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**FIDELITY NATIONAL TITLE**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS**

**AND EASEMENTS**

**FOR**

**THE GARDENS AT SOUTH MOUNTAIN COMMUNITY ASSOCIATION**

action” or “Multiunit dwelling action” as described in A.R.S. § 12-1361 *et seq.*, or any “Homeowners’ association dwelling action” as described in A.R.S. § 33-2001 *et seq.* The Association, the Declarant, the Builder, all Owners, Lessees, Members, Residents and other Persons bound by this Declaration, and Declarant’s agents, contractors, employees, subcontractors, architects, engineers or consultants and any Person not otherwise bound by this Declaration who agrees to submit to this Article XII (collectively, the “Bound Parties”) agree that the dispute resolution procedures set forth in this Article XII shall apply to all Claims.

Section 12.2. **Notice of Claim.** Any Bound Party who contends or alleges to have a Claim (a “Claimant”) against any other Bound Party (a “Respondent”) shall notify each Respondent in writing of the Claim (the “Claim Notice”), stating plainly and concisely: (a) the nature of Claim, including date, time, location, Persons involved, and Respondent’s role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect (as defined in Section 12.5), the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (i) a description of the Claim; (ii) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (iii) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a résumé of such engineer; (iv) the estimated cost to repair such Alleged Defect; (v) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board (if any); (vi) a description of the fee arrangement between such attorney and the Association; (vii) the estimated attorneys’ fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (viii) the estimated time necessary to conclude the action; and (ix) an affirmative statement from the Board that the action is in the best interests of the Association and its Members.

Section 12.3. **Mediation.** The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties (“Termination of Negotiations”), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Declarant. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, 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. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation Notice”). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

Section 12.4. **Binding Arbitration.** In the event a Claim is not resolved by mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 12.4. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. The parties shall cooperate in good faith to assure that all necessary and appropriate persons and entities are included in the arbitration proceedings. No party shall be required to participate in the arbitration proceeding if all persons and entities against whom the party would have necessary or permissive crossclaims, counterclaims or third party claims are not or cannot be joined in the arbitration proceeding. If the Claimant submits the Claim to binding arbitration in accordance with this Section 12.4, the arbitration shall be conducted in accordance with the following rules:

(a) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association (“AAA”) Construction Arbitration Rules, as amended from time to time (the “AAA Rules”).

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12- 1501, *et seq.* In the event of a conflict between the AAA Rules and this Section 12.4, the provisions of this Section 12.4 shall govern.

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this subsection (c) is referred to in this Section 12.4 as the “Arbitrator”.

(d) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. In the event the Claim is described in Section 12.1(c), or otherwise relates to the construction of an Improvement in the Project, the Arbitrator shall have at least ten (10) years of residential construction or residential construction-related experience in the Maricopa County residential construction market. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in subsection 12.4(c).

(f) **Compensation.** The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) **Preliminary Hearing.** Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) **Management of the Arbitration.** The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

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

(j) **Hearings.** Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) **Final Award.** The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

Section 12.5. **Right to Enter, Inspect, Repair and/or Replace.** Following the receipt by a Bound Party of a Claim Notice with respect to an alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Improvements (the "Alleged Defect"), the Bound Party and its employees, agents, contractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area and any Improvement for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances; provided, however, that the Bound Party shall be obligated to repair and restore any damage to any Improvement caused by such inspection or testing. Nothing set forth in this Section 12.5 shall be construed to impose any obligation on any Bound party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Residential Units or any other Improvements. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

Section 12.6. **Use of Funds.** Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. Any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

Section 12.7. **Approval of Litigation.** The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses, including without limitation, attorneys' fees, in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of their Residential Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 12.7.

Section 12.8. **Statute of Limitations.** All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 12.4. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

Section 12.9. **Conflicts.** In the event of any conflict between this Article XII and any other provision of the Project Documents, this Article XII shall control.

Section 12.10. **Severability.** If any provision of this Article XII is found by a court or arbitrator to be invalid or unenforceable for any reason, such provision shall be severed from this Article XII, and the remaining provisions of this Article XII shall remain unaffected and in full force and effect.

**BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XII AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE XII. THE ASSOCIATION, EACH OWNER, AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE XII, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER, AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.**

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

**DECLARANT:**

**SF I PROPERTIES BASELINE  
LIMITED PARTNERSHIP,  
an Arizona limited partnership**

By: *Robert M. De*

Its: *Manager Member*  
**RMF INVESTMENT 40, LLC  
GENERAL PARTNER**

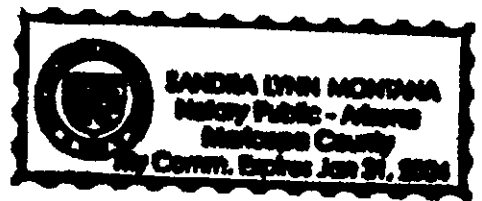
STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this 27 day of OCTOBER, 2003, by ROBERT M. FRANK, the MG MEMBER of SF I PROPERTIES BASELINE LIMITED PARTNERSHIP, an Arizona limited partnership, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument, and that he or she, as such MANAGING Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

My Commission Expires:  
January 31, 2004

*Sandra Lynn Montana*  
NOTARY PUBLIC



**EXHIBIT "A"**

Legal Description of Project

Lots 1 through 117, inclusive and Tracts A through E, F1, F2, G through Z, and AA through DD, inclusive, THE GARDENS AT SOUTH MOUNTAIN, according to Book 650 of Maps, page 26 records of Maricopa County, Arizona.



## EXHIBIT "B"

### Legal Description of Annexable Property

That portion of the southeast Quarter of Section 36, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; more particularly described as follows:

Commencing at the Southeast corner of the Southeast Quarter of said Section 36; thence South  $89^{\circ}43'30''$  West (an assumed bearing), along the South line of the Southeast Quarter of said Section 36, for a distance of 1315.58 feet to a point on the West line of the Southeast Quarter of the Southeast Quarter of said Section 36 and to the Point of Beginning;

Thence along said West line North  $00^{\circ}04'56''$  East, for a distance of 708.68 feet to the North line of the South 708.68 feet of the Southeast Quarter of said Section 36; thence along said North line North  $89^{\circ}43'30''$  East, for a distance of 405.64 feet; thence South  $00^{\circ}05'19''$  West, for a distance of 708.68 feet to a point on the South line of the Southeast Quarter of said Section 36 (said East line also being the South line of a 55' R.O.W. deeded to the City of Phoenix as Doc. No. 89-459062 of Official Records); thence along said South line, South  $89^{\circ}43'30''$  West, for a distance of 405.56 feet; to the Point of Beginning.

An area containing approximately 287,435 square feet or 6.599 acres.

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

**FOR**

**THE GARDENS AT SOUTH MOUNTAIN COMMUNITY ASSOCIATION**

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS**

**AND EASEMENTS**

**FOR**

**THE GARDENS AT SOUTH MOUNTAIN COMMUNITY ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE GARDENS AT SOUTH MOUNTAIN COMMUNITY ASSOCIATION is made this 27 day of OCTOBER 2003, by **SF I PROPERTIES BASELINE LIMITED PARTNERSHIP**, an Arizona limited partnership ("SF"), referred to herein as "Developer/Declarant," or "Developer," or "Declarant."

**RECITALS**

A. Declarant holds fee simple title to that certain real property in the City of Phoenix, County of Maricopa, State of Arizona, which is more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property" or the "Project").

B. Declarant has the right to develop the Property and sell residences to be constructed thereon, and, subject to the conditions set forth hereinbelow, has the authority to exercise all rights of the Declarant under this Declaration.

C. Declarant desires that a nonprofit corporation, The Gardens at South Mountain Community Association, be formed for the purpose of the efficient preservation of the values and amenities of the Property and to which will be delegated certain powers of administering and maintaining the Common Area, enforcing this Declaration, and collecting and disbursing the assessments created herein.

D. Declarant desires and intends that the Property shall be held, sold and conveyed, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on and for the benefit of all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors or assigns, and shall inure to the benefit of each owner thereof and their heirs, representatives, successors and assigns.



NOW, THEREFORE, THE DECLARANT HEREBY DECLARES, COVENANTS AND AGREES AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

Section 1.1. "**Adjacent Lot**" means a Lot adjacent to another Lot.

Section 1.2. "**Annexable Property**" means the real property described on Exhibit B attached to this Declaration, together with all Improvements located thereon, which is adjacent to the south of the Project.

Section 1.3. "**Annual Assessment**" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 8.2 of this Declaration.

Section 1.4. "**Architectural Committee**" means the committee created pursuant to Article VI hereof.

Section 1.5. "**Architectural Committee Rules**" means the rules, if any, adopted by the Architectural Committee.

Section 1.6. "**Areas of Association Responsibility**" means (i) the Common Area; (ii) all land, and the Improvements thereon, situated within the boundaries of a Lot which the Association specifically acknowledges herein or in another recorded document is land which is to be improved, maintained, repaired and replaced by the Association; and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas; and (iv) each of the private joint Ingress/Egress Easements.

Section 1.7. "**Articles**" means the Articles of Incorporation of the Association, as they may from time to time be amended.

Section 1.8. "**Assessment**" means an Annual Assessment or Special Assessment.

Section 1.9. "**Assessment Lien**" means the lien created and imposed by Article VIII of this Declaration.

Section 1.10. "**Assessment Period**" means the period set forth in Section 8.5 of this Declaration.

Section 1.11. "**Association**" means the Arizona nonprofit corporation to be organized by Developer to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Developer intends to

organize the Association under the name of "The Gardens at South Mountain Community Association," but Developer reserves the right to organize the Association or conduct business under such other name as Developer deems appropriate.

Section 1.12. "**Association Rules**" means the rules, if any, adopted by the Board pursuant to Section 7.3 of this Declaration, as they may from time to time be amended.

Section 1.13. "**Board**" means the Board of Directors of the Association.

Section 1.14. "**Builder**" means any Person acting as general contractor for construction of the Project and designated by Declarant from time to time as Builder.

Section 1.15. "**Bylaws**" means the Bylaws of the Association, as they may from time to time be amended.

Section 1.16. "**Common Area**" means: (a) the real property designated as Tracts A-Z (including Tracts F-1 and F-2) and Tracts AA-DD on the Plat; and (b) all land, and the Improvements situated thereon, within the Project which Developer indicates on a recorded subdivision plat, Tract Declaration or other recorded instrument is to be conveyed to the Association for the benefit and use of the Members.

Section 1.17. "**Common Expenses**" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

Section 1.18. "**Declaration**" means this Declaration of Covenants, Conditions, Restrictions and Easements, as it may be amended from time to time.

Section 1.19. "**Developer/Declarant**" (also referred to herein as "Developer" or "Declarant") means SF, or any person or entity who has succeeded to such Developer/Declarant's rights and powers hereunder as to all or a portion of the Property owned by such Developer and to whom such Developer/Declarant's rights hereunder have been assigned by recorded instrument, including this Declaration. Without limiting the generality of the foregoing, Developer/Declarant may assign its rights relating to a Lot (including, but not limited to, the Class B voting rights attributable to such Lot) by making specific reference to such assignment in a recorded deed transferring title to such Lot.

Section 1.20. "**First Mortgage**" means a mortgage or deed of trust recorded against a Lot which constitutes a lien or encumbrance which is prior and superior to all other liens or encumbrances except those that relate to tax liens for real property or taxes or assessments in favor of any municipal or other governmental body.

Section 1.21. "**First Mortgagee**" means a mortgagee under a First Mortgage.

Section 1.22. "**Improvement**" means any Residential Unit, building, fence, wall or other structure or any swimming pool, road, driveway, sidewalk, planter, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

Section 1.23. "**Landscaping**" means grass, trees, plants and other planted improvements together with an irrigation system sufficient to adequately water same.

Section 1.24. "**Lessee**" means the lessee or tenant under a lease, oral or written, of any Lot, including an assignee of a lease.

Section 1.25. "**Lot**" means each parcel of real property designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

Section 1.26. "**Maintenance Standard**" means the standard of maintenance of the Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout The Gardens at South Mountain.

Section 1.27. "**Member**" means any Person who is a Member of the Association.

Section 1.28 "**Motor Vehicle Maneuvering Easement**" means a private easement across the driveways, sidewalks, and portions of Lots adjacent to Tracts H-Z and Tracts AA-CC, as depicted on the Plat and subject to the conditions of use and enjoyment set forth in this Declaration, for the benefit of adjacent Lot Owners and their guests solely for the purpose of securing an adequate vehicle maneuvering area into and out of the driveways on the Lots adjacent to Tracts H-Z and Tracts AA-CC. Motor Vehicle Maneuvering Easements are designated and depicted in the Plat as "Reciprocal Access Easements", "Vehicular Maneuvering Easements", "Motor Vehicle Easements", and/or "MVE's".

Section 1.29. "**Owner**" means 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 interest of a Lot. Owner shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. 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.* Owner shall not include an obligation under an option to purchase (unless and until the option has been exercised and then only as to the Lots for which the option has been exercised), or a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts 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 Arizona Revised Statutes, Section 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.

Section 1.30. "**Person**" means a natural person, corporation, limited liability company business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

Section 1.31. "**Plat**" means the plat of record, The Gardens at South Mountain, recorded in Book 650, page 26, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto, and if the Annexable Property is annexed to the Project, any subdivision plat recorded against all or any part of the Annexable Property, and all amendments, supplements and corrections thereto.

Section 1.32. "**Private Joint Ingress/Egress Easement**" means the private joint ingress/egress easement dedicated in the Plat and subject to the conditions of use and enjoyment set forth in this Declaration, providing vehicular access over Tracts H-Z and Tracts AA-CC, to two or more Lots as depicted on the Plat, and designated on the Plat as "Private Drives".

Section 1.33. "**Private Accessway**" means the private accessway dedicated in the Plat and subject to the conditions of use and enjoyment set forth in this Declaration, depicted on the Plat as Tract "A."

Section 1.34. "**Property**" or "**Project**" means the real property described on Exhibit A attached to this Declaration and any Annexable Property added to the Project pursuant to Section 3.5 of this Declaration together with all Improvements located thereon.

Section 1.35. "**Project Documents**" means this Declaration, the Articles, the Bylaws, and the Association Rules, and any other related documents.

Section 1.36. "**Resident**" means each individual occupying or residing in any Residential Unit.

Section 1.37. "**Residential Unit**" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

Section 1.38. "**Single Family**" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

Section 1.39. "**Special Assessment**" means any assessment levied and assessed pursuant to Section 8.4 of this Declaration.

Section 1.40. "**Visible From Neighboring Property**" means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of the Property (including a Lot, Private Accessway or Common Area) adjoining the Lot or portion of the Property upon which the object is located. The Architectural Committee will be the sole judge as to what constitutes Visible From Neighboring Property.

## ARTICLE II

### **TERM; METHOD OF TERMINATION**

Section 2.1. **Term; Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded, after which time, this Declaration shall be extended automatically for successive periods of ten (10) years each. Subject to any applicable laws or ordinances, this Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, 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.

## ARTICLE III

### **PLAN OF DEVELOPMENT**

Section 3.1. **Property Initially Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. Declarant declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, 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 provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, and its successors, assigns and grantees, covenants and agrees that the Lots and the rights of Members in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot. 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, Members and their respective successors in interest.

Section 3.2. **Disclaimer of Representations.** Neither Owner, Developer nor Builder make any representations or warranties whatsoever that (i) the development of the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future. In addition, if any guardhouses are constructed within the Project, neither Developer nor any Builder makes any representations or warranties that a guard service will be provided or, if guard service is provided, that it will be provided during any particular hours or be continued in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salespersons representing the Developer or Builder shall be deemed to create any implied covenants or restrictions with respect to the use of any property subject to this Declaration or any part of the Annexable Property. While neither the Developer nor Builder believe that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Developer nor Builders make any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel 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 the Lot or Parcel agrees to hold Declarant and Builder harmless therefrom.

Section 3.3. **Cluster Home Development.** The Project is being developed as a cluster home community, and each Person who accepts a deed or acquires an interest in the Project hereby acknowledges that the configuration of the Lots within the Project is different from that of a standard lot single-family residential subdivision, in that the majority of Lots are situated around shared, Private Joint Ingress/Egress Easements, will be subject to easements intended to make vehicle maneuvering from neighboring Lots into and out of the Private Joint Ingress/Egress Easements less difficult, are smaller than typical lots in standard lot single-family residential subdivisions, and are within a Project which is planned to be developed at a higher overall density than a standard lot single-family residential subdivision.

Section 3.4. **Withdrawal of Property.** At any time on or before the date which is ten (10) years after the date this Declaration is recorded, the Declarant shall have the right to withdraw property from the Project without the consent of any other Owner or Person. A withdrawal of all or any portion of the Project shall be effectuated by the Declarant recording with the County Recorder of Maricopa County, Arizona, an amendment to this Declaration setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from the Project pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions or restrictions set forth in this Declaration.

Section 3.5 **Addition of Annexable Property.** At any time on or before the date which is ten (10) years after the date this Declaration is recorded, the Declarant shall have the right to add all or part of the Annexable Property to the Project without the consent of any other Owner or Person. An addition of all or any portion of the Annexable Property to the Project shall be effectuated by the Declarant recording with the County Recorder of Maricopa County, Arizona, an amendment to this Declaration setting forth the legal description of the

portion of the Annexable Property being added to the Project. Upon the addition of any portion of the Annexable Property to the Project pursuant to this Section, such property shall be a part of the "Property" or "Project" referred to in this Declaration, and shall become subject to all of the covenants, conditions and restrictions set forth in this Declaration.

**Section 3.6. Restriction on Liability of the Association.** The Developer or Builder may construct a guardhouse or gated entry on one or more of the streets providing access to the Project in order to limit access to the Project and to provide more privacy for Owners and other occupants of Lots. Each Owner and occupant, their families, guests and invitees acknowledge that any such guardhouse or gated entry may restrict or delay entry into the Project by the police, the fire department, ambulances and other emergency vehicles or personnel. Neither Declarant, Builder, the Association or any director, officer, agent or employee of the Developer, Builder or the Association shall be liable to any Owner or other occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such guardhouse or gated entry.

**Section 3.7. Conveyance of Common Area to the Association.** Within ninety (90) days after the conveyance of the first Lot to a Purchaser, or within such other reasonable period of time, as evidenced by the recording of a deed in the Official Records of Maricopa County, the Developer shall cause the Common Area to be conveyed to the Association by special warranty deed, free and clear of all liens.

## ARTICLE IV

### USE RESTRICTIONS

In addition to the stipulations and restrictions on uses as set forth in the Plat and related documents, the permitted uses, easements, and restrictions for all Property covered by this Declaration shall be as follows:

**Section 4.1. Single Family Residential Use.** All Lots shall be used, improved and devoted exclusively to single-family residential use. No Lots shall ever be used, directly or indirectly, for any business, church, commercial, manufacturing, industrial, storage, vending or other similar uses or purposes; provided, however, that an owner or Lessee shall not be prohibited from using the Residential Unit for business purposes which: (i) use a minimal portion of the Residential Unit; (ii) do not result in the use of the Residential Unit for business meetings, appointments, gatherings or day care; (iii) do not result in shipping or receiving from or to the Residential Unit; (iv) do not involve any additional parking or traffic; and (v) do not otherwise violate the Declaration, or local zoning or use laws. Nothing herein shall be deemed to prevent the leasing of any Lot with the improvements thereon to a single family from time to time by the Owner thereof, subject to all of the provisions of the Declaration. No structure whatever shall be erected, placed or permitted to remain on any Lot without the express written approval of the Architectural Committee. Written approval by the Architectural Committee of such structures is essential to construction of such structures and such structures must comply with the guidelines established for such structures either in this Declaration or in any rules established by the

Architectural Committee and/or the city of Phoenix. Notwithstanding the foregoing, Lots owned by a Developer or its designee or assignee may be used as model homes and for sales and construction offices for the purpose of enabling the Developer or its designee or assignee to sell and construct residences on the Lots within the Property, and the model homes constructed on such Lots may be used by Developer for the purpose of the marketing and sale of homes to be constructed on other Lots in the Project or on the Annexable Property, until such time as all of the Lots owned by the Developer or its designee or assignee have been sold and residences constructed thereon.

Section 4.2. **Parking.**

- (a) **Vehicles.** No motor vehicle classified by manufacturer rating as exceeding three-quarter (3/4) ton, mobile home, trailer, camper shell, detached camper, boat, boat trailer, hand glider, aircraft or other similar equipment or vehicle or attachments or accessories thereto may be parked, stored, maintained, constructed, reconstructed, or repaired on any Lot, street, Private Accessway, Private Joint Ingress/Egress Easement or Common Area, Visible From Neighboring Property within the Property. No automobile, motorcycle, motor bike, motorized hang glider, aircraft or other vehicle of any kind or attachment or accessories thereto shall be constructed, reconstructed or repaired on any Lot, Private Accessway, Private Joint Ingress/Egress Easement or Common Area within the Property and no commercial vehicles, inoperable vehicle, or any vehicle not used on a regular and recurring basis for basic transportation, may be stored or parked anywhere on the Project so as to be Visible From Neighboring Property, except in the event of an emergency or as otherwise required by applicable laws. For purposes of this paragraph, commercial vehicles shall include all vehicles used for commercial purposes, displaying advertising or any other commercial signage or lettering, or any vehicles containing exposed ladders, tools, or other equipment (whether or not actually used for commercial purposes). Unless otherwise permitted by the Board, in no event shall overnight parking of any motor vehicles be permitted in any driveway or Private Accessway within the Project; provided, however, that it shall be permissible for one (1) motor vehicle belonging to a current overnight guest of the Owner of a Lot to be parked in the driveway of the Owner's Lot for a period not to exceed five (5) consecutive days and no more than ten (10) days per month. All motor vehicles of Owners and their Lessees shall be kept in garages whenever such facilities are sufficient to accommodate the number of motor vehicles on a Lot. Motor vehicles shall be permitted to park within the Project only on paved driveways on the Lots, except that parking on areas on either side of the Private Accessway not designated as a No Parking Area shall be permitted within the Project for deliveries, short-term guests and invitees (as determined by the Board).



- (b) **Private Accessway.** No vehicle shall be parked on a Private Accessway, except for vehicles of Owners or guests of Owners which may be parked on areas on either side of the Private Accessway not designated as a No Parking Area, on a short-term basis (as determined by the Board), provided that the requirements of Subsection (a) above have been satisfied.
- (c) **Private Joint Ingress/Egress Easement Parking Restrictions.** Notwithstanding any other provision of this Declaration, no vehicle shall be parked at any time on any Private Joint Ingress/Egress Easement.
- (d) **Driveway Parking.** Vehicles shall be parked in driveways so as to avoid interfering with the safe, convenient and orderly ingress and egress by other Owners and their guests to-and-from the driveways and walkways on the other Lots. No part of any vehicle parked in any driveway shall overhang, to any extent, the edge of any driveway, not including the curb. Garage doors shall be kept entirely closed, except to the extent necessary for access to-and-from the garage for vehicles and equipment.
- (e) **Towing of Vehicles.** The Board shall have the right to have any vehicle which is parked, kept, maintained, constructed, reconstructed or repaired on a Lot, the Common Area, a Private Accessway or a Private Joint Ingress/Egress Easement in violation of the Project Documents, including any rules and regulations as promulgated by the Board, immediately towed away without notice at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle. If the vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in the Declaration for the collection of Assessments. Each Owner hereby grants an easement to the Association and its directors, officers, employees, agents and contractors to enter upon the Owner's Lot for the purpose of towing any vehicle which is parked, kept, maintained, constructed, reconstructed or repaired on the Lot in violation of the Project Documents.

Section 4.3. **Garages and Driveways.** The interior of all garages or carports shall be maintained in a neat, clean and sightly condition. Garages and carports shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities or storage (if such storage restricts the parking of cars in the garages) without the prior written approval of the Board.

Section 4.4. **Antennas.** Except as otherwise permitted by applicable laws or regulations, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained so as to be Visible From Neighboring Property, unless approved by the Architectural Committee.

Section 4.5. **Decorations/Sculptures/Artwork.** Except for holiday decorations as described below, no decorations, sculptures, artwork, flagpoles, fountains or displays may be used, erected or maintained so as to be Visible From Neighboring Property, unless first approved by the Architectural Committee. Appropriate temporary holiday decorations, as determined by the Board, shall be removed within two (2) weeks following the holiday.

Section 4.6. **Gardening Equipment.** All hoses, gardening equipment and other similar implements shall be stored after use in a manner that is not Visible From Neighboring Property.

Section 4.7. **Utility Service.** All lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee. Temporary power or telephone structures incident to construction activities approved by the Architectural Committee are permitted.

Section 4.8. **Lighting.** No exterior lighting of any kind, other than the optional coach lights or rear flood lights offered by Builder, shall be installed and/or maintained so as to be Visible From Neighboring Property, unless first approved by the Architectural Committee. Any exterior lighting shall be installed so as to avoid causing a nuisance to any neighboring property.

Section 4.9. **Screens and Screen Doors.** No screen doors, security doors, window screens or tinting shall be applied, installed or maintained so as to be Visible From Neighboring Property, unless first approved by the Architectural Committee from an approved list of such products. Interior window coverings shall show a white surface on the side facing outside unless otherwise approved by the Architectural Committee. Temporary window coverings Visible From Neighboring Property are to be replaced with permanent coverings within forty-five (45) days after sale of the home by Developer.

Section 4.10. **Improvements and Alterations.** No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of the Property or the improvements located thereon from its natural or improved state existing on the date such Property was first conveyed by Developer to a homebuyer shall be made without the prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall or other structure shall be erected, maintained, improved, altered, made or done (including choice of exterior color scheme and building materials) without the prior written approval of the Architectural Committee or any subcommittee thereof. Pursuant to its rule making power, the Architectural Committee shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The Architectural Committee shall have the right, in its sole discretion, to refuse to approve any plans, specifications or grading plans which are not suitable or desirable, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be

built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from adjacent or neighboring property. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. In the event of any conflict between the provisions of this paragraph and those set forth in Article VI, the more restrictive provisions shall apply unless otherwise determined by the Architectural Committee.

Section 4.11. **Maintenance of Lawns and Planting.** Lots shall be maintained by their Owners free of weeds and debris; lawns shall be neatly mowed and trimmed; bushes and landscaping shall be trimmed; and dead plants, trees, or grass shall be removed and replaced. Trees and bushes shall be maintained so as to not overhang onto a neighbor's Lot, and leaves shall be kept from falling into any neighbor's Lot. Rear yards that have a view wall shall be landscaped in accordance with Architectural Committee approval.

Section 4.12. **Repair of Buildings.** No improvement upon any Property 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.

Section 4.13. **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Property except in covered sanitary containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make same available for collection and, then, only for the shortest time reasonably necessary to effect such collection, not to exceed twelve (12) hours after pickup. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. All trash receptacles shall be placed on the pads designated therefor in order to be collected.

Section 4.14. **Overhangs.** No tree, shrub, or planting of any kind of any Property shall be allowed to overhang or otherwise to encroach upon any Common Area from ground level to a height of twelve (12) feet, without the prior approval of the Architectural Committee.

Section 4.15. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon the Property except usual and customary equipment and machinery used in connection with the use, maintenance or construction of permitted improvements, and except that which Developer or the Association may require for the operation and maintenance of the common Area. Playground equipment, outdoor decks, gazebos and other such equipment or structures shall not be allowed in the front of the houses, and may only be allowed on the rear yards if they are not Visible From Neighboring Property.

Section 4.16. **Restriction on Further Subdivision.** No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board. No further covenants, conditions, restrictions or easements shall be recorded against any Lot without the written consent of the

Board being evidenced on the recorded instrument containing such restrictions and without such approval such restrictions shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board and then only if such proposed use is in compliance with this Declaration.

Section 4.17. **Signs.** No sign of any nature (other than the address sign installed by Developer) shall be permitted on any Lot; provided, however, that one sign of not more than five (5) square feet may be temporarily erected or placed on a Lot for the purpose of advertising the Lot for sale or rent; and provided further, a Developer or its designee or assignee may erect any signs during construction. These restrictions shall not apply to the Association in furtherance of its powers and purposes herein set forth.

Section 4.18. **Animals.** As used in this Section, the term "Permitted Pet" means a dog, cat, parakeet or similar household bird, but excluding any dog whose lineage includes breed(s) determined by the Board to be traditionally bred for dogfighting or viciousness. No animal, bird, fowl, poultry, reptile or livestock, other than two (2) Permitted Pets shall be kept, bred or raised on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No Permitted Pet shall be permitted to make an unreasonable amount of noise, or create an odor or a nuisance, or behave in a vicious or aggressive manner as determined by the Board in its sole discretion. No structure for the care, housing or confinement of any animal or fowl shall be maintained so as to be Visible From Neighboring Property. All Permitted Pets shall be confined to an Owner's Lot, except that a dog or cat may be permitted to leave an Owner's Lot if such dog or cat is at all times kept on a leash not to exceed six (6) feet in length and is not permitted to enter upon any other Lot. All pet waste shall be cleaned up promptly by the Owner. The Board shall have the right to require the removal of any animal, including a Permitted Pet, from the Project if the Board determines that the Declaration or the Rules and Regulations of the Project have been violated as a result of the animal's presence at the Project.

Section 4.19. **Temporary Occupancy.** No temporary building, structure or vehicle of any kind shall be used as a residence, either temporary or permanent. Temporary buildings for structures used during construction periods shall be removed immediately after completion of such construction.

Section 4.20. **Nuisances/Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to a Lot and no odors or loud noises shall be permitted to arise or emit therefrom, so as to create a nuisance, render any such Property or any portion thereof or activity thereon unsanitary, unsightly, offensive or detrimental to the Lot or person in the vicinity thereof. Without limiting the generality of any of the foregoing provisions, no speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any such Property. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Property. The Board in its sole discretion shall have the right to determine the existence of any violation of this Section and its determination shall be final and enforceable as provided herein. Normal construction activities shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be

kept in a neat and tidy condition during construction periods. Supplies or building materials and construction equipment shall be stored only in such areas and in such manner as may be approved by the Architectural Committee or a Developer.

Section 4.21. **Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property unless they are erected, placed and maintained exclusively within a fenced yard and are not Visible From Neighboring Property.

Section 4.22. **Mineral Exploration.** No Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

Section 4.23. **Diseases and Insects.** No Owner or resident shall permit any thing or condition to exist upon the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 4.24. **Party Walls and Fences.** The rights and duties of Owners with respect to party walls or party fences shall be as follows:

- (a) Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use does not interfere with the use and enjoyment thereof by the other Owner.
- (b) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner, his agents, guests, or family members, it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining Lot Owner or Owners. Any dispute over an Owner's liability shall be resolved as provided in Subsection (e) below.
- (c) In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests or family members, it shall be the joint obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence, such expense to be divided among the Owners in accordance with frontage of their Lot on the party wall or party fence.
- (d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior written consent of the Board.
- (e) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence or the sharing of the cost

thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be final and enforceable.

- (f) Each Owner shall permit the Owners of adjoining Lots, or their representatives, when reasonably required, to enter his Lot for the purpose of repairing or maintaining a party wall or fence or for the purpose of performing installations, alterations or repairs to the Property of such adjoining Owners, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this Section shall not be deemed guilty of trespass by reason of such entry.
- (g) Surfaces of party walls or party fences that are generally accessible or viewable from only the adjoining Property may be planted against, painted, maintained and used by the adjoining Owners. If such surfaces are viewable from public streets or the Common Area, the color scheme shall not be changed without the written consent of the Architectural Committee.
- (h) Any Lot which has a wall adjacent to the Common Area and which wall separates the Lot from the Common Area shall be considered to have a party wall with the Association and the provisions of this Section apply as though the Common Area were an adjacent Lot.
- (i) The Owners of Lots with a wall adjacent to a street, or adjoining property, other than Lots or Common Area within the Property, shall be solely responsible for repair and maintenance of such walls, and if repair is necessary, the repaired wall must match the size, color, and texture of the existing adjacent walls within the Property.

Section 4.25. **Right of Entry.** During reasonable hours and upon reasonable notice to the Owner or resident of a Lot, any Member or authorized representative of the Architectural Committee or the Board shall have the right to enter upon and inspect any Lot or improvements thereon, except for the interior portions of any completed improvements, to determine if the improvements are in compliance with this Declaration. Any such persons shall not be deemed guilty of trespass by reason of such entry.

Section 4.26. **Health, Safety and Welfare.** In the event uses, activities and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or residents, the Board may make rules restricting or regulating their presence as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the Architectural Committee rules.

Section 4.27. **Developer's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by a Developer, or its duly authorized contractors, agents or assignees, of Improvements or signs necessary or convenient to the

development or sale of Lots or homes to be constructed upon Lots within the Property. Developer shall have the right to maintain its model homes in the Project for the purpose of the marketing and sale of homes to be constructed on the Lots.

**Section 4.28. Maintenance of Areas of Association Responsibility; Permitted Uses and Restrictions of the Common Area.** The Association hereby accepts responsibility for the maintenance and repair of the Areas of Association Responsibility as set forth herein and in the Plat. The permitted uses and restrictions for the Common Area shall be as follows:

(a) **Permitted Uses.** Except as otherwise provided herein, the Common Area shall be used in general for the exclusive benefit of the Owners, Lessees and any guests or invitees thereof, for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment to be derived from such reasonable and proper use, without hindering the exercise of or encroaching upon the right of any other Owner to utilize the Common Area, provided that no unlawful use shall be permitted. Use of the Common Areas, including any tot lots, swimming pool, trails, ramadas or other recreational amenities, shall be in accordance with such Rules and Regulations as the Board may, from time-to-time, promulgate. All use of the Common Area and its recreational facilities shall be at the sole risk and liability of the user.

(b) **Restricted Uses.**

- (i) The Common Area shall not be used by Owners for storage of supplies, material or personal property of any kind.
- (ii) Except as otherwise provided herein, no activity shall be carried on, nor condition maintained, by any Owner upon the Common Area which spoils the appearance of the Property or hinders or encroaches upon the right of any other Owner to utilize the common Area as reasonably intended.

**Section 4.29. Variances.** The Board, at its option and in extenuating circumstances, may grant variances from the restrictions set forth in this Article IV if the Board determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on an Owner or Lessee or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete; and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Owners and Lessees of the Project and is consistent with the high quality of life intended for residents of the Project. For so long as the Developer owns any of the Lots, in order for any variance to be granted pursuant to this provision, such variance must have the written approval of Developer.

## ARTICLE V

### EASEMENTS

Section 5.1. **Owners' Easements of Enjoyment.** Subject to the rights and easements granted to Developer and Builder in Section 5.4 of this Declaration, every Member, and any person residing with such Member, shall have the right to use the Common Area (including, but not limited to, the right to use any Private Accessway, any Private Joint Ingress/Egress Easement, any Motor Vehicle Maneuvering Easement, or any other private streets which may be part of the Common Area for ingress and egress to the Member's Lot) which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 7.11 of this Declaration.

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

(c) The right of the Association to suspend the right of an Owner and such Owner's family, tenants, guests or invitees to use the Common Area (other than the right of an Owner to use any Private Accessway, any Private Joint Ingress/Egress Easement, any Motor Vehicle Maneuvering Easement, or any private streets which may be part of the Common Area for ingress and egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if such Owner has violated any other provision of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies such Owner of the violation.

(d) Any encroachment easement and right of exclusive use which exists pursuant to Section 5.7 of this Declaration.

(e) If a Lot is leased or rented by the Owner thereof, the Lessee and the members of such Lessee's family who are residing with such Lessee shall have the right to use the Common Area during the term of the subject lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

Section 5.2. **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area, the Lots, the Private Accessway and each of the Private Joint Ingress/Egress Easements and Motor Vehicle Maneuvering Easements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this utility easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area, the Lots, the Private Accessways, and each of the Private Joint Ingress/Egress Easements and Motor Vehicle Maneuvering Easements,



but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area, the Lots, the Private Accessways, or any of the Private Joint Ingress/Egress Easements or Motor Vehicle Maneuvering Easements except as initially designed, approved and constructed by Developer or as approved by the Board.

Section 5.3. **Drainage Easements.** There is hereby created a blanket easement for drainage of groundwater on, over and across the Common Area and to the extent necessary to facilitate the grading and drainage plan for the Project on, over and across the Lots. In addition, an easement has been dedicated in the Plat for drainage, over the west ten (10) feet of the Property described in the Plat, affecting Lots 42-45 and Lots 48-50, for the purpose of draining offsite water through underground pipes (the "Underground Drainage Pipes") to Tract D. No Owner shall obstruct, divert, alter or interfere with any portion of the Property as it relates to the proper drainage on the Project. It shall be the responsibility of each Owner desiring to install any Improvement (such as a swimming pool or landscaping features) to determine at such Owner's sole expense whether the desired Improvement will obstruct, divert, alter or interfere with any Underground Drainage Pipes or other drainage easement or feature of the Project, in which event the installation of such Improvement is hereby prohibited. Each Owner shall at his own expense maintain the surface drainageways and channels on his Lot (excluding any Underground Drainage Pipes) in proper condition free from obstruction.

Section 5.4. **Easements of Developer and Builder.**

(a) Developer and Builder shall have the right and an easement to maintain sales or leasing offices, management offices, construction trailers, construction facilities, and models throughout the Project and to maintain one or more advertising signs on the Common Area, the Private Accessways, or any of the Private Joint Ingress/Egress Easements while Developer or Builder is leasing or selling Lots. Developer and Builder reserve the right to place models, management offices, construction trailers, construction facilities, and sales and leasing offices on any Lots owned by or licensed or leased to them and on any portion of the Common Area in such number, of such size and in such locations as Developer or Builder deems appropriate.

(b) Developer and Builder shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements Developer or Builder may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Developer or Builder for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

(c) Developer and Builder shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations and exercising the rights granted to or reserved by Developer or Builder by this Declaration.

Section 5.5. **Sidewalk Easement.** There is hereby created an easement upon, across, over and under the Common Area, the Lots, the Private Accessway and each of the Private Joint Ingress/Egress Easements and Motor Vehicle Maneuvering Easements adjacent to

the Private Accessway for the construction, maintenance and public access and use of sidewalks, which shall be constructed by Developer as depicted in the Plat, shall be part of the Common Area, and shall be maintained by the Association. No other sidewalks shall be constructed in the Project except as initially designed, approved and constructed by Developer or as approved by the Board. No Owner shall obstruct, alter or interfere with any portion of the Property used for such sidewalks.

Section 5.6. **Easement in Favor of Association.** The Lots, the Private Accessway, and each of the Private Joint Ingress/Egress Easements hereby are made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

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

(b) For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

(c) For correction of emergency conditions in one or more of the Lots or the Private Joint Ingress/Egress Easements, including without limitation, the towing of improperly parked vehicles;

(d) For the purpose of enabling the Association, the Board, or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

(e) For inspection of the Lots, the Private Accessways, or any of the Private Joint Ingress/Egress Easements in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

Section 5.7. **Easement for Encroachments.**

(a) In the event any Residential Unit or any patio adjacent to a Residential Unit or any driveway, sidewalk or walkway providing access to a Residential Unit or any Lot perimeter wall or fence, as initially constructed, encroaches upon any Common Area, then an easement for the encroachment in favor of the Lot Owner shall exist, and the Lot Owner also shall have an easement over the Common Area for the purpose of repairing, maintaining and replacing the portion of the Owner's Residential Unit, patio, driveway, sidewalk, walkway, wall or fence which encroaches upon the Common Area. That portion of the Common Area subject to an easement for encroachment pursuant to this Section shall be for the exclusive use of the Owner of the Lot benefited by the easement and the guests and invitees of such Owner, and shall be maintained by the Owner of the benefited lot.

(b) In the event any Common Area improvement including, but not limited to, any wall, building, road or sidewalk, as initially constructed, encroaches upon any Lot, then an easement for the encroachment in favor of the Association shall exist, and the Association shall also have an easement over that portion of the Lot on which the encroachment exists for the purpose of repairing, maintaining and replacing the portion of the improvement that encroaches upon the Lot. That portion of the Lot subject to an easement for the encroachment pursuant to this Section shall be for the exclusive use of the Association, and shall be maintained by the Association.

Section 5.8. **Adjacent Lot Easement.** In the event any wall or any driveway, sidewalk or walkway providing access to a Residential Unit or any Lot, as initially constructed, encroaches upon any Adjacent Lot, then an easement for the encroachment in favor of the Lot Owner shall exist, and the Lot Owner shall also have an easement over the Adjacent Lot for the purpose of repairing, maintaining and replacing the portion of the Owner's wall or driveway, sidewalk or walkway which encroaches upon the Adjacent Lot. That portion of the Adjacent Lot subject to an easement for encroachment pursuant to this Section shall be for the exclusive use of the Owner of the Lot benefited by the easement and the guests and the invitees of such Owner, and shall be maintained by the Owner of the benefited lot.

Section 5.9. **Entry Landscape Easement.** The Developer intends to construct a project entrance, consisting of one or more of the following features: landscaping, entry signage, walls, automated gates, driveways, decorative paving and/or other improvements (the "Entry Improvements"). A portion of these Entry Improvements may be located within the Lots which are adjacent to the entry. To the extent any Entry Improvements encroach upon any of the said Lots, the Lot Owners agree to grant an easement to the Developer for the purpose of installing said improvements and to the Association for the purpose of maintaining said improvements. The said easement area shall be considered as an Area of Association Responsibility under Section 1.5 above; provided, however, that if any Entry Improvements are damaged by an Owner, Lessee, or invitee or guest of an Owner or Lessee, the Association reserves the right to require such Owner or Lessee to reimburse the Association for the cost of repairing the damage. The aforementioned easement shall be legally recorded at the time the Entry Improvements have been completed, and a legal description of the easement area shall be attached thereto.

Section 5.10 **Motor Vehicle Maneuvering Easements.** There is hereby created a private joint ingress/egress Motor Vehicle Maneuvering Easement across the driveways, sidewalks, Common Areas, and portions of Lots adjacent to Tracts H-Z and Tracts AA-CC, as depicted on the Plat, for the benefit of adjacent Lot Owners and their guests for the purpose of securing an adequate vehicle maneuvering area. The Motor Vehicle Maneuvering Easement on any Lot may be used, if necessary, for the purpose of backing, turning or maneuvering motor vehicles to or from the adjacent Private Joint Ingress/Egress Easement or to or from the driveways of adjacent Lots. Lot Owners and their guests should attempt to stay within the Private Joint Ingress/Egress Easement when maneuvering into or out of a driveway and should use the Motor Vehicle Maneuvering Easement areas only if absolutely necessary. To the fullest extent possible, drivers of vehicles shall use every effort to maneuver vehicles within the paved areas of the Motor Vehicle Maneuvering Easements, and shall avoid encroaching into other Lots and neighboring properties, causing damage to any landscaping installed by the

Developer or Builder within or adjacent to the Motor Vehicle Maneuvering Easements, or interfering with other vehicles while maneuvering within the Motor Vehicle Maneuvering Easements. The portion of any Motor Vehicle Maneuvering Easement area located on a Lot shall be maintained by the Owner of such Lot.

Section 5.11 **Trail Easement.** There is hereby created an easement upon, across, over and under Tracts F1 and F2 for landscape, open space and multi-use trail purposes, and for the construction, maintenance and public access and use of such multi-use trail, which shall be constructed by Developer as depicted in the Plat, shall be part of the Common Area, and shall be maintained by the Association. No Owner shall obstruct, alter or interfere with any portion of Tracts F1 and F2 used for such easement purposes.

## ARTICLE VI

### **ARCHITECTURAL REVIEW**

#### Section 6.1. **Architectural Standards.**

- (a) **General.** No structure shall be placed, erected, or installed upon any Lot, and no improvements, including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and Landscaping (any such activities being referred to herein as "Work"), shall take place without the prior approval of the Architectural Committee, unless exempted from the application and approval requirements pursuant to Section 6.1 hereof. All Work shall be in accordance with the Design Guidelines described in Section 6.4. For purposes of this paragraph, Work requiring prior approval of the Architectural Committee shall include, without limitation, the installation of any window screens, screen or security doors, sculptures or art pieces, exterior lights, security cameras or other equipment or materials Visible From Neighboring Property, or any other actions which according to this Declaration, the Design Guidelines or any Rules or Regulations require Architectural Committee approval.
- (b) **Activities Not Included as Work.** Except as otherwise specifically provided for herein, any Owner may remodel, paint or redecorate the interior of the Improvements on his Lot without the approval of the Architectural Committee; provided, however, any modifications to the interior of porches, patios, and similar portions of a Lot which are Visible From Neighboring Property shall be subject to the approval of the Architectural Committee. No approval shall be required to repaint the exterior of or to rebuild any Improvements in strict accordance with the color scheme, plans and specifications, as applicable, as originally approved by the Architectural Committee or as originally installed by the Developer.

- (c) **Exclusion of Certain Persons and Common Area Work.** The requirement to obtain the approval of the Architectural Committee regarding any work shall not apply to the activities of Builder, or the successors and assigns of same, nor to improvements to the Common Area made by Builder, the Association, or on behalf of the Association.
- (d) **Changes to Landscaping.** No aspect of the Landscaping Plans approved by the Architectural Committee or installed by Developer may be changed or altered in any way without the prior approval of the Architectural Committee.

Section 6.2. **Architectural Review.** The responsibility for the review of all applications for the approval of any Work shall be handled by the Architectural Committee. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any such application. Such fees may include the reasonable costs incurred by the Architectural Committee in having any application reviewed by architects, engineers or other professionals.

Section 6.3. **Architectural Committee Membership.** The Architectural Committee shall consist of at least three, but not more than five, natural Persons. The members of the Architectural Committee need not be Members or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time-to-time by the Board. Until one hundred percent (100%) of the Lots have been developed and conveyed to Owners, Declarant, or its successors or assigns, retains the right to appoint all members of the Architectural Committee, who shall serve at Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right in favor of Declarant, the Board may, at its option, appoint the members of the Architectural Committee, who thereafter shall serve and may be removed in the Board's discretion.

Section 6.4. **Architectural Committee Rules.**

- (a) **Design Guidelines.** Declarant shall prepare the initial Design Guidelines for the Property. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Architectural Committee in considering applications for approval of Work. The Design Guidelines are not the exclusive basis for decisions of the Architectural Committee and compliance with the Design Guidelines does not guarantee approval of any application. The Architectural Committee shall adopt Design Guidelines at its initial organization meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines. The Architectural Committee is expressly authorized to amend the Design Guidelines to remove requirements

previously imposed or otherwise to make the Design Guidelines less restrictive.

- (b) **Distribution and/or Recording of the Design Guidelines.** The Architectural Committee shall make copies of the Design Guidelines available to Owners who seek to engage in any work, and may charge a reasonable fee to cover its printing costs. In the Architectural Committee's discretion, such Design Guidelines may be recorded in the public records of Maricopa County, Arizona, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

Section 6.5. **Procedures.**

- (a) Prior to commencing any Work, an application for approval of such Work shall be submitted to the Architectural Committee in such form as may be required by the Architectural Committee or the Design Guidelines. The application shall include plans and specifications ("Plans") showing the site layout and placement of all proposed structures and improvements, the structural design, exterior elevations, and exterior materials and colors for all structures and improvements, landscaping, drainage, exterior lighting, screens, doors, sculptures, and other features of the proposed construction, as required by the Design Guidelines. In reviewing each submission, the Architectural Committee may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. The Architectural Committee may require the submission of such additional information as it deems necessary to consider any application.
- (b) The Architectural Committee may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the Design Guidelines, and architectural merit. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.
- (c) The Architectural Committee shall, within forty-five (45) days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of the submission of the Plans, of (i) the approval of the Plans, or (ii) the disapproval of the Plans, specifying the portions or features of the Plans which are objectionable. The

Architectural Committee may make suggestions for curing such objections. In the event the Architectural Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the Architectural Committee written notice of such failure to respond and stating that unless the Architectural Committee responds within ten (10) days of receipt of such notice, approval shall be deemed granted and, upon such further failure, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines or this Declaration unless a variance has been granted in writing pursuant to Section 6.7 hereof. Such notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

- (d) If construction does not commence on any Work for which approval has been granted within three (3) months after the date of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration prior to commencing such Work. All Work shall be completed within six (6) months of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Architectural Committee. All Work shall be performed in a workmanlike fashion and in accordance with approved Plans.

Section 6.6. **No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications for approval of Work will change from time-to-time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the work is completed, but the Architectural Committee may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

Section 6.7. **Variance.** The Architectural Committee may, but shall not be required to, authorize variances from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances exist and no Owner shall have any right to demand or obtain a variance, regardless of the circumstances.

No variance shall: (i) be effective unless in writing; (ii) be contrary to the Declaration; or (iii) estop the Architectural Committee from denying a variance in other circumstances.

Section 6.8. **Limitation of Liability.** The standards and procedures established by this Section regarding the approval of Work are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property but shall not create any duty to any Person. NEITHER DECLARANT NOR THE ARCHITECTURAL COMMITTEE SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS, NOR FOR ENSURING THAT ALL STRUCTURES AND IMPROVEMENTS CONSTRUCTED WITHIN THE PROPERTY ARE OF COMPARABLE QUALITY, VALUE, OR SIZE OR OF SIMILAR DESIGN. NEITHER DECLARANT, THE ASSOCIATION, THE BOARD, THE ARCHITECTURAL COMMITTEE, NOR ANY SHAREHOLDER, OFFICER, DIRECTOR OR MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR SOIL CONDITIONS, DRAINAGE PROBLEMS OR OTHER GENERAL SITE WORK, NOR FOR DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED HEREUNDER, NOR FOR ANY STRUCTURAL OR OTHER DEFECTS IN WORK DONE ACCORDING TO APPROVED PLANS, NOR FOR ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE MANNER, DESIGN OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY LOT OR COMMON AREA, NOR AS A RESULT OF THE APPROVAL OR DISAPPROVAL OF ANY APPLICATIONS MADE PURSUANT TO THIS DECLARATION OR THE FAILURE OF THE ARCHITECTURAL COMMITTEE TO ENFORCE ANY OF THE PROVISIONS OF THIS OR ANY OTHER PROVISION CONTAINED IN THIS DECLARATION.

Section 6.9. **Enforcement.**

- (a) Any work performed in violation of or in a manner inconsistent with the approved Plans shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, correct any nonconforming condition or remove any nonconforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board, Declarant, or their designees 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. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section 6.9. The Association may assess any costs incurred in taking enforcement action under this Section 6.9, together with interest at the maximum rate then allowed by law, against the benefited Lot as an Assessment. Failure by the Architectural Committee or the Board to enforce the provisions of this Article in any instance shall not be deemed a waiver by the Architectural Committee or the Board to enforce the provisions hereof in any other instance or to withhold approval as to similar matters thereafter.



- (b) Declarant and the Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration and the Design Guidelines from continuing or performing any further activities on the Property. In such event, neither Declarant nor the Association, nor their officers, directors or agents shall be held liable to any Person for exercising the rights granted by this Section 6.9.
- (c) In addition to the foregoing, Declarant or the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration and the decisions of the Architectural Committee.

## ARTICLE VII

### **THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS**

Section 7.1. **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, the Bylaws, or the Association Rules, this Declaration shall control

Section 7.2. **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

Section 7.3. **The Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility, (ii) minimum standards for any maintenance of Lots, or (iii) any other subject within the jurisdiction 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. The Rules shall have the same force and effect as if they were set forth herein and were a part of the Declaration and may be recorded.

Section 7.4. **Personal Liability.** No member of the Board or of any committee of the Association, no director, officer or employee of the Association, shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee,

committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct;

Section 7.5. **Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

Section 7.6. **Identity of Members.** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot upon becoming the Owner thereof, shall automatically be a Member and shall remain a Member until such time as his ownership ceases for any reason, at which time his Membership shall cease automatically.

Section 7.7. **Classes of Members.** The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners, with the exception of Developer (the "Class A Membership") until the termination of the Class B Membership as provided for herein. Each Class A member shall be entitled to one (1) vote for each Lot owned.

**Class B.** The Class B member shall be the Developer (the "Class B Membership"). The Class B member shall be entitled to ten (10) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the earlier of: (i) the date on which the votes entitled to be cast by the Class A members equals or exceeds the votes entitled to be cast by the Class B member; (ii) the date which is eight (8) years after the recording of this Declaration; or (iii) when Developer notifies the Association in writing that it relinquishes its Class B Membership.

Section 7.8. **Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, thereafter it will be presumed conclusively for all purposes that he or she was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

Section 7.9. **Transfer of Membership.** The rights and obligations of any Member, other than Developer, shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effectuated by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal

process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he or she becomes the Owner of a Lot.

Section 7.10. **Suspension of Voting Rights.** If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

Section 7.11. **Conveyance or Encumbrance of Common Area.** The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public authority or utility: (i) if the transfer or dedication does not have a substantial adverse effect on the enjoyment of the Common Areas by the Members or the Residents, or (ii) if required by a recorded subdivision plat, a zoning stipulation or an agreement with the city of Phoenix, effective prior to the date hereof. Except as authorized in (i) or (ii) above, such dedication or transfer or any mortgage, dedication or encumbrance of the Common Area, or any portion thereof, shall not be effective without the approval of the Class B Member and not less than two-thirds (2/3) of the Class A Members, voting in person or by proxy at a meeting called for such purpose. Subject to compliance with applicable law, including, without limitation, zoning requirements of the City of Phoenix, the Association shall have the right to change the size, shape or location of the Common Areas upon: (x) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Area as no longer in the best interest of the Owners and Members, and that the change desired shall be for their benefit and shall not substantially adversely effect them, and (y) the approval of such resolution by a majority of the votes of each class of members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board, upon satisfaction of Subsection (x) above may, in lieu of calling a meeting pursuant to Subsection (y) above, notify in writing all members of the proposed transaction and of their right to object thereto, and if not more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

Section 7.12. **Indemnification.** The Association shall indemnify each and every officer and director of the Association, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Association, and former members of committees appointed by the Board (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, except for his own

individual willful misfeasance or malfeasance, or bad faith. No Association Officials shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Officials may also be Members of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses by reason of his being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 7.12 or otherwise under the Articles, Bylaws or applicable law, such Association Official, upon demand shall repay promptly to the Association the total of such funds advanced by the Association to him, or for his benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

## ARTICLE VIII

### **COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

#### **Section 8.1. Creation of Lien and Personal Obligation of Assessments.**

(a) Developer, for each Lot owned by it, hereby covenants and agrees to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. Notwithstanding any other provision of this Declaration, the Assessments levied against Lots owned by Developer or Builder and any Shortfall may be satisfied in the form of a cash payment or in the form of "in-kind" contributions of goods or services, or any combination of the foregoing, and any such payments made by Developer in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed. In the event that Developer or Builder contributes "in-kind" goods or services to the Project at a time when no Assessments are due and owing to the Association by such Person, then such Person shall receive a credit to be carried on the books of the Association and applied at such time as an Assessment becomes due and owing from such Person. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, also shall be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation

for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

(b) Each Owner, other than Developer, by becoming an Owner, is deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, also shall be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

Section 8.2. **Annual Assessments.** In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess against each Lot an 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 nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

Section 8.3. **Rate of Assessment.** The amount of the Annual Assessment for each Lot, other than Lots owned or optioned by Developer or Builder, shall be the amount obtained by dividing the total budget of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots subject to the Assessment at the time the Annual Assessment is levied by the Board. The Annual Assessment for Lots owned or optioned by Developer or Builder shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots owned by Persons other than Developers or Builder until such time as a Residential Unit has been constructed on the Lot and the Residential Unit has been occupied for Single Family Residential Use. After a Residential Unit has been constructed on a Lot owned by Developer or Builder and the Residential Unit has been occupied for Single Family Residential Use, the amount of the Annual Assessment for such Lot shall be the same as the Annual Assessment levied against Lots owned by Persons other than Developer or Builder. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the

Lot qualified for each rate. So long as there is a Class B membership in the Association, Developer shall pay to the Association any amounts which, in addition to the Annual Assessments levied by the Association, may be required by the Association (the "Shortfall") in order for the Association to fully perform its duties and obligations under the Project Documents, including the obligation to maintain adequate reserve accounts. At the end of each fiscal year of the Association, either: (1) Developer shall pay or contribute to the Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Developers during such fiscal year, to satisfy in full Developer's obligations under this Section 8.3 for such fiscal year; or (2) the Association shall pay to Developer or credit against Developer's obligations for the immediately following fiscal year, as Developer may elect, the amount, if any, by which the total of all payments or contributions paid or made by Developer during such fiscal year exceeded the total obligations of Developer for such fiscal year under this Section 8.3.

Section 8.4. **Special Assessments.** The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, or any Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 8.5. **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Annual Assessments, 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.

Section 8.6. **Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a semi-annual basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**Section 8.7. Effect of Nonpayment of Assessments: Remedies of the Association.**

(a) Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate established from time to time by the Board of Directors. In addition, the Board of Directors may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within five (5) days after such payment was due.

(b) The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot, (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot, (iii) all fines levied against the Owner of the Lot, and (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments and other amounts due to the Association by the Owner of a Lot (the "Assessment Lien"). Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees.

(c) The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes, (ii) assessments in favor of any municipal or other governmental body and (iii) the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of a First Mortgage, purchase at a 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 which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

(d) The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

(e) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to: (i) bringing a legal action against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments, or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the

power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 8.8. **Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating: (i) that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or (ii) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

Section 8.9. **Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 8.10. **Working Capital/Reserve Fund.** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the Annual Assessment on the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses, the establishment and funding of operating or capital reserves or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

Section 8.11. **Transfer Fee.** Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

Section 8.12. **Fines.** The Board shall have the right to levy reasonable fines against an Owner for any violation of the Project Documents, including without limitation the Use Restrictions set forth in Article IV above, by the Owner or any Person residing on the Owner's Lot provided the Owner is given notice of the alleged violation of the Project Documents and is given an opportunity to cure the violation in accordance with such procedures as may be set forth in the Bylaws or adopted by the Board.

Section 8.13. **Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments.** Notwithstanding any other provision hereof or of the Articles, the Bylaws or the Association Rules, written notice of any



meeting called for the purpose of approving the establishment of any Special Assessment as required by Section 8.4 hereof shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment, a quorum shall consist of fifty percent (50%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

## ARTICLE IX

### MAINTENANCE

#### Section 9.1. Areas of Association Responsibility.

(a) The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except the Association shall not maintain areas that any governmental entity is maintaining or is obligated to maintain.

(b) The Board shall have the right to do all acts it deems necessary to preserve and protect the Common Areas and the beauty thereof, and shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative. The Developer and Association shall have the right to enter upon or cross over any Lot, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating any landscaping and shall not be liable for trespass in so doing.

(c) Any part of the Common Area which is subject to an easement for an encroachment pursuant to Sections 5.7 or 5.10 of this Declaration shall be maintained, repaired and replaced by the Owner of the Lot benefited by the easement.

Section 9.2. Installation of Landscaping. If front yard landscaping has not been installed by Builder before the date on which title to a Lot is first conveyed to a Purchaser, as evidenced by recordation of a deed (the "Closing Date"), within thirty (30) days after the Closing Date, the Owner of the Lot upon which the Residential Unit is situated shall install grass, trees, plants and other landscaping improvements (together with an irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements) on the front yard of the Lot in accordance with plans therefor approved by the Architectural Committee. Within sixty (60) days after the Closing Date, the Owner of the Lot upon which the Residential Unit is situated shall install grass, trees, plants and other landscaping improvements (together with an irrigation system sufficient to adequately water the grass, trees, plants and other landscaping

improvements) in the side and backyard of the Lot. All landscaping to be installed pursuant to this Section shall be installed in accordance with plans approved by the Architectural Committee. If any Owner fails to landscape his Lot in the manner and within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping improvements as the Association deems appropriate (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an owner to the Association pursuant to this Section shall be secured by an assessment lien against the Lot, and the Association may enforce the collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

Section 9.3. **Lots.** Each Owner of a Lot shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, landscaping or other Improvements situated on his Lot, except for any portion of the Lot which is an Area of Association Responsibility or is subject to the easement of an Adjacent Lot Owner provided for in Section 5.8 of this Declaration. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be removed promptly by the Owner and replaced by Owner at its expense with living foliage of like kind. No yard equipment, woodpiles or storage areas may be maintained so as to be Visible From Neighboring Property or any Private Accessway or any Private Joint Ingress/Egress Easement. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner. Each Owner shall also be responsible for the maintenance, repair and replacement of the wall around the patio area of the Owner's Lot. If any Owner fails to comply with the provisions of this Section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot for the purpose of maintaining, repairing or replacing such Improvements and the cost thereof, plus any reasonable fees, expenses, or fines to the Owner shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an owner to the Association pursuant to this Section shall be secured by an assessment lien against the Lot, and the Association may enforce the collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

Section 9.4. **Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the act of any Member, his family, tenants, guests or invitees, the Association shall have the right to repair same and the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section 9.4 in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities also shall become a part of such Assessment and shall be secured by the Assessment Lien.

Section 9.5. **Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to detract substantially from the appearance or quality of the surrounding Lots or other areas of the Project which are affected substantially thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of his obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien. The remedy set forth in this Section shall be in addition to, and not in place of, any other remedy of the Association set forth herein, including the issuance of any fines.

Section 9.6. **Disclaimer.** The City of Phoenix is not responsible for and will not accept maintenance of any private facilities, streets, landscaped areas, etc. within this project.

## ARTICLE X

### **INSURANCE**

Section 10.1. **Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) General liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000 per occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and also shall include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

(b) Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

(c) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

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

The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

- (i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, or with respect to Owners and members of their household;
- (ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;
- (iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;
- (iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;
- (v) Statement of the name of the insured as the Association; and
- (vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

Section 10.2. **Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 10.3. **Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 10.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

Section 10.4. **Payment of Insurance Proceeds.** With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article X, the loss shall be adjusted with the Association, and the insurance

proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 10.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**Section 10.5. Repair and Replacement of Damaged or Destroyed Property.**

Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (x) be retained by the Association as an additional capital reserve, or (y) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

**ARTICLE XI**

**GENERAL PROVISIONS**

**Section 11.1. Binding Effect; Enforcement.** This Declaration shall run with title to each of the Lots within the Project and shall be binding upon and inure to the benefit of the Owners of such Lots, the owners or holders of any interest therein, and their respective successors and assigns. The Association or any Owner shall have the right to enforce the Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, fines, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which: (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Developer. Subject to the provisions of Article XII, in the case of any action taken to enforce any provision of any such document or instrument, the prevailing party or parties shall be entitled to recover its costs and attorneys' fees, together with interest thereon at the rate of ten percent (10%) per annum. Failure by the Association, Builder, Declarant or any Owner to take such enforcement action shall in no event be deemed a waiver of a right to do so thereafter.

**Section 11.2. Amendments.** This Declaration may be amended only upon receipt of the approval of: (i) the Declarant, so long as Declarant owns any property which is subject to this Declaration; (ii) the Builder, so long as Builder is the owner of any Lots subject to this Declaration or an option on the purchase of any such Lots; (iii) the affirmative vote of Owners representing not less than seventy-five percent (75%) of the votes cast with respect to the amendment at an annual or special meeting of the Members; and (iv) the Association, if at the time this Declaration is amended, the Class B Membership no longer exists. The Board may

amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by Developer or the Board. Notwithstanding anything contained herein to the contrary, if the Association is deemed to be under the control of a "Developer" (as defined by the applicable guidelines of the Department of Housing and Urban Development or any other federal authority), the Federal Housing Association or the Veterans Administration must grant approval before any annexation of additional properties, dedication of any Common Area, and any Amendment to this Declaration will be effective. Any amendment approved pursuant to Section 11.2 of this Declaration or by the Board shall be signed by the parties required to approve the same and shall be recorded with the County Recorder of Maricopa County, Arizona; provided, however, that in lieu of requiring that Owners of at least seventy five percent (75%) of all Lots within the Project sign such recorded instrument, the President of the Association may certify in such recorded instrument that: (i) at a meeting of such Owners, Owners of at least seventy-five percent (75%) of the Lots within the Project voted in favor of such amendment; or (ii) attached to such recorded instrument are originals or true and correct copies of one or more petitions, ratifications or similar written instruments collectively bearing the signatures of Owners of the requisite number of Lots; and, provided, that in the event the Association's approval of such an amendment is required pursuant to this Section, such approval may be evidenced by the signature on such recorded instrument by the Association's President, Secretary or other duly authorized officer, and need not be submitted to or approved by the Association's Members (other than Members who are Owners of Lots within the Project).

Section 11.3 **Meeting of Owners.** A meeting of Owners of Lots within the Project for the purposes of voting on a proposed amendment to this Declaration shall be called by the President of the Association if requested in writing by the Declarant, the Builder, or by Owners of at least ten percent (10%) of the Lots within the Project. Notice, quorums and the like for any such meeting shall be governed by provisions of the Bylaws relating to special meetings of the Members of the Association; provided, that notices of the meeting need be sent only to Owners of Lots within the Project, and only Owners of Lots within the Project (or their duly authorized representative) shall be considered in determining a quorum at such meeting and in determining eligibility to vote at such meeting. No Members of the Association other than Owners of Lots within the Project, Declarant, Builder and the President or other officer of the Association shall be entitled to notice of, to attend, appear or speak at, or to vote at any such meeting.

Section 11.4. **Amendment to Correct Errors and Comply with Applicable Law.** Notwithstanding any other provisions of this Declaration to the contrary, Declarant and Builder (so long as Builder owns or has an option to own any of the Lots within the Project) shall alone have the right, at any time, to amend this Declaration to comply with applicable laws or to correct any error or inconsistency in this Declaration, if the Amendment does not adversely affect the rights of any Owner of any Lot within the Project.

Section 11.5. **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles or Bylaws, 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, the Bylaws shall control.

Section 11.6. **Severability.** 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.

Section 11.7. **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 11.8. **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.

Section 11.9. **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.

Section 11.10. **Laws, Ordinances and Regulations.** The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and 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.

Section 11.11. **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions 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 provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

Section 11.12. **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.

Section 11.13. **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 of context thereof.

Section 11.14. **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, Lessee or Resident then, unless otherwise specified herein, in the Bylaws, 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 Maricopa County. This Section 11.14 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.

Section 11.15. **Prior Approval.** As long as there is a Class B Membership, then if this Declaration has been previously approved by the Federal Housing Administration or the Veteran's Administration, the following actions will require approval of the Federal Housing Administration or the Veteran's Administration: annexation of additional properties, dedication of the Common Area, and the amendment of this Declaration.

## ARTICLE XII

### **DISPUTE RESOLUTION**

Section 12.1. **Agreement to Resolve Certain Disputes Without Litigation.** As used in this Article XII, the term "Claim" shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Areas, the Lots, the Improvements, or any other part of the Project, including, without limitation, any claim or cause of action that the Common Areas, the Lots, or the Improvements are defective or that Declarant, Builder, or their respective agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (b) any claim or cause of action against the Declarant, Builder, or any employee, agent, director, member or officer of Declarant or Builder arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty; or (c) any "Dwelling