WHEN RECORDED, RETURN TO:

Michael E. Woolf, Esq.
Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

HIGHLINE RANCH

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIGHLINE RANCH

This Declaration of Covenants, Conditions, and Restrictions for Highline Ranch (the "Declaration") is made this 21st day of June, 2001, by Destiny Holdings I, LLC, an Arizona limited liability company ("Destiny"), and Inca Capital Fund 10, LLC, an Arizona limited liability company ("Optionor"). Destiny and Optionor desire to establish a general plan for the improvement, development, operation, maintenance and use of the Property described herein as an attractive and harmoniously designed residential development to be known as Highline Ranch for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project described herein and the quality of life within the Project. In furtherance of that plan, Destiny and Optionor hereby declare that all of the property within the Project shall be held, sold, conveyed, encumbered, occupied, developed, built on, improved, used, leased and otherwise transferred subject to the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Declaration, each of which shall attach to and run with the land, shall be binding on the Property and all Owners, Occupants, Lessees and other parties having, acquiring or otherwise at any time possessing any right, title or interest in or to the Property or any part thereof, and each of which shall inure to the benefit of said Owners, Occupants, Lessees and other parties. Destiny is the developer of the Project and Destiny has the right to purchase the Lots pursuant to the Option Agreement (as defined herein).

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 "Alleged Defect" means an alleged defect(s) in the planning, design, engineering, grading, construction, or other development of any portion of the Common Area, Areas of Association Responsibility, any Lot and/or any Improvements constructed on the Property, including but not limited to defects caused by negligence of any developer, or its agents, consultants, contractors or subcontractors.

1.2 "Alleged Defect Costs" means the costs of repairing or replacing any defective portion of the Common Area, Areas of Association Responsibility, any Lot and/or any Improvements constructed on the Property (other than Residences).

1.3 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to **Section 6.2** of this Declaration.

1.4 "Architectural Committee" means the committee formed pursuant to **Section 5.10** of this Declaration.

1.5 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to **Section 5.10** of this Declaration, as amended or supplemented from time to time.

1.6 "Areas of Association Responsibility" means (i) all Common Areas; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association; (iii) all real property, and the Improvements situated thereon, within or adjacent to the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas; and (iv) all other land, and the Improvements situated thereon, located adjacent to the Project which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of any other document executed by the Association.

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

1.8 "Assessment" means an Annual Assessment, a Special Assessment, Optional Maintenance Assessment, or any other amounts assessed by the Association pursuant to the terms of this Declaration.

1.9 "Assessment Lien" means the lien created and imposed by **Article 6** of this Declaration.

1.10 "Assessment Period" means the period set forth in **Section 6.7** of this Declaration.

1.11 "Association" means the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to incorporate the Association under the name of *Highline Ranch Homeowners Association*, but if such name is not available, Declarant reserves the right to incorporate the Association under such other name as Declarant deems appropriate.

1.12 "Association Rules" means the rules and regulations adopted by the Board pursuant to **Section 5.3** of this Declaration, as amended from time to time.

1.13 "Association Shortage" shall mean the shortage, if any, between all income and proceeds of the Annual Assessments from all sources and the actual operating costs of the Association during each Assessment Period.

1.14 "Board" means the Board of Directors of the Association.

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

1.16 "Claimant" means the Association, the Board, or any Owner.

1.17 "**Common Area**" means (i) all Tracts shown on the Plat; (ii) 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 or easement interest, for as long as the Association is the owner of the fee, leasehold or easement interest; (iii) all land within the Property which Declarant, by this Declaration or other instrument recorded with the Office of the Maricopa County Recorder, makes available for use by Members and evidences its intent to convey to the Association at a later date; and (v) all land within or adjacent to the Project which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance, and for which the Association benefits by limited use, full use or aesthetic consistency.

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

1.19 "**Declarant**" means and refers to Destiny Holdings I, LLC, an Arizona limited liability company, and its successors and any Person to whom it may expressly assign any or all of its rights under this Declaration. An assignment of the rights of the Declarant under this Declaration may be an assignment of less than all of the rights of the Declarant under this Declaration, and such assignment may apply to less than all the Property. No assignment of the Declarant's rights or a partial assignment of Declarant's rights shall be effective unless recorded with the County Recorder of Maricopa County, Arizona. Notwithstanding the foregoing, in the event the Option Agreement is terminated prior to the purchase by Destiny of all of the Lots pursuant to the Option Agreement, Optionor shall automatically become the Declarant under this Declaration, in which event all references to "Declarant" shall thereafter mean and refer only to Optionor, and after which event Destiny shall no longer be the Declarant under this Declaration. If Optionor becomes Declarant in accordance with the preceding sentences, then at such time as Optionor has sold all of its Lots to Purchasers, Destiny may, in its sole discretion and as long as Destiny then owns any Lot, elect to once again become the Declarant under this Declaration by recording a notice of such election, in which event all references to "Declarant" shall thereafter mean and refer only to Destiny.

1.20 "**Declaration**" means this Declaration, as amended from time to time.

1.21 "**Developer**" as used in **Article 10** of this Declaration, means Destiny or any other developer or contractor who develops the Project and/or constructs any Project Improvements, including Residences.

1.22 "**Dispute**" means a dispute or claim described in **Section 10.4** of this Declaration.

1.23 "**Disputing Party**" means the party instituting a Dispute pursuant to **Subsection 10.4.2** of this Declaration.

1.24 "**FHA**" means the Federal Housing Administration.

1.25 "**FNMA**" means the Federal National Mortgage Association.

1.26 "**FHLMC**" means the Federal Home Loan Mortgage Corporation.

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

1.28 "**First Mortgagee**" means the holder or beneficiary of any First Mortgage.

1.29 "**Improvement**" means any building, fence, wall or other structure (including, without limitation, any sheds, basketball poles/hoops, play structures, patio covers and balconies), any swimming pool, any road, driveway, and parking area (paved or unpaved), and any trees, plants, shrubs, grass and other landscaping of every type and kind.

1.30 "**Indemnified Parties**" means the Persons identified in **Section 5.4** of this Declaration.

1.31 "**Lot**" means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residence or other Improvements situated on the Lot.

1.32 "**Maintenance Standard**" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.33 "**Member**" means any Person who is an Owner of a Lot within the Property.

1.34 "**Modification**" means any construction, installation, addition, alteration, repair, change or replacement, or other work to any Improvement within the Project, including initial construction of Improvements upon a Lot.

1.35 "**Notice of Alleged Defect**" means a notice from a Claimant to Developer describing the specific nature of an Alleged Defect.

1.36 "**Option Agreement**" means the Option Agreement dated ~~June 8th~~ August 9th 2001, between Destiny and Optionor, a Memorandum of which is recorded at Instrument No. 2001-0733134 in the Official Records of Maricopa County, Arizona.

1.37 "**Optional Maintenance Assessment**" means any assessment levied pursuant to Section 6.6.

1.38 "**Optionor**" means Inca Capital Fund 10, LLC ("Inca") and any Person to whom Inca assigns all of its rights under the Option Agreement or any Persons to whom Inca conveys, subject to the Option Agreement, all Lots owned by Inca.

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. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of Arizona Revised Statutes ("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. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation, or a Lessee. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. §33-801, et seq., the trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.40 "Permitted Pet" means the pets defined in **Section 3.14** of this Declaration.

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

1.42 "Plat" means the plat of *Highline Ranch* recorded at Instrument No. 01-0443490 in Book 563 of Maps, page 40, records of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

1.43 "Project" or "Property" means the Lots, tracts and other real property included in the Plat.

1.44 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Committee Rules, and the Plat.

1.45 "Purchaser" means any Person, other than Optionor and Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) a Person who purchases a Lot and then leases it to Declarant for use as a model in connection with the sale or lease of other Lots; or (ii) a Person who, in addition to purchasing a Lot, is assigned or has acquired any or all of Declarant's rights under this Declaration.

1.46 "Recording," "Record" or "Recordation" 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 "Resident" means each individual occupying or residing in any Residence including a Lessee and the members of a Lessee's or Owner's family.

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 "Special Assessment" means any assessment levied and assessed pursuant to **Section 6.5** of this Declaration.

1.50 "**Termination of Negotiations**" means the end of the period to negotiate pursuant to **Section 10.4.2** of this Declaration.

1.51 "**VA**" means the Veterans Administration.

1.52 "**Visible From Neighboring Property**" means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of any adjoining Lot, street, or Common Area at the same elevation as the object being viewed.

1.53 "**Working Capital Fee**" means the fee due pursuant to **Section 6.14** of this Declaration.

ARTICLE 2
PLAN OF DEVELOPMENT

2.1 **Property Subject to the Declaration**. This Declaration is being Recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Project. Destiny and Optionor declare that all of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for him/herself or itself, his/her or its heirs, personal representatives, successors, transferees and assigns, binds himself, his/her heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development, sale, lease and use of the Property and hereby evidences the Owner's intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 **Disclaimer of Representations**. Notwithstanding anything to the contrary herein, Destiny and Optionor make no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the use of any Property subject to this Declaration will not be changed in the future.

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ARTICLE 3
USE RESTRICTIONS

3.1 Architectural Control.

3.1.1 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.2 No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No Modification which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of a Lot, or any Improvements located thereon from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the Modification of any Improvement shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Modification which the Owner desires to perform, including, without limitation, the distance of such work from neighboring properties, if applicable. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans, and specifications which the Architectural Committee may request. If the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with any fee payable pursuant to **Subsection 3.1.5** of this Declaration and all supporting information, plans, and specifications requested by the Architectural Committee have been submitted to the Architectural Committee, approval will not be required and this **Subsection 3.1.2** will be deemed to have been complied with by the Owner requesting approval of such Modification. The approval by the Architectural Committee of any Modification pursuant to this **Subsection 3.1.2** shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Modification subsequently submitted for approval.

3.1.3 Upon receipt of approval from the Architectural Committee for any Modification, the Owner requesting such approval shall proceed to perform, construct or make the Modification approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.4 Any change, deletion, deviation, or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.1.5 The Architectural Committee shall have the right to charge a reasonable fee for reviewing requests for approval of any Modification pursuant to this **Subsection 3.1.5**, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.6 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.

3.1.7 The provisions of this **Subsection 3.1.7** do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, Declarant or any of its affiliates.

3.1.8 The approval required of the Architectural Committee pursuant to this **Subsection 3.1.8** 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.

3.1.9 The Architectural Committee's approval of plans and specifications shall not be deemed to approve the engineering design of an Improvement and shall not be deemed to be a representation or warranty, whether express or implied, that said plans or specifications comply with applicable governmental ordinances or regulations including, without limitation, zoning ordinances and building codes, and industry standards for design or construction of Improvements within the Property. Neither the Association, the Board, any members of the Board or the Architectural Committee, nor Declarant, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications, and shall not be liable to any Owner or Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development, or manner of development, of the Property.

3.1.10 Unless otherwise approved by the City, all Improvements constructed on Lots shall have a minimum setback of ten feet (10') in the front and the rear, with setbacks of eighteen feet (18') from the back of the sidewalk for garages and setbacks of three feet (3') on the side or ten feet (10') if it is from a side street; except for: (i) Lots 1, 40, 41 and 48 where the side setback will be ten feet (10') for single story buildings and fifteen feet (15') for two story buildings; (ii) Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 33, 34, 35, 36, 37, 38, 39, 45, 46 and 47 where the rear setbacks will be fifteen feet (15') for a single story building and twenty feet (20') for a two story building; and Lots 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 where the rear setbacks will be fifteen feet (15') regardless of the height of the building.

3.2 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. Except for temporary buildings, trailers or other structures used by Declarant, temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twenty-four (24) months without the prior written approval of the Architectural Committee.

3.3 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, 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 occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and other property 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 Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this **Section 3.3** shall not apply to construction activities of Declarant.

3.4 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.5 Antennas. To the fullest extent permitted under federal, state and local law, the Architectural Committee shall have the right to regulate the conditions under which any antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation proposed to be erected, used or maintained outdoors on any portion of the Project whether attached to a Residence or structure or otherwise. To the fullest extent permitted by applicable law, the prior approval of the Architectural Committee will be required for the installation, use or maintenance of any such device, which approval the Architectural Committee may condition upon the satisfaction of certain conditions including, but not limited to, the size, placement, height, means of installation and screening of such devices.

3.6 Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

3.7 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained 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 and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property. Notwithstanding the foregoing, during the period of construction, open trash containers may be maintained on a Lot, subject to guidelines adopted by the Architectural Committee that regulate construction trash and debris.

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3.8 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other property so as to be Visible From Neighboring Property.

3.9 Basketball Facilities. Basketball hoops and backboards may not be installed on any Lot unless approved in advance by the Architectural Committee. The installation of such items may be subject to stipulations imposed by the Architectural Committee. The basketball hoops and backboards must be removed when no longer utilized.

3.10 Window Coverings. Windows shall be covered with standard coverings such as shutters, shades, and curtains. Coverings such as foil, paper, sheets, and other temporary materials are prohibited.

3.11 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 other property unless the same shall be contained in conduits or cables installed and maintained under ground or concealed in, under or on buildings or other structures approved by the Architectural 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 Architectural Committee.

3.12 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any side walk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

3.13 Residential Use. All Lots shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that an Owner or other Resident of a Residence may conduct a business activity within a Residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this **Section 3.13** 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 Residents of a Residence and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residence by the Owner thereof or baby-sitting services provided by an Owner shall not be considered a trade or business within the meaning of this **Section 3.13**.

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3.14 **Animals**. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that a reasonable number (as determined by the Board in its sole and absolute discretion, which determination may take into account the size and number of pets and which determination may change from time to time based upon the growth, habits, and circumstances involving pets previously approved) of dogs, cats, parakeets or similar household birds (collectively "Permitted Pets") which may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes and provided such Permitted Pets are not a nuisance to any other owner. Notwithstanding the foregoing, an Owner may keep two Permitted Pets without the prior approval of the Board. All Permitted Pets shall be confined to an Owner's Lot, except that a dog or cat may be permitted to leave an Owner's Lot if such dog or cat is at all times kept on a leash and is not permitted to enter upon any other Lot. No Permitted Pet 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 Permitted Pet 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, one or more Permitted Pets are creating 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. Any Owner, Resident or other Person who brings or permits a pet to be on the Common Area or any Lot shall be responsible for immediately removing any solid waste deposited by such pet.

3.15 **Machinery and Equipment**. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

3.16 **Signs**. No signs whatsoever (including, but not limited to, commercial, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

3.16.1 Signs required by legal proceedings.

3.16.2 Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.

3.16.3 One (1) "For Sale" sign provided the size, color, design, message content, location and type has been approved in writing by the Architectural Committee.

3.16.4 Model home and other signs erected and maintained by Declarant pursuant to **Section 4.4** of this Declaration.

3.17 **Restriction on Further Subdivision, Property Restrictions and Rezoning**. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than Declarant, without the prior written approval of the

Architectural Committee; provided, however, as long as the Option Agreement is in effect, any replat of the Project shall require the written consent of Optionor and, provided further, that any replat which would affect any Lots owned by Destiny or access to such Lots shall require the written consent of Destiny. In the event of any such replat, Optionor and/or Destiny, to the extent they then own any Lots, shall have the right, without the consent of any other Member, to amend this Declaration as may be necessary or appropriate as a result of such permitted replat of the Project. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Resident, or other Person other than Declarant against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.18 Parking, Storage, Maintenance and Towing of Vehicles.

3.18.1 No car, van, truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area or on any street so as to be Visible From Neighboring Property, except for: (i) the temporary parking of a motor home, travel trailer, camper, recreational vehicle or boat and boat trailer on the concrete driveway situated on a Lot for a period of not more than forty-eight (48) consecutive hours and not more than seventy-two (72) hours within any seven (7) day period for the purpose of loading or unloading such vehicle or equipment; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Board; (iii) boats and motor vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; or (iv) motor vehicles not exceeding seven (7) feet in height and eighteen (18) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind and which are parked in the garage or on the concrete driveway situated on a Lot.

3.18.2 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project, and no inoperable vehicle may be stored or parked on any such Lot or other property so as to be Visible From Neighboring Property or to be visible from any Common Area or any street.

3.18.3 No automobile or other motor vehicle shall be parked on any road or street in the Project, except for automobiles or motor vehicles of guests of Owners which may be parked on a road or street in the Project for a period of not more than forty-eight (48) hours during any seven day period.

3.18.4 The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or

equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner or a guest or invitee of an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

3.19 **Variances; Diminution of Restrictions**. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this **Article 3** if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete; and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners and Residents of the Project and is consistent with the high quality of life intended for Residents of the Project. If any restriction set forth in this **Article 3** is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

3.20 **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 as shown on the drainage plans on file with the county or municipality in which the Project is located.

3.21 **Garages and Driveways**. Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. Items may be stored in a garage so long as there is still sufficient space in the garage for the parking of at least one (1) passenger car. Garage doors shall remain closed except when the opening of the garage is necessary for ingress, egress or cleaning.

3.22 **Rooftop Air Conditioners Prohibited**. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residence or other building so as to be Visible From Neighboring Property.

3.23 **Leases**. Any agreement for the lease of all or a portion of a Residence shall provide that the terms of such lease shall be subject in all respects to the provisions of the Project Documents, and shall provide that any failure by the Lessee to comply with the terms of the Project Documents shall be a default under the lease. Any Owner who leases a Residence shall be responsible for assuring compliance with the Project Documents by such Owner's Lessee. No Lot shall be leased for transient or hotel purposes, which shall be defined as a rental for any period less than thirty (30) days.

ARTICLE 4
EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to Declarant in **Sections 4.4 and 4.5** of this Declaration, every Owner or Resident, and any Person residing with such Owner or Resident, 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, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in **Section 5.11** of this Declaration.

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

(iii) 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) 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 Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

4.1.2 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 the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

4.2 Wall Easements. Once constructed, if any wall encroaches upon the Areas of Association Responsibility or a Lot, a valid easement for such encroachment, and for the maintenance of such wall, shall exist in favor of the Association and/or the Owner of the Lot(s) which share such wall, provided such encroachment does not to exceed twelve (12) inches.

4.3 Utility Easement. There is hereby created an easement upon, across, over and under the Areas of Association Responsibility and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Areas of Association Responsibility or Lots, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Areas of Association Responsibility or Lots except as initially designed, approved and constructed by Declarant, or as approved by the Board.

4.4 Use for Sales and Leasing by Declarant.

4.4.1 Declarant and its duly authorized affiliates, agents, employees and representatives, shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned by Declarant while Declarant is selling Lots; however, the rights under this Section shall be subject to reasonable approval by Declarant. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant or its affiliates and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

4.4.2 In the event of any conflict or inconsistency between this **Subsection 4.4.2** and any other provision of this Declaration, this Subsection shall control.

4.5 Declarant's Rights and Easements. Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct, modify, replace and repair all Improvements Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by Declarant by this Declaration. Nothing in this Declaration shall limit the right of Declarant to alter the Common Areas or Lots owned by Declarant, or to construct additional improvements as Declarant deems advisable prior to completion of all Improvements within the Project. Declarant reserves the right to alter its construction plans and designs as it deems appropriate in its sole discretion. In the event of any conflict or inconsistency between this **Section 4.5** and any other provision of this Declaration, this Section shall control.

4.6 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

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

4.6.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots, or to perform maintenance over those Lots for which Optional Maintenance Assessments are assessed;

4.6.3 For correction of emergency conditions in one or more Lots;

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

4.6.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

ARTICLE 5
THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules, or Architectural Rules, this Declaration shall control.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove the members of the Board. At such time as the Declarant no longer owns any Lot, the members of the Board shall be elected by the Members. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot, and to impose late charges for payment of such fines if unpaid fifteen (15) or more days after the due date, provided that the late charge shall not exceed the greater of fifteen dollars ($15.00) or ten percent (10%) of the amount of the unpaid fine, or such greater amount permitted under applicable law.

5.3 The Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for any maintenance of Lots; or (iii) the health, safety or welfare of the Owners and Residents. 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.

5.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager, representative, or employee of the Association, whether past or present (the "Indemnified Parties"), shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, or an Indemnified Party; provided, however, the limitations set forth in this **Section 5.4** shall not apply to any Indemnified Party who has failed to act in good faith or has engaged in

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willful or intentional misconduct. The Association shall indemnify and hold harmless the Indemnified Parties against all contractual liability to others arising out of contracts made on behalf of the Association unless such contract has been made in bad faith. The Association shall indemnify each Indemnified Party against expenses and liabilities, including reasonable attorneys' fees, incurred or imposed upon him or her in connection with any proceeding in which he or she may be a party, or in which he or she may become involved, by reason of such Person being a director, officer, employee, committee member, or other Person acting on behalf of the Association, except in such cases where such Indemnified Party is adjudged guilty by a court of law of gross negligence or malfeasance in the performance of his or her duties. Indemnification shall be in addition to and not exclusive of all other rights to which such Indemnified Party may be entitled.

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

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

5.7 **Classes of Members and Voting Rights**. The Association shall have the following two (2) classes of voting membership:

(i) **Class A**. Class A Members are all Owners of Lots, with the exception of Declarant and Optionor until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each and Optionor Lot owned. Upon the termination of the Class B membership, Declarant shall be a Class A Member so long as Declarant owns any Lot.

(ii) **Class B**. The Class B Members shall be Destiny and Optionor. The Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease on the earliest of (i) the date on which the Declarant no longer owns any Lot in the Project; or (ii) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

Notwithstanding the foregoing, as long as Destiny is the Declarant and the Option Agreement is in effect and as long as Optionor owns any Lots, Destiny may not, without the prior written consent of Optionor, elect to convert the Class "B" membership to Class "A" membership. Also, if Optionor becomes Declarant and Destiny still owns any Lot(s) and if Optionor as Declarant desires to convert its Class "B" membership to Class "A" membership, before doing so, Optionor must first offer to assign to Destiny all of its rights as the Declarant and Class "B" Member under this Declaration, and in the event Destiny elects (by providing Declarant with written notice thereof) within ten (10) days of its receipt of such offer to accept such rights, Destiny shall thereafter become the Declarant and continue as a Class "B" Member

under this Declaration for any Lot(s) owned by Destiny. Upon the termination of the Class "B" membership, that membership shall be converted to Class "A" membership and such membership shall thereafter be entitled to one (1) vote for each Lot owned. Notwithstanding any other provision of this Declaration or any other Project Documents, unless and until Optionor becomes Declarant, Destiny shall have the right to exercise the Class B voting rights of Optionor.

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

5.9 Transfer of Membership. The rights and obligations of any Member other than Declarant 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 of a Lot 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 shall operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association in writing of the purchase within ten (10) days after such Purchaser becomes the Owner of a Lot.

5.10 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as Declarant owns any Lot, Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as Declarant no longer owns any Lot, the members of the Architectural Committee shall be appointed by the Board. Declarant, with the written consent of Optionor, may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event Declarant may require, for so long as Declarant owns any Lot, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. The Architectural Committee may promulgate architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size of Residences; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Residences and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior

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finishes and materials; (vi) signage; and (vii) perimeter and screen wall or fence design and appearance. A decision of the Architectural Committee shall be final on all matters submitted pursuant to this Declaration. Notwithstanding the foregoing, as long as Declarant owns a Lot within the Project, any Architectural Rules or construction guidelines adopted by the Architectural Committee or the Board shall be approved by Declarant prior to such adoption.

5.11 **Conveyance or Encumbrance of Common Area**. Once conveyed to the Association, the Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B membership of the Association and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by the Class A Members of the Association. Notwithstanding the foregoing or any other provision in this Declaration to the contrary, as long as Declarant owns a Lot within the Project, the Board, on behalf of the Association, shall have the right to grant utility easements in favor of municipal or state agencies, or to make non-substantial boundary line changes to accommodate minor encroachments of walls, fences, or other Improvements upon the Common Area.

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

5.13 **Approval of Litigation**. Except for any legal proceedings initiated by the Association to (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules; (iii) enforce the Architectural Committee Rules; (iv) collect any unpaid Assessments levied pursuant to this Declaration, or (v) enforce a contract entered into by the Association with vendors providing services to the Association, the Association shall not incur litigation expenses, including without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of a majority of the Members of the Association entitled to vote, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds, or use monies collected for other specific Association obligations. Each Owner shall notify prospective Purchasers of such legal proceedings initiated by the Board and not included in the above exceptions and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with **Section 10.3** of this Declaration. Nothing in this **Section 5.13** shall preclude the Board from incurring expenses for legal advise in the normal course of operating the Association to (i) enforce the Project Documents; (ii) comply with the statutes or regulations related to the operation of the Association or the Areas of Association Responsibility; (iii) amend the Project Documents as provided in this Declaration; (iv) grant easements or convey Common Area as provided in this Declaration; or (v) perform the obligations of the Association as provided in this Declaration.

ARTICLE 6
COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

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

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment.

6.2.2 The amount of the Annual Assessment for each Lot owned by Owners shall be the amount obtained by dividing the total projected Common Expenses of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots subject to the Assessment at the time the Annual Assessment is levied by the Board.

6.2.3 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment and no ratification of the Annual Assessment or any amendment is required from 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, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board. Notwithstanding the foregoing, no increase in the Annual Assessment under this **Subsection 6.2.3** shall exceed the maximum Annual Assessment established pursuant to **Subsection 6.2.4** of this Declaration.

6.2.4 Notwithstanding anything to the contrary contained in this Declaration, the Board shall not impose an Annual Assessment in any Assessment Period that is

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more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of the majority of the Members, or as otherwise provided in A.R.S. §33-1803(A), as amended from time to time.

6.3 **Exemption for Declarant**. So long as there is a Class B membership in the Association, the Class B Members shall not be required to pay any Assessment for Lots owned by the Class B Members, but instead Declarant shall pay the operating deficiencies of the Association as set forth in **Section 6.4** below. When the Class B membership ceases, such members shall pay the same per Lot Assessment as is payable for Lots owned by Class A Members. If a Lot ceases to qualify for the exemption granted herein during the period to which an Assessment is attributable, the Assessment shall be prorated between the applicable Lots on the basis of the number of days in the Assessment Period that Lots owned by the Class B Members qualified for each rate.

6.4 **Obligation of Declarant for Deficiencies**. Unless Declarant elects to waive its right for Class B Members to pay reduced Assessments pursuant to **Section 6.3** above (which waiver shall be binding on all Class B Members but which right may not be exercised by Destiny without the written consent of Optionor at any time that Optionor owns any Lot), the Class B Members shall pay and contribute to the Association, as such funds are required by the Association, all funds as may be necessary when added to the Annual Assessments levied by the Association on all Class A Members to pay all Common Expenses of the Association as they become due; provided, however, the obligation of the Class B Members to pay such amounts shall not exceed the amounts that otherwise would have been assessed against Lots owned by the Class B Members if the Class B Members had been Class A Members. Amounts paid direct by the Class B Members to Association creditors, or assets purchased by the Class B Members for the Association, shall apply against the obligations of the Class B Members to pay Class B Assessments and its share of deficiencies in Common Expenses. Notwithstanding any other provision contained herein, so long as the Option is in effect Destiny shall be solely responsible for making any payments arising out of this Section 6.4 relating to Lots owned by Optionor and in no event shall Optionor have any responsibility with respect to such assessments. In the event that the Option terminates, Optionor shall become responsible for any such payments that thereafter accrue.

6.5 **Exemption for Declarant**. So long as there is a Class B membership in the Association, the Class B Members shall not be required to pay any Assessment for Lots owned by the Class B Members, but instead Declarant shall pay the operating deficiencies of the Association as set forth in **Section 6.4** above. When the Class B membership ceases, such members shall pay the same per Lot Assessment as is payable for Lots owned by Class A Members. If a Lot ceases to qualify for the exemption granted herein during the period to which an Assessment is attributable, the Assessment shall be prorated between the applicable Lots on the basis of the number of days in the Assessment Period that Lots owned by the Class B Members qualified for each rate.

6.6 **Special Assessments**. The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, expenses which include, but are not limited to, litigation, arbitration or other dispute resolution costs, the cost of any construction, reconstruction, repair or

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replacement of an Improvement upon the Areas of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.7 **Optional Maintenance Assessments**. The Board shall have the right, but not the obligation, to establish an optional program to provide maintenance within a Lot, such as rear-yard maintenance or any other maintenance services that the Board may determine the Owners desire. If the Board establishes such a program, some or all of the Owners may participate in the program at each Owner's sole discretion; provided, however, if an Owner elects to participate in such program, Optional Maintenance Assessments allocated to such Owner's Lot shall be collected in the same manner as any other Assessment hereunder. The provisions for an Owner to elect to participate in such a maintenance program shall be established by the Board at their sole discretion, and shall be fully set forth in an agreement between the Board and any Owner electing to participate in such program. The Optional Maintenance Assessments shall include all costs for the services outlined in the program, including, but not limited to, any additional liability insurance that may be necessary or appropriate in connection with providing such services. When establishing an Optional Maintenance Assessment for a particular Lot, the Board may take into consideration the type of maintenance to be performed, and other matters which, in the reasonable discretion of the Board, warrants the Optional Maintenance Fee applicable to each Lot. Nothing herein shall require the Board to set a standard fee per Lot for such Optional Maintenance Assessment, and nothing herein shall require an Owner to participate in the optional maintenance program, or, once participating, to prohibit an Owner from later terminating such participation pursuant to the terms of the agreement between such Owner and the Association.

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

6.9 **Commencement Date of Assessment Obligation**. Subject to the provisions of Section 6.2, all Lots described on **Exhibit A** to this Declaration shall be subject to assessment upon the conveyance of the first Lot to a Purchaser. Such assessments shall be assessed and payable regardless of the state of completion of the Areas of Association Responsibility.

6.10 **Rules Regarding Billing and Collection Procedures**. Assessments shall be collected on a monthly or quarterly 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 its liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor 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 installation thereof is or will be due and of the amount owing. Such notice

may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.11 Effect of Nonpayment of Assessments; Remedies of the Association.

6.11.1 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 fifteen percent (15%) per annum unless the Lot subject to such late fee is subject to an existing FHA or VA loan, and then the Assessment shall bear interest at the rate established by FHA or VA. In addition, the Board may establish a late fee, not to exceed the greater of fifteen dollars ($15.00) or ten percent (10%) of the amount of the unpaid Assessment or installment thereof (or such greater amount as permitted under applicable law), 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. Notwithstanding anything in this Declaration to the contrary, to the extent applicable law from time to time provides for any shorter period of time after which Assessments or any other amounts payable hereunder may or shall become delinquent, such shorter period shall be deemed to apply in lieu of the time period set forth in this Declaration if so elected by the Board.

6.11.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all fines levied against the Owner of the Lot; (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (v) any amounts payable to the Association pursuant to **Section 7.3 or 7.4** of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Project 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 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 of Lien, including interest, lien recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the delinquent Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot.

6.11.3 The Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any First Mortgage or deed of trust on the Lot, or as

otherwise provided from time to time under applicable law. Any Person acquiring title or coming into possession of a Lot through foreclosure of a First Mortgage purchased at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by such Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

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

6.11.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments, and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage; provided, however, that an Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within three (3) years after the full amount of the Assessment becomes due, or as otherwise provided in A.R.S. §33-1807(F), as amended from time to time. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.12 **Evidence of Payment of Assessments**. Pursuant to A.R.S. §33-1806(A), within ten (10) days after receipt of a written notice of a pending sale of a Lot that includes the name and address of the purchaser, the Association shall mail or deliver, or cause an appropriate officer to mail or deliver, a dated statement setting forth the amount of all Assessments and whether or not all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such statement, or if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date, together with such other information as is required by law. Pursuant to A.R.S. §33-1807(I), upon receipt of a written request from a lienholder, Member or Person designated by a Member, the Association shall issue, or cause an appropriate officer to issue, a statement setting forth the amount of any unpaid Assessment against the Lot, such statement to be furnished within fifteen (15) days after receipt of the request. A reasonable charge may be made by the Association for the issuance of these certificates or statements. If a certificate or statement states an Assessment has been paid, such certificate or statement shall be binding on the Association.

6.13 **Purposes for which Association's Funds May Be Used**. The Association shall apply all 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 common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any

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and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping and Improvements on Areas of Association Responsibility, public right-of-way and drainage areas within the Project, recreation, liability insurance and amounts to cover deductibles, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds as permitted under the laws of the State of Arizona or the charter of the municipality in which the Project is located.

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

6.15 Working Capital Fee. To assist the Association in establishing adequate funds to meet its expenses or to purchase necessary equipment or services, for so long as there is a Class B membership, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot Seventy Six and No/100 Dollars ($76.00) (the "Working Capital Fee"). For so long as there is a Class B membership, such funds may only be used to establish a replacement and repair reserve account or to apply towards repair and reconstruction of Improvements within the Areas of Association Responsibility or to apply to other expenses not anticipated in the annual estimated Association budget. Thereafter, such funds may be used for any purpose permitted under the Project Documents, at the Board's sole discretion. Payments made pursuant to this **Section 6.14** shall be nonrefundable and shall not be considered as an advance payment of any other Assessments levied by the Association pursuant to this Declaration. When there is no longer a Class B membership, the Board shall have the right, by an affirmative vote of the majority of the members of the Board, and based upon the Board's analysis of replacement and repair reserves, to permanently or temporarily cease assessing the Working Capital Fee, and having ceased to assess the Working Capital Fee, the Board shall have the right to reinstate assessment of such fee at any time thereafter, it being the intent that the Board shall have the right to begin or cease assessment of the Working Capital Fee as the Board deems appropriate from time to time.

6.16 Transfer Fee. In addition to the Working Capital Fee referred to in **Section 6.14** above, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to cover the expenses of the Association (or its management company) to change its records, to administer the change in ownership, and to pay any ancillary expenses related thereto.

6.17 Reserve Studies. The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however, (i) no such report or study shall be required until at least three (3) years have elapsed following the date Assessments begin to accrue; and (ii) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (iii) in establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (a) the amount of Assessments for the Project as compared to other comparable developments; (b) the past incidences of required repairs at the Project; and (c) projected funds available to the Association pursuant to future Working Capital Fees paid pursuant to **Section 6.14** of this Declaration. .

ARTICLE 7
MAINTENANCE

7.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining, or is obligated to maintain, in accordance with the Maintenance Standard as determined by the Board. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility. By acceptance of a deed for a Lot within the Project, or by acquiring any interest in any of the Property subject to this Declaration, each Owner and the Association shall be deemed to have agreed that when Declarant ceases to be a Class B Member, the Areas of Association Responsibility shall be owned and accepted by the Association subject to reasonable wear and tear and there shall be no obligation of Declarant, or its successors, to repair, replace, or otherwise cause the Areas of Association Responsibility to be placed in like-new condition.

7.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing the Owner's Lot, and all buildings, Residences, landscaping or other Improvements situated thereon, except for any portion of the Lot which is considered Areas of Association Responsibility or the portion of a Lot for which the Association has assessed an Optional Maintenance Assessment (for so long as such Optional Maintenance Assessment is paid by the Owner of the Lot). 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 Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residences, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

7.2.1 The Association shall maintain, repair and replace the plants, trees, bushes and other landscaping improvements (the "Landscaping," as such term is used in **Subsections 7.2.2 through 7.2.4** herein) situated on the portion of each Lot which is between the

street adjacent to the Lot and the exterior wall of the Residential Unit (the wall which separates the interior of the Residential Unit from the outside yard, patios and entryways) and any fence separating the side or back yard of the Lot from the front yard of the Lot, except for any area located within an enclosed patio or courtyard area which is not Visible From Neighboring Property. The portion of each Lot to be maintained by the Association pursuant to **Subsections 7.2.2 through 7.2.4** shall be referred to as the "Front Yard." Each Lot upon which Landscaping has been installed in the Front Yard of the Lot and the Association's obligation to maintain, repair and replace such Landscaping has commenced shall be referred to as a "Landscaped Lot."

7.2.2 The Association shall not be obligated to initially install Landscaping in the Front Yard of any Lot. Unless installed by a Developer, the Landscaping in the Front Yard of each Lot shall be installed by the Owner no later than thirty (30) days after the Lot is conveyed to a Purchaser. The Association's obligation to maintain, repair and replace the Landscaping in the Front Yard of a Lot shall commence on the day the landscaping is completed, except for any plant replacements or other items covered by warranty of the landscape installer. The Association shall have the right to make such modifications to the Landscaping as the Association deems appropriate from time to time. No Owner or other Person shall install any Landscaping in the Front Yard of any Lot without the prior written approval of the Architectural Committee, and no Owner or other Person shall make any changes or modifications to any Landscaping initially installed in the Front Yard of any Lot without the written approval of the Architectural Committee.

7.2.3 The Association shall not be responsible or obligated for enhancing the quality or quantity of the Landscaping beyond that initially installed in the Front Yards of the Lots or for repairing or replacing any Landscaping which is covered by a warranty received by the Lot Owner.

7.2.4 The Association shall not be responsible for installing, maintaining, repairing or replacing any sprinkler system or other watering system pertaining to the Landscaping. Unless installed by a Developer, a sprinkler system or watering system for the Landscaping shall be installed by the Owner at the time of the installation of the Landscaping. Each Owner of a Lot shall maintain such sprinkler system or watering system in good condition and repair at all times and shall water the Landscaping at such intervals and in such amounts as may be requested by the Association. If any Owner fails to maintain his sprinkler system or watering system as required by this Subsection or fails to water the Landscaping in the manner requested by the Association and such nonperformance is not cured or corrected by the Lot Owner within fourteen (14) days after demand therefor is made by the Association, the Association shall have the right, but not the obligation, to perform any necessary maintenance, repair or replacement of the sprinkler system or watering system or to take such actions as the Association may deem necessary to insure that the Landscaping is watered in accordance with the requirements of the Association, and any cost or expense incurred by the Association shall be paid to the Association by such Owner upon demand therefor. Any amounts payable by an Owner to the Association pursuant to this Subsection shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided in the Declaration for the collection and enforcement of Assessments.

7.3 **Assessment of Certain Costs of Maintenance and Repair.** If the need for maintenance or repair of the Areas of Association Responsibility is caused through the willful or negligent act of any Owner, its family, tenants, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.4 **Improper Maintenance and Use of Lots.** If any portion of any Lot 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 other areas of the Project which are substantially affected thereby or related thereto, including, without limitation, the failure to install landscaping within the time allowed under **Section 7.2** above, or if any portion of a Lot is being used in a manner which violates the Project Documents; or if the Owner of any Lot fails to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days of the date of the notice, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken 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.

7.5 **Boundary Fences.**

7.5.1 Each fence which is located between two Lots shall constitute a boundary fence and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary fences shall apply;

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

7.5.3 In the event that any boundary fence is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the boundary fence without cost to the other Owner or Owners;

7.5.4 In the event any such boundary fence is damaged or destroyed by some cause other than the act of one of the adjoining Owners, its agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

7.5.5 The right of any Owner to contribution from any other Owner under this Subsection 7.5.5 shall be appurtenant to the land and shall pass to such Owner's successors in title;

7.5.6 In addition to meeting the other requirements of this Declaration and of any other building codes or similar regulations or ordinances, any Owner proposing to

modify, make additions to, or rebuild a boundary fence shall first obtain the written consent of the adjoining Owners;

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

7.6 Maintenance of Fences other than Boundary Fences.

7.6.1 Fences (other than boundary fences) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

7.6.2 Any fence which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the fence which faces the Common Area. In the event any such fence encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

7.6.3 Any fence which is placed on the boundary line between a Lot and public right-of-way shall be maintained, repaired and replaced by the Association except that the Owner of the Lot shall be responsible for the repair and replacement of the surface of the fence which faces the Lot.

ARTICLE 8
INSURANCE

8.1 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 in such amounts as the Board may determine to be appropriate from time to time:

8.1.1 Property insurance on all Areas of Association Responsibility, (including, but not limited to, fixtures, Improvements, building service equipment, common personal property and supplies) insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy, including "Agreed Amount" and "Inflation Guard" endorsements. Unless a higher maximum amount is required by Arizona law, the maximum deductible amount for policies covering Areas of Association Responsibility shall be the lesser of $10,000 or one percent (1%) of the policy face amount.

8.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than $1,000,000 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership

or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and 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;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of the State of Arizona;

8.1.4 To the extent reasonably available, liability insurance for directors, officers and committee members of the Association in an amount determined by the Board, but not less than $1,000,000.

8.1.5 If the Project is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy covering the Areas of Association Responsibility and any Improvements thereon in the lesser of one hundred percent (100%) of the insurable value of the Improvements and any other property covered on the required form of policy or the maximum limit of coverage available under the National Flood Insurance Administration program. Unless a higher deductible amount is required by Arizona law, the maximum deductible amount for such policy covering the Areas of Association Responsibility is the lesser of $10,000 or one percent (1%) of the policy's face amount.

8.1.6 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners and Residents;

8.1.7 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association with coverage also extending to all Owners; 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.

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

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8.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to **Section 8.1** of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 Payment of Insurance Proceeds. With respect to any loss to any Areas 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 8.5** of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Areas of Association Responsibility.

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

8.6 Waiver by Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the first mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent of insurance proceeds received in compensation for such loss.

ARTICLE 9
GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations

of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees, costs and expenses incurred by the prevailing party in addition to any relief or judgment ordered by the court in the action (including post-judgment attorneys' fees and costs).

9.2 Term; Method of Termination. Unless amended or terminated as hereinafter provided, this Declaration shall continue in full force and effect in perpetuity. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more votes in each class of membership. If the necessary votes and consents are obtained, the Board shall cause to be recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 Amendments.

9.3.1 Except for amendments made pursuant to **Subsection 9.3.4** of this Declaration, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than seventy-five percent (75%) of the Lots, or such lesser percentage as may then be permitted by FHA/VA. Amendments may be made at any time during the term of this Declaration.

9.3.2 Notwithstanding anything contained herein to the contrary, so long as Destiny or Optionor owns any Lot, any amendment to this Declaration must be approved in writing by Destiny and Optionor.

9.3.3 If and only if the Board has received written notice that an FHA or VA loan has been obtained by an Owner within the Project, and any such FHA or VA loan remains unpaid, then so long as there is a Class B membership in the Association, any amendment to this Declaration, except amendments made pursuant to **Subsection 9.3.4** below, must have the prior written approval of VA or FHA.

9.3.4 Destiny and Optionor, so long as Destiny and Optionor own any Lot, and thereafter, the Board, may amend this Declaration or any Plat, without obtaining the approval or consent of any Owner, (i) in order to conform this Declaration or the Plat to the requirements or guidelines of the FNMA, FHLMC, FHA, VA, or any federal, state or local governmental agency whose approval of the Project or the Project Documents is required by law or requested by Declarant or the Board; or (ii) to correct any error or inconsistency in the Declaration.

9.3.5 So long as Destiny and Optionor collectively own more than seventy-five percent (75%) of the Lots subject to this Declaration, any amendment to this Declaration shall be signed by Declarant. At any time Destiny and Optionor collectively do not own at least seventy-five percent (75%) of the Lots subject to this Declaration, any amendment approved pursuant to **Subsection 9.3.1** of this Declaration or by the Board pursuant to

Subsection 9.3.1 of this Declaration shall be signed by the President or Vice President of the Association, and any such amendment shall certify that the amendment has been approved as required by this **Subsection 9.3.5**. Any amendment made by Destiny and Optionor pursuant to **Subsection 9.3.4** of this Declaration shall be signed by Declarant. All amendments shall be Recorded in the records of Maricopa County to become effective. 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.

9.3.6 Notwithstanding anything to the contrary herein, no amendment to this Declaration which modifies or deletes any portion of Article 10 or **Section 5.13** of this Declaration or which has an affect on Declarant, in its sole judgment, shall be made unless Declarant, whether or not Declarant still owns property within the Project, approves of such amendment in a Recorded document.

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

9.5 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.

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

9.7 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.

9.8 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. Such notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot

against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) 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, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. 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 constitute a waiver of any right of the Association to enforce the Project Documents.

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9.9 Laws, Ordinances and Regulations.

9.9.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Architectural 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.

9.9.2 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.

9.10 No Warranty of Enforceability. Declarant is not aware that any of the covenants contained in this Declaration are invalid or unenforceable for any reason or to any extent; however, Declarant makes no warranty or representation as to the present or future validity or enforceability of any particular covenant, or the compliance of any provisions of this Declaration with public laws, ordinances and regulations applicable thereto. Any Owner acquiring a Lot in reliance on one or more of the covenants contained in this Declaration assumes all risk of the validity and enforceability thereof, and neither Declarant nor the Association shall be liable in damages or otherwise to any Person in the event any covenant is hereafter determined to be invalid or unenforceable in whole or in part.

9.11 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 its heirs, executors, administrators, successors and assigns.

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

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

9.14 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County. This **Section 9.14** shall not be construed to require that any notice be given if not

otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

9.15 FHA/VA Approval. If and only if the Board has received written notice that an FHA or VA loan has been obtained by an Owner within the Project, and any such FHA or VA loan remains unpaid, then so long as there is a Class B membership in the Association the following actions shall require the prior written approval of the FHA or VA: annexation of additional properties, dedication of Common Areas, and amendment to this Declaration, subject to **Section 9.3** above.

9.16 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Areas of Association Responsibility or the Lots. Owners shall only be responsible for damage to the Areas of Association Responsibility or Lots caused by the Owners' negligence or intentional acts.

9.17 References to VA and FHA. In various places throughout the Project Documents, references are made to the VA and the FHA and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Project Documents to meet certain requirements of such agencies should Declarant request approval of the Project by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Project by either or both of such agencies. Unless and until the VA or the FHA have approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Lot to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force and effect.

9.18 Limitation on Rights of Declarant. Notwithstanding any other provision contained in this Declaration, as long as Destiny is the Declarant, Destiny shall not, without the prior written consent of Optionor, have the right to exercise any of the "Declarant" rights under this Declaration in any manner which will have a material adverse impact on the Lots owned by Optionor. Notwithstanding any other provision contained in this Declaration, as long as Optionor is the Declarant, Optionor shall not, without prior written consent of Destiny, have the right to exercise any of the "Declarant" rights under this Declaration in any manner which will have a material adverse impact on the Lots owned by Destiny.

ARTICLE 10
CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

It is intended that the Common Area, Areas of Association Responsibility, each Residence, and all Improvements constructed on the Property by each Developer will be constructed in substantial compliance with all applicable building codes and ordinances and that all Improvements will be of a quality that is consistent with good construction and development practices in the area where the Project is located for production housing similar to that constructed within the Project. Nevertheless, due to the complex nature of construction and the

subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding Alleged Defects will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers, the Association, the Board, and all Owners shall be bound by the following claim resolution procedures.

10.1 Right to Cure Alleged Defect. If a Claimant claims, contends, or alleges an Alleged Defect, each Developer shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

10.1.1 Notice of Alleged Defect. After discovery of an Alleged Defect, and as a condition to any right of recovery against any Developer, the Claimant shall give a Notice of Alleged Defect to the Developer describing in detail the Alleged Defect together with suggested methods of repair (which shall not be binding upon Developer), the specific location of the defect(s) to the extent known, and a copy of any results of testing conducted to determine the nature and extent of any Alleged Defect. Claimant shall be responsible for, and shall immediately repair at its sole expense, any damage caused by Claimant, or its agents or consultants, in performing any testing to determine the nature and extent of the Alleged Defect.

10.1.2 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by a Developer of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, Areas of Association Responsibility, any Lot or Residence, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Developer at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

10.2 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which such Developer is not otherwise obligated under applicable law or any warranty provided by such Developer in connection with the sale of the Lots and Residences and/or the Improvements constructed thereon. The right reserved to Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to a Developer except by a written document executed by such Developer and Recorded.

10.3 Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to **Section 10.4 and Section 5.13** of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging (1) damages for Alleged Defect Costs, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from a

Developer (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer(s) which notice shall include at a minimum (1) a description of the Alleged Defect; (2) a description of the attempts of the Developer(s) to correct such Alleged Defect and the opportunities provided to the Developer(s) to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer(s) and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer(s) and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the action against the Developer(s); and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

10.4 Alternative Dispute Resolution. Any dispute or claim between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner(s) or the Association on the other hand; or (b) any Owner and another Owner; or (c) the Association and any Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of the Project; (iii) or an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this **Section 10.4** prior to any party to the Dispute instituting litigation with regard to the Dispute.

10.4.1 **Negotiation**. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such negotiation.

10.4.2 **Mediation**. If the parties cannot resolve their Dispute pursuant to the procedures described in **Subsection 10.4.1** above within such time period as may be agreed upon by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have thirty (30) days after the termination of negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which such person has a financial or personal interest

in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

10.4.2.1 **Position Memoranda; Pre-Mediation Conference**. Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Maricopa County or such other place as is mutually acceptable by the parties to the Dispute.

10.4.2.2 **Conduct of Mediation**. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in **Subsection 10.4.2.5** below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

10.4.2.3. **Exclusion Agreement**. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

10.4.2.4. **Parties Permitted at Sessions**. Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

10.4.2.5. **Expenses of Mediation**. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such mediation.

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10.4.3 **Final and Binding Arbitration**. If the parties cannot resolve their Dispute pursuant to the procedures described in **Subsection 10.4.2** above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this **Section 10.4**. If the Disputing Party does not submit the Dispute to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Developer shall be required to participate in the arbitration proceeding if all parties against whom a Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this **Section 10.4**, the arbitrator shall have the authority to try all issues, whether of fact or law.

10.4.3.1. **Place**. The arbitration proceedings shall be heard in Maricopa County.

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

10.4.3.3. **Commencement and Timing of Proceeding**. The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

10.4.3.4. **Pre-hearing Conferences**. The arbitrator may require one or more pre-hearing conferences.

10.4.3.5. **Discovery**. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The Developer shall also be entitled to conduct further tests and inspections as provided in **Section 10.1** above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

10.4.3.6. **Limitation on Remedies/Prohibition on the Award of Punitive Damages**. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

10.4.3.7. **Motions**. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

10.4.3.8. **Expenses of Arbitration**. Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

10.5 Statutes of Limitations. Nothing in this Article shall be considered to toll, stay, reduce, or extend any applicable statute of limitations.

10.6 Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with **Subsection 10.4.1** or **Subsection 10.4.2** above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if the parties accept an award of arbitration in accordance with **Subsection 10.4.3** and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or the award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation or mediation or the award including, without limitation, attorneys fees and court costs.

10.7 Conflicts. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article and any other provisions of the Project Documents, this Article shall control.

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

INCA CAPITAL FUND 10, LLC,
an Arizona limited liability company

By: [signature]

Name: ____________________

Its: ____________________

DESTINY HOLDINGS I, LLC,
an Arizona limited liability company

By: ____________________

Name: Barney Feldman

Its: Authorized Member

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this _____ day of June, 2001, by Barney Feldman, the authorized member of Destiny Holdings I, LLC, an Arizona limited liability company, on behalf of thereof.

____
Notary Public

My Commission Expires:

____

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this 30 day of June, 2001, by William Cleroux the Manager of the Manager of INCA Capital Fund 10, LLC, an Arizona limited liability company, on behalf of thereof.

[signature]
Notary Public

My Commission Expires:

NOTARY PUBLIC
STATE OF ARIZONA
Maricopa County
GREGG N. WOLIN
My Commission Expires 03/31/04

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

INCA CAPITAL FUND 10, LLC,
an Arizona limited liability company

By: _____

Name: _____

Its: _____

DESTINY HOLDINGS I, LLC,
an Arizona limited liability company

By: _____

Name: Barney Feldman

Its: Authorized Member

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this 21 day of June, 2001, by Barney Feldman, the authorized member of Destiny Holdings I, LLC, an Arizona limited liability company, on behalf of thereof.

_____
Notary Public

My Commission Expires:

NOTARY PUBLIC
STATE OF ARIZONA
Maricopa County
GREGG N. WOLIN
My Commission Expires 03/31/04

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this _____ day of June, 2001, by _____ the _____ of INCA Capital Fund 10, LLC, an Arizona limited liability company, on behalf of thereof.

_____
Notary Public

My Commission Expires:

_____

CONSENT OF LENDER

The undersigned, Beneficiary of that certain Deed of Trust, recorded in Document No. 20010733135, Official Records of Maricopa County, Arizona, does hereby approve and consent to the foregoing Declaration of Covenants, Conditions and Restrictions.

Dated this 22nd day of ~~June~~ August, 2001.

CALIFORNIA BANK AND TRUST, a California Banking Institution

By: _____

Its: Assistant Vice President

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this 22nd day of August, 2001, by Mark Stebbings, the AVP, a _____, on behalf of the California Bank and Trust.

_____
Notary Public

My Commission Expires:

April 14, 2002

OFFICIAL SEAL
SHAWNA L. NEWMAN
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Comm. Expires April 14, 2002

EXHIBIT A

Lots 1-107, inclusive, and Tracts A-G, inclusive, Final Plat for Highline Ranch, according to Book 563 of Maps, page 40, records of Maricopa County, Arizona.