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WHEN RECORDED, RETURN TO:

Matthew R. Berens, Esq.  
Berens, Kozub, Lord & Kloberdanz, PLC  
7047 East Greenway Parkway, Suite 140  
Scottsdale, Arizona 85254

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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ROESER PARK**

## TABLE OF CONTENTS

	<u>Page</u>
<b><u>ARTICLE 1 - DEFINITIONS</u></b> .....	1
<b><u>ARTICLE 2 - PROPERTY AND PERSONS BOUND BY DECLARATION</u></b> .....	6
2.1 Purpose and Binding Effect .....	6
2.2 Annexation of Additional Property .....	7
2.3 Obligation to Construct Association Common Area Improvements .....	7
2.4 Supplemental Declaration .....	8
2.5 Disclaimer of Representations and Implied Covenants.....	9
<b><u>ARTICLE 3 - ARCHITECTURAL CONTROL</u></b> .....	9
3.1 Approval Required .....	9
3.2 Review of Plans .....	10
3.3 Variances ..... <small>Unofficial Document</small> .....	10
3.4 Construction of Improvements .....	11
3.5 No Changes Without Approval.....	11
3.6 Review Fee.....	11
3.7 New Construction.....	12
3.8 No Warranty .....	12
3.9 Conditional Approval .....	12
3.10 Improvements to Areas of Association Responsibility.....	12
3.11 Design Review Committee .....	12
<b><u>ARTICLE 4 - USE RESTRICTION</u></b> .....	13
4.1 Residential Use .....	13
4.2 Temporary Occupancy and Temporary Buildings.....	14
4.3 Nuisances; Construction Activities .....	14
4.4 Antennas .....	15
4.5 Trash Containers and Collection .....	15
4.6 Utility Service.....	15
4.7 Overhead Encroachments .....	16
4.8 Animals .....	16
4.9 Machinery and Equipment.....	17
4.10 Further Subdivision, Property Restrictions, Rezoning and Timeshares .....	17

4.11	Vehicles and Parking .....	17
4.12	Drainage.....	19
4.13	Garages and Carports.....	19
4.14	Rooftop HVAC Equipment Prohibited .....	20
4.15	Basketball Goals and Backboards .....	20
4.16	Playground Equipment .....	20
4.17	Rental of Lots .....	20
4.18	Lights .....	21
4.19	Window Cover Materials.....	21
 <b>ARTICLE 5 - EASEMENTS.....</b>		<b>21</b>
5.1	Easements for Use of Common Area .....	21
5.2	Utility and Development Easements.....	23
5.3	Easements to Facilitate Development.....	23
5.4	Dedications and Easements Required by Governmental Authority.....	24
5.5	Further Assurances .....	24
5.6	Duration of Development Rights; Assignment .....	24
5.7	Association Powers and Rights.....	24
5.8	Easement for Maintenance and Enforcement.....	25
5.9	Easements for Encroachments.....	25
5.10	Rights of Builders .....	25
 <b>ARTICLE 6 - THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS .....</b>		<b>26</b>
6.1	Formation of Association .....	26
6.2	Board of Directors and Officers.....	26
6.3	The Association Rules .....	26
6.4	Personal Liability.....	27
6.5	Implied Rights.....	27
6.6	Identity of Members .....	27
6.7	Allocation of Memberships.....	27
6.8	Classes of Members and Voting Rights .....	28
6.9	Voting Procedures .....	28
6.10	Transfer of Membership .....	28
6.11	Conveyance or Encumbrance of Common Area .....	29
6.12	Suspension of Voting Rights .....	29
 <b>ARTICLE 7 - COVENANT FOR ASSESSMENTS AND CREATION OF LIEN ..</b>		<b>29</b>
7.1	Obligation to Pay Assessments and Other Charges.....	29
7.2	Regular Assessments.....	30

7.3	Special Assessments.....	31
7.4	Benefited Property Assessments .....	31
7.5	Enforcement Assessment .....	32
7.6	Assessment Period .....	32
7.7	Obligation of Developer and Designated Builders for Deficiencies .....	32
7.8	Rules Regarding Billing and Collection Procedures .....	32
7.9	Creation of Assessment Lien; Effect of Nonpayment of Assessments; Remedies of the Association.....	33
7.10	Purposes for which Association's Funds May Be Used .....	34
7.11	Surplus Funds .....	35
7.12	Initial Capital Contribution .....	35
7.13	Transfer Fee.....	35
7.14	Reserve Contribution .....	35
7.15	Reserves .....	36
 <b>ARTICLE 8 - MAINTENANCE.....</b>		<b>37</b>
8.1	Areas of Association Responsibility .....	37
8.2	Lots and Parcels .....	37
8.3	Assessment of Certain Costs of Maintenance and Repair .....	37
8.4	Improper Maintenance and Use of Lots or Parcels .....	38
8.5	Boundary Walls .....	38
8.6	Maintenance of Walls other than Boundary Walls .....	39
 <b>ARTICLE 9 - INSURANCE.....</b>		<b>39</b>
9.1	Scope of Coverage.....	39
9.2	Certificates of Insurance .....	40
9.3	Payment of Insurance Proceeds .....	40
9.4	Repair and Replacement of Damaged or Destroyed Property .....	41
 <b>ARTICLE 10 - DISPUTE RESOLUTION.....</b>		<b>41</b>
10.1	Agreement to Resolve Certain Disputes Without Litigation.....	41
10.2	Notice of Claim .....	41
10.3	Mediation .....	42
10.4	Binding Arbitration.....	43
10.5	Right to Enter, Inspect, Repair and/or Replace .....	45
10.6	Use of Funds.....	45
10.7	Approval of Litigation .....	46

**ARTICLE 11 - GENERAL PROVISIONS ..... 46**

11.1 Enforcement ..... 46

11.2 Duration; Termination ..... 48

11.3 Amendments ..... 48

11.4 Condemnation of Common Area ..... 49

11.5 Interpretation ..... 49

11.6 Severability ..... 50

11.7 Change of Circumstances ..... 50

11.8 Laws, Ordinances and Regulations ..... 50

11.9 References to this Declaration in Deeds ..... 50

11.10 Gender and Number ..... 50

11.11 Captions and Titles ..... 51

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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**ROESER PARK**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Roeser Park (the "Declaration") is made this 18<sup>th</sup> day of March, 2005, by V&M Homes, L.L.C., an Arizona limited liability company (the "Declarant").

**INTRODUCTION**

A. The Declarant owns a portion of the real property located in Maricopa County, Arizona, legally described on Exhibit A attached hereto (the "Property").

B. The Declarant, as the Owner of over seventy-five (75%) of the Lots, now records this Declaration, hereby revoking the Declaration of Covenants, Conditions and Restrictions For Roeser Park, recorded on March 7, 2005, at Document No. 2005-0279364, records of Maricopa County, Arizona

C. By executing and recording this Declaration with the County Recorder of Maricopa County, Arizona, the Declarant intends to impose upon the Property mutually beneficial covenants, conditions, restrictions and easements to establish a flexible and reasonable procedure for the overall development, administration, maintenance, use and preservation of the Property. Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Property and which will be binding upon all future Owners of all or any portion of the Property and any other Person acquiring any right, title or interest in or to all of any portion of the Property.

D. Declarant deems it desirable to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Areas of Association Responsibility and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Areas of Association Responsibility and the enforcement of the covenants, conditions and restrictions contained in this Declaration.

**ARTICLE 1  
DEFINITIONS**

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

1.1 **"Additional Property"** means any real property (other than the Property), together with all improvements situated thereon.

1.2 **"Areas of Association Responsibility"** means (a) all Common Area; and (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot, Parcel or public right-of-way which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration, a Supplemental Declaration or other Recorded document executed by the Developer or the Association.

1.3 **"Articles"** means the Articles of Incorporation of the Association, as amended from time to time.

1.4 **"Assessment"** means a Regular Assessment, Special Assessment, Enforcement Assessment or Benefited Property Assessment.

1.5 **"Assessment Lien"** means the lien created and imposed by Article 7.

1.6 **"Assessment Period"** means the period set forth in Section 7.6.

1.7 **"Association"** means Roeser Park Homeowners' Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.8 **"Association Rules"** means the rules adopted by the Board pursuant to Section 6.3.

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1.9 **"Benefited Property Assessment"** means any assessment levied pursuant to Section 7.4.

1.11 **"Benefited Property Assessment Area"** means a portion of the Project designated in a Supplemental Declaration as an area containing Limited Common Area or as an area in which the Association will provide Special Services.

1.12 **"Benefited Property Expenses"** means the actual or estimated expenses, including allocations to reserves, incurred or anticipated to be incurred by the Association for the Maintenance of Limited Common Area or to provide Special Services to the Owners, Lessees and Residents in a Benefited Property Assessment Area.

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

1.14 **"Builder"** means any Person (other than the Developer or a Designated Builder) who purchases a Parcel for the purpose of subdividing such Parcel into Lots for the purpose of resale in the ordinary course of such Person's business or who purchases six or more Lots for the purpose of resale in the ordinary course of such Person's business.

1.15 "**Bylaws**" means the Bylaws of the Association, as amended from time to time.

1.16 "**Collection Costs**" means all costs, fees, charges and expenditures including, without limitation, attorneys' fees (whether or not a legal action is filed), court costs, filing fees and recording fees incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, demand fees, interest or other amounts payable to the Association pursuant to this Declaration.

1.17 "**Common Area**" means Tracts A through D, inclusive, Roeser Park Final Plat, according to the plat recorded in 2004-1084509, records of the County Recorder of Maricopa County; and (d) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot or Parcel the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

1.18 "**Common Expenses**" means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

1.19 "**Community Documents**" means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules and <sup>Unofficial Document</sup> Design Guidelines, all as amended from time to time.

1.20 "**City**" means the City of Phoenix, Arizona.

1.21 "**Declarant**" means V&M Homes, L.L.C., an Arizona limited liability company, and any Person to whom a Declarant may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.22 "**Declaration**" means this Declaration of Covenants, Conditions, and Restrictions for Roeser Park, as amended from time to time.

1.23 "**Design Guidelines**" means the procedures, standards and guidelines adopted by the Design Review Committee pursuant to Section 3.11, as amended or supplemented from time to time.

1.24 "**Design Review Committee**" means the committee created pursuant to Section 3.11.

1.25 "**Designated Builder**" means any of the builders included under "Declarant" to include V&M Homes, L.L.C., an Arizona limited liability company, its successors and assigns, or any Builder that is designated by the Developer as a "Designated Builder" in a written notice given by the Declarant to the Association.

**1.26 “Developer”** means V&M Homes, L.L.C. an Arizona limited liability company, its successors and assigns.

**1.27 “Developer Control Period”** means the period commencing upon the Recording of this Declaration and ending on the date that the Class B membership in the Association terminates pursuant to Section 6.7.

**1.28 “Enforcement Assessment”** means an assessment levied pursuant to Section 7.5.

**1.29 “First Mortgage”** means any mortgage or deed of trust on a Lot or Parcel which has priority over all other mortgages and deeds of trust on the same Lot or Parcel.

**1.30 “First Mortgagee”** means the holder or beneficiary of any First Mortgage.

**1.31 “Improvement”** means: (a) any Residence, building, fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (c) any road, driveway or parking area; (d) any trees, plants, shrubs, grass or other landscaping improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (f) any other structure of any type, kind or nature.

**1.32 “Lessee”** means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of the lessee's <sup>Unofficial Document</sup> or tenant's interest under a lease.

**1.33 “Limited Common Area”** means real property, and the Improvements situated thereon, which are part of the Common Area and which are designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Limited Common Areas may include, without limitation, private streets, access gates, guardhouses, drainage or retention areas, swimming pools, clubhouses or landscape medians.

**1.34 “Lot”** means a parcel of land within the Project, whether improved or unimproved, intended for independent ownership and use and designated as a “lot” on a Plat and any Residence, building, structure or other Improvement situated thereon.

**1.35 “Maintenance”** means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

**1.36 “Maintenance Standard”** means the standard of Maintenance of Improvements situated on Lots 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 situated on Lots generally prevailing throughout the Project.

**1.37 "Member"** means any Person who is a member of the Association as provided in Section 6.6.

**1.38 "Membership"** means a membership in the Association allocated to a Lot or Parcel pursuant to Section 6.7.

**1.39 "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 or Parcel. In the case of Lots or Parcels subject to an option agreement, the optionor shall be considered the Owner. Owner shall not include Persons having an interest in a Lot or Parcel merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 et. seq. Owner shall not include 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 a Lot or Parcel subject to a deed of trust pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of a Lot or Parcel 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.

**1.40 "Parcel"** means each separately owned contiguous area of real property within the Project other than a Lot or <sup>Unofficial Document</sup> ~~Contiguous~~ Area.

**1.41 "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.

**1.42 "Plat"** means the Final Plat at Roeser Park, recorded at Document Number 2004-1084509, Book 704, Page 47 in the records of the County Recorder of Maricopa County, Arizona, and all amendments, supplements and corrections thereto; and any subdivision plat recorded against any part of the Additional Property which is annexed and subjected to this Declaration pursuant to Section 2.2.

**1.43 "Property"** means the real property described on Exhibit A attached to this Declaration, together with all Improvements located thereon.

**1.44 "Project"** means the Property and any part of the Additional Property, and all Improvements situated thereon, which is annexed and subjected to this Declaration pursuant to Section 2.2.

**1.45 "Purchaser"** means any Person who becomes the Owner of a Lot, except for: (a) a Declarant; (b) a Designated Builder; or (c) a Person who purchases a Lot and then leases it to the Developer or a Designated Builder for use as a model in connection with the sale or lease of other Lots.

**1.46 “Recording”** means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and **Recorded** means having been so placed of public record.

**1.47 “Regular Assessment”** means the Assessments levied pursuant to Section 7.2.

**1.48 “Residence”** 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.

**1.49 “Resident”** means each person occupying or residing in any Residence.

**1.50 “Special Assessment”** means any assessment levied pursuant to Section 7.3.

**1.51 “Special Services”** means services designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Special Services may include, without limitation, guard services and landscape maintenance services for landscaping situated on Lots.

**1.52 “Supplemental Declaration”** means a Supplemental Declaration Recorded pursuant to Section 2.4.

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**1.53 “Visible From Neighboring Property”** means, with respect to any given Improvement, that such Improvement is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot, Parcel, Common Area or any public street within or adjacent to the Project.

## ARTICLE 2

### PROPERTY AND PERSONS BOUND BY DECLARATION

#### **2.1 Purpose and Binding Effect.**

Declarant is the record owner of fee title to the Property. Declarant intends by this Declaration to impose upon the Property covenants, conditions, restrictions and easements to create a general plan of development for the Property and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use and enjoyment of the Property. The Declarant declares that all of the Project shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Project. Declarant further declares that all of easements, restrictions, conditions and covenants in this Declaration shall run with the Project and shall be binding upon and inure to the benefit of the Declarant and all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Project

or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Project, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association.

## **2.2 Annexation of Additional Property.**

So long as the Developer owns any Lot, Parcel or any part of the Additional Property, the Developer shall have the right to annex and subject to this Declaration all or any portion of the Additional Property. The annexation of all or any portion of the Additional Property shall be effected by the Developer Recording a Declaration of Annexation setting forth the legal description of the Additional Property being annexed and stating that such portion of the Additional Property is annexed and subjected to this Declaration. If the portion of the Additional Property being annexed is not owned by the Developer, the Declaration of Annexation must be signed by the owner of fee title to the portion of the Additional Property being annexed.

The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The property annexed by the Developer pursuant to this Section need not be contiguous with other property already subject to this Declaration, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property. The Developer Unofficial Document no assurances as to which, if any, part of the Additional Property will be annexed.

After the Developer no longer owns any Lot, Parcel or any part of the Additional Property, the Association may annex and subject all or any part of the Additional Property to this Declaration by executing and Recording a Declaration of Annexation containing the information required for a Declaration of Annexation Recorded by the Developer pursuant to this Section, provided the annexation is approved by Owners holding at least two-thirds (2/3) of the total votes in the Association, and the Declaration of Annexation is signed by the owners of fee title to the portion of the Additional Property being annexed.

## **2.3 Obligation to Construct Association Common Area Improvements.**

A Declarant, a Builder or other owner of real property identified or designated on the Declaration, Plat or any Supplemental Declaration as real property which is to be Common Area or to be an Area of Association Responsibility shall be responsible for installing and constructing Improvements on such real property in accordance with plans and specifications for such real property approved by the City and by the Design Review Committee. The construction and installation of Improvements on any such real property shall be constructed in a good and workmanlike manner and in accordance with applicable industry standards. The construction and installation of Improvements on any such real property shall be completed within such time period as may be specified by the Design Review Committee and in accordance with project schedule (phasing). Upon completion of

the construction and installation of Improvements on any real property designated as Common Area in accordance with the plans for such Improvements approved by the Design Review Committee, the Owner of such real property shall convey fee title to the real property to the Association. The Association shall accept the conveyance of such real property so long as all the following conditions are met: (a) the Owner provides the Association, at the Owner's expense, with a standard coverage owner's policy of title insurance in an amount reasonably acceptable to the Association issued by a title insurance company authorized to transact such business in the State of Arizona, insuring that the Association is the owner of fee title to the property subject to any such liens and other matters as may be approved by the Association; (b) the Owner agrees to replace any landscaping that does not survive for a period of ninety (90) days following the conveyance assuming proper maintenance was performed by association contractor; and (c) all third party warranties applicable to the Improvements constructed or installed on the real property are assigned to the Association.

#### **2.4 Supplemental Declaration.**

So long as the Developer owns one or more Lots or Parcels, the Developer shall have the right to Record one or more Supplemental Declarations for various parts of the Project. If the property covered by a Supplemental Declaration is not owned by the Declarant, then the Supplemental Declaration must also be signed by the owners of fee title to the property covered by the Supplemental Declaration. After the Developer no longer owns any Lot or Parcel, any Designated Builder may Record a Supplemental Declaration for any portion of the <sup>Unofficial Document</sup>Property owned by the Designated Builder, if a Supplemental Declaration has not previously been recorded against such portion of the Project by the Developer. A Supplemental Declaration may designate Common Areas or other Areas of Association Responsibility and impose such covenants, conditions, restrictions and easements as the Declarant or the Designated Builder executing the Supplemental Declaration deems appropriate for the property to be covered by the Supplemental Declaration. A Supplemental Declaration may delete or modify the use restrictions set forth in Article 4 to the extent such restrictions are not appropriate for the property covered by the Supplemental Declaration. A Supplemental Declaration may also designate Benefited Property Assessment Areas, Limited Common Area and Special Services. If a Supplemental Declaration designates any Limited Common Areas or Special Services, the Supplemental Declaration shall also designate the Benefited Property Assessment Area containing the Lots or Parcels which will be subject to a Benefited Property Assessment. A Supplemental Declaration may only be amended by a written instrument executed by: (a) the Owners representing more than seventy-five percent (75%) of the votes in the Association held by the Owners of all of the Lots and Parcels subject to the Supplemental Declaration; (b) after neither the Declarant nor any Designated Builder owns any Lot or Parcel, the Association; (c) the Declarant so long as the Declarant owns any Lot or Parcel; and (d) after the Declarant no longer owns any Lot or Parcel, the Designated Builders so long as any Designated Builder owns one or more Lots or Parcels.

## **2.5 Disclaimer of Representations and Implied Covenants.**

The Declarant make no representation or warranty that Project will be developed in accordance with the zoning and development plan for the Project as it exists as of the Recording of this Declaration. Each Owner, Lessee, Resident and other Person acquiring any Lot, Parcel or other property in Project acknowledges that the zoning and development plan may be amended from time to time by the County. The Declarant make no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to Project. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of the Project.

### **ARTICLE 3**

#### **ARCHITECTURAL CONTROL**

##### **3.1 Approval Required.**

As used in this Article 3, "Construction" means any devegetation, excavation or grading work or the construction, erection or installation of an Improvement on a Lot or Parcel, and "Modification" means an addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot or Parcel. Except as expressly provided in this Declaration, no Construction or Modification shall be made or done without the prior written approval of the Design Review Committee.

Any Owner desiring approval of the Design Review Committee for any Construction or Modification shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification which the Owner desires to perform. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the Improvements and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request.

In the event that the Design Review Committee fails to approve or disapprove a complete application for approval within forty-five (45) days after the application, together with any fee payable pursuant to Section 3.6 and all supporting information, plans and specifications requested by the Design Review Committee, have been submitted to the Design Review Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

The provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required for, any Construction or Modification or any other work made by, or on behalf of, a Declarant. The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

Owners should be aware that additional construction may affect the warranty of their home. Owners are advised to contact the builder for additional information.

### **3.2 Review of Plans.**

In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Design Review Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (c) the exterior design, finish materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its sole and absolute discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive. Decisions of the Design Review Committee 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 attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

The Design Review Committee, by resolution, may exempt certain Construction or Modifications from the application and approval requirements of this Article, provided such Construction or Modifications are undertaken in strict compliance with the requirements of such resolution. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild an Improvement in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a Residence without approval of the Design Review Committee so long as such work does not affect the exterior appearance of the Residence.

### **3.3 Variances.**

The Design Review Committee may grant variances from compliance with any provision of the Design Guidelines in circumstances where the design meets the intent of

the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require, and the Design Review Committee determines, in its sole discretion, that the objective of the particular requirement can still be achieved. No variance shall be effective unless in writing and signed by an authorized representative of the Design Review Committee. No variance may be contrary to this Declaration or prevent the Design Review Committee from denying a variance in other circumstances including, without limitation, circumstances similar or identical to circumstances under which the Design Review Committee previously granted a variance. For purpose of this Section, the inability to obtain approval of any governmental agency, obtain the issuance of any permit necessary for the proposed Construction or Modification, or comply with the terms of any financing shall not constitute hardships.

### **3.4 Construction of Improvements.**

Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall commence the Construction or Modification approved by the Design Review Committee within ninety (90) days after the date the Construction or Modification was approved by the Design Review Committee and shall diligently pursue such Construction or Modification so that it is complete within six (6) months. If the Construction or Modification is not commenced within the time period presented in this Section, the Design Review Committee may revoke its prior approval of the Construction or Modification.

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### **3.5 No Changes Without Approval.**

Any Construction or Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.

### **3.6 Review Fee.**

The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any Construction or Modification, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. The fee charged by the Design Review Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Design Review Committee in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Association may retain architects, engineers or other persons as deemed necessary to review applications or otherwise assist the Design Review Committee.

### **3.7 New Construction.**

All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot without prior approval.

### **3.8 No Warranty.**

The approval by the Design Review Committee of any Construction or Modification shall not be deemed a warranty or representation by the Design Review Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

### **3.9 Conditional Approval.**

The Design Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Design Review Committee in an amount determined by the Design Review Committee to be reasonably sufficient to: (a) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) repair any damage which might be caused to any Area of Association Responsibility <sup>Unofficial Document</sup> as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond or other security shall be released to the Owner upon the completion of the Improvements in accordance with the plans and specifications approved by the Design Review Committee and the Owner's written request to the Design Review Committee.

### **3.10 Improvements to Areas of Association Responsibility.**

If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification with respect to the Improvement on the execution by the Owner of an agreement in form and substance acceptable to the Design Review Committee and the Board which obligates the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement. Any such agreement shall be recorded.

### **3.11 Design Review Committee.**

So long as the Developer owns any Lot or Parcel, the Developer shall have the right to determine the number of members on the Design Review Committee and to appoint and

remove the members of the Design Review Committee. At such time as the Developer no longer owns any Lot or Parcel, the Designated Builders shall have the right to determine the number of members on the Design Review Committee and to appoint and remove the members of the Design Review Committee. After either the Developer or any Designated Builder owns any Lot or Parcel, the Board shall determine the number of members on the Design Review Committee, and the members of the Design Review Committee shall be appointed and may be removed by the Board. The Developer or the Designated Builders may at any time voluntarily surrender their right to appoint and remove the members of the Design Review Committee, and in that event the actions of the Design Review Committee must be approved by the Developer or the Designated Builders before they become effective.

The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (a) the size and height of Residences; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (c) placement of Residences and other buildings; (d) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; (g) perimeter and screen wall design and appearance; (h) time periods for commencement and completion of any approved construction or modification; and (i) rules and regulations governing construction activities. Any adoption, amendment or repeal of the Design Guidelines after neither the Developer nor the Designated Builders have the right to appoint the Design Review Committee must be approved by the Board.

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

## ARTICLE 4

### USE RESTRICTION

#### **4.1 Residential Use.**

All Lots and Residences shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or Parcel or in or from any Residence, except that the Owner, Lessee or other Resident of a Residence may conduct a business activity within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (c) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of

Owners, Lessees or Residents in the Project; (d) the use of the Residence for trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (f) the trade or business is conducted by a Resident or Residents of the Residence with no employee working in or from such Residence who is not a Resident thereof; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) the use of the Residence for a trade or business does not violate any other provision of the Community Documents.

The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

#### **4.2 Temporary Occupancy and Temporary Buildings.**

No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Design Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee, however, this does not apply to the activities of the Developer, the Declarant or the Designated Builders.

#### **4.3 Nuisances; Construction Activities.**

No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot or Parcel, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No Person shall permit any thing or condition to exist upon any Lot or Parcel which may induce, breed or harbor infectious plant diseases or noxious insects. No condition shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. No Lot or Parcel shall be used in any manner to explore for or to remove any

water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or Parcel so as to be Visible From Neighboring Property.

Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during the construction of Improvements may be kept only in areas approved in writing by the Design Review Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Developer or a Designated Builder.

#### **4.4 Antennas.**

To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be subject to the prior written approval of the Design Review Committee. Therefore, no antenna, satellite or microwave dish or other device for transmission or reception of Unofficial Document or radio signals shall be constructed, installed, erected, used or maintained on any Lot or Parcel without the prior written approval of the Design Review Committee unless applicable law prohibits the Design Review Committee from requiring such approval. Even if applicable law prohibits the Design Review Committee from requiring prior approval for the installation of certain antennas, any such antennas must still be installed in accordance with the Design Guidelines.

#### **4.5 Trash Containers and Collection.**

No garbage or trash shall be placed or kept on any Lot or Parcel except for bulk collection on pick up days, except in covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers be kept or placed on a Lot or Parcel so as to be Visible From Neighboring Property, except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots or Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

#### **4.6 Utility Service.**

No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected,

placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee or exempt from Design Review Committee review and approval.

#### **4.7 Overhead Encroachments.**

No tree, shrub, or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee.

#### **4.8 Animals.**

No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot or Parcel, except that a reasonable number of dogs, cats, parakeets or similar household birds may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have the authority to determine what is a reasonable number of dogs, cats, parakeets or similar household birds for any particular Lot, and the Board's determination shall be final. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at Unofficial Document kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

The Board may adopt rules and regulations further restricting and governing animals within the Property, which rules may include, without limitation rules providing for the removal from the Property of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Residents.

#### **4.9 Machinery and Equipment.**

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Parcel, except such machinery or equipment as is usual and customary in connection with residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot or Parcel.

#### **4.10 Further Subdivision, Property Restrictions, Rezoning and Timeshares.**

Without the prior written approval of the Design Review Committee and the Board, no Owner other than the Developer or a Designated Builder shall do any of the following: (a) further subdivide a Lot or Parcel or otherwise separate the Lot or Parcel into smaller lots or parcels; (b) convey or transfer less than all of a Lot; or (c) replat a Lot or combine the Lot with other Lots. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Developer or a Designated Builder against any Lot or Parcel without the provisions thereof having been first approved in writing by the Design Review Committee and the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Developer or a Designated Builder unless the application has been approved by the Design Review Committee and the Board and the proposed use otherwise complies with this Declaration. No Lot or Parcel shall be subjected to or used for any timesharing, <sup>Unofficial Document</sup> cooperative, weekly, monthly or any other type or revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

#### **4.11 Vehicles and Parking.**

As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) "Streets" means the public or private streets shown on a Plat.

No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot or Parcel so as to be Visible From Neighboring Property.

Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot, Parcel or the Common Area. No Motor Vehicles designed or used for transporting passengers for a fee or for carrying merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents.

It is the intent of this Section to limit parking on the Streets. No Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the Streets if space for the parking of the Motor Vehicle is available in any of the following areas: (a) the garage or carport situated on the Lot of the Owner, Lessee or Resident; (b) the driveway on the Lot constructed as part of the initial construction of Improvements on the Lot by a Declarant; or (c) a driveway expansion constructed on the Lot with the approval of the Design Review Committee.

It is also the intent of this Section to limit the parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of the Lot in the driveway and in any driveway expansion situated on the Lot. Accordingly, Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage or carport situated on the Lot to the extent space is available in the garage or carport for the parking of such Motor Vehicles. If space is not available in the garage or carport, then Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot. Parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may only be parked on a driveway expansion constructed with the approval of the Design Review Committee if space for the parking of such Motor Vehicles is not available either in the garage or carport or in the driveway constructed as part of the initial construction or Improvements on the Lot. The parking of a Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot on a driveway expansion is also subject to such rules and regulations as may be adopted by the Board.

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No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Area.

No recreational vehicle, motor home or similar vehicle may be parked or kept on a Lot or Parcel in such a manner as to be Visible From Neighboring Property, except that a recreational vehicle, motor home or similar vehicle owned or leased by an Owner, Lessee or Resident may be parked in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

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

Private, non-commercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or width or two hundred twenty-eight (228) inches in length, may be parked on the Property within a garage or in a private driveway appurtenant to a Dwelling Unit but except as provided in the next sentence may not be parked elsewhere on the Property or streets adjoining the Property. The preceding sentence shall not preclude occasional overflow parking in a street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners or Occupants of other Lots. No other vehicle (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents, or similar vehicles or equipment, commercial vehicles, or vehicles exceeding one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or width, or two hundred twenty-eight (228) inches in length or similar vehicles or equipment) shall be kept, placed or maintained upon the Property or any roadway adjacent thereto, except: (a) within a fully-enclosed garage appurtenant to a Dwelling Unit; or (b) in such areas and subject to such rules and regulations as the Board may designate and adopt in its sole discretion (and the Board in its sole discretion may prohibit such other vehicles and equipment completely).

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

The provisions of this Section 4.12 will not apply to (a) vehicles of the Developer, the Declarants or any Designated Builder or their respective employees, agents, affiliates, contractors or subcontractors during the course of construction activities or sales activities upon or about the Project, or (b) vehicles used by the Association and repairing, maintaining and replacing the Areas of Association Responsibility and all Improvements thereon, and performing all of the rights, duties and obligations of the Association under this Declaration.

#### **4.12 Drainage.**

No Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot or Parcel as shown on the approved drainage plans on file with the County. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans.

#### **4.13 Garages and Carports.**

Garages and carports shall be used for parking vehicles and storage only and shall not be used or converted for living or recreational activities. The interior of all garages and

carports shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

#### **4.14 Rooftop HVAC Equipment Prohibited.**

No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Residence or other building so as to be Visible From Neighboring Property.

#### **4.15 Basketball Goals and Backboards.**

Except as expressly permitted by the Design Guidelines, no portable basketball goal or backboard shall be constructed, installed or maintained on any Lot or Parcel. Permanent basketball goals or backboards may be kept on a Lot provided they are kept and used in accordance with the Association Rules which may govern their size, design, color, material, location and hours of use. All permanent goals must be approved by the Design Review Committee prior to installation.

#### **4.16 Playground Equipment.**

No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot or Parcel without the prior written approval of the Design Review Unofficial Document Committee.

#### **4.17 Rental of Lots.**

No Owner may lease less than his entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Community Documents and that any violation of this Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease. There shall be no subleasing of Residences or assignments of leases.

At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and each other person who will reside in the Residence during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot and the Residence situated thereon must provide the Lessee with copies of this Declaration, the Design Guidelines and the Association Rules.

Any lease of a Lot or Residence situated thereon must be for an initial term of at least one (1) month. The Owner shall be liable for any violation of this Declaration, the

Design Guidelines or the Association Rules by the Lessees or other persons residing in the Residence and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

#### **4.18 Lights.**

Except as initially installed by the Developer or a Designated Builder, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property, except as approved by the Design Review Committee.

#### **4.19 Window Cover Materials.**

Within sixty (60) days after becoming the Owner of a Lot, the Purchaser shall install permanent draperies or suitable window coverings on all windows facing a street. All such window coverings facing a street must show white or beige colors unless otherwise approved in writing by the Design Review Committee. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, and no sheets, bedding or similar items shall be installed or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Board. Except as permitted by this Section, no enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence shall be constructed or installed without the prior written consent of the Board.

## **ARTICLE 5**

### **EASEMENTS**

#### **5.1 Easements for Use of Common Area.**

Every Owner and Resident and their guests shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot and Parcel, subject to:

(a) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.10; provided, however, that if access to a Lot or Parcel is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot or Parcel and their guests and invitees.

(b) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area (such

as landscaped areas) not intended for use by the Owners, Lessees or Residents.

(c) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot or Parcel) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Community Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

(d) The rights and easements reserved by or granted to the Developer or a Designated Builder by this Declaration.

(e) The right of the Board to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area.

(f) The right of the Board to permit the use of any recreational facility or amenity situated on the Common Area by persons other than Owners or Residents and their guests upon payment of such fees, if any, as may be established by the Board.Unofficial Document

(g) The rights and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.

If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use any recreational facilities or amenities situated on the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use such recreational facilities or amenities until the termination or expiration of such lease.

Notwithstanding any other provision of this Section to the contrary, only the Owners and Residents of Lots within a Benefited Property Assessment Area, and their guests, shall have a right and easement of enjoyment in the Limited Common Area of the Benefited Property Assessment Area.

The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot or Parcel to which such right is appurtenant.

## **5.2 Utility and Development Easements.**

A non-exclusive, perpetual blanket easement is hereby granted over and through the Common Area for the purpose of: (a) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property or adjacent land any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; and (b) ingress and egress to install, construct, operate, maintain, repair and replace such equipment and (c) storm water management and storm water drainage, as necessary or desirable for the orderly development of the Project. Such easement is hereby granted to any Person providing the aforesaid utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Developer, where contemplated on any site plan approved by the Developer or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Developer. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the surrounding vegetation and improvements to their original condition as soon as possible.

The Developer hereby reserve the right to grant and reserve easements, rights-of-way and licenses over and through the Unofficial Document Common Area for the purposes set forth in this Section or for any other purpose necessary or desirable for the orderly development of the Project. If the Person installing the utility or providing a service requests a specific easement by separate recordable documents, then the Developer or the Association shall have the power to record a document locating such easements.

## **5.3 Easements to Facilitate Development.**

The Developer hereby reserves to itself and its successors and assigns and grants to each Designated Builder and its successors and assigns a non-exclusive blanket easement over and through the Project for all purposes reasonably related to the development and completion of Improvements on the Project, including without limitation: (a) temporary construction easements; (b) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (c) easements for the construction, installation and Maintenance of Improvements on the Property or Improvements reasonably necessary to serve the Property.

The Developer hereby reserves to itself, its successors and assigns and grants to each Designated Builder and its successors and assigns the right to: (a) use any Lots or Parcels owned or leased by the Declarant or the Designated Builder, any other Lot or Parcel with the written consent of the Owner thereof or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas for the marketing and sale of Lots

and Parcels and for the marketing and sale of property which is not part of the Project; and (b) install and maintain on the Common Area, any Lot or Parcel owned or leased by the Declarant or the Designated Builder or any other Lot or Parcel with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant or the Designated Builder deems necessary in connection with the marketing and sale of Lots and Parcels and in connection with the marketing and sale of property which is not part of the Project.

#### **5.4 Dedications and Easements Required by Governmental Authority.**

The Developer hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

#### **5.5 Further Assurances.**

Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate the reservations of rights and easements contained in this Article 5, whether or not set forth in the conveyance instrument. The easements granted and reservations made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Project by the Declarant. Upon written request of a Declarant, the Association, <sup>Unofficial Document</sup> and each Owner shall from time to time sign, acknowledge and deliver to such Declarant such further assurances of these reservations of rights and easements as may be requested.

#### **5.6 Duration of Development Rights; Assignment.**

The rights and easements reserved by or granted to the Developer or a Designated Builder pursuant to this Article 5 shall continue so long as the Developer or any Designated Builder owns one or more Lots or Parcels or holds an option to purchase one or more Lots or Parcels. The Developer or a Designated Builder may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or Maintenance on any portion of the Property.

#### **5.7 Association Powers and Rights.**

The Association's exercise of the rights, powers and easements granted in this Article 5 are not subject to the time limitations on duration applicable to the Developer and the Designated Builders. If the Developer or a Designated Builder requests the Association to exercise its powers under this Article 5, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

### **5.8 Easement for Maintenance and Enforcement.**

The Association and its directors, officers, agents, contractors and employees, the Design Review Committee and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots or Parcels (excluding the interior of any Residence), for: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on the Lot or Parcel have been constructed in accordance with the plans and specifications for such Improvements approved by the Design Review Committee and that all Improvements are being properly maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or Parcel or in the Common Area threatening another Lot or Parcel or the Common Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on the Lots or Parcels for which the Association is responsible for Maintenance; or (e) correcting any condition which violates the Community Documents.

### **5.9 Easements for Encroachments.**

If any Improvements on any Lot or Parcel or portion of the Common Area now or hereafter encroach on any other portion of the Project by reason of: (a) the original construction thereof; (b) deviations within normal construction tolerances in the Maintenance of any Improvement; or (c) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

### **5.10 Rights of Builders.**

Notwithstanding any other provision of this Declaration to the contrary, a Builder shall have the right to maintain model homes and sales offices on Lots owned or leased by the Builder and to construct and maintain parking areas for the purpose of accommodating persons visiting such model homes and sales offices provided: (a) the plans and specifications for the model homes and sales offices, and related landscaping, have been approved in writing by the Design Review Committee; (b) the location and design of the parking areas incidental to such model homes and sales offices has been approved in writing by the Design Review Committee; (c) the opening and closing hours for such model homes and sales offices have been approved in writing by the Design Review Committee; and (d) the construction, operation and maintenance of such model homes and sales offices otherwise complies with all provisions of this Declaration. Any home constructed as a model home shall cease to be used as a model home and any sales office shall cease to be used as a sales office at any time the Builder is not actually engaged in the sale of Lots.

Notwithstanding any other provision of this Declaration to the contrary, a Builder may store supplies of brick, block, lumber and other building materials on a Lot owned or leased by a Builder during the course of construction of Improvements on Lots provided such materials

are kept in areas approved in writing by the Design Review Committee which may require the screening of such storage areas. In addition, normal construction activities of the Builder in connection with the construction of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration. A Builder constructing Improvements on Lots shall keep the Lots in a clean, safe and neat condition free of weeds, trash and debris. Declarant and Designated Builders shall be allowed to maintain model homes without any oversight by the Design Review Committee.

## ARTICLE 6

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

#### 6.1 Formation of Association.

The Association shall be a nonprofit Arizona corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona law and all powers necessary or desirable to perform the Association's duties and obligations and to exercise the rights and powers of the Association set forth in the Community Documents. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and maintenance of the Areas of Association Responsibility.

#### 6.2 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. The initial directors and officers shall be designated in the Articles, and such persons shall serve until their death, resignation or removal from office. Until the earlier of the termination of the Developer Control Period or such time as the Developer no longer owns any Lot or Parcel, the Developer shall have the right to appoint and remove the members of the Board. After the Developer no longer owns any Lot or Parcel, then until the termination of the Developer Control Period, the Designated Builders shall have the right to appoint and remove the members of the Board. After the termination of the Developer Control Period, the Board shall be elected by the members as provided in the Bylaws. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

#### 6.3 The Association Rules.

The Board may adopt, amend and repeal rules and regulations pertaining to: (a) 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; (b) minimum standards for the Maintenance of Lots; or (c) restrictions on the use of Lots. 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

Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

#### **6.4 Personal Liability.**

No director or officer of the Association, no member of the Design Review Committee or of any committee of the Association, and no other person acting on behalf of the Board shall be personally liable to any Member, or to any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such person's duties and responsibilities under the Community Documents provided such person acted in good faith.

#### **6.5 Implied Rights.**

The Association may exercise any right or privilege given to the Association expressly by the Community 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 Community Documents or reasonably necessary to effectuate any such right or privilege.

#### **6.6 Identity of Members.**

The members of the Association shall be the Owners of the Lots and Parcels. All Owners of Lots and Parcels shall be mandatory members of the Association. An Owner of a Lot or Parcel shall automatically, upon <sup>Unofficial Document</sup> becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

#### **6.7 Allocation of Memberships.**

Each Lot and Parcel is allocated the following Memberships in the Association:

- (a) Each Lot is allocated one (1) Membership.
- (b) Each Parcel is allocated one (1) Membership for each Lot which is expected to be created by the subdividing of the Parcel as shown on the Master Development Plan attached hereto as Exhibit B.

Each Owner shall have the number of Memberships allocated to the Lots and Parcels owned by such Member.

## **6.8 Classes of Members and Voting Rights.**

The Association shall have the following two classes of voting membership:

**Class A.** Class A members are all Owners, with the exception of the Developer and the Designated Builders until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Membership held by such Member. Upon the termination of the Class B membership, the Developer and each Designated Builder shall be Class A member so long as they own any Lot or Parcel.

**Class B.** The Class B members shall be the Developer and the Designated Builders. The Developer and each Designated Builder shall be entitled to three (3) votes for each Membership held by such Member. The Class B membership shall cease and be converted to Class A membership when the votes held by Class A members exceed the votes held by the Class B members. The Developer may at any time voluntarily relinquish its Class B membership by giving written notice thereof to the Association. Declarant and Designated Builders may also voluntarily relinquish their respective Class B Memberships by giving written notice to the Association.

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## **6.9 Voting Procedures.**

No change in the ownership of a Lot or Parcel 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 or Parcel must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot or Parcel 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 or Parcel, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot or Parcel 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 or Parcel, none of the votes shall be counted and all of the votes shall be deemed void.

## **6.10 Transfer of Membership.**

The rights and obligations of any Member other than the Developer or a Designated Builder 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 or Parcel may be effected 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 or Parcel shall operate to transfer the Membership appurtenant to the Lot or Parcel to the new Owner thereof. Each purchaser of a Lot or Parcel shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot or Parcel.

#### **6.11 Conveyance or Encumbrance of Common Area.**

The Association may dedicate parts of the Common Area to the County or any public agency, authority or utility for such purposes and subject to such conditions as the Board may determine to be in the best interests of the Project. The Association may convey portions of the Common Area for the purpose of adjusting the boundary lines between the Common Area and adjoining Lots or Parcels or dedicated rights-of-way. The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project. The Association may lease all or any part of the Common Area for such purposes and on such terms and conditions as the Board determines to be necessary or desirable; provided, however, that any lease entered in to after the termination of the Period of Declarant Control must be approved by Owners entitled to cast more than fifty percent (50%) of the Eligible Votes. Except as otherwise expressly provided in this Declaration, the Common Area shall not be mortgaged or conveyed without the prior approval of (a) the Members holding at least two-thirds (2/3) of the total votes in the Association, (b) the Developer, if the Developer owns any Lot or Parcel and (c) each Designated Builder Unofficial Document that owns any Lot or Parcel.

#### **6.12 Suspension of Voting Rights.**

If any Owner fails to pay any Assessments or other amounts due to the Association under the Community Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Community Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board, in accordance with the procedures set forth in the Bylaws, 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 Community Documents are corrected.

### **ARTICLE 7**

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

##### **7.1 Obligation to Pay Assessments and Other Charges.**

Each Owner, by becoming the Owner of a Lot or Parcel, 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. 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, shall also be the personal obligation of the Person who was the Owner of the Lot or Parcel 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.

No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or Parcel or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Design Review Committee to take some action or perform some function required of it.

## **7.2 Regular Assessments.**

At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, except for Benefited Property Expenses. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments and the amount to be generated through Assessments against the Lots and Parcels. Based on the budget adopted by the Board, the Board shall assess against each Lot and Parcel a Regular Assessment. The Regular Assessment shall be set at a uniform amount per Membership, <sup>Unofficial Document</sup> except that the Regular Assessment for Lots and Parcels owned by the Developer or a Designated Builder shall be twenty-five percent (25%) of the amount that would be assessed to such Lots and Parcels based on the number of Memberships allocated to such Lots and Parcels. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.

The Board shall give notice of the Regular 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 Regular Assessment established by the Board nor relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Regular Assessment for any Assessment Period is required by law, neither the budget nor the Regular Assessment shall be required to be ratified or approved by the Members.

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, the Board may amend the budget and increase the Regular Assessment for that Assessment

Period and the revised Regular Assessment shall commence on the date designated by the Board.

### **7.3 Special Assessments.**

The Association may levy against each Lot and Parcel a Special Assessment for the purpose of obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area (including fixtures and personal property related thereto), or to pay unbudgeted expenses or expenses in excess of the amount budgeted. Any Special Assessment must be approved by 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. So long as the Developer owns any Lot or Parcel, any Special Assessment must be approved in writing by the Developer. Any Special Assessment must also be approved in writing by each Designated Builder that owns a Lot or Parcel at the time the Special Assessment is approved. Any Special Assessment shall be levied at a uniform amount per Membership.

### **7.4 Benefited Property Assessments.**

All Common Expenses of the Association pertaining to the maintenance, repair and replacement of Limited Common Areas or to the providing of Special Services shall be shown separately in the budget adopted by the Board. The Common Expenses pertaining to the maintenance, repair and replacement of Limited Common Area or to the providing of Special Services shall be assessed solely <sup>Unofficial Document</sup> against the Lots within the Benefited Property Assessment Area designated in the Supplemental Declaration establishing the Limited Common Area or the Special Services. No Common Expenses pertaining to the maintenance, repair or replacement of Limited Common Area or pertaining to providing Special Services shall be used in computing the Regular Assessments to be levied pursuant to Section 7.2. Unless otherwise provided for in the applicable Supplemental Declaration, Benefited Property Assessments shall be levied against the Lots within the Benefited Property Assessment Area at an equal amount for each Lot. If the Board determines during any Assessment Period that any Benefited Property Assessment is, or will, become inadequate to pay all Common Expenses to be paid by the Benefited Property Assessment for any reason, including, without limitation, nonpayment of Benefited Property Assessments by Owners, the Board may increase the Benefited Property Assessment for that Assessment Period and the revised Benefited Property Assessment shall commence on the date designated by the Board.

In addition to a Benefited Property Assessment assessed pursuant to this Section, the Association may assess against each Lot within a Benefited Property Assessment Area a special Benefited Property Assessment for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement situated on the Limited Common Area. Any such special Benefited Property Assessment shall be assessed against all Lots within the applicable Benefited Property Assessment Area at an equal amount for each Lot.

### **7.5 Enforcement Assessment.**

The Association may impose against an Owner as an Enforcement Assessment the following expenses: (a) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; and (b) any monetary penalties levied against the Owner. The Enforcement Assessment shall be automatically imposed against an Owner at such time as the Collection Cost or other amounts are incurred by the Association or, in the case of a monetary penalty, the date the monetary penalty is imposed on the Owner by the Board.

### **7.6 Assessment Period.**

The period for which the Regular Assessment is to be levied shall be the calendar year, except that the first Assessment Period shall commence on the first day of the first month following 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.

### **7.7 Obligation of Developer and Designated Builders for Deficiencies.**

During the Developer Control Period, the Developer and the Designated Builders shall pay and contribute to the Association such funds as may be necessary, when added to the Assessments levied by the Association, to pay all Common Expenses of the Association as they become due. The <sup>Official Document</sup> payment of any such amounts shall be allocated between the Developer and the Designated Builders on a pro rata basis according to the number of Memberships held by the Developer and each Designated Builder as of the date the payment is requested by the Board. The Board may require the payment of such funds by the Developer and the Designated Builders from time to time as the Board deems necessary by giving written notice thereof to the Developer and the Designated Builders. Each such notice shall state the total amount of funds required and the calculation of the pro rata share of such funds to be paid by the Developer and each Designated Builder. In no event shall the Developer or a Designated Builder be obligated to contribute funds to the Association in excess of the amount of Assessments that would have been payable by the Developer or the Designated Builders if the Lots and Parcels owned by the Developer or the Designated Builder had been assessed the same amount as Lots and Parcels owned by an Owner other than the Developer or a Designated Builder.

### **7.8 Rules Regarding Billing and Collection Procedures.**

Regular Assessments and Benefited Property Assessments shall be collected on a monthly 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 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 such Member's liability for any

Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment 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 or Parcel changes during an Assessment Period but successor Owners of Lots or Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**7.9 Creation of Assessment Lien; Effect of Nonpayment of Assessments; Remedies of the Association.**

Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

The Association shall have a lien on each Lot or Parcel for: (a) all Assessments levied against the Lot or Parcel; (b) all interest, lien fees, late charges and other fees and charges assessed against the Lot or Parcel or payable by the Owner of the Lot or Parcel; (c) all fines levied against the Owner of the Lot or Parcel; (d) all attorney 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 or other amounts due to the Association by the Owner of a Lot or Parcel whether or not suit is filed by the Association; (e) any amounts payable to the Association pursuant to Section 8.3 or 8.4; and (f) any other amounts payable to the Association pursuant to the Community Documents.

The 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 or Parcel 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. Before recording any Notice of Lien against a Lot or Parcel, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot or Parcel. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot or Parcel against which the Notice of Lien is recorded a lien fee in an amount established from time to time by the Board.

The Assessment Lien shall have priority over all liens or claims except for: (a) liens and encumbrances Recorded before the Recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges; and (c) the lien of any First Mortgage or seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot or Parcel through foreclosure of the 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 or Parcel which became payable prior to the acquisition of such Lot or Parcel by the First Mortgagee or other Person. Any Assessments and charges against the Lot or Parcel which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot or Parcel.

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 or Parcel have been paid in full.

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, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action <sup>Unofficial Document</sup> may be brought without waiving the Assessment Lien or (b) bringing an action to foreclose the Assessment Lien against the Lot or Parcel 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 or Parcels purchased at such sale.

#### **7.10 Purposes for which Association's Funds May Be Used.**

The Association may use the funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Community Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Community Documents or applicable law; (c) providing or promoting activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Project and the Owners, Lessees and Residents; (d) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owners, Lessees and Residents; and (e) taking such other action as the Board deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Project.

### **7.11 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 Regular 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.

### **7.12 Initial Capital Contribution.**

Each Purchaser of a Lot from the Declarant or a Designated Builder shall pay to the Association immediately upon becoming the Owner of the Lot a contribution to the operating capital of the Association (the "Initial Capital Contribution"). The amount of the Initial Capital Contribution shall be set by the Board prior to the conveyance of the first Lot to a Purchaser. The Board may from time to time thereafter increase or decrease the amount of the Initial Capital Contribution, but the amount of the Initial Capital Contribution may not be increased by the Board by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the votes in the Association. Initial Capital Contributions may be used by the Association for payment of operating expenses or any other purpose permitted under the Community Documents. Initial Capital Contributions shall be nonrefundable and shall not be considered as an advance payment of <sup>Unofficial Document</sup> any Assessments levied by the Association pursuant to this Declaration.

### **7.13 Transfer Fee.**

Each Purchaser, except where a developer sells to a designated builder, or a designated builder sells to another designated builder, 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 to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail to deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C.

### **7.14 Reserve Contribution.**

Except as otherwise provided in this Section, each Purchaser of a Lot shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.15. The amount of the initial Reserve Contribution shall be set by the Board prior to the conveyance of the first Lot to a Purchaser. The Board may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve

Contribution may not be increased by the Board by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the votes in the Association. The Reserve Contribution shall be in addition to, and not in lieu of, any other Assessments or amounts payable to the Association by the Owner making the Reserve Contribution, and the Reserve Contribution shall be secured by the Assessment Lien. The Reserve Contribution shall be deemed a contribution to the capital of the Association.

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

#### **7.15 Reserves.**

The Board shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of the Association Responsibility. The reserves may be funded from Regular Unofficial Document Assessments, the Reserve Contributions paid pursuant to Section 6.13 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. To assist the Board in determining the appropriate amount of reserves, the Board shall obtain a reserve study at least once every three years, which study shall at a minimum include (a) identification of the major components of the Areas of Association Responsibility which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

**ARTICLE 8****MAINTENANCE****8.1 Areas of Association Responsibility.**

The Association shall be responsible for the management and Maintenance of the Areas of Association Responsibility, and all Improvements located thereon, except for (a) any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate Maintenance of all Areas of Association Responsibility, but the Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times.

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

**8.2 Lots and Parcels.**

Each Owner of a Lot shall be responsible<sup>Unofficial Document</sup> for the Maintenance of his Lot, and all buildings, Residences, landscaping or other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, which is an Area of Association Responsibility. All buildings, Residences, 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 promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Design Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots or Parcels upon which no Residences, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

**8.3 Assessment of Certain Costs of Maintenance and Repair.**

In the event that the need for Maintenance of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such Maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

#### **8.4 Improper Maintenance and Use of Lots or Parcels.**

In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or Parcels or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration; or in the event the Owner of any Lot or Parcel is failing to perform any of its obligations under the Community 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 fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen day period 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 paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

#### **8.5 Boundary Walls.**

Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section, the general rules of law regarding boundary walls shall apply.

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

Except as otherwise provided in this Section, the Owners of contiguous Lots who share a boundary wall shall each pay one-half (½) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (½) of such cost.

In the event that any boundary wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners who share the boundary wall.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary wall shall first obtain the written consent of the adjoining Owners.

In the event any boundary wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share such boundary wall.

The Developer hereby reserves to itself and its successors and assigns and grants to each Designated Builder and its successors and assigns a perpetual, non-exclusive easement over, under, upon and across the Lots and Parcels for the purpose of repairing or relocating a boundary wall without the consent of the Owners who share the use of the boundary wall.

#### **8.6 Maintenance of Walls other than Boundary Walls.**

Walls (other than boundary walls) located on a Lot or Parcel shall be maintained, repaired and replaced by the Owner of the Lot or Parcel. Any wall which is placed on the boundary line between a Lot or Parcel and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Area of Association Responsibility. In the event any such wall encroaches upon the Common Area or a Lot or Parcel, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot or Parcel, as the case may be. Any wall which is placed on the boundary line between a Lot or Parcel and public right-of-way shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that the Association shall be responsible for the repair and replacement of the surface of the wall which faces the public right-of-way.

### **ARTICLE 9**

#### **INSURANCE**

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

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

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

(e) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation against 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 policy shall primary, even if an Owner has other insurance that covers the same loss; (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;

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

## **9.2 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 cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

## **9.3 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, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the

provisions of Section 9.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

#### **9.4 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 repair or replacement would be illegal under any state or local health or safety statute or ordinance, or Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. 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 be retained by the Association as an additional capital reserve.

### **ARTICLE 10**

#### **DISPUTE RESOLUTION**

##### **10.1 Agreement to Resolve Certain Disputes Without Litigation.**

As used in this Article 10, 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 Area or any Lot or any Improvements situated thereon, including, without limitation, any claim or cause of action that the Common Areas are defective or that the Developer or a Designated Builder or their agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; of (b) any claim or cause of action against the Developer or a Designated Builder or any employee, agent, director, member or officer of Developer or a Designated 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. The Association, the Developer, the Designated Builders, all Owners, Lessees, Residents and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Article (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article shall apply to all Claims.

##### **10.2 Notice of Claim.**

Any Bound Party having or alleging 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, the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against the Developer or a Designated Builder which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of the Developer or any Designated Builder to correct such Alleged Defect and the opportunities provided to Developer or the Designated Builder to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and complete professional background of the attorney retained by the Association to pursue the claim against the Developer or a Designated Builder and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer or a Designated Builder and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action against the Developer or a Designated Builder, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or a Bound Party, and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

### **10.3 Mediation.**

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 by the American Arbitration Association (the "AAA") or such other independent mediation service as may be agreed to by the Claimant and the Respondent.

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.

#### **10.4 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. 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. If the Claimant submits the Claim to binding arbitration in accordance with this Section, the arbitration shall be conducted in accordance with the following:

(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 AAA Commercial Arbitration Rules or such other rules as the AAA may determine to be applicable to the proceeding (the "AAA Rules").

(b) **Governing Procedures.** Unofficial Document 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 10.4, the provisions of this Section 10.4 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 10.4 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. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

(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 (c) above.

(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 (within sixty (60) days of 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; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

#### **10.5 Right to Enter, Inspect, Repair and/or Replace.**

Within a reasonable time after the receipt by the Developer or a Designated Builder of a Claim Notice, the Developer or a Designated Builder shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residence constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Developer or the Designated Builder, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction, Unofficial Document or development of the Common Area or any Lot, or any Improvement constructed on the Common Area or a Lot which is the basis for the Claim (the "Alleged Defect"). In conducting such inspection, testing, repairs and/or replacement, Developer or a Designated Builder shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this Section shall be construed to impose any obligation on the Developer or a Designated Builder to inspect, test, repair, or replace any item or Alleged Defect for which the Developer or a Designated Builder is not otherwise obligated under applicable law or any limited warranty provided by the Developer or a Designated Builder in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the Developer and the Designated Builders 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 Developer or a Designated Builder. In no event shall any statutes of limitations be tolled during the period in which the Developer or a Designated Builder conducts any inspection or testing of any Alleged Defects.

#### **10.6 Use of Funds.**

In the event the Association recovers any funds from the Developer, a Designated Builder or any other Person as a result of a claim involving an Alleged Defect, the funds shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant

for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any excess funds shall be paid into the Association's reserve fund.

### **10.7 Approval of Litigation.**

The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any 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 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 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 10.2.

## **ARTICLE 11**

### **GENERAL PROVISIONS**

#### **11.1 Enforcement.**

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The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:

- (a) imposing reasonable monetary fines after notice and an opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot or Parcel or by any guest or invitee of the Owner or any Lessee or Resident;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot or Parcel;
- (d) suspending any services provided by the Association to an Owner or the Owner's Lot or Parcel if the Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association;

(e) exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;

(f) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot or Parcel in violation of this Declaration and to restore the Lot or Parcel to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in the Project;

(h) towing vehicles which are parked in violation of this Declaration or the Association Rules; and

(i) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled.

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(j) recording a written notice of violation by any Owner, Lessee or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (b) the legal description of the Lot or Parcel against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot or Parcel, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or Parcel or constitute a waiver of any right of the Association to enforce the Community Documents.

The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a

result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

Any Owner shall also have the right to enforce this Declaration in any manner available at law or in equity. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If the Association retains or consults with an attorney with respect to any violation of the Community Documents by the Owner of a Lot, the Lessees of the Owner or the Residents of the Owner's Lot, all attorney fees incurred by the Association shall be assessed against the Owner, whether or not a lawsuit is filed by the Association, and all such attorney fees shall be paid by the Owner to the Association on demand and shall be secured by the Assessment Lien. If any lawsuit is filed by the Association, an Owner, a Lessee or Resident to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

### **11.2 Duration; Termination.**

This Declaration, as it may be amended pursuant to Section 11.3, shall run with the land and bind the Property and be in full force and effect in perpetuity unless terminated as provided in this Section. 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 holding ninety percent (90%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. No termination of this Declaration shall be effective unless approved in writing by (a) the Developer if the Developer owns one or more Lots or Parcels at the time of the termination and (b) each Designated Builder that owns one or more Lots or Parcels at the time of the termination.

### **11.3 Amendments.**

This Declaration may be amended at any time by the affirmative vote of Owners holding not less than two-thirds (2/3) of the total votes in the Association. Any amendment to this Declaration must be approved in writing by the Developer if the Developer owns any Lot or Parcel at the time of the amendment and by each Designated Builder that owns any Lot or Parcel at the time of the amendment. Notwithstanding any other provision of this Declaration to the contrary, neither Article 10 nor this sentence may be amended without

the prior written consent of the Developer and all Designated Builders even if the Developer or the Designated Builders no longer own any Lots or Parcels at the time of the amendment.

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

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

#### **11.4 Condemnation of Common Area.**

If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. Any conveyance by the Association of all or any part of the Common Area must be approved in accordance with the provisions of Section 6.10. If the taking involves a portion of the Common Area upon which Improvements have been <sup>Unofficial Document</sup> constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners holding at least eighty percent (80%) of the votes in the Association instruct the Board not to build replacement Improvements.

If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners holding more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds shall be retained by the Association and used for such purposes as may be determined by the Board.

#### **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, Bylaws, Association Rules or Design

Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Design Guidelines, the Bylaws shall control.

**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.

**11.7 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.

**11.8 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 Declarant, the Board or the Design Review Committee 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.

**11.9 References to this Declaration in Deeds.**

Deeds to and instruments affecting any Lot or any other 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.

**11.10 Gender and Number.**

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



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lots 1 through 54, inclusive, Tracts A through D, inclusive, Final Plat for Roeser Park, according to the plat recorded in Document Number 2004-1084509, Book 704, Page 47, in the official records of the County Recorder of Maricopa County, Arizona.

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**EXHIBIT B  
MASTER DEVELOPMENT PLAN**

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