat Recorded with respect to any portion of the Property. The Plat for the Initial Property is that certain Final Plat of Rittenhouse Ranch recorded in Book 1269 of Maps, Page 6 in the office of the Maricopa County Recorder.

"Property" shall mean the Initial Property together with all Improvements constructed thereon from time to time, and all portions of the Annexable Property annexed to the Initial Property and subjected to this Declaration pursuant to the provisions of *ARTICLE 14* hereof. The Property shall not be deemed to include any portion of the Annexable Property until such portion is annexed to the Property pursuant to the provisions of *ARTICLE 14* hereof.

"Purchaser" shall mean any Person who becomes the Owner of a Lot except for: (i) the Declarant or a Designated Builder; (ii) a Person who purchases a Lot and then leases it to Declarant or a Designated Builder for use as a model in connection with the sale or lease of other Lots; or (iii) a

Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

"Record," "Recording," or "Recordation" shall mean placing an instrument of public record in the office of the Maricopa County Recorder, Arizona, and **"Recorded"** shall mean having been so placed of public record.

"Recreational Vehicle" as used in *Section 4.15*, shall have meaning given to it in *Section 4.15* hereof

"Reduced Assessments" shall have the meaning set forth in *Section 8.3.2* hereof.

"Reserve Contribution" shall mean the amount payable by Purchasers to the Association as provided in *Section 8.9.2* hereof.

"Resident" shall mean each natural person legally occupying or residing in a Dwelling Unit.

"Special Assessments" shall have the meaning set forth in *Section 8.6.1* hereof.

"Special Service Area" shall have the meaning set forth in *Section 8.6.2* hereof.

"Special Service Area Assessments" shall have the meaning set forth in *Section 8.6.2* hereof.

"Special Service Area Expenses" shall have the meaning set forth in *Section 8.6.2* hereof.

"Street" as used in *Section 4.15*, shall have meaning given to it in *Section 4.15* hereof

"Subsidiary Association" shall mean an Arizona nonprofit corporation, its successors and assigns, established for the purpose of administering and enforcing the provisions of any Supplemental Declaration.

"Supplemental Declaration" shall mean a declaration of covenants, conditions, and restrictions (or similar instrument) Recorded against all or a portion of the Property as a supplement to this Declaration setting forth additional or modified provisions for all or such portion of the Property as described in *Section 4.2.4*.

"Town" shall mean the Town of Queen Creek.

"Tract" means any portion of the Property that is designated as a Tract on a Plat.

"VA" shall mean the Veterans Administration, or any successor agency.

"Visible From Neighboring Property" shall mean, with respect to any given object, item, and/or Improvement, that such object, item, and/or Improvement is, or would be, either (i) taller than any surrounding wall or (ii) visible from any public rights-of-way, private streets, roadways, or from any other property subject to this Declaration if viewed by a six-foot tall person standing at ground level.

"Working Capital Contribution" shall mean the amount payable by Purchasers to the Association as provided in *Section 8.8.1* hereof.

ARTICLE 2
PLAN OF DEVELOPMENT

2.1 General Declaration. This Declaration is established for the purpose of enhancing the value, desirability and attractiveness of the Property. Declarant intends that the Property be developed, used, and enjoyed in accordance with and pursuant to each Plat by subdividing the Property into Lots and Common Area and by selling and conveying Lots to Purchasers. All Lots and Common Area within the Property shall be held, conveyed, hypothecated, encumbered, occupied, built upon, or otherwise used, improved, or transferred in whole or in part, subject to this Declaration; provided however, that such portions of the Property as are dedicated to the public or a governmental entity for public purposes shall not be subject to the Declaration while owned by the public or the governmental entity, although any restrictions imposed in this Declaration upon the Owners or the Residents concerning the use and maintenance of such portion or portions of the Property shall at all times apply to the Owners and the Residents. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of the Property, and is established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and every part thereof. This Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and Residents, and their successors in interest. By acceptance of a Deed or by acquiring any interest in any portion of the Property, each Person, for himself, his heirs, personal representatives, successors, transferees, and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the terms and conditions now or hereafter imposed by this Declaration. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development, sale, and use of the Property and that all terms and conditions contained in this Declaration shall run with the land and be binding upon all subsequent and future owners, grantees, purchasers, assignees, tenants, and transferees thereof. Each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial and prohibitive to the Association and all Owners. Declarant, its successors, assigns, and grantees, covenant and agree that the Memberships in the Association, and the other rights appurtenant to the Lots and Common Area, shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Common Area even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Common Area. The preceding sentence does not limit assignments of the Declarant's rights hereunder or the granting of rights to Designated Builders. All of the foregoing Recitals are hereby incorporated herein by reference.

2.2 Association Bound. Upon the Recording of this Declaration, the covenants, promises, and other requirements contained herein shall be binding upon and shall benefit the Association.

2.3 Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that the Property is or will be committed to or developed for a particular (or any) use or that, if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring any portion of the Property in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof

and, by accepting a Deed to any portion of the Property, agrees that neither Declarant nor any Designated Builder shall have any liability with respect thereto.

ARTICLE 3
EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

3.1 Easements for Use of Common Areas. Declarant and every Owner and Resident of the Property shall have a non-exclusive easement for the use and enjoyment in and to the Common Areas that shall be appurtenant to, and shall pass with the title to, every Lot and Common Area subject to the following provisions:

A. The right of the Association to suspend (i) the voting rights of any Member, (ii) the right to use the facilities and other Common Areas by any Member, Owner, and/or Resident and/or (iii) any other rights incidental to membership (x) for any period during which any Assessment against the Member's Lot remains delinquent; (y) for a period not to exceed sixty (60) days for any infraction of this Declaration, the Association Rules, or any other Community Document; and (z) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period; provided, however, that a Member's rights may only be suspended under procedures sufficient to comply with applicable law and provided further that the Association may not restrict an Owner's access to such Owner's Lot.

B. The right of the Association to regulate the use of the Common Areas pursuant to the Association Rules and to prohibit or limit access to certain Common Areas, such as specified landscaped areas.

C. The right of the Association to dedicate, transfer, or mortgage or otherwise encumber all or any part of the Common Areas to any Person for such purposes and subject to such conditions as may be agreed to by the Association, subject to the provisions of *Section 12.4* hereof.

D. The right of the Association to change the use, size, shape, or location of the Common Areas, subject to the provisions of *Section 12.5* hereof.

Notwithstanding the foregoing limitations, if ingress or egress to any Lot is through any part of the Common Areas, in no event shall an Owner or Resident be denied access to such Owner's or Resident's Lot.

3.2 Easements to Facilitate Development. Declarant hereby reserves to itself and its successors and assigns, and to each Designated Builder expressly granted such rights by the Declarant, and their respective contractors, subcontractors, suppliers, engineers, architects, and agents, a non-exclusive blanket easement over and through the Property (excluding the interior of any Dwelling Unit) for access and for the purposes of facilitating the development, marketing, sale and/or lease of the Property, which shall include without limitation: (a) the Construction of all Improvements on the Common Area that Declarant deems necessary; (b) the Construction of Dwelling Units and other Improvements on Lots owned by Declarant or such Designated Builder; and (c) the storage of supplies of building materials and equipment necessary to construct Improvements on the Common Area and such Lots owned by Declarant or Designated Builder.

Declarant hereby reserves to itself and its successors and assigns, and its respective contractors, subcontractors, suppliers, engineers, architects, and agents the right to: (a) use any Lots owned by

Declarant, any Lots leased by Declarant, any other Lot with consent of the Owner thereof, or any portion of the Common Areas as models, management offices, sales offices, a visitors' center, construction offices, customer services offices or sales office parking areas; and (b) install and maintain on the Common Areas, any Lot owned by Declarant, any Lot leased by Declarant, or any other Lot with the consent of the Owner thereof, such marketing, promotional, or other signs as Declarant deems necessary for the development, marketing, sale and/or lease of the Property owned by Declarant. So long as Declarant is selling and/or marketing the Property owned by Declarant, Declarant shall have the right to restrict the use of any parking spaces situated on the Common Area and to reserve such parking spaces for use by prospective Purchasers of Lots, Declarant's contractors, subcontractors, suppliers, agents or employees, or other Persons engaged in sales, marketing, or Construction activities for or on behalf of Declarant. Declarant shall have the right, during the Declarant Control Period, to expressly grant some of all of the foregoing rights to any Designated Builder it so chooses, including with regard to Lots owned by the Designated Builder.

Neither Declarant nor any Designated Builder shall exercise any of the rights or easements reserved by or granted pursuant to this *Section 3.2* in such a manner as to unreasonably interfere with the Construction, development, or occupancy of any part of the Property.

3.3 Utility Easements. A nonexclusive, perpetual blanket easement is hereby created over and through the Common Areas (in locations specifically approved by Declarant during the Declarant Control Period or the Board after the termination of the Declarant Control Period) and a limited, specific easement is hereby created over and through those portions of the Property shown as public utility easement areas on any Plat, for the purpose of:

A. Installing, constructing, operating, maintaining, repairing, or replacing equipment used to provide to any portion of the Property any utilities including, without limitation, water, sewer, gas, electricity, telephone, internet, and television service, whether public or private;

B. Ingress and egress to install, construct, operate, maintain, repair and replace such equipment; and

C. Exercising the rights under the easement.

Such easement is hereby granted to any Person providing such utilities or installing, constructing, maintaining, repairing, or replacing equipment related thereto. All utility installations including, without limitation, electrical installations, must be placed underground unless the prior written consent is given by the Declarant during the Declarant Control Period, or by the Board after the termination of the Declarant Control Period. Any pipes, conduits, lines, wires, transformers, and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by Declarant, or where contemplated on any Plat, or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of Construction if approved by Declarant. The Person installing a utility pursuant to this easement shall install and construct, and the Person providing the service shall maintain, repair or replace, the equipment used to provide or meter utilities as promptly and expeditiously as possible in a good and workman like manner free of any mechanics' or materialmens' liens, and shall restore the surface of the land and the improvements situated thereon to their original condition as soon as possible.

During the Declarant Control Period, Declarant may grant, and Declarant may cause the Association to grant, easements and licenses over, under, and across the Common Areas and the Lots (provided that such easements and licenses do not unreasonably interfere with the house on such Lot or otherwise unreasonably interfere with the use of such Lot) as reasonably needed for development of the Project.

3.4 Easement for Maintenance of Association Maintained Areas. To the extent an Association Maintained Area is made subject to this Declaration or Declarant holds title thereto at the time of the recording of this Declaration, an easement is hereby granted to the Association upon, over, under and across such Association Maintained Areas for the purpose of (a) repairing, maintaining and replacing the Association Maintained Areas and all Improvements thereon and (b) performing all other rights, duties and obligations of the Association under this Declaration. The easement provided in the preceding sentence shall terminate with respect to any Association Maintained Area on the date the Association's responsibilities with respect to such Association Maintained Area terminates.

3.5 Easements for Encroachments. If any Improvement constructed by or for a Builder or Declarant on any Lot or Common Area now or hereafter encroaches on any other portion of the Property by an amount of deviation permitted by customary construction tolerances, and which encroachment is minor or inconsequential in nature and does not materially interfere with the intended use of the burdened property, a perpetual easement is hereby granted to the extent of any such encroachment, and the owner of the encroaching Improvement shall also have an easement for the limited purpose of the Maintenance of the encroaching Improvement.

3.6 Delegation of Use. Any Member may, in accordance with this Declaration and the other Community Documents, delegate its right of use and enjoyment in the Common Areas and facilities thereon to the members of its family, its Residents, its guests, or its Residents' guests. Each Member and Resident shall cause the members of its family, its Residents, its guests, or its Residents' guests to comply with this Declaration and the other Community Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such Persons, notwithstanding the fact that such Persons are also fully liable for any violation of the Declaration and the other Community Documents.

3.7 Dedications and Easements Required by Governmental Authority. Declarant hereby reserves to itself and its successors and assigns (including the Association after the termination of the Declarant Control Period), the right to make any dedication and to grant any easements, rights-of-way, and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

3.8 No Merger. The easements granted and reservations made to Declarant and other Owners in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger.

3.9 Assignment of Development Rights/Easements. Declarant and each Designated Builder may make one or more limited temporary assignments of its easement rights under this Declaration to any Person performing Construction or Maintenance on any portion of the Property.

3.10 Easement for Maintenance and Enforcement. Declarant, the Association, and their respective directors, officers, agents, contractors and employees, the Architectural Committee, and

any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Dwelling Unit) for:

A. the exercise and discharge of their respective powers and responsibilities under the Community Documents;

B. making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements that are or were approved in writing by the Architectural Committee, and that all Improvements are being properly maintained as required by the Community Documents;

C. correcting any condition originating on a Lot or in the Common Area threatening another Lot or the Common Area;

D. performing installation or Maintenance of utilities, landscaping, or other Improvements located on the Lots for which the Association is responsible for Maintenance; or

E. correcting any condition that violates the Community Documents.

3.11 Easement for Drainage. Easements for drainage on the Lots and Common Areas are hereby granted to the Declarant and all other Owners in accordance with the drainage and/or improvement plans prepared on behalf of Declarant and approved by the Town. An Owner or Resident shall not modify or change the drainage for such Owner's or Resident's Lot, any other Lot, or any Common Area except as may be permitted by *Section 4.20*.

3.12 Emergency Access and Water Easements Shown on Plat.

A. The 20' Emergency Access & Utility Easement over the southwest portion of Tract A as shown on the Plat may be used for (i) emergency access purposes by emergency vehicles, (ii) for sewer outfall line in a location approved by Declarant or the Association and (iii) a gas line in a location approved by Declarant or the Association. The Declarant or Association may require or agree to additional easement terms in one or more separate easement agreements.

B. The 20' Water Easement over Tract A as shown on the Plat between Lots 49 and 50 as shown on the Plat may be used for waterline and electric lines in locations approved by the Declarant or Association. The Declarant or Association may require or agree to additional easement terms in one or more separate easement agreements.

ARTICLE 4
PERMITTED USES AND RESTRICTIONS

4.1 Residential Purposes. All Lots and Dwelling Units within the Property shall be used, improved, and devoted exclusively to single-family residential purposes. No gainful occupation, profession, business, trade, or other nonresidential use shall be conducted on any Lot or in any Dwelling Unit; provided, however, that an Owner or any Resident may conduct limited business activities in a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity conforms to all applicable zoning requirements and all other applicable laws; (c) the business activity does not involve door-to-door solicitation of other Owners or Residents (other than door-to-

door solicitation in connection with political activity conducted between sunrise and sunset and such Owner complies with the identification requirements contained in A.R.S. § 33-1808(G)(2)); (d) the business activity does not generate drive-up traffic or customer or client parking; and (e) the business activity is consistent with the residential character of the Property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other Owners or Residents, as may be determined in the sole discretion of the Board.

4.2 Animals. No animal, bird, poultry, or livestock may be kept on any Lot other than a reasonable number of generally recognized house or yard pets, and only to the extent that they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have authority to determine (a) what constitutes a reasonable number of generally recognized house or yard pets for a particular Lot and (b) what constitutes a generally recognized house or yard pet, and the Board's determination of both matters shall be final. All house or yard pets permitted under this *Section* shall be confined to an Owner's Lot; except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash and is not permitted to enter upon any other Lot. Any Person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict portions of the Common Area on which dogs are permitted.

No generally recognized house or yard pets 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 generally recognized house or yard pets shall be maintained so as to be Visible From Neighboring Property, provided however, that where such structure is Visible From Neighboring Property solely through a "view fence," such structure shall be permitted. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, for the purposes of this paragraph, whether a particular generally recognized house or yard pet is a nuisance or whether the number of such pets is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein and in this Declaration. During the Declarant Control Period, Declarant may adopt such rules and regulations relating to animals permitted and maintained on the Property. Thereafter, the Board may adopt such rules and regulations relating to animals permitted and maintained on the Property.

4.3 Temporary Occupancy and Temporary Building. No mobile home, basement of any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind shall be used at any time for a Dwelling Unit, either temporary or permanent. Temporary buildings, mobile homes, or structures may be used during the Construction of a Dwelling Unit on any Lot, in such locations as they are approved in writing by the Architectural Committee in advance provided that they shall be removed immediately after the completion of Construction. This *Section* shall not prevent Declarant's or a Designated Builder's use of one or more temporary building(s) or mobile home(s) as a construction and/or sales offices on either (i) any Lots owned by Declarant or the Designated Builder or (ii) any Common Area, to the extent such uses are explicitly permitted by Declarant.

4.4 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Common Area that shall induce, breed, or harbor infectious plants, diseases, or noxious insects.

4.5 Antennas. Subject to applicable law, no antenna, aerial, satellite dish, or other device for the transmission or reception of television, radio, or other (including amateur or ham radio) signals of any kind (collectively referred to herein as "Antennas") will be allowed outside any Dwelling Unit so

as to be Visible From Neighboring Property, unless approved by the Architectural Committee; provided, however, with respect to Antennas and other devices for the reception of video programming signals covered by 47 CFR part 1, Subpart S, Section 1.4000 (or any successor provision promulgated under the Telecommunications Act of 1996, as amended, superseded, or replaced from time to time) (collectively the "Permitted Antenna"), an Owner may install a Permitted Antenna on his Lot if written notice identifying the type of Permitted Antenna is given to the Association and, to the extent the following can be done without precluding the reception of an acceptable quality signal, the Permitted Antenna is installed so as to be inconspicuous from adjacent Lots and Common Area in a manner that is architecturally compatible with the overall theme of the Property. This provision shall be interpreted in a manner to be consistent with the Telecommunications Act of 1996, as amended, superseded, or replaced from time to time, and the regulations promulgated thereunder. The Architectural Committee may permit the placement and operation of one or more aerial satellite dishes or satellite communication systems, and/or other apparatus and equipment for an Antenna or cable system for the benefit of all or portions of the Property.

Subject to any limitations imposed by state or federal law, any transmission cable for a receiver to a Dwelling Unit must be underground. The Board is hereby vested with the broadest discretion to enact rules and regulations to implement this *ARTICLE* to conform to state and federal law. The Board may enact rules and regulations that are more restrictive than this *Section 4.5*, if permissible by federal and state law. No Owner may place Antennas on Common Areas or Association Maintained Areas.

4.6 Mineral Exploration. With the exception of (i) wells that may be operated on Common Area, as approved by Declarant or the Board and (ii) construction grading done by or on behalf of Declarant or a Builder, as approved by the Declarant or the Architectural Committee, no portion of the Property may be used in any manner to explore for or to remove any: (a) water; (b) oil, gases or other hydrocarbons of any kind; (c) geothermal energy; (d) minerals of any kind; (e) or any gravel, earth, or any earth substance of any kind.

4.7 Garbage, Trash Containers and Collection. No recycling items, garbage, trash or debris shall be allowed, stored or placed on a Lot or Common Area except in sanitary, covered containers of a type, size, and style that are approved by the Board or supplied by the Town. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection, not to exceed a 24-hour period commencing at dusk on the day prior to collection and ending at dusk on the day of collection. All recycling items, garbage, trash and debris shall be regularly removed from each Lot and Common Area and shall not be allowed to accumulate thereon. No incinerator shall be maintained on any Lot or Common Area and no recycling items, garbage, trash or debris shall be burned thereon by open fire or otherwise. The Board shall have the right to require all Owners and Residents to place recycling items, garbage, trash and debris in containers located in areas designated from time to time by the Board or the Town.

4.8 Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls or fences ("Party Walls") between Lots, or between Lots and Common Areas, shall be as follows:

A. To the extent not inconsistent with this *Section*, the general rules of law regarding Party Walls shall apply.

B. The Owners of contiguous Lots who share a Party Wall shall both have the right to use such Party Wall provided that such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner.

C. Except as otherwise provided in this *Section* or in an applicable Supplemental Declaration or Declaration of Annexation for the portion of the Property subject to such Supplemental Declaration or Declaration of Annexation, the Owners of contiguous Lots who share a Party Wall shall each pay one-half (1/2) of the cost of any modification, maintenance, repair, or replacement of a Party Wall. Either of such Owners may perform any necessary modifications, repairs, maintenance, or replacement of a Party Wall and, in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (1/2) of such cost. The right of any Owner to request or gain contribution from any other Owner under this *Section* shall be appurtenant to the land and shall pass to such Owner's successors in title.

D. Before making any modifications, repairs, maintenance, or replacement of a Party Wall, and in addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, the Owner proposing to modify, repair, maintain, or replacement a Party Wall shall first obtain the written consent of the adjoining Owner.

E. Notwithstanding the foregoing, in the event that any Party Wall is damaged or destroyed through the act or omission of an Owner or the Owner's Residents, agents, licensees, guests, invitees, or family (whether or not such act is negligent or otherwise culpable), such Owner shall be obligated to rebuild and repair the Party Wall at such Owner's sole cost and expense and without cost to the other Owner or Owners who share the Party Wall; provided, however, that this *Section* shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any insurer, Resident, agent, licensee, guest, invitee, family member or other Person who otherwise may be liable to such Owner.

F. In the event any Party Wall encroaches upon a Lot or Common Area, a reasonable easement for such encroachment and for the maintenance of the Party Wall shall and does exist in favor of the Owners of the Lots that share the Party Wall, but only to the extent such encroachment is permitted by customary construction tolerances.

G. Declarant hereby reserves to itself and to its successors and assigns and, after the termination of the Declarant Control Period, to the Association, a perpetual non-exclusive easement over, under, upon, and across the Lots for the purpose of repairing or relocating a Party Wall without the consent of the Owners who share the use of the Party Wall.

H. In the event of a dispute between Owners with respect to the modification, repair, rebuilding, or maintenance of a Party Wall, or with respect to the sharing of the cost thereof, either adjoining Owner may submit the dispute to the Board, the decision of which shall be binding.

I. The Association shall have the right, but not the obligation, to perform any work which an Owner or Owner(s) fails to do in a timely manner. The Owner(s) responsible for such work shall, upon demand, pay all costs incurred by the Association together with interest at twelve percent (12%) per annum and an administrative fee at ten percent (10%) of the costs incurred by the Association.

J. Notwithstanding anything contained herein to the contrary, Party Walls constructed by or for Declarant, any Builder, or the Association on Common Areas where the wall or fence does not border on a Lot shall be maintained by the Association, subject to the provisions of *ARTICLE 12* hereof.

4.9 Overhead Encroachments. No tree, root, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, Party Wall, Common Area or other Lot from ground level to a height of eight feet (8') without the prior written approval of the Architectural Committee. No tree, root, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach visibly upon any other Lot.

4.10 Window Coverings. Within ninety (90) days of the initial conveyance of a Lot with a Dwelling Unit constructed thereon to an Owner from Declarant or a Builder (or by a trustee for the benefit of Declarant or a Builder), the Owner or Resident of the Lot shall install permanent window coverings on all street facing windows. In no event shall the interior or exterior of any windows be covered with reflective material such as foil, or with paper, bed sheets, or other temporary coverings. The Architectural Committee shall have the broadest authority to enact rules and regulations relating to such window coverings and all such window coverings must comply with such rules and regulations.

4.11 Garages and Driveways. No garage shall be converted to a living space, altered, or used for storage of material or other purposes that would prevent the use of the garage for the parking of at least two motor vehicles or, in the case of homes with garage extensions, trailers, all-terrain vehicles, boats, or other similar recreational vehicles, except that Declarant or a Designated Builder may use the garage in one or more model homes for a sales office and/or a construction office. The interior of all garages situated upon any Lot shall be maintained by the respective Owners thereof in a neat and clean condition. Garage doors will be kept closed in accordance with such rules as the Association may adopt from time to time.

4.12 Heating, Ventilating, and Air Conditioning Units. Except as originally installed by or on behalf of the Declarant or approved by the Architectural Committee, no heating, air conditioning, or evaporative cooling units or equipment shall be placed, constructed, or maintained upon the Property including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall that conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and prior written approval of the Architectural Committee, provided however, that where such unit or equipment is Visible From Neighboring Property solely through a "view fence," no screening or concealment shall be required.

4.13 Solar Collection Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, Declarant, and other Persons if they have obtained the prior written approval of the plans by the Architectural Committee, such approval to be subject to the restrictions of applicable law, may cause solar

collecting panels and devices to be placed, constructed, or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar panels and devices are placed, constructed, and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed, and maintained in such location(s) and with such means of screening or concealment as the Architectural Committee may reasonably deem appropriate (to the extent the same are permitted by applicable law) to limit, to the extent reasonably possible, the visual impact of such solar collecting panels and devices. The restrictions in this *Section 4.13* shall be subject to any limitations imposed by A.R.S. §§ 33-439 and 33-1816 and other applicable law. Each Owner and Resident acknowledges that solar panels and devices installed by or on behalf of Declarant may in some instances be Visible From Neighboring Property. Further, each Owner and Resident acknowledges and agrees that: (y) solar panels and devices installed in compliance with this *Section 4.13* may cause glare which may impact surrounding Owners and Residents and (z) that the Architectural Committee is not responsible for potential glare from such solar panels and devices. Each Owner and Resident further: (i) agrees that the Declarant, a Builder, the Architectural Committee, and the Association shall not be responsible for, or have an obligation to remedy, any glare caused by the installation and operation of any solar panel or device by an Owner or Resident in accordance with this *Section 4.13* and (ii) acknowledges and accepts the location of, and any glare resulting from, solar panels or devices installed by or on behalf of the Declarant or a Builder upon a Lot. An Owner or Resident installing or operating a solar panel or device shall take reasonable measures to reduce glare; provided, however, that the installing Owner or Resident shall not be required to take any measure which would contravene A.R.S. § 33-1816(B). All solar panels and devices installed by or on behalf of the Declarant shall be deemed approved by the Architectural Committee and in compliance with this *Section 4.13*.

4.14 Basketball Goals. Permanent mounted basketball goals placed in the front or side yard of a Lot adjacent to the driveway, and portable or temporary basketball goals, may be permitted or restricted as determined by the Architectural Committee. The Architectural Committee may adopt such other rules and regulations as it deems appropriate relating to the Construction, placement, and use of basketball goals or similar structures or devices.

4.15 Vehicles.

A. As used herein; (i) "Motor Vehicle" means a car, van, sport utility vehicle, truck, motorcycle, motorbike, golf cart, all-terrain vehicle, pickup truck, or other motorized vehicle; (ii) "Recreational Vehicle" means a bus, mobile home, motor home, travel trailer, tent trailer, trailer, camper, camper shell, boat, boat trailer, personal watercraft, recreational vehicle, or other similar equipment or vehicle; and (iii) "Street" means each public or private street or alley shown on a Plat.

B. Except as otherwise provided herein or by applicable law, all Motor Vehicles owned or leased by an Owner or Resident and located on the Property must be parked within the garage located upon such Owner's or Resident's Lot; provided, however, that if the garage already contains the maximum number of Motor Vehicles for which it was intended to hold, such Motor Vehicles may be parked in the driveway on such Lot, or on the Streets subject to such limitations and rules as the Association may adopt in accordance with applicable law. Except as otherwise provided herein or by applicable law, Motor Vehicles owned by guests of an Owner or Resident may be parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Areas if such exist. Notwithstanding the foregoing, and except as otherwise provided by applicable law, no Motor Vehicle owned or leased by an Owner or Resident or their guests may be parked on a Street if space for the parking of the Motor Vehicle is available in any of the following areas: (i) the garage situated

on the Lot of the Owner or Resident; (ii) the driveway on the Lot constructed as part of the initial Construction of Improvements on the Lot by Declarant or a Builder; or (iii) a driveway expansion constructed on the Lot with the written approval of the Architectural Committee.

C. No Motor Vehicle that exceeds eight feet (8') in height or exceeds twenty-four feet (24') in length or that is designed or used for carrying merchandise, supplies, or equipment for commercial purposes shall be parked on a Street or on a driveway or any other part of a Lot so as to be Visible From Neighboring Property, except for:

- (i) the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers, or vendors of the Association or of an Owner, or Resident in the driveway of a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board; and
- (ii) the parking for not more than seventy-two (72) hours within any seven (7) day period of any Recreational Vehicles owned or leased by an Owner or Resident in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

D. No Motor Vehicle of a contractor, subcontractor, supplier, or vendor of an Owner or Resident shall be parked overnight on a Lot, a Street, or the Common Area. No Motor Vehicle shall be parked on any part of the Common Area other than a Street or designated parking spaces.

E. No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Areas. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp, or other material.

F. Notwithstanding any other provision of this *Section* to the contrary, no Motor Vehicle may be parked on a driveway if the length of the Motor Vehicle exceeds the length of the driveway or if the Motor Vehicle encroaches upon or obstructs access across the sidewalk or curb adjacent to the driveway.

G. Notwithstanding the foregoing, no Recreational Vehicle may be parked, kept, or stored on the Common Areas. No Recreational Vehicles may be parked on a Lot if Visible From Neighboring Property except in a garage or behind an RV gate or double wide gate and in a parking area approved by the Architectural Committee or Board or originally installed by or on behalf of Declarant. All other restrictions herein shall apply to Recreational Vehicles to the extent not inconsistent with the foregoing.

H. Owners, Residents, and their guests shall, at all times, comply with all parking markings and signage posted along a Street.

I. The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles and Recreational Vehicles on Lots or the Streets and implementing the provisions of this *Section*. In the event of any conflict or inconsistency between the provisions of this *Section* and the Association Rules, the provisions of this *Section* shall control.

J. The Association shall have the right to tow any Motor Vehicle, Recreational Vehicle, or related equipment parked, kept, maintained, constructed, reconstructed, or repaired in violation of this Declaration or the Association Rules at the cost and expense of the Owner if such vehicle or equipment is parked on any Common Area or otherwise in violation of this *Section 4.15*. The cost incurred by the Association in towing any Motor Vehicle, Recreational Vehicle, or related equipment shall be payable by the Owner of such Lot on demand by the Association and shall be secured by the Assessment Lien.

K. The provisions of this *Section 4.15* will not be construed to prohibit the parking of any Motor Vehicle within the Property to the extent required by A.R.S. §33-1809 or other applicable law.

The provisions of this *Section 4.15* shall not apply to vehicles of Declarant, a Designated Builder, or their respective employees, agents, Affiliates, contractors, or subcontractors during the course of Construction activities upon or about the Property.

4.16 Landscaping and Maintenance. Within ninety (90) days of acquiring a Lot with a Dwelling Unit thereon, each Owner (other than a Declarant and a Builder) shall landscape (if not already landscaped) (1) the front yard of such Lot and any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and any adjacent street (unless a Common Area lies between the boundary of the Lot and the adjacent street) and (2) the backyard of such Lot. Each Owner (other than a Declarant and a Builder) who is required by the immediately preceding sentence to landscape its Lot shall submit a landscaping plan to the Architectural Committee for review and approval pursuant to *ARTICLE 5* hereof. Each Owner (other than a Declarant and a Builder) shall maintain the landscaping on such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street (unless a Common Area lies between the boundary of the Lot and the adjacent street) in accordance with the Maintenance Standards and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping that have been damaged. Landscaping shall be installed under this *Section 4.16* so as to be consistent, in terms of general appearance and level of care and attention, with other normal completed residential landscaping within the Property and within other residential properties in the vicinity of the Property and in accordance with Association Rules.

Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean, and attractive condition, free from weeds, and consistent in appearance with other properly maintained, improved Lots within the Property. In the event any such landscaping is damaged or disturbed as a result of the installation or maintenance of any utility lines, cables, or conduits for the use or benefit of the Owner of the Lot, such Owner shall promptly repair and restore any damage or disturbance to such landscaping in accordance with the landscape plans previously approved by the Architectural Committee.

Notwithstanding the foregoing, the provisions of this *Section 4.16* shall not apply to any Lot or Common Area owned by Declarant or any Builder and any landscaping installed by Declarant on a Lot shall be deemed to have been approved by the Architectural Committee.

4.17 Prohibited Uses. No use that is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation, pollution, or that constitutes a nuisance or unreasonable source of annoyance, or that is hazardous by reason of risk of fire or explosion shall be permitted on

any Lot. No use that is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use, ordinance, or regulation) of the United States, the State of Arizona, the County, the Town, or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot. The provisions of this *Section 4.17* shall not apply to any activity of Declarant or any Designated Builder or their respective employees, agents, Affiliates, contractors or subcontractors during the course of Construction activities or sales activities upon or about the Property.

4.18 Dust Control. The areas on each Lot that are not improved with buildings ("Clear Areas") shall be landscaped as provided in *Section 4.16*. After a sale of any Lot by Declarant or any Builder to a Purchaser, until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris, and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain his Lot in a manner that minimizes the possibility of dust being transmitted into the air and over adjacent properties. Nothing in this *Section 4.18* shall be interpreted to require Declarant or a Builder to landscape a Lot before a sale of such Lot by Declarant or a Builder.

4.19 Nuisances; Construction Activities.

A. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property or on any Lot for any time, and no odors shall be permitted to arise or emit therefrom, so as to render the Property or any portion thereof, or activity thereon, unsanitary, unsightly, unreasonably offensive, or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Residents.

B. No loud, noxious or unreasonably offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon that may be, or may become, an unreasonable annoyance or nuisance to Persons or property in the vicinity of such Lot, or that shall unreasonably interfere with the quiet enjoyment of each of the Owners and Residents.

C. Normal Construction activities and parking in connection with the Construction of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during the Construction period, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any Construction equipment and building materials stored or kept on any Lot during the Construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas.

D. The Board shall have the right to determine, in its sole discretion, whether the provisions of this *Section 4.19* have been violated. Any decision rendered by the Board shall be enforceable and be binding in the same manner as other restrictions in this Declaration.

E. This *Section* shall not apply to Construction activities of Declarant or its respective employees, Affiliates, contractors, or subcontractors during the course of Construction activities or sales activities upon or about the Property.

4.20 Drainage.

A. No Owner or Resident shall change or modify the drainage established for such Owner's Lot, the Property or any other property adjacent to such Owner's Lot (as shown on the drainage plans for the Property on file with the Town) without the consent of the Architectural Committee or the Declarant. Any change or modification shall also be subject to such other consents as may be required by law or recorded easements.

B. Each Owner shall, at its own expense, maintain the drainage ways and channels within any drainage easements on its Lot in proper condition free from obstruction.

C. The Association shall have the right, after ten (10) days' notice to an Owner, except in the case of emergency (in which case the Association shall have an immediate right of access), to repair or otherwise maintain the drainage way or channel within any drainage easements on said Owner's Lot or Common Area, which the Association, acting through the Board, determines has not been maintained by the Owner in compliance with this provision. All costs and expenses including, but not limited to, reasonable attorneys' fees and costs incurred by the Association shall be borne by the Owner, and shall be paid to the Association upon demand, plus interest at an annual rate of twelve percent (12%) from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an Assessment, subject to the Assessment Lien, and collected in like manner as Assessments levied pursuant to this Declaration.

D. For the purpose of this *Section 4.20*, "drainage" means the drainage that exists at the time the overall grading of the Lots, rights-of-way, and Common Areas is completed by or on behalf of Declarant or any Builder in accordance with plans approved by the Town and the Declarant or Architectural Committee, and drainage easements created by the Plat, this Declaration, or other properly granted and recorded easement. During the Declarant Control Period, and subject to obtaining Town approval when required by law, Declarant may change the drainage on (i) Lots and Property owned by Declarant or (ii) Lots and Property owned by the Association.

4.21 Health, Safety, and Welfare. In the event that any uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of any Owner or Resident, the Board may adopt rules restricting or regulating their presence on the Lot or Common Area as part of the Association Rules.

4.22 Leasing; Obligations of Tenants and Other Occupants. All tenants and other Residents shall be subject to the terms and conditions of this Declaration and other Community Documents. Each Owner shall cause his, her, or its Residents or other occupants to comply with this Declaration, all Supplemental Declarations and other Community Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such Residents or other occupants, notwithstanding the fact that such Residents or other occupants are also fully liable for any violation of each and all of those documents. No Owner may lease less than such Owner's entire Lot. No Lot may be leased for a period of less than six (6) months. Each Owner who rents a Lot or the Dwelling Unit thereon is required to (1) advise the Association within fifteen (15) days of the effective date of the lease and to include in such notice to the Association the information relating to the lease set forth in A.R.S. § 33-1806.01(C), as amended from time to time and (2) disclose to the Association, within fifteen (15) days after receipt of notice from the Association, such information as the Association may require and/or request and which the Association is permitted to require and/or request by A.R.S. § 33-1806.01 or such other applicable law as amended from time to

time. The Association is authorized to charge a fee for each new tenancy as set forth and limited by A.R.S. § 33-1806.01(D) or such other applicable law as amended from time to time. Written leases are required. Subject to any limitations imposed by applicable law, all leases must restrict occupancy to no more than five (5) unrelated individuals or to a single family of related individuals of any size. The Owner is responsible for the tenant's / Resident's violation of this Declaration and other Community Documents. The provisions of this *Section 4.22* shall not apply to the use of (i) any Lots owned by Declarant (or the Dwelling Units located thereon), (ii) any Lots owned by a Designated Builder (or the Dwelling Units located thereon), or (iii) any Lots leased to the Declarant or a Designated Builder (or the Dwelling Units located thereon), as a model home or for marketing or sales purposes.

4.23 Environmental Protections. No Lot or Common Area, nor any facilities on any Lot or Common Area, 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 *Section*, "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, 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; in the rules and regulations adopted and guidelines promulgated pursuant to said laws; and any other applicable municipal, county, state, or federal laws and regulations regulating Hazardous Substances, all as the same may be amended, modified, or supplemented from time to time.

4.24 Supplemental Declarations; Additional Property Restrictions. No Supplemental Declarations shall be Recorded by any Owner, Resident, or other Person against any portion of the Property without obtaining the following consents. Prior to the termination of the Declarant Control Period, a Supplemental Declaration must be approved by the Declarant in addition to the Owner(s) of such Property, except as provided below. After the termination of the Declarant Control Period, any Supplemental Declaration must be approved by the Board in addition to the Owner(s) of such Property. The approval of any Person entitled to approve a Supplemental Declaration under this *Section 4.24* shall be evidenced on such Supplemental Declaration, and any Supplemental Declaration that is Recorded without such approval being evidenced thereon shall be null and void. Notwithstanding the foregoing or anything else in this Declaration to the contrary, no Supplemental Declaration Recorded by an Owner shall operate to modify or amend this Declaration but, in the event that such covenants, conditions and restrictions impose restrictions on the use or occupancy of the real property subject to the Supplemental Declaration that are more restrictive than the restrictions set forth in this Declaration, the more restrictive provisions shall prevail. No application for rezoning, variances, or use permits pertaining to any Lot or Common Area shall be filed with any governmental authority by any Person unless the application has first been approved by the Declarant (during the Declarant Control Period), and the Board (after the termination of the Declarant Control Period), and the proposed use otherwise complies with this Declaration.

4.25 Model Homes. The provisions of this Declaration that prohibit nonresidential use of Lots and regulate parking of vehicles shall not prohibit the Construction and Maintenance of model homes by Declarant or a Designated Builder engaged in the Construction and/or sale of Dwelling Units within the Property and parking incidental to the visiting of such model homes. Any Dwelling Units

constructed as model homes shall cease to be used as model homes at any time Declarant or a Designated Builder is not actively engaged in the Construction and/or sale of single-family Dwelling Units within the Property, and no Dwelling Units shall be used as a permanent main model home for the sale of Dwelling Units not located within the Property.

4.26 Repair of Improvements; Reconstruction. No Improvement on any Lot shall be permitted to fall into disrepair and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed, then, subject to the approvals required by *ARTICLE 5* hereof, such Improvement shall be promptly repaired or rebuilt or shall be demolished, in which event the area shall be restored to a reasonably safe and presentable condition. In the event any Improvement or other structure is totally or partially damaged or destroyed by fire, act of God, or any other cause, the Owner shall promptly remove all exterior debris, shall secure the damaged area as needed, including as may be reasonably necessary for the health and safety of others, and shall fully repair the damage and complete reconstruction of the Dwelling Unit or other structure as soon as reasonably possible, and in all events within eighteen (18) months after occurrence of the damage or destruction.

4.27 Signs. No signs whatsoever that are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- A. Signs required by legal proceedings.
- B. A maximum of one political sign (as defined in A.R.S. § 33-1808 or such other applicable law as amended from time to time) (or such greater number of political signs permitted by Town ordinances if the Town regulates the number of political signs on residential property) may be placed on a Lot by the Owner of that Lot; provided, however, that no political signs may be displayed pursuant to this *Section 4.27* earlier than 71 days before an election day or more than 3 days after an election day. The size of all such political sign(s) shall not exceed nine square feet in the aggregate.
- C. No more than two (2) identification signs for individual Dwelling Units, each with a face area of seventy-two square inches (72") or less.
- D. "For Sale" and "For Lease" signs temporarily erected in connection with the marketing of any Lot, provided, however, that the Board may adopt additional rules regulating such signs provided such rules comply with the provisions of A.R.S. § 33-1808F (as amended) and any other applicable laws.
- E. Signs and notices erected or posted in connection with the provision of building security.
- F. Promotional and advertising signs of any Designated Builder on any Lot approved from time to time in advance and in writing by the Architectural Committee as to number, size, color, design, message content, location, and type.
- G. Cautionary signs regarding children provided that: (i) all such signs are displayed in residential areas only; (ii) all such signs are removed within one hour of children ceasing their activities; (iii) all such signs are displayed only when children are actually present within fifty feet

(50') of the sign; (iv) all such signs are no taller than three feet in height; and (v) all such signs are professionally manufactured or produced.

H. Other signs (including, but not limited to, Construction job identification signs, Designated Builder identification signs and subdivision identification signs) that are in conformance with the applicable requirements of the Town or other applicable governmental agencies and have been approved in advance and in writing by the Architectural Committee as to size, color, design, message content, and location.

Subject to the limitations above, the Association may adopt reasonable rules and regulations regarding the number, size, placement and manner of display of signs and flags to the extent A.R.S. §33-1808 or other applicable law does not prohibit such regulation. The provisions of *Section 4.27* shall not apply to the Declarant or any of its activities on the Property.

4.28 Utility Service. No lines, wires, or other devices for communications 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 or Common Area unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Declarant or any Builder with approval by Declarant or the Architectural Committee or as may be otherwise approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the Construction of buildings or structures.

4.29 Right of Entry. During reasonable hours and upon reasonable prior notice to the Owner or Resident of a Lot or Common Area, any member of the Architectural Committee or the Board, or any authorized representative thereof, shall have the right to enter upon and inspect any Lot or Common Area, and the Improvements thereon, except for the interior portions of any completed Dwelling Units, for the purpose of ascertaining whether or not the provisions of this Declaration or any other Community Documents have been, or are being, complied with, and such Persons shall not be deemed guilty of trespass by reason of such entry.

4.30 Crime and Drug Free Community; Restriction on Offenders. To the extent not prohibited by A.R.S. § 33-1806.01, as amended, and other applicable law, the Association shall have the right and power to (i) enact rules prohibiting criminal and drug activity on the Property, including the right to assess fines and evict tenants who engage in such activity and (ii) require Residents and Owners to sign reasonable contracts and forms that assure there is no criminal and drug related activity on the Property. Notwithstanding the foregoing to the contrary, neither Declarant nor the Association shall have any obligation or responsibility for enforcing the law, or liability for the occurrence of such activity on the Property. Further, neither Declarant nor the Association makes any guaranty that such activity will not occur on the Property. Finally, pursuant to the authority granted to the Association in A.R.S § 33-1806.01 (or other applicable law as it may be amended from time to time), no Person who is required to be registered pursuant to A.R.S. § 13-3821 (or other applicable law as it may be amended from time to time) and who is classified as a level two or level three offender may be a Resident of any portion of the Property. The foregoing provision shall only be applicable and enforceable to the extent allowed by applicable law.

4.31 Sidewalks, Paths, and Walkways. Sidewalks, paths, and walkways within the Property are designed for pedestrian traffic only. No Motor Vehicles, as defined in *Section 4.15*, may be operated

on the sidewalks, paths, or walkways within the Property. Horses may not be ridden on sidewalks, paths, walkways, streets, or any other portion of the Property.

4.32 Flags and Flagpoles. Excluding flags used for marketing by Declarant or approved by Declarant for marketing by Designated Builders, and except as set forth in the next sentence, no flags of whatever nature shall be placed on any Lot or Common Area which are Visible From Neighboring Property. The following flags shall be permitted on an Owner's Lot and the Association shall adopt reasonable rules and regulations regarding the placement and manner of display of: (a) The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by a Member on that Member's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10) and other applicable law; (b) the POW/MIA flag; (c) the Arizona state flag; (d) an Arizona Indian nations flag; or (e) the Gadsden flag. Subject to the limitations above, the Association may adopt reasonable rules and regulations regarding the location and size of flagpoles, may limit an Owner or Resident to displaying no more than two flags at once, and may limit the height of the flagpole to no more than the height of the rooftop of the Owner's home, except that the Association shall not prohibit the installation of a flagpole in the front yard or backyard of a Lot. This provision shall be read and interpreted to be in compliance with A.R.S. § 33-1808(A) and (B), as amended.

4.33 Clothes Drving Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot unless they are not Visible From Neighboring Property.

4.34 Variances. The Board and/or the Architectural Committee, with respect to such matters over which it has control, may in its good-faith discretion grant such variances of the restrictions contained in this *ARTICLE 4* as it shall deem appropriate, so long as the use or condition permitted by such variance does not result, as determined by the Board and or the Architectural Committee in its sole discretion, in an unsafe, insanitary, or aesthetically displeasing condition, or in a substantial departure from the common plan of development contemplated by this Declaration.

4.35 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent or limit the right of Declarant (and its Affiliates, agents, employees, contractors, and subcontractors) to, in its sole discretion, do any one or more of the following: (i) construct, install and maintain production homes, model homes, sales offices and parking incidental thereto, landscaping, and signs, in such manner as Declarant may deem appropriate in its sole discretion; (ii) construct, install or maintain any other Improvements necessary or convenient to the development, marketing, sale and/or lease of any Lots or Common Area; or (iii) conduct any other activity reasonably required and related to the foregoing, including, but not limited to, the storage and staging of construction equipment, trailers, and materials. Declarant may, in its sole discretion, provide some or all of the same exemptions provided in this *Section 4.35* to a Designated Builder in one or more of the following: a Supplemental Declaration, a separate Recorded document, or written notice given by the Declarant to the Association.

ARTICLE 5

ARCHITECTURAL CONTROL

5.1 Approval Required.

A. Except for the Construction or Modification of an Improvement by or on behalf of Declarant, no Construction or Modification of any Improvement that is Visible From Neighboring Property (including, without limitation, any sheds, trampolines, playgrounds, or similar structures) or which would affect the drainage of the Property shall be done without the prior written approval of the Architectural Committee, which shall have the authority to regulate the Construction and Modification of such Improvements as more fully set forth herein. Any Owner desiring approval from the Architectural Committee for the Construction or Modification of any Improvement that is Visible From Neighboring Property or which would affect the drainage of the Property shall submit to the Architectural Committee written request for approval specifying in detail the nature and extent of the type of work that the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications that the Architectural Committee may reasonably request. If the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after receipt of (i) a written application meeting all of the requirements of this Declaration, the Architectural Committee Rules, and the other Community Documents (if applicable) and (ii) any additional information, plans, and specifications requested by the Architectural Committee, the application will be deemed to have been disapproved. Approvals from the Architectural Committee for any Improvement may be subject to commencement and completion of Construction in the time periods reasonably set by the Architectural Committee.

B. The approval by the Architectural Committee of any Construction or Modification of an Improvement shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

C. Notwithstanding anything to the contrary contained in this Declaration, for the new construction of a Dwelling Unit on a Lot, or for rebuilds of a Dwelling Unit on a Lot, and if the Community Documents permit the Association to charge an Owner or Member a security deposit and the Association requires an Owner or Member to pay a security deposit to secure completion of the Owner's or Member's construction project or compliance with approved plans, the rules set forth in A.R.S. § 33-1817(2), as amended, shall apply.

5.2 Architectural Committee. An Architectural Committee shall be established to perform the duties and exercise the power and authority imposed on or granted to the Architectural Committee by the Community Documents. Until the termination of the Declarant Control Period, Declarant shall have the sole right and absolute discretion to determine the number of members on the Architectural Committee and to appoint and remove the members of the Architectural Committee. Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee and, in that event, Declarant may require, until the termination of the Declarant Control Period, that specified actions of the Architectural Committee be approved by Declarant in writing before they become effective. In no event shall the Board or the Association have any jurisdiction over architectural or design review matters, the Architectural Committee, or other matters set out in the Architectural Committee Rules until after the first to occur of (i) the termination of the Declarant Control Period or (ii) the Declarant voluntarily relinquishes its rights under this *Section 5.2* in writing (and then only to the extent of such relinquishment). After the termination of the Declarant Control Period, the Board shall determine the number of members on the Architectural Committee, and the members of the Architectural Committee shall be appointed and may be removed by the Board at a Board meeting or by written action in lieu of a meeting. Members of the Architectural Committee need not be Owners or Residents of the Property. In the event the Board does not appoint an

Architectural Committee for any reason, the Board shall exercise the authority granted to the Architectural Committee under this Declaration.

Notwithstanding the foregoing, in accordance with A.R.S. § 33-1817(1), the Architectural Committee shall, at all times, include at least one member of the Board who shall serve as chairperson of the Architectural Committee.

The Architectural Committee may adopt, amend, and repeal various guidelines, standards, rules and procedures to be used in governing its operations, rendering its decisions, and in regulating the design and other features of Dwelling Units and other Improvements on the Property that are Visible From Neighboring Property or which would affect the drainage of the Property (the "Architectural Committee Rules"). The Architectural Committee Rules may include, without limitation, provisions regarding:

- A. the size and height of Dwelling Units and other Improvements;
- B. architectural design, with particular regard to the harmony of the design with the surrounding structures and topography;
- C. placement of Dwelling Units and other buildings;
- D. landscape design, content, and conformance with the character of the Property and permitted and prohibited plants;
- E. requirements concerning exterior color schemes, exterior finishes and materials;
- F. signage;
- G. perimeter and screen wall design and appearance;
- H. time periods for commencement and completion of any approved Construction or Modification; and
- I. rules and regulations governing Construction activities.

Any adoption, amendment, or repeal of the Architectural Committee Rules after Declarant no longer has the right to appoint the Architectural Committee must be approved by the Board.

The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove any Construction or Modification within a specified portion of the Project.

The decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration, but, after the termination of the Declarant Control Period, shall be subject to appeal to the Board as the final arbiter, and the decision of the Board in all cases shall be final and binding.

5.3 Owners In Good Standing. In addition to all other requirements of this *ARTICLE 5*, the Owner of a Lot must be In Good Standing to be eligible to submit plans for any Construction or

Modification of any Dwelling Unit, any other Improvements or other work to the Architectural Committee for approval.

5.4 Review of Plans. If the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after an application meeting all of the requirements of this Declaration and of the Architectural Committee Rules, together with any fee required to be paid and any additional information, plans, and specifications requested by the Architectural Committee has been submitted to the Architectural Committee, the submittal will be deemed disapproved. In reviewing plans and specifications for any Construction or Modification of an Improvement that must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish-grade elevation. The Architectural Committee may disapprove plans and specifications for any Construction or Modification to an Improvement that must be approved by the Architectural Committee pursuant to this *ARTICLE 5*, if the Architectural Committee determines that:

A. The proposed Construction or Modification would violate any provision of this Declaration or other Community Documents;

B. The proposed Construction or Modification does not comply with any Architectural Committee Rule or Association Rule;

C. The proposed Construction or Modification is not in harmony with existing Improvements within the Property or with Improvements previously approved by the Architectural Committee but not yet constructed;

D. The proposed Construction or Modification is not aesthetically acceptable;

E. The proposed Construction or Modification would be detrimental to or adversely affect the appearance of the Property; or

F. The proposed Construction or Modification is otherwise not in accord with the general plan of development for the Property.

The Architectural Committee shall comply with A.R.S. § 33-1817 and other applicable law as it may be amended from time to time. The Architectural Committee may grant variances from the standards set forth in the Architectural Committee Guidelines if the Architectural Committee determines that the matter subject to the requested variance will not have a substantially adverse effect on the other Owners and Residents and is consistent with the high quality of life intended for the Property.

5.5 Exclusions. The provisions of this *ARTICLE 5* shall not apply to, and approval of the Architectural Committee shall not be required for, the Construction or Modification with respect to any Improvements made by or on behalf of Declarant (or its designated agents or contractors). Further, the Architectural Committee's approval shall not be required for the Construction or Modification of any Dwelling Units or other Improvements by any Designated Builder if: (i) the Declarant specifically grants a Designated Builder such exemption in writing and (ii) the Construction or Modification of such Dwelling Units and other Improvements is done in accordance with plans and specifications that have previously been approved by Declarant or the Architectural Committee in writing.

5.6 Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance, and location, and are not approved for engineering design or for compliance with zoning and building ordinances (or other governmental requirements), and by approving the plans and specifications neither the Architectural Committee, the members thereof, Declarant, the Association, any Owner, nor the Board (nor any committee, officer, director, employee, or agent of any of the foregoing) assumes any liability or responsibility therefor, or for any defect in any structure constructed from the plans and specifications. Neither the Architectural Committee, any member thereof, Declarant, the Association, nor the Board (nor any committee, officer, director, employee, or agent of any of the foregoing) (subject to any mandatory limitations imposed by A.R.S. § 10-3202, § 10-3851, § 10-3856 or other applicable law, and except for an intentional infliction of harm on the Association or its Members, an intentional violation of criminal law, the receipt of a financial benefit to which such Person was not entitled, or an unlawful distribution under A.R.S. § 10-3833 or other applicable law), shall be liable to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective, (b) the Construction, Modification or performance of any work, whether or not pursuant to approval of plans, drawings, and specifications, (c) the development or manner of development of any property within the Property, or (d) the execution and filing of any estoppel certificate pursuant to any Architectural Committee Rules established by the Board, whether or not the facts therein are correct; provided, however, that the action, with the actual knowledge possessed by the Person executing and filing the estoppel certificate was taken in good faith. Approval of plans and specifications by the Architectural Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including but not limited to zoning ordinances and building codes.

5.7 Inspection and Recording of Approval. Any member or authorized consultant of the Architectural Committee, or any authorized officer, director, employee, or agent of the Association, may at any reasonable time, enter without being deemed guilty of trespass, upon any Lot after a reasonable notice as provided herein to the Owner in order to inspect Improvements constructed or being constructed or modified on the Lot to ascertain whether the Improvements have been or are being built in compliance with the Architectural Committee Rules, any applicable provisions of any other applicable Community Documents, and this Declaration. The Architectural Committee also has the right, but not the obligation, to cause an inspection to be undertaken within 30 days of a request therefor from any Owner as to the Owner's Lot and, if the inspection reveals that the Improvements located on the Lot have been completed in compliance with the Architectural Committee Rules, any applicable provisions of any other applicable Community Documents, and this Declaration, the Architectural Committee has the right, but not the obligation, to provide the Owner a notice of approval in recordable form which, when Recorded, shall be conclusive evidence of compliance with the provisions of the Architectural Committee Rules, any other applicable Community Documents, and this Declaration as to the Improvements described in the Recorded notice, but as to the described Improvements only.

5.8 Governmental Approvals. The approval required by the Architectural Committee pursuant to this *ARTICLE 5* shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule, or regulation. The approval by the Architectural Committee of any Construction or Modification of an Improvement pursuant to this *ARTICLE 5* shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms

to any applicable building codes or other federal, state, or local law, statute, ordinance, rule, or regulation.

5.9 Fee. The Architectural Committee may establish a reasonable fee from time to time to defer the costs of the Architectural Committee in considering any requests for approvals and requests for variances submitted to the Architectural Committee, which fee shall be paid at the time the request for approval or variance is submitted. The Architectural Committee may also authorize supplemental fees to cover the cost of retaining consultants and other professional services needed to evaluate properly any matter submitted to the Architectural Committee for review.

ARTICLE 6

ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be an Arizona nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, this Declaration, and any other Community Documents. The Association shall have all of the common law and statutory power conferred upon nonprofit corporations under Arizona law and all powers necessary and desirable to perform the Association's duties and obligations. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration or this Declaration is terminated.

6.2 Board of Directors and Officers; Management.

A. The affairs of the Association shall be controlled and managed by the Board appointed or elected in accordance with this Declaration, the Articles, and the Bylaws, and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association. The initial directors of the Association shall be designated in the Articles, and such individuals shall serve until their death, resignation, or removal from office.

B. Until the termination of the Declarant Control Period, Declarant shall have the exclusive right to appoint and remove the members of the Board. After the termination of the Declarant Control Period, Declarant has the right but not the obligation to appoint the first Board comprised of Owners, until the first election of Board Members. Thereafter the Board shall be elected annually.

C. The Board may appoint various committees and may appoint a manager or managing agent who shall, subject to the direction of the Board, be responsible for the day-to-day operations of the Association for such compensation as may be agreed upon by the Board and the managing agent. Notwithstanding anything contained in the foregoing or elsewhere in this Declaration to the contrary, Declarant shall have the right to designate and to determine the compensation to be paid to the initial managing agent if such managing agent is retained during the Declarant Control Period.

6.3 Indemnification.

A. To the fullest extent permitted by law, but subject to any mandatory limitations imposed by A.R.S. § 10-3202, A.R.S. §§ 10-3850 through 10-3858, inclusive, or other applicable law, the Association shall indemnify all Indemnified Persons (as defined in *Section 6.6*) against all expenses and liabilities including, but not limited to, attorneys' fees, witness fees (including expert witness fees), costs and litigation-related expenses reasonably incurred by or imposed upon any such Indemnified in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of their being or having appointed, removed or controlled, or failed to control members of the Board or the Architectural Committee), or any settlement of any such proceeding.

B. Any other agent or employee of the Association may, in the discretion of the Board, also be indemnified by the Association.

C. Notwithstanding anything to the contrary in this Declaration, before any Person is entitled to indemnity pursuant to this *Section 6.3*, the Board must determine, in good faith and in accordance with A.R.S. § 10-3855, that the Person to be indemnified has met the standard of conduct set forth in A.R.S. § 10-3851.

D. The rights of indemnification set forth herein shall be in addition to and not exclusive of all other rights to which the Persons to be indemnified may be entitled at law or otherwise.

E. Any repeal or modification of this *Section 6.3* shall not adversely affect any right or protection of any Persons with respect to anything occurring prior to or at the time of such repeal or modification. The provisions of this *Section 6.3* shall not apply to: (a) any director and/or officer of the Association or any member of the Architectural Committee and/or other committees of the Association in such Person's separate capacity as a Member, Owner, or Resident or (b) the Declarant's and each Designated Builder's obligation to pay Deficiency Assessments as set forth in *Section 8.3.3*.

6.4 Role of Association. The Association is intended to be an "umbrella" organization whose primary responsibilities will include, without limitation, the following:

- A. The maintenance of all Association Maintained Areas;
- B. Appointment of individuals to serve on the Architectural Committee pursuant to the provisions of *ARTICLE 5* hereof;
- C. The enforcement of this Declaration and the other Community Documents; and
- D. The approval, coordination, and oversight of any Subsidiary Association.

6.5 The Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the Association Rules, which shall apply to, restrict, and govern the use of any Association Maintained Areas and/or the Lots by any Owner, Member or Resident; provided however, that the Association Rules shall not be inconsistent with this Declaration, or the Articles or

Bylaws of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Association Rules may include, without limitation, the following:

- A. the management, operation and use of the Association Maintained Areas including, but not limited to, any recreational facilities situated upon the Association Maintained Areas;
- B. minimum standards for the Maintenance of Lots; and
- C. restrictions on the use and Maintenance of Lots.

6.6 Non-Liability of Officials/Personal Liability.

A. To the fullest extent permitted by applicable law, including, but not limited to, A.R.S. § 10-3202, as amended from time to time, (i) no director and/or officer of the Association; (ii) no member of the Architectural Committee and/or other committees of the Association; and (iii) no Declarant and/or its officers, directors, managers, members or employees ((i) through (iii) collectively the "Indemnified Persons") shall be liable to any Member, any Owner, the Association, or any other Person for any damage, loss, liability or prejudice suffered or claimed by such Person on account of any decision, course of action, action, inaction, omission, error, negligence, or the like which any one or more Indemnified Persons (a) made in good faith, (b) made in compliance with applicable standards, if any, imposed by law, and (c) reasonably believed to be within the scope of their respective duties.

B. Each Owner and other Person having any interest in the Property or entering upon or using any portion of the Property is deemed to acknowledge and accept the following:

- (i) No Indemnified Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner or other Person entering upon or making use of any portion of Property. Each Owner and other Person assumes all risks associated with the use and enjoyment of the Property including but not limited to any recreational facilities upon or within the Property.
- (ii) No Indemnified Persons shall be liable for or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property. Each Owner and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property.
- (iii) No provision of this Declaration or any other Community Documents shall be construed or interpreted as creating a duty by any of the Indemnified Persons to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

C. Any repeal or modification of this *Section 6.6* shall not adversely affect any right or protection of any Indemnified Persons with respect to anything occurring prior to or at the time of such repeal or modification. The provisions of this *Section 6.6* shall not apply to: (a) any director and/or officer of the Association or any member of the Architectural Committee and/or other committees of the Association in such Person's separate capacity as a Member, Owner, or Resident or (b) the Declarant's and each Designated Builder's obligation to pay Deficiency Assessments as set forth in *Section 8.3.3*.

6.7 Easements. In addition to the other easements granted hereunder, the Association is authorized and empowered to grant permits, licenses, easements, and rights-of-way upon, across, or under real property owned or controlled by the Association for sewer lines, water lines, underground conduits, storm drains, drainage, retention, television cable, electric, gas, and other similar public or private utility purposes, roadways, or other purposes as may be reasonably necessary and appropriate for the development, maintenance or preservation of the Common Areas or for the preservation of the health, safety, convenience, and welfare of the Owners, provided that any damage to a Lot resulting from a grant of any of the foregoing rights shall be repaired by the grantee at its expense.

6.8 Managing Agent. All powers, duties, and rights of the Association, the President of the Board or the Board as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no delegation shall relieve the Association of its obligation to perform any delegated duty. Any agreement for professional management, or any other contract providing for management or maintenance services (excluding utility services) to the Association, shall not exceed a term of five (5) years, subject to renewal by agreement of the parties for successive one (1) year periods, and shall further provide for termination by the Association with or without cause and without payment of a termination fee upon thirty (30) days written notice.

6.9 Designated Service Providers. Subject to compliance with all applicable law, the Board shall have the authority to designate preferred providers of services within the Property when the Board deems it necessary or desirable to do so for reasons of obtaining better rates or terms of service or for other reasons deemed reasonable by the Board. If the Board makes such a designation, the Association may enter into an agreement with the designated service provider, and the cost of services purchased by the Board shall be considered a Common Expense of the Association and shall be included in the Assessments payable by each Owner; provided, however, that the Board may allocate such costs between improved and unimproved properties, as a Special Assessment, in such a manner as the Board deems equitable. Notwithstanding any designation and negotiation with a service provider, each Owner may contract separately with the designated service provider to receive services in excess of those provided to the Property pursuant to the service provider's agreement with the Association, and the cost of the additional services shall be paid separately by the Owner and shall not be an Assessment under this Declaration. Any service provider designated by the Board pursuant to this *Section 6.9* shall have an easement over the Common Areas to the extent necessary or convenient for the efficient delivery of the designated service.

ARTICLE 7

MEMBERSHIPS AND VOTING

7.1 Owners of Lots; Identity of Members. Each Owner of a Lot shall automatically be a Member of the Association, and shall remain a Member of the Association until such time as ownership ceases for any reason, at which time the Owner's Membership in the Association shall automatically cease. Each such Membership shall be appurtenant to and may not be separated from

ownership of the Lot to which the Membership is attributable, and joint ownership or ownership of undivided interests in any real property that establishes a Membership shall not cause there to be more Memberships than the number established for purposes of this *Section 7.1*. There shall be one (1) Membership for each Lot within the Property as shown on any Plat. Notwithstanding the fact that Owners of Common Areas shall be subject to the portions of this Declaration that are specifically applicable to the Common Area, Owners of Common Areas shall not be Members of the Association, except to the extent of their ownership of a Lot. Membership may be evidenced by an official list of Owners, which list shall be kept by the Association and as provided by applicable law.

7.2 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one Owner and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void. Except as prohibited by law, during the Declarant Control Period all voting rights of the Members shall be vested in the Declarant (who shall have the right to approve and disapprove such matters as more fully set forth herein) and no Member shall be entitled to vote. After the termination of the Declarant Control Period, each Member shall have one (1) vote for each Lot owned by such Member.

7.3 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the other Community Documents, as the same may be amended from time to time.

7.4 Transfer of Membership. The rights and obligations of an Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot. A transferor of a Lot must notify the Board of the transfer in writing, and remains liable for all obligations hereunder until the transferor so notifies the Board. A transfer of ownership to a Lot may be effectuated by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of Record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of the Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. The foregoing restrictions shall not apply to any transfer by the Declarant of its rights under this Declaration or its designation of a Designated Builder.

ARTICLE 8

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Right and Personal Obligation of Assessments.

8.1.1 Right of Assessment. In order to provide funds to enable the Association to meet its obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board as more fully set forth in this

ARTICLE 8 and elsewhere in the Declaration. Subject to *Section 8.3*, each Owner, by acceptance of a Deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot.

8.1.2 Obligation to Pay Assessments. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using such Owner's Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to such Owner's Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner, and in addition to the Assessment Lien which shall run against a Lot, the obligation to pay Assessments is also the personal obligation of the Person who was the Owner of such Lot at the time such Assessments arose with respect to such Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association, the Board, or Declarant to take some action or perform some function required to be taken or performed by the Association, the Board, or Declarant under this Declaration or the other Community Documents.

8.1.3 Cessation of Obligation to Pay Assessments. Upon transfer by an Owner of fee title to such Owner's Lot by recorded deed, and with written notice to the Association, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot.

8.2 Lien for Assessments; Late Charges; Remedies.

8.2.1 Assessment Lien. There is hereby created and established a lien in favor of the Association against each Lot that shall secure payment of: (i) all present and future Assessments assessed or levied against such Lot or the Owner thereof; (ii) all charges for late payment of Assessments; (iii) all reasonable collection fees and reasonable attorney fees and costs incurred with respect to such Assessments; and (iv) all other amounts levied against such Lot or the Owner thereof pursuant to the Community Documents (collectively, the "Assessment Lien"). The Assessment Lien is a charge on the Lot and is a continuing lien upon the Lot against which each such Assessment is made. The Assessment Lien shall be subject to any limitations imposed by A.R.S. §§ 33-1803 and 33-1807 or other applicable law as amended from time to time.

8.2.2 Late Charges; Collection Costs; Interest. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due (or such longer time period as the Board may specify from time to time) shall also pay a late charge as set by the Board from time to time. The initial late charge shall be the greater of (i) fifteen dollars (\$15.00) per month or (ii) ten percent (10%) of the unpaid Assessment. The fifteen-day delinquency period and late charges shall be subject to any limitations imposed by A.R.S. § 33-1803 or other applicable law as amended from time to time. The Owner shall also pay all reasonable collection fees and reasonable attorney fees and costs incurred by the Association in seeking to collect such Assessments and other amounts. In addition, subject to any limitations imposed by applicable law, the Board may, if it so elects, charge interest (not to exceed ten (10%)) on any Assessment or any installment of any Assessment that is not paid within fifteen (15) days (or such longer time period as the Board may specify from time to time) of the date that the Assessment is due.

8.2.3 Foreclosure of Assessment Lien; Ownership by Association; Other Remedies. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees, and any other sums due to the Association in any manner allowed by law, including, but not limited to, the following:

A. Foreclosure. Any Assessment Lien may be foreclosed in the manner provided by law for the foreclosure of mortgages (including the right to recover any deficiency) and any other applicable law. The sale or transfer of any Lot shall not affect the Assessment Lien; provided however, that any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of a First Mortgage, purchase at foreclosure sale or trustee sale, or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot that became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot that accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot. The Association shall have the power to bid for any Lot at any sale to foreclose the Assessment Lien on the Lot, and to acquire and hold, lease, mortgage, and convey the same. During the period any Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Areas.

B. Suspension of Rights. The Board may suspend for the entire period during which a delinquent Assessment or other amount due the Association remains unpaid the obligated Owner's voting rights and rights to use and enjoy the Common Areas, in accordance with procedures that conform to Arizona law except that in no event shall the Board prevent access to such Owner's Lot.

C. Collection of Delinquent Amount. Subject to any limitations imposed by applicable law, as may be amended from time to time, the Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments without a foreclosure of its Assessment Lien for such Assessments, and the same shall not constitute a waiver of the Assessment Lien for such Assessments.

D. Limitations. The provisions of this *Section 8.2.3* shall be subject to any limitations imposed by A.R.S. §§ 33-1803 and 33-1807 or other applicable law as amended from time to time.

8.2.4 Notice and Perfection of Assessment Lien. As set forth in A.R.S. § 33-1807(E), the recording of this Declaration constitutes record notice and perfection of the liens established hereby, including, but not limited to, the Assessment Lien, and further Recordation of any claim of an Assessment Lien or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of liens in such circumstances as the Board may deem appropriate).

8.2.5 Priority of Assessment Lien. Subject to A.R.S. § 33-1807 or other applicable law as amended from time to time, the Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recording of this Declaration; (ii) liens for real estate taxes and other governmental assessments and charges against the Lot; and (iii) any Recorded First Mortgage on the Lot or a seller's interest in a first contract for sale pursuant to Title 33, Chapter 6, Article 3 of the Arizona Revised Statutes Recorded prior to the Association's lien.

8.3 Declarant's Exemption from Assessments; Reduced Assessments for Designated Builders; Deficiency Assessments and Designated Builder's Subsidy.

8.3.1 Declarant's Exemption from Assessments. During the Declarant Control Period, Lots owned by Declarant shall not be subject to any Assessments, but Declarant shall be required to pay to the Association Deficiency Assessments as provided and determined in *Section 8.3.3*. Upon termination of the Declarant Control Period, Declarant shall no longer be required to pay any Deficiency Assessments.

8.3.2 Reduced Assessments. During the Declarant Control Period, each Designated Builder shall pay Annual Assessments with respect to Lots owned by such Designated Builder in an amount equal to twenty-five percent (25%) of the Annual Assessment payable by other Owners other than Declarant ("Reduced Assessments"). Each Designated Builder shall be required to pay to the Association Deficiency Assessments as provided and determined in *Section 8.3.3*. Upon termination of the Declarant Control Period, Designated Builders shall no longer be required to pay any Deficiency Assessments. After termination of the Declarant Control Period, all Designated Builders shall pay Annual Assessments as set forth in *Section 8.5*.

8.3.3 Deficiency Assessments/Designated Builders' Subsidy. Subject to the terms of this Section, during the Declarant Control Period, Declarant and each Designated Builder, as applicable, shall pay to the Association such amounts as may be necessary to make up any budget shortfalls of the Association resulting from the Reduced Assessments paid by the Designated Builders and the fact that Declarant is exempt from the payment of Assessments with respect to any Lots owned by Declarant ("Deficiency Assessments"). Such deficiencies shall be allocated between Declarant and the Designated Builders on a pro rata basis according to the number of Lots owned by Declarant and each Designated Builder, and number of days owned, during the Assessment Period for which there is a deficiency. Notwithstanding the foregoing, in no event shall Declarant or any Designated Builder be obligated to pay any Deficiency Assessment for any Assessment Period that would cause the total amount of Deficiency Assessments, Reduced Assessments or portion of Annual Assessments paid for an Assessment Period for a Lot to exceed the amount of the full Annual Assessment for such Lot for such Assessment Period, or the applicable prorated portion of the full Annual Assessment if and to the extent the Lot was owned by a Declarant or Designated Builder for less than the full Assessment Period. In the event of any conflict between this *Section 8.3.3* and any other paragraph of the Declaration, this *Section 8.3.3* shall control. Notwithstanding anything to the contrary contained in this Declaration, despite the fact that Annual Assessments may not have commenced with respect to Assessable Lots pursuant to *Section 8.5.2*, each Designated Builder, from the date such Designated Builder becomes an Owner of a Lot, shall be obligated to pay its pro rata share of Deficiency Assessments for all Lots owned by such Designated Builder, provided that such Designated Builder shall receive a credit against its obligation to pay Deficiency Assessments in the amount of any Reduced Assessments paid with respect to the Lots owned by such Designated Builder.

8.4 Due Dates; Confirmation of Payment.

8.4.1 Due Date and Payment of Assessments. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

8.4.2 Confirmation of Payment. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Association's manager setting forth whether the Assessments payable with respect to a specific Lot have been paid. A properly executed certificate of the Association as to the status of the payment of Assessments with respect to any such Lot shall be binding upon the Association as to the matters described therein.

8.5 Purpose of Annual Assessments; Computation of Annual Assessments; Annual Budget.

8.5.1 Right to Impose Annual Assessments. The Association shall have the right to impose Annual Assessments for the purpose of paying all Common Expenses of the Association.

8.5.2 Commencement of Annual Assessments. The Annual Assessments shall commence as to all Assessable Lots on the first day of the calendar month following conveyance of the first Lot to a Purchaser. The initial Annual Assessment shall be prorated according to the number of months remaining in the calendar year within which the Annual Assessments actually commence.

8.5.3 Preparation of Budget. At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments or other amount to be generated through Assessments against the Lots. The Annual Assessments may include contributions to the Capital Reserve Fund in addition to other contributions to the Capital Reserve Fund allowed or required by this Declaration. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot an Annual Assessment. The Annual Assessment shall be the same for each Assessable Lot. When adopted by the Board, the Board shall make the annual budget available to the Members of the Association. If the Board fails to adopt a budget for any Assessment Period at least thirty (30) days in advance, then the current Annual Assessment amount shall apply until the Board establishes the Annual Assessment for each subsequent fiscal year.

8.5.4 Notice of Annual Assessment. The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board and not relieve any Owner from its obligation to pay the Annual Assessment.

8.5.5 Inadequate Funds. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are or will become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board may amend the budget and increase the Annual Assessment for that Assessment Period (subject to such limitations as may be imposed by A.R.S. § 33-1803 or other applicable law as amended from time to time) and the revised Annual Assessment shall commence on the date designated by the Board.

8.5.6 Maximum Annual Assessment. The Annual Assessments shall not at any time exceed the Maximum Annual Assessment as determined in accordance with this *Section 8.5.6*. Unless a greater Maximum Annual Assessment is approved by majority of all Members of the Association, the Maximum Annual Assessment for any fiscal year, after the first fiscal year, shall be equal to the

Annual Assessment levied in the immediately preceding fiscal year increased by twenty percent (20%). Increases in Annual Assessments shall be subject to any limitations imposed by A.R.S. § 33-1803 or other applicable law as amended from time to time.

8.6 Special Assessments and Special Service Area Assessments.

8.6.1 Special Assessments. In addition to the Annual Assessments, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any Construction or Modification of one or more Capital Improvements owned by the Association or for defraying other extraordinary expenses (collectively, "Special Assessments"); provided, however, that such Special Assessment must be approved by at least two-thirds (2/3rds) of the votes entitled to be cast by the Members voting in person or by absentee ballot at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners.

8.6.2 Special Service Area Assessments. If the Board determines, in its sole and absolute discretion, that certain services provided, or to be provided, by the Association benefit any 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 each special service area (each, a "Special Service Area") a distinct Assessment against the Memberships appurtenant to the Lots benefitted by such services as determined by the Board ("Special Service Area Assessments"). Owners receiving benefits in a disproportionate manner may be located in more than one Special Service Area and, therefore, subject to more than one Special Service Area Assessment. The expenses incurred by the Association to deliver the special services to a Special Service Area (the "Special Service Area Expenses") shall be assessed solely against the Lots which are benefitted by the special services provided to the Lots located in that Special Service Area. No Special Service Area Expense shall be used in computing the Annual Assessments to be levied pursuant to *Section 8.5* of this Declaration. Special Service Area Assessments shall be levied against the Lots located in the particular Special Service Area at a uniform amount per Membership determined in the sole discretion of the Board, with the objective of providing to the Association all funds required to pay all Special Service Area Expenses incurred by the Association in providing the operational, maintenance and other services to the particular Special Service Area. Special Service Area Assessments shall commence upon the date established by the Board. If the Board determines during any assessment period that Special Service Area Assessments with respect to any Special Service Area are, or will become, inadequate to pay for all Special Service Area Expenses pertaining to that Special Service Area for any reason including, without limitation, nonpayment of Special Service Area Assessments by Members, the Board may increase that Special Service Area Assessment for the assessment period and the revised Special Service Area Assessment shall commence on the date designated by the Board. The amount of any Special Service Area Assessments shall be determined in a manner consistent with the Board's determination of the respective benefits each Lot receives from such special services. Special Service Area Assessments shall not be subject to the Maximum Annual Assessment limitations set forth in *Section 8.5.6*, but are secured by the Assessment Lien.

8.7 Administrative Transfer Fee. Each Purchaser who acquires a Lot with a completed Dwelling Unit constructed thereon shall pay to the Association immediately upon becoming the Owner of such Lot a transfer fee in the amount established from time to time by the Board (the "Administrative Transfer Fee"). The Transfer Fee may be in addition to amounts charged pursuant to A.R.S. § 33-1806 or other applicable law for information provided pursuant to such section or law. The Administrative Transfer Fee shall be used by the Association in compliance with A.R.S. § 33-

442(c)(3), this Declaration, and any other applicable laws. Payments made pursuant to this *Section 8.7* shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this *Section 8.7* shall not be used in calculating the Maximum Annual Assessment pursuant to *Section 8.5.6* hereof. Administrative Transfer Fees payable pursuant to this *Section* are secured by the Assessment Lien and are in addition to any other fees payable pursuant to the Community Documents and any other fees payable at the close of escrow. The Board may, from time to time, increase or decrease the amount of the Administrative Transfer Fee and, during the Declarant Control Period, must obtain the consent of the Declarant

8.8 Working Capital Fund.

8.8.1 Payment of Working Capital Contribution. To help ensure that the Association shall have adequate funds to meet its expenses and/or to purchase necessary equipment or services, each Purchaser who acquires a Lot with a completed Dwelling Unit constructed thereon shall pay to the Association immediately upon becoming the Owner of such Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for such Lot (the "Working Capital Contribution"). The Working Capital Contribution shall be used by the Association in compliance with A.R.S. § 33-442(c)(3), this Declaration, and any other applicable laws. Payments made pursuant to this *Section 8.8.1* shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this *Section 8.8.1* shall not be used in calculating the Maximum Annual Assessment pursuant to *Section 8.5.6* hereof. Working Capital Contributions payable pursuant to this *Section* are secured by the Assessment Lien and are in addition to any other fees payable pursuant to the Community Documents and any other fees payable at the close of escrow. The Board may, from time to time, increase or decrease the amount of the Working Capital Contribution and, during the Declarant Control Period, must obtain the consent of the Declarant.

8.8.2 Exemption from Working Capital Contribution. No Working Capital Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, a family limited liability company, or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a Person in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Contribution, in which event a Working Capital Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. 33-741, et seq.

8.9 Capital Reserve Fund; Capital Reserve Fee; Reserves.

8.9.1 Establishment of Capital Reserve Fund. The Board shall establish reserves for the future periodic maintenance, repair, or replacement of the major components of the Association Maintained Areas. The reserves may be funded from Annual Assessments, Special Assessments, the Working Capital Contributions paid pursuant to this Declaration, the Reserve Contributions paid pursuant to this Declaration, or any other revenue of the Association. All amounts designated as

reserves shall be deposited by the Board in a separate bank account (the account and all such funds therein shall be collectively referred to herein as the "Capital Reserve Fund") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Unless the Association is exempt from federal or state taxes, all reserves shall be accounted for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Capital Reserve Fund may only be used to pay costs and expenses related to the periodic maintenance, repair, and replacement of the Association Maintained Areas, unless the expenditure of any or all of the funds in the Capital Reserve Fund for other purposes is approved by the vote of Owners holding at least two-thirds (2/3rds) of the votes in the Association. The Board may obtain a reserve study and updates thereafter as reasonably determined necessary by the Board. The Board may modify the budget in accordance with the findings of any reserve study. Neither the Board, nor the Declarant, shall be liable to the Association, the Members, the Owners, or the Residents, if the reserves collected are inadequate.

8.9.2 Reserve Contribution. Except as otherwise provided in this *Section*, each Purchaser who acquires a Lot with a completed Dwelling Unit constructed thereon shall pay to the Association immediately upon becoming the Owner of such Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for such Lot (the "Reserve Contribution"), which sum shall be placed in the Capital Reserve Fund. The Board may, from time to time, (with the consent of the Declarant during the Declarant Control Period) thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board by more than twenty percent (20%) during any year without the approval of Members holding more than fifty percent (50%) of the votes in the Association. All Reserve Contributions shall be deposited in the Capital Reserve Fund established pursuant to this Declaration. Reserve Contributions shall be non-refundable and shall not be offset or credited against or considered as an advance payment of the Annual Assessments or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this *Section 8.9* shall not be used in calculating the Maximum Annual Assessment pursuant to *Section 8.5.6* hereof. Reserve Contributions payable pursuant to this *Section* are secured by the Assessment Lien and are in addition to any other fees provided for in the Community Documents and any other fees to be paid at the close of escrow. The Reserve Contribution shall be used by the Association in compliance with A.R.S. § 33-442(c)(3), this Declaration, and any other applicable laws.

8.9.3 Exemption from Reserve Contribution. No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, a family limited liability company, or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a Person in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution, in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. 33-741, et seq.

8.9.4 Annual Audit. The Board shall comply with A.R.S. § 33-1810 and other applicable law as amended from time to time. As of the date of the recording of this Declaration, A.R.S. § 33-

1810 requires that: (i) the Board provide for an annual financial audit, review or compilation of the Association and (ii) that such audit, review or compilation shall be completed no later than one hundred eighty days after the end of the Association's fiscal year and shall be made available upon request to the Members within thirty days after its completion. The Board may, if it elects, use a certified public accountant to assist in the completion of the foregoing.

ARTICLE 9

USE OF FUNDS; BORROWING POWER

9.1 Purposes For Which Association's Funds May Be Used. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all funds and property collected and received by the Association from any source ("Funds") for the common good and benefit of the Property, the Owners and the Residents. The Funds may be used, among other things, to insure, acquire, construct, alter, clean, maintain, supervise, provide and operate, in any manner whatsoever, any and all land, properties, Improvements, services, projects, programs, studies and systems within the Property and the Common Areas and other Association Maintained Areas as may be necessary, desirable or beneficial to the general common interests of the Owners and Residents. In connection with the foregoing, the Funds may be used for the administration, office expenses, salaries and other personnel costs of the Association and for the payment of any independent contractors hired by the Association. The Association may also expend its funds for any purposes that any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter, subject to the limitations imposed by *Section 11.6*.

9.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that no portion of the Common Areas shall be mortgaged or otherwise encumbered except in accordance with *Section 12.4*.

9.3 Surplus Funds; Association's Rights in Spending Funds from Year to Year. The Association shall not be obligated to spend in any year all Funds received by it in such year (whether by way of Assessments, other fees, or otherwise), and may carry forward, as surplus, any Funds remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus of Funds exists from a prior year and the Association may carry forward from year to year such surplus of Funds 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.

ARTICLE 10

INSURANCE AND EMINENT DOMAIN

10.1 Association Maintained Insurance Coverage. Commencing no later than the time of the first conveyance of a Lot to a Purchaser, the Association must obtain and maintain at all times, directors' and officers' liability insurance covering all officers and directors of the Association, as well as all regular and alternate members of the Architectural Committee, in amounts and on terms adequate to permit the Association to meet its obligations to indemnify such persons pursuant to the Articles and Bylaws. In addition, and commencing no later than the time of the first conveyance of a Lot to a Purchaser, the Association shall purchase and maintain such property damage and liability insurance upon the Association Maintained Areas, including the Common Areas and such other insurance as the Board, in its absolute discretion, may determine. The premiums payable by the

Association for such insurance shall be part of the Common Expenses. The Association shall be the named insured in all policies providing such insurance.

10.2 Payment of Insurance Proceeds. The Association is irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board shall have full and complete power to act for the Association in this regard and may, in its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority to negotiate losses under any policy purchased by the Association. With respect to any loss to any Association Maintained Area covered by insurance obtained by the Association, 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 this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Association Maintained Areas. In all other events, all proceeds from insurance acquired by the Association shall be payable to the Association.

10.3 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Association Maintained Areas that is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or unless Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements located on, or other portions of, the Association Maintained Areas. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association in accordance with the Declaration. If all of the Association Maintained Areas are not repaired or replaced, insurance proceeds attributable to the damaged Association Maintained Areas shall be used to restore the damaged area to a condition that is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be retained by the Association and placed in the Capital Reserve Fund.

10.4 Individual Responsibility; Disclaimer of Liability. It shall be the responsibility of each Owner and Resident to provide insurance for himself and his real and personal property interests on or within the Property, including but not limited to, additions and Improvements thereto, furnishings, and personal property thereon, and for his personal liability. No Person shall maintain any insurance that would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvements or fixtures on the Association Maintained Areas. The Association, the Board, Designated Builders, and the Declarant (including all officers, directors, managers, members, employees, attorneys, and other agents of the foregoing) shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or the amount of such insurance is not adequate.

10.5 Eminent Domain. The term "Taking" as used in this *Section 10.5* shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Area, rights of the Association in Association Maintained Areas, or other property in which the Association has easements or rights, the Owners hereby appoint the Board and such persons as the Board may designate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu

of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association and shall be placed in the Capital Reserve Fund.

ARTICLE 11
DISPUTE RESOLUTION PROVISIONS - MANDATORY BINDING ARBITRATION

11.1 Dispute Resolution.

11.1.1 **Consensus for Association Action.** Except as provided in this *ARTICLE 11*, the Association may not commence a legal proceeding or an action without the approval or affirmative vote of Owners representing not less than seventy-five percent (75%) of the total authorized votes in each class of membership, which approval must also contain, at a minimum, (i) the approval of an estimated budget for the litigation being approved by the Owners and (ii) the approval of a resolution establishing one or more Special Assessments to fund the litigation being approved by the Owners. A Member holding a proxy (if proxies are then allowed by applicable law, such as A.R.S. § 33-1812, as amended) or otherwise representing Lots owned by Owners other than the voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of seventy-five percent (75%) of the total number of Lots represented by the voting Member. *Section 11.1* shall not apply, however, to (i) actions brought by the Association to enforce the Community Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or (v) any claims, grievances or disputes that do not involve a Bound Party and where the amount in controversy is equal to or less than \$50,000.00. Except for the various matters that are excluded from the scope of "Claims" in *Section 11.1.3* below, in no event shall the cost of any legal proceeding(s) commenced by the Association be funded out of any Assessments other than one or more Special Assessments.

11.1.2 **Alternative Method of Resolving Disputes.** Declarant, its officers, directors, employees and agents; the Association, its officers, directors, committee members and other Association officials; all Owners, Residents, and other Persons subject to this Declaration; any Builder, its officers, directors, employees and agents; and any Person not otherwise subject to this Declaration who agrees to submit to this *ARTICLE 11* after request by a Bound Party (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes related to the Property or this Declaration as more particularly described in *Section 11.1.3* (collectively, "Claims") to the procedures set forth in this *ARTICLE 11*.

11.1.3 **Claims.** Unless specifically exempted below, all Claims between any of the Bound Parties relating to the Property regardless of how the same might have arisen or on what it might be based including, but not limited to, Claims: (a) arising out of or relating to the interpretation, application or enforcement of the Community Documents or the rights, obligations and duties of any Bound Party under the Community Documents; (b) relating to the design or construction of Improvements, whether or not such Improvements are Visible From Neighboring Property; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of *Section 11.1.4* and, if applicable, the dispute resolution provisions of the purchase agreement for the purchase of a Dwelling Unit. To the extent of any conflict between the dispute resolution provisions of this

Declaration, and the dispute resolution provisions of a purchase agreement, the dispute resolution provisions of the purchase agreement shall control between the buyer and Declarant or Builder, and the buyer and seller, as to the Lot(s) or other portions of the Property subject to the purchase agreement, but the provisions hereunder shall apply as to the Common Areas, actions brought by or on behalf of the Association, and other Claims not covered by the applicable purchase agreement. Notwithstanding the foregoing, in addition to the provisions of *Section 11.1.4*, Claims involving a Defect or Alleged Defect shall first be subject to the provisions of *Section 11.2*, prior to the Bound Parties proceeding to negotiations under *Section 11.1.4(B)(ii)*.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of *Section 11.1.4*.

- A. any suit by the Association against any Bound Party to enforce the provisions of *ARTICLE 8*;
- B. any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's and/or Declarant's ability to act under the provisions of *ARTICLE 4* (Permitted Uses and Restrictions) or *ARTICLE 5* (Architectural Control);
- C. any suit between or among Owners which does not include Declarant, a Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Community Documents;
- D. any suit in which any indispensable party is not a Bound Party;
- E. any suit as to which any applicable statute of limitations has expired; and
- F. those matters set forth in the last sentence of *Section 11.1.1*.

11.1.4 **Mandatory Procedures.**

- A. **Notice.** Any Bound Party having a Claim (for purposes of this *Section 11.1.4*, "Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:
 - (i) the nature of the Claim, including the persons involved and Respondent's role in the Claim;
 - (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises including, as applicable, proof that the Members have approved the course of action in accordance with *Section 11.1.1* above);
 - (iii) the proposed remedy; and

- (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

To the extent applicable, the Association shall promptly provide to any Bound Party all Association documents reasonably requested by such Bound Party to confirm that seventy-five percent (75%) of the total authorized votes in each class of membership has approved the commencement of a legal proceeding or an action, including the filing of a Claim.

B. Negotiation and Mediation.

- (i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (ii) If the Parties do not resolve the Claim within 30 days after the later of (1) the date of the Notice and (2) for Claims involving an Alleged Defect, the Cure Period provided in *Section 11.2*, then the Claimant may submit the Claim to mediation within 30 days thereafter. If Claimant does not submit the Claim to mediation within such 30-day period, or does not appear for the mediation, then the Respondent may deliver notice to Claimant, in accordance with *Section 11.7*, stating that Respondent is ready to proceed with mediation of the Claim. If Claimant, within 60 days after the receipt of Respondent's notice, does not submit the Claim to mediation or does not appear for the meditation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
- (iii) All mediation proceedings conducted pursuant to this *ARTICLE 11* shall be administered in accordance with the rules of the AAA, applying the AAA rules, procedures, and protocols determined by the mediator to be most applicable to the nature of the Claim, including, where applicable, the AAA's Supplementary Rules for Residential Construction Disputes, the AAA Consumer Due Process Protocol, and Supplemental Procedures for Consumer-Related Disputes.
- (iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 90 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with *Section 11.1.4* and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this *ARTICLE 11*. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying, from all such Parties pro rata) all costs incurred in enforcing such agreement including, without limitation, attorneys' fees and court costs.

C. **Binding Arbitration.**

- (i) Upon Termination of Mediation, Claimant shall be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the rules of the AAA, applying the AAA rules, procedures, and protocols determined by the arbitrator to be most applicable to the nature of the Claim, including, where applicable, the AAA's Supplementary Rules for Residential Construction Disputes, the AAA Consumer Due Process Protocol, and Supplemental Procedures for Consumer-Related Disputes or, if such supplementary procedures are not in effect, in accordance with the AAA's Construction Industry Arbitration Rules then in effect; provided, however, that the Federal Arbitration Act (9 U.S.C. Section 1 *et seq.*) shall apply, as necessary, to supplement the applicable AAA rules. Such Claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000.00 the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator, except as provided in the *Section 11.1.4(C)(ii)*. Arbitrators shall have at least five (5) years' experience serving as an arbitrator and shall have technical expertise and knowledge in the area(s) of dispute, which may include legal expertise if legal issues are involved. The arbitrator(s) shall not have any relationship to the parties or interest in the Property.
- (ii) Consolidation of claims is not permitted except where otherwise required by law. In any case involving multiple parties or consolidated claims, any party may require that a panel of three (3) arbitrators decide the case, including all preliminary and procedural issues. The Party making the request for additional arbitrators agrees to pay the entire cost associated with the additional arbitrators.
- (iii) If Claimant does not submit the Claim to arbitration within 90 days after receipt of the Termination of Mediation, or does not appear for the arbitration, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing

herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

- (iv) Except as elsewhere provided herein, each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).
- (v) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.
- (vi) Unless otherwise mutually agreed by the parties to the proceedings, the arbitration proceedings shall be heard in the County.
- (vii) The award of the arbitrator or its decision is final and may be confirmed, entered and enforced as a judgment in a county having jurisdiction, subject to appeal only in the event of the arbitrator's manifest disregard of the law, no evidence to support the award, or such other grounds for appeal of arbitration awards that exist by statute, common law or the applicable rules of the administrative agency.

11.1.5 **No Amendment of Section 11.1.** Without the prior written consent of Declarant this *ARTICLE 11* may not be amended for a period of twenty years from the effective date of this Declaration.

11.2 Right to Cure Alleged Defect. If the Association, the Board or any Owner or other Person (for purposes of this *Section 11.2*, "Claimant") claims, contends, or alleges that a Defect (an "Alleged Defect") exists in any Improvements, whether or not such Improvements are Visible From Neighboring Property, within the Property as installed or constructed by or on behalf of Declarant or a Builder, including, but not limited to, the Dwelling Unit constructed on the Lots, the Bound Party alleged to be responsible (for purposes of this *Section 11.2*, the "Respondent") shall have the right to inspect, repair, redesign, and/or replace the Alleged Defect as set forth in this *Section 11.2*.

A. **Defect Defined.** As used in this Declaration, "Defect" shall mean failure to construct or install Improvements, whether or not such Improvements are Visible From Neighboring Property, in accordance with: approved plans and specifications, applicable governmental requirements, contractual obligations, applicable covenants or aesthetic requirements or standards of good practice in the applicable industry; using acceptable materials or procedures; in breach of applicable governmental, legal or contractual obligations; or otherwise contrary to the expectations of the Claimant.

B. **Notice of Alleged Defect.** As soon as possible after discovery and in all events within 30 days after discovering any Alleged Defect, a Claimant shall give written notice of the Alleged Defect ("Notice of Alleged Defect") to the Respondent(s) believed by the Claimant to be responsible for the Alleged Defect. The Notice of Alleged Defect shall include a reasonably detailed description of the Alleged Defect, which shall include, at a minimum, information constituting "reasonable detail" as described in A.R.S. § 12-1363(O), the information required by *Section 11.1.4(A)*, and may contain any additional information the Claimant believes to be necessary to cure the Alleged Defect.

C. **Right to Enter, Inspect, Repair and/or Replace.** Within ninety (90) days after the receipt of a Notice of Alleged Defect (the "Cure Period"), the Respondent shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter the affected portion of the Property for the purposes of inspecting and/or conducting testing and, if the Respondent(s) so chooses in its sole discretion, repairing and/or replacing the Alleged Defect (or paying the Claimant the reasonable cost of repairing and/or replacing the Alleged Defect) or to otherwise respond to the Claimant in the event that the Respondent(s) determines that no default has occurred and/or no Defect exists. A Claimant shall have no right to bring any action against Respondent(s) until the earlier of: (i) the expiration of the Cure Period (as such Cure Period may be reasonably extended by the Respondent if Respondent is diligently pursuing a cure) or (ii) the Respondent(s)' election to not take any curative action with respect to the Alleged Defect (the "Termination of the Cure Period"). Upon the Termination of the Cure Period, the Claimant may elect to proceed to mediation as provided in *Section 11.1.4(B)(ii)*, and thereafter, the remainder of *Section 11.1.4* shall govern the resolution of the dispute between Claimant and Respondent. The Cure Period shall be extended by any period of time that Claimant refuses to allow such Respondent(s) to perform inspections and/or perform tests as provided in this *Section 11.2*. Any agreement made in writing for repair, replacement or other curative action shall be enforceable against both parties to the agreement without requiring either party to again go through the notice and other procedures provided for in this *ARTICLE 11*.

D. **No Additional Obligations; Irrevocability and Waiver of Right.** Nothing in *Section 11.2* shall be construed to impose any obligation on any Person to inspect, test, repair, or replace any item or Alleged Defect for which the Person is not otherwise obligated under applicable law or other binding legal obligation. The right 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 any Person except by a written document executed by that Person.

E. **No Amendment of Section 11.2.** Without the express prior consent of Declarant and any and all Designated Builders, *Section 11.2* may not be amended for a period of twenty years from the effective date of this Declaration.

11.3 Conflicts. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between the provisions of this *ARTICLE 11* and any other provision of the Community Documents, this *ARTICLE 11* shall control.

11.4 Arizona Statute Compliance. In the event a court of competent jurisdiction invalidates all or part of this *ARTICLE 11* regarding the resolution of Disputes and litigation becomes necessary, Declarant, each Builder, the Association, the Board, and all Owners shall be bound by the applicable Arizona Construction Defect Statute—currently codified at A.R.S. § 33-2001, *et seq.*, and A.R.S. §12-1361, *et seq.*—then in existence.

11.5 Exclusions. Neither Declarant nor any Builder, as applicable, shall be liable for damages or any Defects caused by:

- A. normal wear and tear;
- B. an Owner's, Member's, Resident's or third party's use of the Property and/or Improvements;
- C. alterations by Owners, other than those performed by Declarant or a Builder; or
- D. reliance by Declarant or any Builder on engineering or other reports.

11.6 Funds of the Association. Notwithstanding any other provision of this *ARTICLE 11* (or of any other *ARTICLE* of this Declaration), no funds of the Association shall be used or devoted to proceedings with respect to any Defect unless they are raised specifically for such purposes by a Special Assessment imposed in accordance with the requirements of this Declaration following appropriate notice to the Members of the purposes for which such funds are being collected.

11.7 Notices under Article 11. All notices required pursuant to this *ARTICLE 11* to be given to a Person that is an entity shall be deemed sufficient if personally delivered, delivered by commercial messenger service, or mailed by registered or certified mail, postage prepaid, return receipt requested to the address of: (i) the Statutory Agent for a Person (if any) and (ii) the "Domestic Address" as set forth in the records of the Arizona Corporation Commission or other jurisdiction of organization. With respect to notice that is required to be sent to a Person which is not an entity, such notice may be sent to the last known address of such Member, Owner, or Resident as it appears on the records of the Association as of the date of mailing.

11.8 Scope. Declarant or a Builder may, at its sole election, include its contractors, sub-contractors and suppliers, as well as any warranty company and insurer as parties in any mediation or arbitration. The waiver or invalidity of any portion of this *ARTICLE 11* shall not affect the validity or enforceability of the remaining portions of this *ARTICLE 11*. This *ARTICLE 11* does not limit the rights of Declarant or a Builder against their respective contractors, sub-contractors and suppliers whether at contract or at law.

ARTICLE 12 MAINTENANCE

12.1 Association Maintained Areas.

12.1.1 The Association shall be responsible for the management and Maintenance of the Association Maintained Areas and all Improvements located thereon, except for (i) any part of the Association Maintained Areas that any governmental entity is maintaining or is obligated to maintain or (ii) any portion of the Property that is required to be maintained by the Owners of a Lot, either through a Subsidiary Association or otherwise. The Association shall use a commercially reasonable standard of care in providing for the repair, management, and Maintenance of the Association Maintained Areas. The Board, however, shall be the sole judge as to the appropriate level of Maintenance of all Association Maintained Areas. Any cooperative action necessary or appropriate to the proper Maintenance and upkeep of the Association Maintained Areas shall be taken by the

Board or by its duly delegated representative. Notwithstanding any duty the Association may have to maintain and repair the Association Maintained Areas, the Association, the Declarant, and any Builder shall not be liable for injury or damage caused by a latent condition or by any Member, Owner, Resident, or other Person. Neither the Association, nor the Declarant, nor any Builder shall be liable to any Person for any claim, injury, or damage arising from the use of the Association Maintained Areas, which shall be used at the risk of the user. No Declarant or Builder has the duty or obligation to maintain, operate, manage, or repair the Association Maintained Areas. The foregoing limitations of liability with respect to the Association, the Declarant, or a Builder shall not apply to any claim arising from the gross negligence or intentional misconduct of the Association, the Declarant, or a Builder, as applicable.

12.1.2 The Association may, in the discretion of the Board:

- A. Reconstruct, repair, replace, or refinish any Improvement or portion thereof upon Association Maintained Areas;
- B. Remove and/or replace injured and diseased trees and other vegetation in any Association Maintained Areas and plant trees, shrubs, and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- C. Place and maintain upon any Association Maintained Areas such signs as the Board may deem appropriate for the proper identification, use, and regulation thereof; and
- D. Do all such other and further acts that the Board deems necessary to preserve and protect the Association Maintained Areas and the beauty thereof in accordance with the general purposes specified in this Declaration.

12.1.3 No Owner, Resident, or other Person shall construct or install any Improvements on the Association Maintained Areas or alter, modify, or remove any Improvements situated on the Association Maintained Areas without the written approval of the Board. No Owner, Resident, or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Association Maintained Areas and the Improvements located thereon.

12.1.4 In the event any Plat, deed restriction, or this Declaration permits the Board to determine whether Owners of certain Lots will be responsible for Maintenance of certain Association Maintained Areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of the Property for the Association or an individual Owner to be responsible for such Maintenance considering cost, uniformity of appearance, location, and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the Maintenance and other obligations of the Association under this *ARTICLE 12* and in order to promote uniformity and harmony of appearance. The Board may also cause the Association to contract to provide Maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon. Any charges or fees to be paid by the Owner of a Lot in connection with a contract entered into by the Association with an Owner for the performance of an Owner's Maintenance responsibilities shall also be an Assessment and shall be secured by the Assessment Lien.

12.2 Assessment of Certain Costs of Maintenance and Repair of Association Maintained Areas. In the event that the need for Maintenance of an Association Maintained Area is caused through the act of any Owner or Resident (or their respective family members, guests, tenants, or invitees), the cost of such Maintenance or repairs shall be due within thirty (30) days of notice and shall be an Assessment to which such Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien, provided that, prior to submitting a bill for such costs, the Board shall cause a notice to be sent to the Owner specifying the Maintenance or repairs and the Owner shall have the right to object to his responsibility. Following the Board's consideration of such objection, the Board may absolve the Owner or demand that the Owner pay the bill within the thirty (30) day period provided above. The decision of the Board shall be final and binding, subject to the final decision of a court of competent jurisdiction.

12.3 Improper Maintenance and Use of Lots and Common Areas; Association's Right to Remedy. In the event any portion of any Lot or Common Area is so Maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots, Common Areas, or other areas of the Property that are substantially affected thereby or related thereto, or in the event any portion of a Lot or Common Area is being used in a manner that violates this Declaration or the other Community Documents, or in the event the Owner of any Lot or Common Area is failing to perform any of its obligations under this Declaration or other Community Documents, the Board may, by resolution, make a finding to such effect specifying the particular condition or conditions that exist and, pursuant thereto, give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If, at the expiration of said fourteen (14) day period of time, the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken (either by undertaking such corrective actions or bringing suit or other legal means to compel the offending Owner to undertake such corrective action) and the cost thereof, together with any attorney's fees expended by the Association in connection therewith, shall be an Assessment to which the offending Owner and the Owner's Lot or Common Area is subject, if any, and shall be secured by the Assessment Lien.

12.4 Conveyance of Common Areas. The Declarant and any Designated Builder, may convey all or portions of the Common Areas to the Association from time to time and the Association shall reasonably accept such deeds for the Common Areas shown on the Plat or otherwise reasonably determined by the Association to be Common Area. The Association shall be responsible for the ongoing Maintenance, repair, and restoration (in accordance with the Community Documents) of Common Areas and areas designated or intended to become Common Areas, when the same are (i) conveyed to the Association and (ii) the Common Area Improvements have been substantially completed and accepted for Maintenance by the Association, which acceptance shall not be unreasonably withheld or delayed. After conveyance of any Common Area to the Association, the Association shall not dedicate or otherwise convey title to the Common Areas, or mortgage or otherwise encumber Common Areas unless: (a) during the Declarant Control Period, the Declarant has executed a written instrument authorizing such action or (b) after the termination of the Declarant Control Period: (i) the Board has adopted a resolution stating that the transaction would be in the best interests of the Owners and Residents, and (ii) the Owners of at least sixty-seven percent (67%) of the Lots have approved such resolution. Notwithstanding anything to the contrary herein contained, if ingress or egress to any Lot is through Common Area to be dedicated, conveyed or encumbered, such dedication, conveyance or encumbrance shall be subject to an easement for ingress and egress benefitting such Lot. The consents required by this *Section* shall not be required in order for the Association, pursuant to resolution of the Board and consent of the Declarant (during the Declarant

Control Period) to grant utility, drainage and other appropriate easements over, under, across or through the Common Area. Additional consents may be requested and additional restrictions may apply under Agency rules if an approval by such Agency of this Declaration has been requested and obtained by the Declarant or Association and the Declarant or the Association desires to have such approval remain in place.

12.5 Procedure for Change of Use of Common Areas. The Association shall have the power and right to change the use, size, shape, or location of any Common Area (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use: (i) also shall be for the common benefit of the Owners and Residents; and (ii) shall be consistent with any Recorded deed and zoning regulations. Notwithstanding the foregoing, the Association shall not change the use, size, shape, or location of any Common Area unless: (a) during the Declarant Control Period, the Declarant has executed a written instrument authorizing such action or (b) after the termination of the Declarant Control Period: (i) the Board has adopted a resolution stating that the transaction would be in the best interests of the Owners and Residents, and (ii) the Owners of at least sixty-seven percent (67%) of the Lots have approved such resolution. The consents required by this *Section* shall not be required in order for the Association, pursuant to resolution of the Board and consent of the Declarant (during the Declarant Control Period) to grant utility, drainage and other appropriate easements over, under, across or through the Common Area. Additional consents may be requested and additional restrictions may apply under Agency rules if an approval by such Agency of this Declaration has been requested and obtained by the Declarant or Association and the Declarant or the Association desires to have such approval remain in place.

12.6 Walls and Fences Between Lots and Common Areas. If a wall (whether or not a Party Wall) is located on the boundary line between Common Areas and one or more Lots, then the Association shall be responsible for the painting and maintenance and repair of the surface on the side thereof that faces the Common Areas and the top of such wall, and the Owner or Owners owning the opposite side of the wall shall be responsible for the maintenance, repair, painting and replacement of such opposite side. In the case of destruction of both sides of such wall or structural damage, the Owner(s) owning Lots adjacent to the wall shall be responsible for one-half of the cost of replacement or repair of the wall and the Association shall be responsible for the other one-half.

12.7 Mechanic's Liens on Common Area Prohibited. Under no circumstances shall the Association allow any of the Common Areas to become subject to any mechanic's or materialmen's lien and shall, as soon as possible, release or caused to be released such mechanic's or materialmen's lien from the Common Area. If the mechanic's or materialmen's lien was caused as the result of any action or inaction of an Owner, the Association will bill such Owner for the cost incurred by the Association in releasing or causing such mechanic's or materialmen's lien to be released.

ARTICLE 13 RIGHTS AND POWERS OF ASSOCIATION; FINES

13.1 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 that a homeowners' association could do or that 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, along

with a copy of the other Community Documents, shall be available for inspection at the office of the Association during reasonable business hours.

13.2 Rights of Enforcement of Provisions of This and Other Instruments.

13.2.1 Enforcement. Declarant, during the Declarant Control Period, and the Association, as the agent and representative of the Members, shall each have the right to enforce the provisions of this Declaration and the other Community Documents. Notwithstanding the foregoing, if Declarant or the Association shall fail or refuse to enforce this Declaration or any provision hereof and the other Community Documents for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association by bringing an appropriate action whether in law or in equity, but not at the expense of the Association. No Member may bring an action against the Board or Declarant for failure to enforce the Community Documents without joining as claimants at least twenty percent (20%) of the Members, and without complying with the provisions contained in this Declaration and the other Community Documents.

13.2.2 Methods of Enforcement. The Declarant, during the Declarant Control Period, and the Association may enforce the provisions of this Declaration and the other Community Documents in compliance with applicable law (including, but not limited to A.R.S. §§ 33-1803 and 33-1807, as amended) in any manner provided for in this Declaration or the other Community Documents or by law, or in equity, including, but not limited to:

- A. Imposing reasonable monetary fines and/or penalties for violations of this Declaration and the Community Documents as more fully described in *Section 13.3*.
- B. Suspending an Owner's right to vote;
- C. Suspending any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from an Owner's Lot;
- D. Suspending any services provided by the Association to any Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;
- E. Exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;
- F. Requiring an Owner, at the Owner's expense, to remove any structure or other Improvement on such Owner's Lot in violation of the Community Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- G. Without liability to any Person, prohibiting any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the

terms and provisions of the Community Documents from continuing or performing any further activities in the Property;

- H. Towing vehicles from Common Areas that are parked in violation of the Community Documents;
- I. Filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or monetary damages, or to obtain such other relief as to which the Association may be entitled; and
- J. Recording a written notice of violation by any Owner or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: the name of the Owner or Resident violating or responsible for the violation of the Community Documents; the legal description of the Lot against which the notice is being Recorded; a brief description of the nature of the violation; a statement that the notice is being Recorded by the Association pursuant to this Declaration; and a statement of the specific steps that must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent Purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute any evidence that no violation exists with regard to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that, because of the strength of the Owner's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

13.3 Fines.

13.3.1 Right to Impose Fines. The Association, acting through the Board, shall have the right to impose various fines for, and to adopt a schedule of fines for, the violation of any provision of the Community Documents by any Owner or Resident.

13.3.2 Procedure to Impose Fine. No fine for violation of any provision of the Community Documents shall be imposed without the Association first providing a written warning to the Owner or Resident in question, which shall contain, at a minimum the following information: (i) a description of the violation and the provision of the Community Documents that has allegedly been violated; (ii) the date of the violation or the date the violation was first observed; (iii) the first and last name of the person or persons who observed the violation; (iv) a warning stating that the failure to stop such violation within no less than fifteen (15) business days (or less in the event of a recurrence of the same violation within three (3) months of the original violation) or other time periods as may be required by applicable law, shall result in the Owner or Resident, as applicable, being subject to the imposition of a fine; (v) the amount of such prospective fine and the manner in which the fine

shall be enforced; and (vi) a description of the process the Owner or Resident must follow to contest the notice, which process shall be adopted by the Board in accordance with applicable law, and if applicable, shall include the following statement (or such other statement as the Board determines is necessary to comply with then applicable law): "This letter serves as notice that you have or may have the option to petition the Department of Fire, Building and Life Safety and/or the State Real Estate Department for an administrative hearing concerning the enforcement of alleged violation(s) pursuant to A.R.S. § 32-2199.01 and/or A.R.S. § 41-2198.01" ((i) – (vi) collectively, the "Violation Notice").

13.3.3 Opportunity to Be Heard. In accordance with applicable law, all Owners and Residents receiving a Violation Notice shall be given an opportunity to be heard, in the manner described in the Violation Notice, regarding the imposition of a fine prior to the levying of a fine. The opportunity to be heard shall include, among other procedures described in the Violation Notice or required by law, the right of the Owner or Resident receiving a Violation Notice to provide the Association with a written response by sending the response to the Association (at the address identified in the Violation Notice) by certified mail within the time period required by A.R.S. § 33-1803 or other applicable law as amended from time to time, which as of the Recording of this Declaration is twenty-one (21) days after the Owner's or Resident's receipt of the Violation Notice.

13.3.4 Late Fees. Each Owner or Resident failing to pay a fine within fifteen (15) days of the date that the fine is due (or such longer time period as the Board may specify from time to time) shall also pay a late charge as set by the Board from time to time. The initial late charge shall be the greater of (i) fifteen dollars (\$15.00) per month or (ii) ten percent (10%) of the unpaid fine. The fifteen-day delinquency period and late charges shall be subject to any limitations imposed by A.R.S. § 33-1803 or other applicable law as amended from time to time. Each Owner and Resident shall also pay all reasonable collection fees and reasonable attorney fees and costs incurred by the Association in seeking to collect such fines. In addition, the Board may, if it so elects, charge interest (not to exceed ten (10%)) on any fine that is not paid within fifteen (15) days (or such longer time period as the Board may specify from time to time) after such fine, first became due.

13.3.5 Limitations. Notwithstanding anything to the contrary contained in this Declaration, the levying and collection of all fines or other monetary penalties under this Declaration must comply with applicable law, including A.R.S. §§ 33-1803 and 33-1807, as amended.

13.4 Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, or in the Articles, the Bylaws, and the laws of the State of Arizona (including, without limitation, A.R.S. §33-1811), the Association may enter into contracts or other transactions with any Person, including, but not limited to, Declarant. Such contracts or other 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, has a financial interest in, or is otherwise connected with Declarant; provided, however, 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 that shall authorize any contract or transaction described above or grant or deny any approval sought by Declarant or any competitor thereof and may vote to authorize any such contract, transaction, or approval with like force and effect as if he were not so interested.

ARTICLE 14
ANNEXATION AND DEANNEXATION; REPLAT

14.1 Annexation of Annexable Property. The Annexable Property may be annexed to the Property and become subject to this Declaration and to the jurisdiction of the Association without the approval, assent, or vote of the Association or its Members provided that a Declaration of Annexation covering the portion of the Annexable Property sought to be annexed is: (i) executed by Declarant, or its successors and assigns, and by the fee title holders of the portions of the Annexable Property sought to be annexed, in the event Declarant or its successors and assigns does not hold fee title to all of said property and (ii) Recorded. Such execution and Recording of a Declaration of Annexation shall constitute and effectuate the annexation of the portion of the Annexable Property described therein, making said real property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter, the Annexable Property so annexed shall be part of the Property and all of the Owners of Lots in the Annexable Property so annexed shall automatically be Members of the Association. Although Declarant, its successors, and assigns, shall have the ability to so annex all or any portion of the Annexable Property, neither Declarant nor its successors and assigns shall be obligated to annex all or any portion of the Annexable Property, and such Annexable Property shall not become subject to this Declaration unless and until a Declaration of Annexation annexing such Annexable Property shall have been so executed and Recorded. The Declaration of Annexation may contain provisions for the establishment of a Subsidiary Association, if approved and acknowledged by the Association or if established by Declarant in the Declaration of Annexation.

14.2 Annexation of Other Real Property. Prior to the termination of the Declarant Control Period, the Declarant may cause real property other than the Annexable Property to be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association; provided, however, that the Declarant must obtain the consent of the owner of such property. After the termination of the Declarant Control Period, real property other than the Annexable Property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association only with the prior written consent of Members holding at least seventy-five percent (75%) of the votes of the Association and the consent of the owner of such property. In the event that any additional real property is annexed to the Property, such annexation shall be effected by the Recording of a Declaration of Annexation covering the real property sought to be annexed and executed by the Board and by the owner(s) of the real property sought to be annexed.

14.3 Deannexation Without Approval. During the Declarant Control Period, a portion or portions of the Property may be deannexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Association provided that a Certificate of Deannexation covering the portion of the Property sought to be deannexed shall be (i) executed by Declarant and by the Owner(s) of all of the real property to be deannexed and (ii) Recorded.

14.4 Declarations of Annexation and Certificates of Deannexation. The annexations and deannexations authorized under the foregoing Sections shall be made by Recording a Declaration of Annexation or similar instrument that shall extend the plan of this Declaration to such property or a Certificate of Deannexation that shall remove the portion of the Property covered thereby from the plan of this Declaration. The Declarations of Annexation contemplated above may contain such complementary additions and modifications of the Covenants, Conditions, and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any

such Declaration of Annexation revoke, modify, or add to the Covenants established by this Declaration within the existing Property.

14.5 Reservation of Right to Resubdivide and Replat. Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to resubdivide and replat any Common Area, Lot or Lots, or other portion of the Property which the Declarant then owns and has not conveyed or sold.

ARTICLE 15 TERM; AMENDMENTS; TERMINATION

15.1 Term; Method of Termination. This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each unless there is an affirmative vote to terminate this Declaration by Members holding ninety percent (90%) of the votes eligible to be cast at a meeting held for such purpose within six (6) months prior to the expiration of the effective period hereof, and by Declarant during the Declarant Control Period. This Declaration may be terminated at any time if one hundred percent (100%) of the votes cast by the Members shall be cast in favor of termination at a meeting held for such purpose and Declarant, to the extent it continues to own a Lot in the Property, have voted in favor of termination. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained within a period beginning six (6) months prior to such vote to six (6) months after such vote from the holders of First Mortgages to which the Assessment Lien is subordinate pursuant to this Declaration, on seventy-five percent (75%) of the Lots upon which there are such First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect and the Association shall be dissolved pursuant to the terms set forth in its Articles.

15.2 Amendments.

15.2.1 After the Declarant Control Period, this Declaration may be amended only by the affirmative vote or written consent of Members holding at least sixty-seven (67%) of the votes of the Association. No amendment to this Declaration shall be effective until such amendment is Recorded and all amendments shall be effective immediately upon Recording unless a delayed effective date is expressly stated in the amendment. In addition, the provisions of this Declaration shall not be amended to the detriment of Declarant without the prior written consent of Declarant even if Declarant no longer owns any portion of the Property or any portion of the Annexable Property at the time the amendment is adopted.

15.2.2 Notwithstanding anything to the contrary contained in this Declaration, the Declarant, during the Declarant Control Period, may unilaterally (without the consent of any other Person) amend any provision of this Declaration, which amendment, subject to restrictions of applicable law, may apply to or impact all or only a portion of the Lots and/or the Property, as the Declarant shall determine in its sole and absolute discretion. All Owners hereby expressly consent to the foregoing provision and acknowledge that any such amendment may impact some portion of the Lots and the

Property, but not others or may treat certain portions of the Property differently than other portions. In all events, however, Declarant reserves the right to amend this Declaration, without the consent or vote of any other Person, to: (a) correct minor errors, ambiguities or omissions; or (b) to conform any provision of this Declaration to applicable law. After the termination of the Declarant Control Period, the Board reserves the right to amend this Declaration, without the consent or vote of any Person, to: (a) correct minor errors, ambiguities or omissions; or (b) to conform any provision of this Declaration to applicable law. During the Declarant Control Period, the Declaration may not be amended without the written consent of the Declarant.

15.2.3 Any amendment approved by the Owners shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this *ARTICLE 15*. Any amendment made by Declarant shall be signed by Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

15.2.4 Any challenge to any amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this *Section* must be made within one (1) year after the Recording of the amendment.

15.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions.

15.3.1 The Declarant, during the Declarant Control Period, and thereafter the Board, may amend this Declaration or the Plat without obtaining the approval or consent of any other Person in order to conform this Declaration or the Plat to the requirements or guidelines of any Agency, or any other federal, state, or local governmental agency whose approval of the Property, the Plat, or the Community Documents is required by law, by Declarant, or by the Board.

15.3.2 During the Declarant Control Period, and if the Property has been approved by the FHA, the VA, or any other Agency in connection with any loan programs made available by such Agency, any amendment to this Declaration must be approved by the FHA, the VA, and any other Agency that affects any Lot or which Declarant desires remain in effect, as applicable, and only if required by such Agency at the time of the amendment.

ARTICLE 16 **MISCELLANEOUS**

16.1 Interpretation of the Covenants; Conflict.

16.1.1 Except for judicial construction and as hereinafter provided, the Declarant, during the Declarant Control Period, and thereafter, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, the Articles, the Bylaws, and the Association Rules. In the absence of any adjudication to the contrary by a court of competent jurisdiction, such party's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by this Declaration, the Articles, the Bylaws, or the Association Rules.

16.1.2 In the event of any conflict between this Declaration, and the Articles, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

16.2 Compliance with Applicable Law; Severability. It is the intent of the Declarant that this Declaration, and all of the Community Documents, comply with all applicable laws and to the extent any provision of this Declaration or the Community Documents is in violation of any applicable laws, the provisions of applicable law shall prevail. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

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

16.4 Perpetuities and Restraints on Alienation. If any of the options, privileges, Covenants, or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the last living survivor of the living descendants of the President of the United States on the date hereof.

16.5 Laws, Ordinances, and Regulations. The Covenants set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of Declarant, the Board, or the Architectural Committee with respect to a certain action are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances, and regulations. The compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, ordinances, and regulations. 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.

16.6 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities, and duties provided said rules and regulations are not inconsistent with the provisions of this Declaration.

16.7 References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or Common Area or any part of the Property may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee/Owner or other Person claiming through any instrument and such Person's heirs, executors, administrators, successors, and assigns.

16.8 Time is of the Essence. Time is of the essence of this Declaration.

16.9 Governing Law. The provisions of this Declaration shall be governed by and interpreted in accordance with the laws of the State of Arizona.

16.10 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender

shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

16.11 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

16.12 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the Town. This *Section* shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

16.13 Waiver. The waiver of or failure to enforce any breach or violation of this Declaration will not be deemed a waiver or abandonment of any provision of the Declaration or a waiver of the right to enforce any subsequent breach or violation of the Declaration. The foregoing shall apply regardless of whether any Person affected by the Declaration (or having the right to enforce the Declaration) has or had knowledge of the breach or violation.

16.14 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Areas or any Funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only to the extent appurtenant thereto).

16.15 Additional Disclosures.

16.15.1 The Property is located near the Phoenix-Mesa Gateway Airport. Due to its proximity to the Phoenix-Mesa Gateway Airport, the site is likely to experience aircraft over flights, which could generate noise levels that may be of concern to some individuals. The aircraft traffic consists of cargo, commercial, charter, corporate, general aviation and military aircraft.

16.15.2 The Property is subject to a Street Light Improvement Assessment.

16.15.3 The Property is near a Union Pacific rail line over which a minimum of 10 trains travel per day.

16.15.4 There is a high voltage electric line easement in favor of the Salt River Project Agricultural Improvement and Power District that runs through portions of Tract A as shown on the Plat. This easement was created by that certain High Voltage Easement recorded on October 9, 2014, at Document No. 2014-0670641 in the Official Records of the Maricopa County Recorder's Office. Please be aware that in the future there is the potential for high power electric lines to be constructed through portions of Tract A.

16.15.5 The Property is subject to, among other things, the various terms and provisions set forth in the Plat, which are incorporated herein by this reference.

[Signature page follows.]

LIENHOLDER'S CONSENT

U.S. BANK NATIONAL ASSOCIATION, d/b/a HOUSING CAPITAL COMPANY, as Beneficiary under (i) that certain Master Form of Deed of Trust (with Security Agreement and Assignment of Rents and Leases) recorded on August 1, 2013, at Instrument No. 2013-0705524 of Official Records of Maricopa County, Arizona and (ii) that certain Deed of Trust Incorporating by Reference a Master Form Deed of Trust (With Security Agreement and Assignment of Rents and Leases) recorded on March 9, 2016, at Instrument No. 2016-0152294 of Official Records of Maricopa County, Arizona ((i) and (ii) as modified and amended, collectively the "Deed of Trust"), hereby ratifies and consents to all of the terms and provisions of the foregoing Declaration of Covenants, Conditions, and Restrictions for Rittenhouse Ranch (the "Declaration") and subordinates the Deed of Trust, and the terms and provisions thereof, to said Declaration.

DATED this 5th day of JANUARY, 2016⁷.

U.S. BANK NATIONAL ASSOCIATION, d/b/a
HOUSING CAPITAL COMPANY

By [Signature]
Name SAM A. MEADE
Title SENIOR VICE PRESIDENT

STATE OF Texas)
COUNTY OF Dallas) ss.

On this 5 day of January, 2016⁷, before me, the undersigned officer, personally appeared Sam Meade, who acknowledged himself/herself to be Senior Vice President of U.S. BANK NATIONAL ASSOCIATION, d/b/a HOUSING CAPITAL COMPANY:

- whom I know personally;
- whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
- whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

[Signature]
Notary Public



EXHIBIT "A"

Legal Description of Initial Property

LOTS 1 THROUGH 59, INCLUSIVE, AND TRACTS A THROUGH E, INCLUSIVE, OF THE FINAL PLAT OF RITTENHOUSE RANCH, AS RECORDED IN BOOK 1269 OF MAPS, PAGE 6, OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER.

Rittenhouse Ranch Homeowners Association

Top 10 Important Rules and Regulations:

Owners are responsible to also remind their Tenants and Guests of the Rules and Regulations of the Community

- Motorized/off-road vehicles are not permitted to be driven on the common areas of the Association. This includes common areas of the Association, such as walking trails, paths and sidewalks.
- Pets are required to be on a leash at all times while inside the community.
- Homeowners are responsible to pick up after their pet at all times while inside the community. Pet stations have been made available to aid you in doing so.
- Rubbish, Debris, Garbage is not allowed to accumulate on a property. This also includes construction materials during construction. Homeowner is responsible to ensure the street is cleaned after debris is removed.
- Homeowners are responsible to dispose of personal trash left in the ramada/common areas of the Association.
- All improvements that alter the exterior of the property must be approved by the Architectural Committee. This includes, but not limited to, painting, trees, shrubs, granite, gates, knee walls, concrete, pavers and any rear yard structure/equipment that is above the height of the wall.
- Vehicles are to be parked in the garage first, driveway second, driveway extensions third. Overflow street parking is allowed if the above is met.
- Trash and Recycle containers must be placed behind the gates or out of view the next day after pick up.
- No Parking within fifteen (15) feet of fire hydrants.
- Owners are responsible to keep their trees trimmed back away from the street, sidewalks and shared property lines for both the front and back yards.