

CC&Rs-Condo Declaration
The Vineyards at Arcadia

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3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913
Attention: George T. Cole

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE VINEYARDS AT ARCADIA**

This instrument is being re-recorded to correct omissions in Exhibit "A"

20031238736

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ELECTRONIC RECORDING
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Fennemore Craig
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913
Attention: George T. Cole

SECURITY TITLE AGENCY

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE VINEYARDS AT ARCADIA**

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE VINEYARDS AT ARCADIA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (as amended from time to time, the "Declaration") is made and entered into as of the 28th day of August, 2003, by THE VINEYARDS AT ARCADIA, L.L.C., an Arizona limited liability company ("Declarant").

RECITALS

A. Declarant owns that parcel of real property in Maricopa County, Arizona, described on Exhibit "A" attached hereto and by reference made a part hereof (the "Parcel").

B. Declarant desires to submit and subject the Parcel, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which comprise a part of the "Property" as hereafter defined), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein.

C. Declarant deems it desirable to establish covenants, conditions and restrictions applicable to the Property, and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property.

D. Declarant also deems it desirable to have an owners association ("Association") for the Property and to delegate to it powers provided for in this Declaration or which generally benefit its members, the Property, and the owners of any interests therein.

E. A nonprofit corporation has been, or will be, incorporated under the laws of the State of Arizona for the purpose of being the Association provided for in this Declaration.

F. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other Persons now holding or hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property.

DECLARATIONS

NOW, THEREFORE, Declarant hereby declares as follows:

The Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges

and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association and each member of the Association; and

Defined terms appearing in this Declaration shall have the first letter of each word in the term capitalized. Defined terms shall have the meanings given to them in Appendix "A" to this Declaration (or as may be otherwise expressly provided herein).

1. RIGHTS OF ENJOYMENT

1.1 Owners' Right of Enjoyment. Every Owner and Occupant shall have a nonexclusive easement for use and enjoyment of the Common Areas, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration including, but not limited to, the following provisions:

1.1.1 Association Rights. The right of the Association:

(a) to limit the number of guests of Owners and Occupants who use Common Areas; and

(b) to limit the use of the Common Areas by Persons who are not Owners, but who are in possession of a Lot or own a portion of, or less than the entire ownership interest of, a Lot.

1.1.2 Rules and Regulations. The right of the Association to establish reasonable rules and regulations pertaining to or restricting the use of the Common Areas by Owners, Occupants and other Persons (including restricting certain areas to drainage, utility, landscaping, or similar uses).

1.1.3 Suspension of Use Rights. The right of the Association to suspend the right of an Owner, Occupant and any other Person (including, but not limited to, a member of the family of an Owner or Occupant) to use the Common Areas, or any designated portion thereof:

(a) during any time in which any Assessment attributable to the Owner or the Owner's Lot remains unpaid and delinquent, or

(b) for a period not to exceed 60 days for any single infraction or breach of the Property Documents, and up to one year for any subsequent violation of the same or similar provision of the Property Documents.

(c) Any suspension of a Person's right to use the Common Areas, except for failure to pay Assessments, shall be made only by the Board or a duly appointed committee thereof, after notice and a reasonable opportunity for hearing.

(d) Notwithstanding the foregoing, the Association shall not have the right to suspend any Owner's right to use any portion of the Common Areas necessary for the Owner to gain access to the Owner's Lot.

1.1.4 Dedications. The right of the Association to dedicate or transfer all or any part of, or interest in, the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association provided that these actions otherwise comply with this Declaration.

1.1.5 Alteration of Use or Characteristics. The right of the Association to change the use, size, shape or location of Common Areas, to exchange Common Areas for other properties that then become Common Areas, and to abandon or otherwise transfer Common Areas, provided that all of these actions otherwise comply with this Declaration.

1.2 Delegation of Use. No Owner may delegate the Owner's right to use and enjoy the Common Areas to any Person including, but not limited to, Occupants of the Owner's Lot, or the Owner's guests, except as permitted by the Association Rules. An Owner's right to use and enjoy the Common Areas shall be appurtenant to and shall pass with title to the Owner's Lot.

1.3 Waiver of Use. No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments or release any Lot the Owner owns from the liens, charges and other provisions of the Property Documents, by voluntary waiver of, or suspension or restriction of the Owner's right to, the use and enjoyment of the Common Areas, or the abandonment of the Owner's Lot.

2. ASSOCIATION

2.1 Purpose of Association. The Association has been or will be incorporated as a nonprofit corporation to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in the Property Documents, or otherwise necessary or appropriate to the proper functioning of the Association and the Property. The Association shall not be deemed to be conducting a business of any kind and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of the Property Documents.

2.2 Membership in Association. Except as provided in Sections 2.5 and 2.17, there shall be one Membership in the Association with one Membership vote for each Lot. Each Membership shall be entitled to one vote on each matter to be decided by the Owners. If the Owner of a Lot is other than one individual, each individual and entity comprising the Owner shall be considered a member but the number of Memberships or votes attributable to the Lot shall not be increased by the fact of multiple ownership. In the case of multiple ownership, the Owner shall give the Association written notice identifying the individual who is entitled to cast the Membership vote for the Lot. In the absence of such a written notice, Assessments shall nevertheless be charged against the Lot and the Owner thereof, but there shall be no right to cast the Membership vote. The individual entitled to cast the Membership vote must be an Owner, or, if the Owner is or includes a Person other than an individual, must be an individual who is (i) a member of the limited liability company, if the Owner is or includes a limited liability company, (ii) a partner in the partnership, if the Owner is or includes a partnership, (iii) an officer of the corporation, if the Owner is or includes a corporation, (iv) a beneficiary of the trust, if the Owner

is or includes a trust, or (v) an owner of the entity, if the Owner is or includes a Person other than an individual, a limited liability company, a partnership, a corporation or a trust. The individual, as so specified, shall be the only Person entitled to vote for the Owner of the Lot at Association meetings and elections. An Owner may change the individual who is designated for the Owner's Lot, provided the individual is eligible to cast the Membership vote hereunder. The Board may establish reasonable processing fees and reasonable procedures for changing the designated individual including rules governing the manner and frequency in which designations can be made. An Owner shall remain a member of the Association until the Owner ceases to be an Owner, at which time the Owner's Membership in the Association shall automatically cease.

2.3 Suspension of Voting Rights. No Owner shall be entitled to exercise any voting rights as a member in the Association during any period in which the Owner is delinquent in the payment of any Assessments.

2.4 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to the Owner's Lot to a Mortgagee as additional security, only the vote of the Mortgagee will be recognized on matters covered by the proxy or pledge if a copy of the proxy or other instrument pledging the vote has been filed with the Association. In the event that more than one irrevocable proxy or pledge has been filed, the Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

2.5 Assignment of Declarant's Voting Rights. If any lender to whom Declarant has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security succeeds to the interests of Declarant by virtue of the assignment, the absolute voting rights of Declarant provided for in Section 2.17 shall not be terminated by the assignment, and the lender shall hold Declarant's memberships and voting rights on the same terms as they were held by Declarant pursuant hereto.

2.6 Governing Board.

2.6.1 Composition of Board. The affairs of the Association shall be conducted by the Board as provided herein and in accordance with the Articles and Bylaws. Except for directors appointed by Declarant, each director shall be an individual qualified under Section 2.2 to be designated to cast votes for a Membership (whether or not actually so designated). If a director ceases to meet the foregoing qualifications during the director's term, the director will thereupon cease to be a director and the director's place on the Board shall be deemed vacant. Unless the vote or consent of the Owners is expressly required hereunder, any action required or permitted to be taken by the Association, shall be satisfied or taken by the Board. The Board may appoint various committees (which may consist, in whole or in part, of individuals who are not on the Board).

2.6.2 Declarant's Powers. Declarant shall have the absolute power and right to appoint and remove the members of the Board until the Transition Date. After the Transition Date, the Owners shall have the power and right to elect and remove the members of the Board as provided in the Articles and Bylaws. Declarant may (but shall not be required to) relinquish its rights under this Section prior to the Transition Date by recording a notice of relinquishment.

2.7 Board's Determination Binding. Subject to the provisions of Section 13, in the event of any dispute or disagreement between or among any Owners, or any other Persons subject to this Declaration, relating to the Property, or any question of interpretation or application of the provisions of the Property Documents, then (subject to any judicial decision by a court of competent jurisdiction) the determination thereof by the Board shall be final and binding on each Owner and other Person subject to this Declaration. The Board, at its election, may delegate the resolution of any such dispute or disagreement to the President or a committee appointed by the Board.

2.8 Approval of Owners. Unless elsewhere otherwise specifically provided in the Property Documents, any provision of the Property Documents that requires the vote or written assent of the Owners of the Association shall be deemed satisfied by the following:

(a) The vote in person or by proxy of the specified percentage of Owners at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings.

(b) Written consents signed by the specified percentage of Owners as provided in the Articles or Bylaws.

(c) If no percentage of Owners is otherwise specified then the vote or written assent of a Majority of Owners shall be required.

2.9 Additional Provisions in Articles and Bylaws. The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members not inconsistent with law or this Declaration.

2.10 Association Rules. The Board shall be empowered to adopt, amend or repeal rules and regulations that it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Common Areas and any other part of the Property.

2.10.1 Fines. The Association Rules may establish a system of fines and penalties enforceable as Special Assessments.

2.10.2 Application; Nondiscrimination. The Association Rules shall govern all matters pertaining to the purposes of the Association including, but not limited to, the use of the Common Areas and any Areas of Common Responsibility; provided, however, that the Association Rules may not discriminate among similarly situated Owners except as expressly provided or permitted herein, or in a Supplemental Declaration with regard to property subject to the Supplemental Declaration. Association Rules shall not be inconsistent with this Declaration or any other Property Document.

2.10.3 Delivery to Owners. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon

completion of the notice requirements, the Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners, and all other Persons having any interest in, or making any use of, the Property, whether or not actually received thereby.

2.10.4 Availability at Association Offices. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and other Person reasonably entitled thereto, upon request.

2.10.5 Priority. In the event of any conflict between any provision of the Association Rules and any provisions of the other Property Documents, the provisions of the Association Rules shall be superseded by the provisions of the other Property Documents to the extent of the conflict.

2.11 Indemnification. To the fullest extent permitted by law, the Association shall indemnify the following Persons against all expenses and liabilities including, but not limited to, attorneys' fees, witness fees (including expert witness fees), costs and litigation-related expenses reasonably incurred by or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement of any such proceeding:

- (a) every director and officer of the Association;
 - (b) every member of the Design Review Committee and other committees of the Association;
 - (c) Declarant and all Related Parties (and their respective employees);
- and
- (d) all the employees of the Association.

Any agent of the Association may, in the discretion of the Board and subject to the findings described below, also be indemnified by the Association. Any Person described in the enumerated subsections above shall be entitled to indemnification whether or not that Person is a director, officer, member of the Design Review Committee or serving in any other specified capacity at the time the expenses are incurred. Notwithstanding anything to the contrary in this Declaration, before any Person is entitled to indemnity pursuant to this Section 2.11, the Board shall determine, in good faith, that the Person to be indemnified did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of that Person's duties. These rights of indemnification shall be in addition to, and not exclusive of, all other rights to which the Persons to be indemnified may be entitled at law or otherwise.

2.12 Non-Liability of Officials. To the fullest extent permitted by law, none of the following Persons shall be liable to any Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction,

omission, error, negligence or the like made in good faith and which the following Persons reasonably believed to be within the scope of their respective duties:

- (a) every director and officer of the Association;
- (b) every member of the Design Review Committee and other committees of the Association;
- (c) Declarant and all Related Parties (and their respective employees and agents); and
- (d) all employees and agents of the Association.

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

(e) None of the Persons described above in this Section 2.12 shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant, or other Person entering upon or making use of any portion of the Property. Each Owner, Occupant, and other Person assumes all risks associated with the use and enjoyment of the Property.

(f) None of the Persons described above in this Section 2.12 shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property. Each Owner, Occupant and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property.

(g) No provision of the Property Documents shall be construed or interpreted as creating a duty by any of the Persons described above in this Section 2.12 to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

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

2.14 Accounting. The Association, at all times, shall keep (or cause to be kept) true and correct records of account in accordance with generally accepted accounting principles consistently applied, and shall have available for the inspection of all Owners at reasonable times during regular business hours at the principal office of the Association, books or other records

specifying in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise. The Association shall cause the books and records of the Association to be audited on an annual basis by an accounting firm selected by the Board.

2.15 Records. The Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner, at the Association's office, the books, records and financial statements of the Association together with current copies, as amended from time to time, of the Property Documents. Declarant shall be under no obligation to make its own books and records available for inspection by any Owner or other Person.

2.16 Managing Agent. All powers, duties and rights of the Association, the President or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no delegation shall relieve the Association of its obligation to perform any delegated duty.

2.17 Declarant's Control of Association. Notwithstanding anything in this Declaration to the contrary, Declarant shall maintain absolute control over the Association, including appointment of the President and the members of the Board, until the Transition Date. In addition, until the Transition Date, Declarant shall have exclusive jurisdiction over architectural and design matters and shall be entitled to exercise the architectural and design review powers reserved to Declarant under this Declaration as provided in Section 10. Until the Transition Date, only Declarant will be entitled to cast any vote with respect to any matter requiring the approval of the Owners except referendums of the Owners with respect to certain provisions of this Declaration as set forth in Sections 5.3.4, 5.5, 7.3 and 16.4. Declarant voluntarily may (but shall not be required to) permit the Owners to assume control of the Association or vote on any matter at any time.

2.18 Rights of Enforcement. The Board shall have the exclusive right to enforce the provisions of the Property Documents, and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens, or easements provided for in any contract, deed, declaration or other instrument relating to the Property that have been executed pursuant to, or subject to, the provisions of this Declaration, or that otherwise indicate its provisions were intended to be enforced either by the Association or by Declarant for the Association. If the Board fails or refuses to enforce this Declaration or any provision of the instruments listed above for an unreasonable period of time after written request to do so, then an Owner (at the Owner's expense) may enforce them on behalf of the Association by any appropriate legal action, whether at law or in equity. Notwithstanding any provision hereof concerning the rights and powers of the Board, Declarant may pursue whatever rights and remedies might be available to it at law or in equity. Notwithstanding any provision of this Declaration, Declarant shall have no duty to undertake any such enforcement actions and shall not be deemed a guarantor of enforcement.

2.19 Contracts With Others For Performance of Association's Duties. Subject to the restrictions and limitations contained in this Declaration, or in any applicable Supplemental Declaration, the Board may enter into contracts and transactions with others, including Declarant, any Related Party and any affiliated Persons, or any agent of any of the foregoing, for the performance of the Association's duties and for other purposes consistent with this

Declaration. No contract or transaction shall be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee may be employed by or otherwise connected with the other party to the contract or transaction, provided that any relationship of the other party to directors or officers of the Association and members of any committee is disclosed or known to the other directors or committee members acting upon the contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any director, officer, or committee member with a relationship to, or any other interest in, the other party to the contract (i) may be counted in determining the existence of a quorum at any meeting that authorizes any contract or transaction described above or that grants or denies any approval sought by the other party, and (ii) may vote there to authorize any contract, transaction or approval, as if the director or member had no relationship to the other party to the contract.

2.20 Purposes For Which Association's Funds May be Used. The Association, except as otherwise permitted in this Declaration, shall apply all funds and property collected and received by it from any source (including Assessments, fees, loan proceeds, and surplus funds) for the common good and benefit of the Property in accordance with this Declaration, the Owners, and Occupants by devoting these funds and property, among other things, to the Common Expenses described in this Declaration. Notwithstanding these requirements, all funds of the Association shall be deemed to be the sole property of the Association in its corporate capacity, and not trust funds, and the Association shall not be deemed to hold any funds as trustee or in any fiduciary capacity, except as expressly provided in this Declaration, or a Supplemental Declaration. The Association also may expend its funds for any purposes for which any municipality in the State of Arizona may expend its funds under the laws of the State of Arizona or the municipality's charter.

2.21 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time, as the Board deems necessary or appropriate.

2.22 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in that year, regardless of source, unless specifically provided to the contrary in this Declaration or in a Supplemental Declaration. The Association may carry any remaining balances forward as additional working capital or reserves. The Association shall not be obligated to reduce the amount of the Regular Assessments in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year any surplus that the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

2.23 Designated Service Providers. The Board shall have the authority to designate exclusive providers of services to Owners within the Property when the Board deems it necessary or desirable to do so for reasons of obtaining better rates or terms of service or for other reasons deemed reasonable by the Board. Such services may, if the Board so elects, include (but are not limited to) garbage collection, cable TV, and security services. If the Board makes such a designation, the Association may enter into an agreement with the designated service provider. The cost of services purchased by the Board from a designated service provider shall

be considered a Common Expense of the Association and shall be included in the Regular Assessments payable by each Owner provided, however, that the Board may allocate such costs between improved and unimproved properties, or among various portions of the Property, as a Benefited Assessment, in such a manner as the Board deems equitable. Notwithstanding any designation and negotiation with a service provider, each Owner may contract separately with the designated service provider to receive services in excess of those provided to the Property pursuant to the service provider's agreement with the Association, and the cost of the additional services shall be paid separately by the Owner and shall not be an Assessment under this Declaration. Any service provider designated by the Board pursuant to this Section 2.24 shall have an easement over the Common Areas to the extent necessary or convenient for the efficient delivery of the designated service.

3. EASEMENTS AND ACCESS CONTROLS

3.1 Blanket Easements. There is hereby created a blanket easement upon, across, over and under the Property (including all Lots, Common Areas and any Areas of Common Responsibility) for ingress and egress, installing, constructing, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, telephone, electricity, television cable, alarm systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the service provider to erect (including, but not limited to, underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by Declarant or thereafter created or approved by the Association. This provision shall in no way affect any other recorded easements on the Property.

3.2 Use of Common Areas. Except for the use limitations provided in this Section, each Owner shall have the nonexclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and ingress and egress to (and use, occupancy and enjoyment of) any Lot owned by the Owner or other Common Areas available for the use of the Owner. This right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner. The right to use the Common Areas shall be perpetual and appurtenant to each Lot, but shall be subject to and governed by the provisions of the Property Documents and the reasonable limitations and restrictions as are from time to time be contained therein. The Board may limit or restrict the right of Owners and other Persons to use portions of the Common Area that exist for the benefit of the Association, but which by their nature are not intended for access and ingress and egress including, but not limited to drainage, utility, landscape or similar easements or rights.

3.3 Declarant Easement. There is hereby created a nonexclusive easement for ingress and egress over, for the right to go over, under, and across, and for the right to enter and remain upon, all portions of the Property, including, but not limited to, Lots (except the interiors of occupied dwelling units) and Common Areas (including, but not limited to, a right of access through any access control points) for the purpose of enabling Declarant, Related Parties, and

their respective employees, agents, invitees, licensees, contractors and guests to exercise Declarant's rights and obligations hereunder and to engage in activities reasonably related to the development, management, administration, operation, maintenance, advertisement and sale or rental of the portions of the Property owned by Declarant or a Related Party. The easement created in this Section 3.3 shall be in favor of Declarant and the Related Parties, and appurtenant to portions of the Property owned by Declarant or a Related Party in fee or beneficially. The rights of access established in this Section 3.3 shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Lot by its Owner and any Occupant. The easement created in this Section 3.3 shall continue until the day upon which neither Declarant nor any Related Party has any interest in any portion of the Property.

3.4 Association Easement. There is hereby created a nonexclusive easement in favor of the Association for ingress and egress over all the Property (except the interiors of occupied dwelling units) for the purpose of enabling the Association and its contractors, employees, representatives, and agents to implement the provisions of this Declaration. The rights of access established in this Section 3.4 shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Lot by its Owner and any Occupant.

3.5 Irrigation Easement. Every Lot is also hereby subjected to a nonexclusive easement for overspray and runoff of water from any irrigation systems serving the Common Areas or any Areas of Common Responsibility. Under no circumstances will the Association or any officers, directors, employees, or agents of the Association be responsible for any property damage or personal injury resulting from any overspray or from the operation of the irrigation systems serving the Common Areas or any Areas of Common Responsibility.

3.6 Easements For Drainage. All Lots and Common Areas are hereby subjected to an easement for drainage of storm water runoff from other portions of the Property; provided, however, that no Person shall be entitled to alter the drainage patterns on any portion of the Property that are set forth on drainage plans approved by governmental authorities so as to increase materially the drainage of storm water onto adjacent portions of the Property (or materially change its locations) without the consent of any Owners of the affected property and the Board.

3.7 Access Control. The Association, or its duly delegated representative, may operate an access control system for the Property, or any portion of the Property.

3.7.1 Generally. Any access control (or similar) system may (but is not required to) include all or any of the following: key gates and other access control points at entries to various portions of the Property; patrol vehicles, patrolmen and patrol supervisors; computer and/or other monitoring equipment; television monitoring devices; burglar and fire alarm devices; communications equipment; direct line phones; and such other devices as may be deemed appropriate by the Board. The cost of any services described in this Section 3.7.1 shall be part of the Common Expenses and may be collected through a Benefited Assessment, if applicable.

3.7.2 Access Through Gates. For so long as Declarant or a Related Party owns any of the Property in fee or beneficially, Declarant shall have the unrestricted right of

access through any access control systems and the use of all Common Areas, for itself and its successors in interest as to any other portion of the Property owned in fee or beneficially by Declarant or a Related Party, and for their respective employees, agents, invitees, licensees, and guests. Notwithstanding anything contained in the Property Documents to the contrary, so long as Declarant or a Related Party owns any of the Property, no restrictions shall be imposed upon Declarant or any Related Party, or their respective employees, agents, invitees, licensees and guests, that impairs access to any portion of the Property (including, but not limited to, restrictions on construction traffic) or that eliminates or materially impairs any easements for construction purposes reserved to Declarant. Subject to applicable provisions of the Property Documents (including, but not limited to, the easements created in Section 3.4 and elsewhere in this Declaration), the Association shall have the right, from time to time, to determine who may have access through access control systems into the Property. Subject to applicable portions of the Property Documents, the Association may, from time to time, make reasonable rules relating to the right of entry through access control systems throughout the Property, but none restricting entry by Owners or Occupants or their tenants and guests or by prospective purchasers of homes or Lots invited by an Owner.

3.7.3 Individual Lots. When appropriate for the efficient administration of the Property including, but not limited to, effective control over access to the Property, the Association may require that any Owner wishing security or similar services (including, but not limited to, patrol service and fire and burglar alarm protection) for the Owner's Lot (as distinguished from general services under Section 3.7.1) obtain the service from a Person (which may be the Association) selected by the Board to provide such services to all Owners desiring such services. The Board, however, may not require any Owner to have such services for the Owner's particular Lot. The cost of any such services to a Lot shall not be a Common Expense or included in the Regular Assessment, but, if provided by or through the Association, will be charged to the Owner requesting the service. The cost of any such services selected by the Board shall be reasonably competitive with the charges for similar services rendered by unaffiliated companies providing similar services on a contract basis to other communities and customers in comparable areas of Maricopa County.

3.7.4 Right of Entry. Representatives and agents of the Association including, but not limited to, patrolmen, shall have the right to enter upon all Lots, Common Areas and any Areas of Common Responsibility when responding to alarms or when otherwise reasonably deemed necessary for the protection of Persons or property, and neither the Association, nor any representative or agent thereof, shall have any liability to any Person when acting in good faith pursuant to this Section 3.7.4.

3.7.5 Liability. Neither the Association, nor Declarant, nor any Related Party (nor any principal, committee, officer, director, agent or employee of any of them), is or should be considered a guarantor or insurer of security in the Property or individual Lots. Each Owner and Occupant, for themselves and on behalf of their families, guests and invitees, acknowledges and assumes the risks that the access control system will not keep out unauthorized Persons and that gated entries and other features of the access control system may restrict or delay entry into the Property by the police, fire department, ambulances and other emergency vehicles or personnel. Neither the Association, nor Declarant, nor any Related Party (nor any principal, committee, officer, director, agent or employee of any of them) shall be liable

to any Owner, Occupant, or other Person for any claims or damages resulting, directly or indirectly, from the construction, existence, operation, failure of operation or maintenance of any access control system, or for delays caused by reason of restricted access to the Property, or for the unauthorized entry of Persons into the Property. Moreover, no approval of a security (or similar) system for a Lot by the Design Review Committee or the Board shall constitute a warranty or assurance of any kind by the Design Review Committee or Board that the system will function as intended, and neither the Design Review Committee nor the Board (nor any member, employee or agent of either) shall have any liability by reason of any approval if any security system fails to prevent or detect the risk for which it is intended.

3.7.6 Release and Waiver. Each Owner and Occupant hereby releases the Association, Declarant and Related Parties (and their respective principals, committees, officers, directors, agents and employees) from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting, directly or indirectly, from the construction, existence, operation, failure of operation or maintenance of any access control system, or for delays caused by reason of restricted access to the Property, or for the unauthorized entry of pedestrians and other Persons into the Property.

4. INSPECTION AND TURNOVER OF COMMON AREAS

4.1 Inspection of Common Area Improvements. The following procedures shall apply to Common Areas and Common Area improvements being conveyed by Declarant to the Association:

4.1.1 Inspection Upon Conveyance. Not later than each date upon which Declarant conveys Common Areas (or Common Area improvements costing in excess of \$10,000) to the Association and as a condition to any such conveyance, Declarant shall select qualified consultants to inspect any completed structures, roads, sidewalks and other improvements to those Common Areas to determine whether the improvements have been constructed in substantial compliance with the plans and specifications, as modified by any change orders, and to inspect for defects in materials and workmanship and for governmental code violations.

4.1.2 Inspection Upon Construction. In addition, upon Declarant's completion of any building, road, sidewalk or other improvement in Common Areas previously conveyed to the Association (costing in excess of \$10,000), Declarant shall select qualified consultants to inspect the completed improvements to determine whether the improvements have been constructed in substantial compliance with the plans and specifications, as modified by any change orders, and to inspect for defects in materials and workmanship and for governmental code violations.

4.1.3 Expenses of Inspection. The Association shall pay the cost of the inspections and the cost shall be a Common Expense.

4.1.4 Selection of Inspectors. Each Owner is deemed to agree to the inspectors selected by Declarant and the inspection process set forth in this Section and to agree to abide by the inspectors' determinations.

4.1.5 Required Repairs. Declarant shall, at its sole cost and expense, make all repairs to the improvements which the inspectors deem necessary to cause the improvements (when they are conveyed to the Association) to comply substantially with the plans and specifications, as modified by any change orders, to be free from defects in materials and workmanship and to be in compliance with applicable governmental codes. Except as provided in Section 4.3, Declarant shall have no obligation to make any additional repairs to the improvements other than the repairs which the inspectors deem necessary as provided in the preceding sentence.

4.1.6 Release. The Association and each Owner release Declarant and the Related Parties from any further obligations with respect to repairs to any Common Area improvements except any repairs required to be made by Declarant pursuant to Section 4.3.

4.1.7 Completion. At such time as Declarant has completed all repairs required to be made by Declarant under this Section 4.1 and the inspectors selected by Declarant have certified that all required repairs have been completed, the Association shall be deemed to own and to have accepted (and shall have no right to refuse to accept) the improvements. Thereafter, the Association shall have no right to require Declarant or any of the Related Parties to make any further repairs to the Common Area improvements (except as provided in Section 4.3) and shall have no right to bring any claim or action against Declarant or any of the Related Parties (or any of their respective employees) relating to the improvements.

4.2 Conveyance of Common Areas to Association. On or before the Transition Date, Declarant shall convey any Common Areas then held by Declarant (and shall cause the conveyance of any Common Areas held by a Related Party) to the Association by special warranty deed or other appropriate instrument as determined by Declarant, subject to this Declaration and all other matters of record. The Common Areas may be conveyed in phases, if Declarant so elects, provided all of the Common Areas are owned by the Association no later than the Transition Date. The Association shall accept title to the Common Areas transferred to it by Declarant. Any costs of conveying the Common Area to the Association shall be paid by the Association. **SUBJECT TO ANY REPAIRS REQUIRED UNDER SECTION 4.1 OR SECTION 4.3, THE ASSOCIATION SHALL ACCEPT THE COMMON AREAS AND COMMON AREA IMPROVEMENTS "AS IS" AND WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT THERETO INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES REGARDING FUTURE REPAIRS OR REGARDING THE CONDITION, CONSTRUCTION, ACCURACY, COMPLETENESS, DESIGN, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS, EXCEPT AS SET FORTH HEREIN. THE ASSOCIATION AND EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF AN INTEREST IN A LOT, RELEASE DECLARANT AND THE**

RELATED PARTIES (AND THEIR RESPECTIVE EMPLOYEES) FROM ANY CLAIMS AND WARRANT THAT NO CLAIM SHALL BE MADE BY THE ASSOCIATION OR ANY OWNER RELATING TO THE CONDITION OR COMPLETENESS OF THE COMMON AREAS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM.

4.3 Inspection of Previously Conveyed and Completed Improvements. The following procedures shall apply to Common Areas and Common Area improvements being conveyed by Declarant to the Association:

4.3.1 Inspection and Analysis. Immediately prior to the Transition Date, Declarant shall select qualified consultants to inspect improvements on Common Areas.

4.3.2 Expenses of Inspection and Analysis. The Association shall pay the cost of the inspections and the cost shall be a Common Expense.

4.3.3 Selection of Inspectors. Each Owner is deemed to agree to the inspectors selected by Declarant and the inspection process set forth in this Section and to agree to abide by the inspectors' determinations.

4.3.4 Required Repairs and Funding. Declarant shall, at its sole cost and expense, make all repairs to the improvements that the inspectors deem necessary to cause the improvements to be free of unreasonable defects in materials and workmanship. Nothing in this Section shall require Declarant to make any repairs to the Common Areas or the improvements thereto necessitated by ordinary wear and tear or changes in codes or other legal requirements. Declarant shall have no obligation to make any additional repairs to the improvements other than the repairs that the inspectors deem necessary as provided herein or to fund the Association's reserves for capital improvements.

4.3.5 Release. The Association and each Owner release Declarant and the Related Parties from any further obligations to repair the Common Area improvements and to fund reserves for capital improvements.

4.3.6 Completion. At such time as Declarant has completed all repairs required to be made by Declarant to the Common Area improvements and the inspectors selected by Declarant have certified that all required repairs have been completed, the Association and the Owners shall be deemed to have accepted the condition of the Common Areas and improvements thereto and the amount of the reserves for capital improvements, and, thereafter, the Owners and the Association shall have no right to require Declarant or any Related Party to make any further repairs to the improvements to the Common Areas or to contribute to the reserves of the Association and shall have no right to bring any claim or action against Declarant or any Related Party (or their respective employees) relating to the condition of the Common Areas, the Common Area improvements and the level of the Association's reserves for capital improvements.

5. ASSESSMENTS

5.1 Creation of Lien and Personal Obligation. Each Owner is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments (if applicable), Capital Improvement Assessments (if applicable), Reconstruction Assessments (if applicable), Benefited Assessments (if applicable), and any other sums established and collected from time to time as provided in the Property Documents. All Assessments shall be established and collected, from time to time, as provided in this Declaration or, in the case of Benefited Assessment, in the applicable instrument establishing the Benefited Assessment. The Assessments and charges provided for in the Property Documents, together with interest thereon, late charges, attorneys' fees, witness fees (including expert witness fees), costs, litigation-related expenses and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon the Lot against which the Assessments and charges are made. Each Assessment and charge, together with interest and other costs, shall also be the personal obligation of the Owner to whom the Assessment or charge relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by the Owner's successor. If more than one Person owns a Lot, all co-Owners of the Lot shall be jointly and severally liable for all Assessments and charges provided for in the Property Documents.

5.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Association and all other Common Expenses, to provide for obligations set forth in the Property Documents, and to otherwise further the interests of the Association. Where a Lot has separate electrical, sewer, cable television or other similar utility service and the services are not being provided through the Association pursuant to Section 2.23, all costs related to the services (including, but not limited to, service charges, repairs, and maintenance) shall be the personal obligation of the Owner of the Lot and shall not be part of the Common Expenses to be paid through Assessments.

5.3 Regular Assessments.

5.3.1 Owner's Share. Except as otherwise specifically provided herein, each Owner's Regular Assessment shall be the Owner's Proportionate Share of the Common Expenses.

5.3.2 Budget and Assessment Calculations. Not later than 60 days prior to the beginning of each fiscal year of the Association (starting with the first full fiscal year after the sale of the first Lot to a Retail Purchaser), the Association shall make a pro forma operating statement or budget for the upcoming fiscal year available for review by each Owner at the Association's office during reasonable business hours. The operating statement or budget shall, among other things, estimate the total Common Expenses to be incurred for the fiscal year. The Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify each Owner thereof. Each Owner shall thereafter pay to the Association the Owner's Regular Assessment at such regular intervals as may be determined by the Board, from time to time. Each installment shall be due and payable on the date set forth in the written

notice sent to Owners. The fiscal year of the Association shall be the calendar year, unless otherwise specified in the Articles or Bylaws.

5.3.3 Adjustment During a Year. If the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Association shall then determine the approximate amount of the inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. If the estimated total Regular Assessments for the current year prove to be in excess of the actual Common Expenses, the Association may, at the discretion of the Board, retain the excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for a period of time deemed appropriate by the Board. No reduction or abatement of Regular Assessments because of any anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

5.3.4 Adjustment from Year to Year. From one fiscal year to the next, the Board shall not increase Regular Assessments without a vote or written consent by both (i) Declarant (so long as Declarant owns any of the Property in fee or beneficially) and (ii) a Majority of Owners other than Declarant by more than the greater of the following: (a) 20%, (b) the increase during the preceding year of the Consumer Price Index for All Urban Consumers - U.S. Cities Average-All Items (the "CPI") published by the United States Department of Labor, Bureau of Labor Statistics (1982-84 = 100), or (c) the maximum increase permitted by applicable law. In the event the Bureau of Labor Statistics ceases to publish the CPI and such information is not available from any other source, public or private, then a new formula for determining the maximum annual increase permitted without a vote or written consent of the Owners shall be adopted by the Board.

5.4 Special Assessments. The Association may levy Special Assessments against particular Owners and Lots that are subject to Assessments in accordance with the following:

5.4.1 For Special Benefits and Services. The Association may levy a Special Assessment to recover the cost, including overhead and administrative expenses, of providing benefits, items, or services to a Lot (or to its Owner or Occupant) that are not included in the Common Expenses payable as Regular Assessments. Special Assessments under this Section may be levied in advance and payment of the Special Assessment may be a condition of providing the benefit, item or service.

5.4.2 For Compliance Costs. The Association also may levy a Special Assessment to cover the cost of bringing a Lot (or its Owner or Occupant) into compliance with the requirements of the Property Documents including, but not limited to, increased maintenance costs to the Association caused by an Owner's use or treatment of the Owner's Lot. Before any Special Assessment is levied pursuant to this Section 5.4.2, the Owner affected by the Special Assessment shall be given notice and an opportunity to be heard by the Board (or by a committee designated for the purpose by the Board).

5.4.3 Other Purposes. The Association may also levy Special Assessments for any other charge designated as a Special Assessment in the Property Documents.

5.4.4 Fines. The term "Special Assessment" shall also include any fines levied or fixed by the Board or the Design Review Committee pursuant to the Property Documents and attorneys' fees, witness fees (including expert witness fees), costs, litigation-related expenses, interest and other costs incurred in connection with a Special Assessment.

5.5 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, to the extent not covered by the provisions affecting Reconstruction Assessments in Section 7. Without the vote of a Majority of Owners (and, if prior to the Transition Date, the written consent of Declarant), the Association shall not impose a Capital Improvement Assessment in an amount that in any one year exceeds 5% of the estimated annual Common Expenses. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, pursuant to Section 5.13 shall not be included in determining the foregoing limitation on any annual Capital Improvement Assessment. All amounts collected as Capital Improvement Assessments may be used only for capital improvements (including any related fixtures and personal property) and shall be deposited by the Association in a separate bank account to be held in trust for those purposes. Those amounts shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Owners.

5.6 Benefited Assessments. If the Association determines in the exercise of its reasonable judgment that a particular portion of the Property benefits in a substantial way from a particular feature (not including underground water issues), characteristic or service and other Lots outside that particular portion do not benefit or do not benefit as much from the feature, characteristic, or service, the Association may levy a Benefited Assessment against each Lot within the designated portion of the Property to pay for the incremental cost incurred in connection with the feature, characteristic or service including, but not limited to, maintenance, repair and replacement costs.

5.7 Uniform Assessment. The Regular Assessment and any Capital Improvement Assessment shall be uniform for all Lots subject to Assessments. Any Benefited Assessment shall be uniform for all Lots subject to the particular Benefited Assessment.

5.8 Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

5.9 Commencement of Regular Assessments and Benefited Assessments. Regular Assessments for Lots subject to Assessment shall commence on the first day of the month following the date of conveyance of the first Lot conveyed to a Retail Purchaser after the date

hereof. Any Benefited Assessments shall commence on the date specified by the Association when it determines that a Benefited Assessment will be imposed in accordance with Section 5.6.

5.10 Time and Manner of Payment; Late Charges and Interest. The manner and timing of payment of Assessments shall be designated by the Board. The Board may, in its discretion, establish late fees and charge interest (including interest at the Default Rate of Interest) on any Assessment not paid by its due date, subject to any limitations imposed by applicable law. The Board may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. An Owner who is delinquent in payment of Assessments shall also be liable for attorneys' fees, witness fees (including expert witness fees), costs, and other litigation-related expenses incurred by the Association as a result of the delinquency, and if any suit, action or other proceeding is brought to collect any delinquent Assessment or charge, then there shall be added to the amount thereof reasonable attorneys' fees, witness fees (including expert witness fees), costs and other litigation-related expenses, to be fixed by the court and included in any judgment or award rendered thereon.

5.11 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment. No offsets against the specified Assessment amount shall be permitted for any reason including, but not limited to, a claim that (a) the Association, the Board, the President or Declarant is not properly exercising its duties and powers as provided in the Property Documents; (b) Assessments for any period exceed Common Expenses; or (c) an Owner has made, and elects to make, no use of the Common Areas.

5.12 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter, to the extent of any liens created pursuant to this Declaration, whether the liens are now in existence or are created at any time in the future.

5.13 Contribution to Reserves. Upon the initial transfer of record title to a Lot by Declarant to a Retail Purchaser, and upon each subsequent transfer of record title, the new Owner of the Lot shall be required to make a contribution to the capital of the Association in an amount equal to one month (or 1/12th) of the annual amount of the Regular Assessments for that Lot, or such lesser amount as the Board may determine from time to time, to establish reserves of the Association. Notwithstanding the foregoing, Declarant shall have no obligation to contribute to the reserves of the Association except as may be provided in Section 4.3. In addition, the Board may, but shall not be required to, annually prepare a reserve budget which shall take into account the number and nature of replaceable assets, the useful life of each asset and the anticipated repair and replacement cost. If the Board establishes a reserve budget, the Board shall establish a required contribution to the reserve for capital improvements, in an amount sufficient to permit the Association to meet its projected needs, as shown on the reserve budget, with respect both to amount and timing of annual Assessments over the period of the budget. Any required contributions to the reserve for capital improvements shall be assessed as a portion of the Regular Assessment on each Lot. Any reserves collected upon the initial sale of a Lot as described above, and any additional reserves included in the Common Expenses which are collected as part of the Regular Assessments, shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected and are to be

segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to nonprofit corporations or homeowners associations. All reserves shall be deemed a contribution to the capital account of the Association by the Owners. The responsibility of the Board (whether while controlled by Declarant or the Owners) shall be only to provide for an amount of reserves as the Board in good faith deems reasonable, and neither the Board (nor any member thereof), nor Declarant, nor any Related Parties (nor the respective employees and agents of Declarant and the Related Parties), shall have any liability to any Owner, to the Association, or to any other Person if the reserves prove to be inadequate.

5.14 Subordination of Lien. Any lien that arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment or other charge imposed pursuant to the Property Documents shall be subordinate to the lien of a prior recorded Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment or charge that accrues from and after the date on which a Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any reasonable attorneys' fees, witness fees (including expert witness fees), costs, litigation-related expenses, interest and any late charges related thereto). If any lien for unpaid Assessments or other charges prior to the date the Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process through which the Mortgagee came into possession of or acquired title to the Lot, the Mortgagee shall not be liable for unpaid Assessments or charges arising prior to the foregoing date and, upon written request to the Association by the Mortgagee, the lien shall be released in writing by the Association. Any unpaid Assessments or other charges that are extinguished as a lien pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner and may also be reallocated by the Association among all Owners as part of the Common Expenses.

5.15 Certificate of Payment. Any Person acquiring an interest in any Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to the Lot, if any, and that Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments that occur or become due after the date thereof and any reasonable attorneys' fees, witness fees (including expert witness fees), costs, litigation-related expenses, interest and any late charges related to those subsequent Assessments.

5.16 Enforcement of Lien. The lien provided for in this Section 5 may be foreclosed by the Board in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 5 relating to the enforcement of the lien provided for herein (including, but not limited to, the subordination provisions in Section 5.14 and the provisions of this Section 5.16) shall apply with equal force in each other instance provided for in the Property Documents wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by the lien provided for in this Section 5. Nothing in this Section shall be construed as requiring that the Association take any action in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take action at a later time or in a different instance.

5.17 Exemption of Unsold Lots. Notwithstanding anything in this Section 5 to the contrary, prior to the Transition Date, no Assessments shall be levied upon, or payable with respect to, any Lot owned in fee or beneficially by Declarant or any Related Party until the Lot has been conveyed to a non-affiliated purchaser thereof.

6. INSURANCE

6.1 Authority to Purchase. The Association shall purchase and maintain insurance including, but not limited to, the insurance described in Section 6.3. Except as otherwise specifically provided herein, policies shall be on such terms and conditions as the Board shall determine in its discretion. All policies maintained by the Association and endorsements thereon, or copies thereof, shall be deposited with the Association. Upon request, the Association shall advise Owners of the coverage of any policies purchased by the Association in order to permit the Owners to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured by the Association. All of the Association's insurance policies and claims thereunder shall be administered by the Board.

6.2 Owner's Responsibility. Each Owner shall be responsible for providing insurance on the Owner's Lot, and any additions and improvements thereto, and any furnishings and personal property therein, the Owner's personal property stored elsewhere within the Property, the Owner's personal liability to the extent not covered by the public liability insurance obtained by the Association and any other insurance the Owner desires. No Owner shall maintain any insurance, whether for the Owner's Lot or otherwise, that would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas or the Association's interest in any Areas of Common Responsibility.

6.3 Coverage. The Association shall maintain and pay for policies of insurance as follows:

6.3.1 For Casualties. A blanket property insurance policy covering "risks of direct physical loss" on a "special form" basis (or comparable coverage) covering all of the Common Areas providing, at a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use including, but not limited to, perils normally covered by an "all-risk" policy, in an amount determined by the Board, but in all events an amount sufficient to cover the full replacement cost of any insured improvements. If "special form" coverage is not generally available at a reasonable cost, then "broad form" coverage may be substituted.

6.3.2 For Liability. A policy of commercial general liability insurance covering all of the Common Areas and acts for which the Association might be responsible in an amount determined by the Board but not less than \$1,000,000 per occurrence, for personal injury or death and/or property damage. The scope of coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use including, but not limited to, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the

Common Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Association.

6.3.3 For Fidelity. The Association shall, at the Board's election, obtain fidelity insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or other individuals responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, fidelity insurance coverage shall also be obtained for the officers, employees or agents thereof handling or responsible for Association funds. The fidelity insurance must name the Association as the named insured and shall be written to provide protection in an amount not less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to three months' aggregate Regular Assessments plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with the coverage, an appropriate endorsement to the policy to cover any individual who serves without compensation shall be added if the policy would not otherwise cover volunteers. Any such coverage must also name the Association as an obligee.

6.3.4 Worker's Compensation. A worker's compensation policy, if necessary to meet the requirements of law.

6.3.5 For Directors and Officers. A policy of "directors and officers" liability insurance, including errors and omissions coverage.

6.3.6 Other Insurance. Other insurance, in amounts and on terms, as the Board may determine from time to time to be desirable.

If at any time any of the foregoing types of coverage are not reasonably available, the Association shall maintain the most nearly equivalent coverages that are reasonably available.

6.4 Required Provisions. The insurance policies purchased by the Association shall, to the extent reasonable and available, contain the following provisions:

6.4.1 Proration or Contribution. The coverage afforded by the policies purchased by the Association shall not be brought into contribution or proration with any insurance that may be purchased by any Owner or Mortgagee.

6.4.2 Conduct of Others. The conduct of any one or more Owners shall not constitute grounds for avoiding liability on any of the policies.

6.4.3 Subrogation Waiver. There shall be no subrogation with respect to the Association, its agents or employees, Owners or members of their households or families and employees, and each Mortgagee of all or any part of the Property or of any Lot, or the policies should name those Persons as additional insureds. Each policy must also contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

6.4.4 Severability. A “severability of interest” endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of the conduct or negligent acts of the Association and its agents or other Owners.

6.4.5 Other Insurance Defined. Any “other insurance” clause shall exclude insurance purchased by Owners or Mortgagees.

6.4.6 Acts of Others. Coverage must not be prejudiced by (a) any act or neglect of Owners when the act or neglect is not within the control of the Association or (b) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

6.4.7 Notice Before Cancellation. Coverage may not be cancelled or substantially reduced without at least 30 days’ (or a lesser period as the Board may reasonably deem appropriate) prior written notice to the Association.

6.4.8 Insurer’s Right to Restore. Any policy of property insurance that gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that the election is not exercisable without the prior written approval of the Board, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

6.4.9 Insurance Trust. A recognition of any insurance trust agreement entered into by the Association.

6.4.10 Insurer Qualifications. Each hazard insurance policy shall be written by a hazard insurance carrier which has a Best’s Key Rating Guide rating of A or better and is assigned a financial size category of IX or larger as established by A. M. Best Company Inc., or if that rating service is discontinued, a comparable rating by a successor thereto or a similar rating service.

6.4.11 Insurer Licensing. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

6.4.12 Contingent Obligation to Pay. Policies shall not be utilized where, under the terms of the carrier’s charter, bylaws or policy, contributions or assessments may be required from the Owners or the Association or loss payments are contingent upon action by the carrier’s board of directors, policyholders, or members.

6.5 Non-Liability of Association/Board/President. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association, nor the President, the members of the Board, Declarant, the Related Parties, nor any of their respective employees or agents shall be liable to any Owner, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association’s insurance and to procure and pay for additional insurance coverage and protection as the Owner may desire.

6.6 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium arising from the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas, by an Owner may be assessed against that particular Owner.

6.7 Insurance Claims. The Board, acting for the Association, is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

6.8 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for, the Association or the Owners, as their interests may appear.

7. DAMAGE AND DESTRUCTION TO COMMON AREAS

7.1 Duty of Association. In the event of partial or total destruction of all or any portion of the Common Areas or any Areas of Common Responsibility, or any improvements thereon, the Association shall either (i) restore and repair the destroyed area; or (ii) clear and landscape the destroyed area, in either case as promptly as practical pursuant to this Section 7. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for whichever work is undertaken by the Association pursuant to the foregoing sentence, subject to the prior rights of Mortgagees whose interest may be protected by the policies.

7.2 Reconstruction Assessment Levied Without a Vote of Owners. If the amount available from the proceeds of any insurance policies for restoration and repair, together with any uncommitted or unreserved capital of the Association, is at least 75% of the estimated cost of restoration and repair, the Association shall levy a Reconstruction Assessment against each Owner for the Proportionate Share of each Lot owned by that Owner to provide any necessary funds for restoration and repair in excess of the amount of the funds available for that purpose. The Association shall cause the damaged or destroyed Common Areas or Areas of Common Responsibility to be restored in accordance with Section 7.1.

7.3 Reconstruction Assessment Levied With Required Vote of Owners. If the amount available from the proceeds of any insurance policies for restoration and repair, together with any uncommitted or unreserved capital of the Association, is less than 75% of the estimated cost of restoration and repair, the Association shall levy a Reconstruction Assessment against each Owner for the Proportionate Share of each Lot owned by that Owner to provide any necessary funds for restoration and repair in excess of funds available for that purpose, unless two-thirds of the Owners, at a special meeting held for that purpose, disapprove the restoration and repair. If the Owners do not disapprove the proposed restoration and repair and the Association levies a

Reconstruction Assessment pursuant to this Section 7.3, the Association shall cause the damaged or destroyed area to be restored and repaired in accordance with Section 7.1. If the Owners disapprove the restoration and repair of the damaged or destroyed area, the Association shall not levy a Reconstruction Assessment, and the damaged or destroyed area shall be cleared and landscaped in accordance with Section 7.1.

7.4 Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any damaged or destroyed area is either restored and repaired or cleared and landscaped pursuant to Section 7.1, the Board, in its discretion, may retain those sums in the general funds of the Association or may distribute all or a portion of the excess to the Owners in their Proportionate Shares, subject to the prior rights of Mortgagees whose interests may be protected by the insurance policies carried by the Association. The rights of an Owner or the Mortgagee of a Lot to such a distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

7.5 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall be used only for the purposes set forth in this Section 7 and shall be deposited by the Association in a separate bank account to be held in trust for those purposes. Those amounts shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Owners. Any Reconstruction Assessment shall be secured by the lien provided for in Section 5.

7.6 Contract for Reconstruction. In the event the Association undertakes the repair and restoration of the Common Areas or any Areas of Common Responsibility, the Association shall contract with a licensed contractor or contractors who may be required to post a suitable performance or completion bond. The contract with the contractor or contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, subject to the prior presentation of an architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Association.

7.7 Insurance Proceeds Trust. Upon receipt by the Association of any insurance proceeds, the Association may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Maricopa County, Arizona, designated by the Association to be a trustee (the "Insurance Trustee"). The insurance proceeds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Association. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Maricopa County, Arizona.

8. EMINENT DOMAIN

8.1 Definition of Taking. The term "Taking," as used in this Section 8, shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas or the Association's interest in any Areas of Common Responsibility.

8.2 Representation in Condemnation Proceedings. In the event of a threatened Taking of all or any portion of the Common Areas, or the Association's interest in any Areas of Common Responsibility, the Owners hereby appoint the Association (through individuals designated by the Board) to represent all of the Owners in connection therewith. The Board shall act in its sole and absolute discretion with respect to any awards being made in connection with the Taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.

8.3 Condemnation Award. Any awards received by the Association on account of a Taking shall be paid to the Association. The Board shall apply all of any such award, or so much of the award as the Board determines in its discretion to be appropriate, to restore any portions of the Common Areas adversely affected by the Taking. After undertaking any such restoration and repair, the Board may, in its sole and absolute discretion, retain the remainder of any award in the general funds of the Association or distribute all or any portion thereof to the Owners as their interests may appear. The rights of an Owner, and the Mortgagee of the Owner's Lot, to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

9. MAINTENANCE, REPAIRS AND REPLACEMENTS

9.1 Maintenance of Lots.

9.1.1 Generally. Subject to the Association's obligations with respect to any Areas of Common Responsibility on Lots, each Owner shall furnish and be responsible for, at the Owner's expense, all of the maintenance, repairs and replacements within the Owner's own Lot. Without limiting the generality of the foregoing sentence, each Owner shall:

- (a) keep all shrubs, trees, hedges, grass, and plantings of every kind located on landscaped portions of the Owner's Lot neatly trimmed,
- (b) keep all of the Lot free of trash and other unsightly material, and
- (c) maintain in good condition and repair all paved, concrete and other synthetically surfaced areas including, but not limited to, driveways, roadways, and parking areas.

Subject to the Association's obligations with respect to any Areas of Common Responsibility on Lots, in the event of damage to or destruction of structures on any Lot, the Owner of the Lot shall proceed promptly either (i) to repair or reconstruct the structures in a manner consistent with the original construction or other plans and specifications approved in accordance with Section 10; or (ii) to clear and landscape the damaged or destroyed structures in accordance with the Property Documents.

9.1.2 Improper Maintenance and Use of Lots. Subject to the provisions of Section 13, if (i) any portion of any Lot is so maintained as to present a public or private nuisance or an unreasonable condition (as determined by the Board) with respect to other Owners or Occupants, or as to violate the standards required by this Declaration; (ii) any portion of a Lot is being used in a manner that violates the Property Documents; or (iii) the Owner of any Lot fails to perform any of the Owner's obligations under the Property Documents, then the

Board may by resolution make a finding to that effect, specifying the particular condition or conditions that exist, and pursuant thereto give notice to the offending Owner that unless corrective action is taken within a deadline reasonably established by the Board, the Board may cause corrective action to be taken at the Owner's cost. If, at the expiration of the deadline fixed by the Board, the requisite corrective action has not been taken, the Board is authorized and empowered to cause remedial action to be taken. The cost of any remedial action shall become a Special Assessment against the offending Owner and the Owner's Lot and shall be secured by the lien provided for in Section 5. Notwithstanding the foregoing, if the Board believes that immediate action is or may be necessary to avoid a risk of serious physical injuries to individuals or damage to property, the Board shall be entitled, after giving notice to the affected Owner, to take whatever action it may believe to be minimally necessary to guard against or prevent injuries or damage without being required to wait for the period otherwise established by the Board as a deadline for action by the defaulting Owner.

9.2 Common Areas and Areas of Common Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas and any Areas of Common Responsibility including, but not limited to, any landscaping, walkways, parking areas, drives, and improvements located upon the Common Areas; provided, however, the Association shall not be responsible for maintaining any Common Areas or any Areas of Common Responsibility that are part of Lots unless (i) the landscaping or structures are available for use by all Owners and Occupants or are within easements intended for the general benefit of the Property, and (ii) the Association assumes in writing the responsibility for the maintenance, or the Association's responsibility is set forth in a recorded instrument.

9.2.1 Standard of Care. Common Areas and Areas of Common Responsibility shall be maintained, operated and repaired so that they will reflect compliance with the standards described in Section 9.4. In the discretion of the Board, the Association may, subject to any applicable provisions relating to Capital Improvement Assessments, perform any of the following within the Common Areas and any Areas of Common Responsibility:

- (a) construct, reconstruct, repair, replace or refinish any improvement or portion thereof;
- (b) replace injured and diseased trees and other vegetation, and plant trees, shrubs, and ground cover to the extent the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (c) place and maintain such signs as the Board and Design Review Committee may deem appropriate for the proper identification, use, and regulation of these areas; and
- (d) do all such other and further acts that the Board deems necessary or appropriate to preserve and protect these areas and the beauty thereof, in accordance with the general purposes specified in this Declaration and the standards required by this Section.

9.2.2 Contracts For Maintenance. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the

Association under this Section 9.2 and, in order to promote uniformity and harmony of appearance, the Board also may cause the Association to contract to provide maintenance services to Owners of Lots having these responsibilities in exchange for the payment of such fees as the Board and the applicable Owners may agree upon. All fees that the Board and Owners agree upon pursuant to the preceding sentence shall be considered Special Assessments, and shall be levied and collected by the Board pursuant to Section 5.4.

9.2.3 Assessment of Certain Costs of Maintenance and Repair. If the need for maintenance, repair, or replacement of Common Areas, any Areas of Common Responsibility or any other areas maintained by the Association is caused through the willful or negligent act of any Owner or Occupant or the family, guests, or invitees of either, the cost of all required maintenance or repairs shall be a Special Assessment against the Owner and the Owner's Lot and shall be secured by the lien provided for in Section 5.

9.3 Right of Access. An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and Areas of Common Responsibility, or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas or Areas of Common Responsibility, or to perform any of the Association's duties or responsibilities hereunder.

9.4 Standard of Maintenance. It is the intent of this Declaration to preserve and enhance the desirability and attractiveness of the Property and to cause all permitted improvements thereon to be designed, constructed, and at all times operated, managed and maintained in compliance with applicable laws and other requirements of governmental authorities and in conformity with the standards of quality associated with a luxury single-family residential development.

10. ARCHITECTURAL AND LANDSCAPE CONTROL

10.1 Declarant's Intention to Construct. Declarant may, but shall have no obligation to, construct the residences that will be built in the Property, either directly or through Related Parties. Construction of residences and related improvements by Declarant, or by Related Parties, shall not be subject to the Design Guidelines and review procedures provided for in this Section 10. The Design Guidelines and review procedures provided for in this Section 10 shall, however, apply to any proposed changes to such residences and improvements after they are initially constructed and to any residences or other improvements to be constructed by any Person other than Declarant or a Related Party.

10.2 Appointment of Design Review Committee. Subject to Section 10.9, the Association shall have a Design Review Committee consisting of not less than two nor more than five individuals, as specified from time to time by resolution of the Board. After the Transition Date or such earlier date as Declarant elects to delegate the design review powers to the Design Review Committee, members of the Design Review Committee shall be appointed by the Board. Individuals appointed to the Design Review Committee by the Board must be Owners or satisfy such other requirements as may be designated by the Board.

10.3 Design Guidelines/Purpose. The Design Review Committee shall establish reasonable rules, regulations, restrictions, architectural standards and design guidelines ("Design Guidelines") that are appropriate to the Property and to the development of luxury single-family residences. The Design Review Committee may, from time to time, amend, repeal or augment the Design Guidelines.

10.4 Design Guidelines/Procedure and Implementation. After the Transition Date or such earlier date as Declarant elects to delegate the design review powers to the Design Review Committee, any change in the Design Guidelines will be effective only if it is approved by Declarant (so long as Declarant or any Related Party, owns any of the Property in fee or beneficially). The Design Guidelines are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners and other Persons having any interest in the Property as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

10.4.1 Time Limits. Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines.

10.4.2 Compliance with Approvals. Conformity of completed improvements to plans and specifications approved by the Design Review Committee. For purchasers and encumbrancers in good faith and for value, however, unless (a) a notice of non-completion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Design Review Committee, is recorded with the County Recorder of Maricopa County, Arizona, and (b) the notice is given to the Owner of the Lot within one year following the expiration of the time limitation described in Section 10.4.1, or, if later, within one year following completion of the improvement, or (c) legal proceedings are instituted to enforce compliance or completion within the foregoing one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review Committee and in compliance with the architectural standards of the Association and the Property Documents.

10.4.3 Landscaping and Other. Additional limitations and restrictions that the Design Review Committee in its discretion may adopt including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence (including, but not limited to, limitations on the nature, kind, shape, height, materials, exterior color, surface texture, and location of any improvements). Notwithstanding the foregoing, in no event shall any change in the Design Guidelines rescind or invalidate approvals previously given. IT IS THE INTENT OF THE COMMUNITY TO AVOID THE FEEL OF VACANT/UNLANDSCAPED LOTS. EACH OWNER UPON CLOSING WILL BE REQUIRED TO HAVE ALL LANDSCAPING INSTALLED BEFORE THE END OF THE (14) MONTH. IF NO CONSTRUCTION HAS OCCURRED BY THE END OF THE (14) MONTH EACH OWNER WILL BE REQUIRED TO INSTALL AND MAINTAIN SOD ON THE ENTIRE LOT (All sod installation, quality and maintenance will be approved by the Association).

10.5 General Provisions.

10.5.1 Processing Fees. The Design Review Committee may assess reasonable fees in connection with its review of plans and specifications.

10.5.2 Delegation. The Design Review Committee may delegate its plan review responsibilities, except final review and approval required by the Design Guidelines, to one or more of its members or architectural consultants retained by the Design Review Committee. Upon any delegation of responsibilities, the approval or disapproval of plans and specifications by the member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

10.5.3 Address of Committee. The address of the Design Review Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines or by written notice to Owners. That address shall be the place for the submittal of plans and specifications and the place where the current Design Guidelines shall be kept.

10.5.4 Owner's Responsibility. The establishment of the Design Review Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots otherwise specified in the Property Documents.

10.5.5 Deadlines for Decisions. The Design Review Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Design Guidelines within a reasonable time and, in any event, within any period specified in the Design Guidelines.

10.5.6 Waivers. The Design Review Committee, in its discretion, from time to time, may grant minor waivers of compliance with the restrictions set forth in this Section 10 or any comparable restrictions set forth in the Design Guidelines; provided, however, following the Transition Date, any such waiver shall require the prior written approval of Declarant, so long as Declarant or any Related Party owns any of the Property in fee or beneficially.

10.6 Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, but not limited to, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with the Design Guidelines as to harmony of external design and location in relation to surrounding structures and topography. It is understood and agreed by each Person having or acquiring an interest in the Property that the Design Review Committee will include aesthetic judgment in its decision-making process and approval of submitted plans will not be required simply because the plans satisfy stated objective requirements.

10.7 Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances (or other governmental requirements). By approving plans and specifications neither the Design Review Committee, nor the members thereof, Declarant, any Related Party, the Association, any Owner, the President, nor the Board (nor any committee, officer, director, employee or agent of any of the foregoing) assumes any liability or responsibility therefor, or for any defect in any structure constructed from the plans and specifications. Neither the Design Review Committee, nor any member thereof, Declarant, any Related Party, the Association, the President, nor the Board (nor any committee, officer, director, employee or agent of any of the foregoing) shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development, or manner of development of any property within the Property, or (d) the execution and filing of an estoppel certificate pursuant to the Design Guidelines, whether or not the facts therein are correct; provided, however, that the action, with the actual knowledge possessed by the Person executing and filing the estoppel certificate, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that the plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

10.8 Inspection and Recording of Approval. Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on the Lot to ascertain that the improvements have been or are being built in compliance with the Property Documents. The Design Review Committee shall cause an inspection to be undertaken within 30 days of a request from any Owner concerning the Owner's Lot, and if the inspection reveals that the improvements located on the Lot have been completed in compliance with this Section 10 and any other applicable portions of the Property Documents, the Design Review Committee shall provide the Owner a notice of approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this Section 10 and the other Property Documents as to the improvements described in the recorded notice, but as to the described improvements only.

10.9 Declarant Review. Each Owner acknowledges that Declarant, as the developer of the Property, has a substantial interest in ensuring that the improvements within the Property enhance the reputation of Declarant and Related Parties as a community developer and do not impair Declarant's ability to market, sell or lease its property. Notwithstanding anything contained in this Declaration to the contrary, until the Transition Date, Declarant, shall have all of the rights granted in the Property Documents to the Design Review Committee, and shall exercise all of the powers granted in the Property Documents to the Design Review Committee through individuals appointed by Declarant including, but not limited to, establishment of the Design Guidelines. Until the Transition Date or such earlier time as Declarant delegates all or a portion of its design review powers to the Design Review Committee, the Association shall have no jurisdiction over architectural or design review matters. If Declarant delegates all or a portion

of its design review powers to the Design Review Committee prior to the Transition Date, Declarant shall give the Association at least 30 days prior written notice of the delegation. Upon the expiration or relinquishment of Declarant's rights under this Section 10.9, the Association, acting through the Design Review Committee, shall assume jurisdiction over architectural and design review matters, subject to Declarant's rights under Section 10.1 and Section 10.5.6. In exercising its powers under this Section 10.9, Declarant shall be acting in its own interest as developer of the Property.

10.10 Reconstruction. The reconstruction of any Common Areas or Areas of Common Responsibility after destruction by casualty or otherwise that is accomplished in substantial compliance with "as built" plans for the Common Areas or Areas of Common Responsibility, as applicable, shall not require compliance with the provisions of this Section 10 or the Design Guidelines.

10.11 Additional Powers of the Design Review Committee. The Design Review Committee may promulgate as a part of the Design Guidelines additional architectural and landscape standards, rules and regulations as it deems appropriate; provided the standards, rules and regulations are not in conflict with this Declaration or the architectural and landscape standards, rules and regulations promulgated by Declarant in the exercise of its powers under Section 10.9. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE DESIGN REVIEW COMMITTEE MAY FIX A FINE AGAINST ANY OWNER AND ANY LOT SUBJECT TO THIS DECLARATION FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR FOR FAILURE TO COMPLY WITH ANY APPROVAL OF THE DESIGN REVIEW COMMITTEE AND MAY REQUIRE SECURITY DEPOSITS TO ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS.

11. USE AND OCCUPANCY RESTRICTIONS

11.1 Residential Use.

11.1.1 No Commercial Use. Each Lot may be used only for residential purposes and none other. No business or commercial building may be erected on any Lot and no business or commercial enterprise or other non-residential use may be conducted on any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the Design Guidelines.

11.1.2 Declarant's Rights. Nothing herein contained shall be deemed to limit Declarant's rights as set forth in Section 13.

11.1.3 Limited Incidental Activities. The restriction on use of any Lot for business or commercial enterprise shall not prohibit an activity if it meets all of the following requirements: (a) is not apparent or detectable by sight, sound or smell from outside the Lot on which it occurs, (b) does not involve individuals coming onto the Lot who do not reside on the Lot or solicitation of residents of the Property by anyone, whether or not a resident, and (c) is consistent with the residential character of the Lot and the Property and not a nuisance, or a hazardous or offensive use, as may be determined in the sole and absolute discretion of the

Board. By way of illustration, but not limitation, activities conducted from within a residence solely by telephone, facsimile, or computer, without the use of employees other than those who reside on the Lot, to outside parties off of the Property (or wholly without communication to outside parties) are not considered prohibited but the activity shall be prohibited if it involves or requires visits to the Lot by actual or prospective customers, clients, or patients, or by others (excluding once a day document delivery services such as Federal Express), as a result of business activities by the Owner or Occupant of the Lot. Similarly, the fact that family members or other occupants of a residence are employed in business affairs within the Lot will not make such employment a prohibited business use of the Lot but visits to the Lot by employees who do not reside there shall be prohibited if the individuals are employed for the business purposes of the Owner or Occupant of the Lot. However, garage sales and similar publicly-visible activities are prohibited.

11.1.4 Power to Augment and Clarify. The scope of the types of activities that are prohibited by this Section may be clarified, supplemented and interpreted by the Board (or by Declarant, prior to the Transition Date) from time to time, as it may choose in its sole and absolute discretion, so long as not materially inconsistent with the terms set forth above.

11.2 Violation of Law or Insurance. No Owner or Occupant shall permit anything to be done or kept in the Owner's Lot or in or upon any Common Areas that will result in the cancellation, increase in premiums or reduction in coverage of insurance maintained by the Association or that would be in violation of any law or other applicable requirement of governmental authorities.

11.3 Signs. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Association or the Design Review Committee, except:

- (a) signs used by Declarant or any Related Party in connection with the development and sale of Lots and residences in the Property;
- (b) signs required by legal proceedings, or the prohibition of which is precluded by law; and
- (c) signs required by Declarant or governmental authorities for traffic control and regulation of Common Areas.

One "For Sale" or "For Rent" sign, and one security or alarm sign, may be posted on any Lot; provided each such sign complies with any applicable provisions of the Association Rules and Design Guidelines.

11.4 Animals. No animals, including horses or other domestic farm animals, fowl or poisonous reptiles of any kind may be kept, bred or maintained in any Lot or in or upon any Common Area, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's Lot without a leash, or conduct itself so as to create a nuisance. Owners, Occupants or other Persons shall immediately clean up their animals' waste from the Common Areas and other

portions of the Property. All domestic pets must be registered with the Association and must have proof of proper immunization presented with their registration.

11.5 Nuisances. No Owner or Occupant shall permit or suffer anything to be done or kept about or within the Owner's Lot, or on or about the Property, that will unreasonably obstruct or interfere with the rights of other Owners, Occupants or other individuals holding the right to use and enjoy any Lot or the Common Areas, or annoy them by unreasonable noises or otherwise. No Owner or Occupant shall commit or permit any nuisance or commit or suffer any illegal act to be committed on or about the Property. Each Owner and Occupant shall comply with the Association Rules and other Property Documents and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, provided they are in compliance with the Design Guidelines and requirements of the Design Review Committee and Board. Lots, Common Areas and Areas of Common Responsibility shall be kept in a neat and tidy condition during construction periods; trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and other building materials shall be piled only in such areas as may be approved by the Design Review Committee or Board. In addition, any construction equipment and building materials stored or kept on the Property during construction of improvements may be kept only in areas approved by the Design Review Committee or Board, which also may require screening of the storage areas. The Board, in its sole and absolute discretion (but subject to the provisions of this Declaration including, but not limited to, Section 13, shall have the right to determine the existence of any unreasonable annoyance or nuisance under this Declaration.

11.6 Boats and Motor Vehicles. Except as specifically permitted by the Association Rules:

11.6.1 Prohibited Vehicles. No boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except within an enclosed garage or as otherwise permitted by the Design Guidelines or Association Rules.

11.6.2 Repairs. No vehicle shall be repaired or rebuilt in any Lot or upon the Common Areas.

11.6.3 Parking. Nothing shall be parked on any Common Areas except in parking areas (if any) designated by the Board.

The Board may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner of the vehicle in any manner consistent with law.

11.7 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, which in any manner will allow light to be directed or reflected on the Common Areas, any other Lot, or any portion of any of the foregoing, except as may be expressly permitted by the Association Rules or the Design Guidelines.

11.8 Antennas/Cable TV. The Board may adopt reasonable rules, restrictions and requirements from time to time regulating the placement, appearance, size, operation, and other aspects of any antennas, satellite dishes, and other similar structures and devices allowed for use on Lots, within the constraints of any applicable law. Any such rules, restrictions and requirements shall take into account aesthetic considerations, available technology, cost, feasible alternatives, and the effect (if any) of applicable laws and other requirements of governmental authorities. The Board shall have the authority under Section 2.23 (but no obligation) to enter into contracts providing for the availability of cable television and related services to the Property, or to such portions as the Board reasonably deems appropriate, on such terms as the Board may elect. If the Board elects to enter into such contracts, the costs of any such service shall be a Common Expense payable by those properties to which service is available (whether or not the Owner elects to receive the service), but the Board may allocate the costs of such service between improved and unimproved properties that are subject to Assessment in such proportions as the Board deems equitable.

11.9 Garbage. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot or the Common Areas except on the day of pick up for the minimum period reasonably required and in containers approved by Association Rules or Design Guidelines. No incinerators shall be kept or maintained in any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

11.10 Mining; Wells. No portion of the Property shall be used in any manner to drill or maintain a well for potable or irrigation water purposes or to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

11.11 Safe Condition. Without limiting any other provision in this Section 11, but subject to any responsibility of the Association for Areas of Common Responsibility, each Owner shall maintain and keep the Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity that might interfere with the reasonable enjoyment by other Owners and Occupants of their respective Lots or the Common Areas.

11.12 Fires. Other than properly constructed barbecue pits or grills and fire pits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted that would tend to increase the insurance rates or fire risk for the Common Area, or for other Owners.

11.13 Clothes Drying Area. No exterior portion of any Lot shall be used as a drying or hanging area for laundry of any kind. All laundry facilities shall be provided within the buildings to be constructed on each Lot.

11.14 No Further Subdivision. No Lot shall be divided or subdivided.

11.15 No Obstructions to Drainage. No Owner or other Person shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction that would

interrupt the normal drainage of the land or within any area designated on a Plat, or other binding document, as a "drainage easement" or similar designation, except that, with the prior consent of applicable governmental authorities and the Design Review Committee, non-permanent structures, including fences, may be erected in those areas that contain only underground closed conduit storm drainage facilities.

11.16 Use of Lots. Each Owner shall be responsible for assuring compliance with all of the provisions of the Property Documents by any Occupants of the Owner's Lot including, but not limited to, any lessee or other Person who the Owner allows to use the Owner's Lot. Each such Owner shall be jointly and severally responsible for any violations of the Property Documents by the lessee or other Person.

11.17 Enforcement. The Association and its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct the violation at the expense of the Owner of the Lot. Any expenses, and any fines imposed pursuant to Property Documents, shall be a Special Assessment secured by a lien upon the Lot enforceable in accordance with the provisions of Section 5. All remedies described in Section 14 and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant or other Person of any provision of this Section 11.

11.18 Diseases and Insects. No Owner shall cause or permit any thing or condition to exist upon the Property that induces, breeds, or harbors infectious plant disease or noxious insects.

11.19 Repair of Structures. No building, structure, or improvement on the Property shall be permitted to fall into disrepair, and (subject to any provisions of this Declaration expressly imposing maintenance and repair obligations on the Association or other Persons) each building, structure and improvement on a Lot shall at all times be kept by the Owner of that Lot in good condition and repair and adequately painted or otherwise finished as appropriate to a luxury residential development.

11.20 Utility Service. No lines, wires, or other services for the communication or transmission of electric current or power or electromagnetic impulses, including telephone, television, and radio signals, shall be erected, placed, or maintained anywhere in or upon the Property unless they are contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Design Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings, structures, or improvements approved by the Design Review Committee.

11.21 Health, Safety, and Welfare. If any uses, activities, and facilities are deemed by the Board to be an unreasonable annoyance or a nuisance, or to unreasonably affect the health, safety, or welfare of Owners or Occupants, the Board may make such rules restricting or regulating their presence on the Property as part of the Association Rules or may direct the Design Review Committee to make rules governing their presence on Lots as part of the Design Guidelines. Any rules promulgated pursuant to this Section 11.21 shall be consistent with the provisions of this Declaration including, but not limited to, Section 9.4 and Section 13.

11.22 Implementation and Variances. Subject to Section 9.4 and Section 13, the Board may implement the restrictions set forth in this Section 11, or otherwise restrict and regulate the use and occupancy of the Property and the Lots by reasonable rules and regulations adopted by the Board from time to time that shall be incorporated into the Association Rules. After the Transition Date, any new Association Rules or amendments or terminations of existing Association Rules, shall be subject to review and approval by Declarant before becoming effective (so long as Declarant or a Related Party owns any of the Property in fee or beneficially). Subject to Section 9.4 and Section 13, the Board may, in its discretion, modify or waive the restrictions set forth in this Section 11; provided, however, following the Transition Date, any such waiver or variance shall (i) require the prior written approval of Declarant, so long as Declarant or any Related Party owns any of the Property in fee or beneficially, and (ii) be consistent with the standards of a luxury residential development.

12. RIGHTS OF MORTGAGEES

12.1 General Provisions. Notwithstanding and prevailing over any other provisions of the Property Documents, the following provisions shall apply to and benefit each holder of a Mortgage applicable to a Lot.

12.2 Liability for Assessments. A Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of the Mortgage, or through any equivalent proceedings such as, but not limited to, the taking of a deed or assignment in lieu of foreclosure or acquiring title at a trustee's sale under a first deed of trust, and any third-party purchaser at a foreclosure sale or trustee's sale (a "Successor Owner"), will not be liable for the Lot's unpaid Assessments or other charges (including, but not limited to, special use fees, fines, collection costs, attorneys' fees, litigation-related expenses including expert or other witness fees, and interest) that accrued prior to the time the Successor Owner came into possession of the Lot or became record Owner of the Lot, whichever occurred first. In addition, a Successor Owner shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration that secures the payment of any charges or Assessments accrued prior to the time the Successor Owner either came into possession of the Lot or became record Owner of the Lot. Any unpaid Assessments or other charges (including, but not limited to, special use fees, fines, collection costs, attorneys' fees, litigation-related expenses including expert or other witness fees, and interest) against the foreclosed Lot shall be deemed to be a Common Expense charged proratably against all of the Owners. Nevertheless, in the event the Owner against whom the original Assessments or other charges were made is the purchaser or redemptionor, the lien shall continue in effect and may be enforced by the Board, for the Lot's Assessments and other charges that were due prior to the final conclusion of the foreclosure or equivalent proceedings. Further, any unpaid Assessments and other charges shall continue to exist as the personal obligation of the defaulting Owner of the Lot, and the Board may use reasonable efforts to collect unpaid Assessments and other charges from the Owner even after the Owner is no longer the Owner of the Lot.

12.3 No Personal Liability. A Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or other charge (including, but not limited to, special use fees, fines, collection costs, attorneys' fees, litigation-related expenses including expert or other witness fees, and interest), nor the observance or performance of any covenant, restriction,

or rule and regulation of in the Property Documents, or any management agreement, except for those matters that are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 12.

12.4 Enforcement After Foreclosure Sale. An action to abate the breach of any of the Property Documents may be brought against any purchaser who has acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to the purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot.

12.5 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a Mortgage (including any period of redemption) or from the time a trustee under a deed of trust has given notice of sale pursuant to power of sale conferred under the deed of trust and pursuant to law, the Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner.

12.6 Subject to Declaration. At such time as a Mortgagee comes into possession of or becomes record Owner of a Lot, the Mortgagee shall be subject to all of the terms and conditions of this Declaration and other Property Documents applicable to Owners including, but not limited to, the obligation to pay all Assessments and charges accruing thereafter in the same manner as any other Owner.

13. EXEMPTION FROM RESTRICTIONS

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration or other Property Documents shall be construed or deemed to limit or prohibit any act of Declarant, any Related Party or their respective employees, agents and subcontractors, or parties designated by them in connection with the construction, completion, sale or leasing of the Lots, residences on Lots, Common Areas, the Property or other property owned in fee or beneficially by Declarant or any Related Party (whether or not subject to this Declaration). Without limiting the generality of this Section 13 in any way and notwithstanding anything to the contrary in this Declaration, (a) Declarant is expressly exempted from the provisions of this Declaration requiring submittals to or authorizations by the Design Review Committee including, but not limited to, Section 10.6, (b) Declarant shall have the right to erect, operate and maintain one or more administrative and sales offices on any portion of the Property owned beneficially or in fee, or leased, by Declarant or any Related Party (including, but not limited to, Lots), and (c) neither the provisions of Section 10, nor the Design Guidelines, shall apply to buildings and other structures or improvements constructed by Declarant, any Related Parties or their respective agents or employees.

14. REMEDIES

14.1 General Remedies. In the event of any default by any Owner, Occupant or other Person under the provisions of the Property Documents, the Association, and its successors or assigns, and its agents, and Declarant, shall have each and all of the rights and remedies that may

be provided for in the Property Documents, or that may be available at law or equity, and may prosecute any action or other proceedings against the defaulting Owner, Occupant or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest accrued thereon, and to sell the Lot as provided in this Section 14.1, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of the Owner. The proceeds of any such rental or sale shall first be paid to discharge litigation costs including, but not limited to, reasonable attorneys' fees, witness fees (including expert witness fees), costs, litigation-related expenses and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of charges and any unpaid Assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

14.2 Expenses of Enforcement. Any expenses of the Association and Declarant in connection with any action or proceeding described or permitted by this Section 14, including reasonable attorneys' fees, witness fees (including expert witness fees), costs and other litigation-related expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the defaulting Owner and shall be a Special Assessment against such Owner, and the Association shall have a lien as provided in Section 5 therefor. In the event of any such default by any Owner, the Association, and the manager or managing agent of the Association, if so authorized by the Board, and Declarant, shall have the authority to correct the default and to do whatever may be necessary to correct the default, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Section 5. Any such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association and Declarant.

14.3 Legal Action. In addition to any other remedies available under this Section 14, if any Owner (either by the Owner's conduct or by the conduct of any Occupant of the Owner's Lot or family member, guest, invitee or agent) violates any of the provisions of the Property Documents, as then in effect, the Association and Declarant shall have the power to file an action against the defaulting Owner for a judgment or injunction requiring the defaulting Owner to comply with the provisions of the Property Documents, and granting other appropriate relief, including money damages.

14.4 Effect on Mortgage. Notwithstanding anything to the contrary herein, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and

effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

14.5 Limitation on Liability. Notwithstanding anything to the contrary in this Declaration or any other Property Document, each Owner, by accepting title to any portion of the Property and becoming an Owner, and each other Person acquiring an interest in the Property (including, but not limited to, any Mortgagee), acknowledges and agrees that Declarant (including, but not limited to, any assignee of the interest of Declarant hereunder and any member in such assignee) and any Related Party, and their respective agents, shall have no personal liability to the Association, or any Owner, Mortgagee or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) the Property Documents, the Association, or the Design Review Committee, except to the extent of that Person's interest in the Property, and, in the case of a Related Party (or, in the case of a member in an assignee of the interest), that Person's interest in Declarant (or such assignee), and, in the event of a judgment against any of the foregoing Persons, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon the other assets, of the judgment debtor.

15. DISPUTE RESOLUTION

15.1 Approval of Litigation.

15.1.1 Required Procedures. The Association shall not initiate or voluntarily participate in any litigation, arbitration, claim to regulatory authorities, or any other binding legal proceeding with respect to any matter affecting or arising from the Property ("Property Litigation") except upon compliance with the requirements of this Section 15.

(a) Before the Association incurs expenses or potential liabilities in connection with Property Litigation including, but not limited to, attorneys' fees, court filing fees and exposure for costs and fees of an adverse party, the Association must hold a meeting of the Owners and obtain the approval of Owners holding more than 75% of the total votes entitled to be cast by all Owners, excluding the vote of any Owner who would be a defendant in the proceedings.

(b) If the Property Litigation arises from an alleged "Defect" (as defined in Section 15.2.1, the Association shall provide all Owners with at least the following information about the proposed Property Litigation not later than the time the vote of Owners is taken:

- (i) a reasonably detailed description of the alleged Defect;
- (ii) a good faith description of any attempts to correct the alleged Defect by the Person alleged to be responsible for it, and the opportunities provided to that Person to correct the alleged Defect;
- (iii) a certification from an architect or engineer licensed in the State of Arizona that the alleged Defect exists, along with a description of the scope of work necessary to cure the alleged Defect and a resume of the architect or engineer;

- (iv) a good faith estimate of the cost to cure the alleged Defect;
- (v) the name and professional background of any attorney retained (or proposed to be retained) by the Association to pursue the claim against arising from the alleged Defect, and a description of the relationship between the attorney and member(s) of the Board or the Association's management company (if any);
- (vi) a description of the fee arrangement between the attorney and the Association;
- (vii) a good faith estimate of the attorneys' fees and expert fees and costs necessary to pursue the claim;
- (viii) a good faith estimate of the time necessary to conclude the action (including possible appeals);
- (ix) a good faith estimate of the fees and costs the Association may be required to pay to the other party in the event that the Association's claim is unsuccessful; and
- (x) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and the Owners.

(c) The costs of any Property Litigation shall be paid by the Association only with monies that are collected for that purpose by Benefited Assessment. The Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations.

(d) Each Owner shall notify prospective purchasers of any Property Litigation initiated by the Board.

(e) In the event that Property Litigation arising from an alleged Defect is successfully pursued, any recovery shall be applied (after payment of applicable attorneys' fees and other litigation-related costs) to curing the alleged Defect or repaying the Association for costs previously incurred in curing the alleged Defect. Any excess funds remaining after curing the alleged Defect shall be retained in the Association's reserve funds.

15.1.2 Exempt Actions. The procedural requirements set forth in Section 15.1.1 shall not apply to any proceedings initiated by the Association to (i) collect unpaid Assessments; or (ii) enforce a contract entered into by the Association with vendors providing services or materials to the Association. Property Litigation shall not be construed to mean litigation, arbitration, or other proceedings in which the Association is participating by reason of having been named a defendant.

15.1.3 Non-Litigation Advice. Nothing in this Section 15.1 shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (a) enforce this Declaration and related documents; (b) comply with the statutes or regulations related to the operation of the Association; (c) amend this Declaration and related documents, in

accordance with their terms; (d) grant easements or convey Common Area as provided in this Declaration; or (e) perform the obligations of the Association as provided in this Declaration.

15.2 Right to Cure Alleged Defect. If the Association, the Board or any Owner or other Person ("Claimant") claims, contends, or alleges that a "Defect" exists in any improvements within the Property including, but not limited to, the residential structures constructed on the Lots, the Person that constructed the improvement shall have the right to inspect, repair and/or replace the alleged Defect as set forth herein.

15.2.1 Defect Defined. As used in this Declaration, Defect shall mean failure to construct or install improvements in accordance with approved plans and specifications, in accordance with applicable governmental requirements, in accordance with contractual obligations, in accordance with applicable covenants or aesthetic requirements, in accordance with standards of good practice in the applicable industry, using acceptable materials or procedures, in breach of applicable governmental, legal or contractual obligations, or otherwise contrary to the expectations of the Claimant.

15.2.2 Notice of Alleged Defect. Within 15 days after discovering any condition that will be alleged to be a Defect, a Claimant shall give written notice of the alleged Defect ("Notice of Alleged Defect") to the Person or Persons believed by the Claimant to be responsible for the alleged Defect. The Notice of Alleged Defect shall include a reasonably detailed description of the alleged Defect and any action the Claimant believes to be necessary to cure the alleged Defect.

15.2.3 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt of a Notice of Alleged Defect, the Person who received the Notice of Alleged Defect shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter the affected portion of the Property for the purposes of inspecting and/or conducting testing and, if the Person so chooses in its sole discretion, repairing and/or replacing the alleged Defect. Any agreement made in writing for repair, replacement or other curative action shall be enforceable against both parties to the agreement without requiring either party to again go through the notice and other procedures provided for in this Section 15.2 or to go through the negotiation and mediation procedures set forth in Section 15.3.1 and Section 15.3.2.

15.2.4 Scope of Work; Indemnity. In conducting such an inspection, testing, repair and/or replacement, the Person receiving the Notice of Alleged Defect shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Any Person entering the property of a Claimant, or performing testing, repair and/or replacement pursuant to this Section 15.2, shall defend, indemnify and hold the Claimant harmless for, from and against all claims, demands, costs, losses, and liabilities of every kind and nature arising from exercise of the entry and curative rights provided for in this Section.

15.2.5 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section 15.2 shall be construed to impose any obligation on any Person to inspect, test, repair, or replace any item or alleged Defect for which the Person is not otherwise obligated under applicable law or other binding legal obligation. The right to enter, inspect, test, repair and/or replace an alleged Defect shall be irrevocable and may not be waived.

or otherwise terminated with regard to any Person except by a written document executed by that person.

15.3 Alternative Dispute Resolution. Any dispute, controversy, disagreement or claim of any kind or nature arising in any way from the Property, including, but not limited to, the physical condition, use, appearance, or operation of the Property or any portion of it, or agreements or other legally binding instruments or obligations pertaining to the Property or any portion of it (each, a "Dispute") shall be processed progressively by negotiation, mediation and arbitration in accordance with this Section 15.3, unless specifically exempted, if the Dispute is between or among (i) the Declarant or any builder (or the officers, directors, employees, brokers, agents, consultants, contractors, or subcontractors of either of them) and any Owner or the Association; or (ii) the Association and any Owner. This Section will apply to any such Dispute regardless of whether it involves theories based upon contract, tort, statute or other legal theory. No Person bound by this Section 15.3 may commence legal proceedings of any kind including, but not limited to judicial and regulatory complaints, in lieu of complying with the procedures and requirements set forth herein. The procedures shall not apply to Disputes relating to the payment of any type of Assessment or to claims by any of the foregoing Persons against third parties not listed above (unless the third party has agreed to comply with the procedures set forth in this Section 15.3).

15.3.1 Negotiation. Any Person wishing to pursue resolution of, or a remedy for, a Dispute (the "Claimant"), must give written notice of the Dispute to the Person or Persons believed to be responsible for the circumstances causing the Dispute, or believed to be responsible for remedying those circumstances (in either case, the "Respondent"). The notice must set forth in reasonable detail the circumstances alleged to give rise to the Dispute and the remedy or other action sought by the Claimant. The Claimant must thereafter follow the procedures set forth in this Section 15.3.1.

(a) Opportunity to Meet. Following delivery of such a notice, the Respondent shall be afforded a reasonable opportunity to meet with or otherwise communicate with the Claimant for a discussion of the circumstances giving rise to the Dispute and possible resolution of the Dispute and an examination of any physical conditions or written instruments giving rise to the Dispute.

(b) Deadline for Resolution. If the Dispute is not resolved to the satisfaction of the Claimant and the Respondent by negotiation within 30 days following delivery of the original notice by the Claimant and the Claimant wishes to pursue the Dispute further, the Claimant shall give notice to the Respondent that mediation pursuant to Section 15.3.2 is required.

(c) Defect Disputes. If the Dispute involves an alleged Defect and the procedures set forth in Section 15.2 have been followed, this Section 15.3.1 shall be deemed satisfied and Section 15.3.2 shall become applicable.

(d) Enforcement of Agreements. Any written agreement by the Respondent and the Claimant entered into for the purposes of resolving the Dispute shall be enforceable against either party in accordance with the provisions of Section 15.4.

15.3.2 Mediation. The Claimant shall initiate mediation by submitting the Dispute to mediation by the American Arbitration Association (or any successor thereto or any other independent entity providing similar services mutually accepted by the parties) pursuant to the commercial mediation procedures then in effect, as modified by this Section 15.3.2 (unless the parties otherwise agree). No Person shall serve as a mediator in any Dispute in which the 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.

(a) Position Memoranda; Pre-Mediation Conference. Within 10 days after the selection of the mediator, each party to the Dispute shall be entitled to 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 10 days following the deadline for submittal of memoranda to the mediator and shall conclude within 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 Scottsdale, Arizona or such other place as may be mutually acceptable to the parties to the Dispute.

(b) Conduct of Mediation. The mediator may conduct the mediation in the manner the mediator believes to be 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) the expert advice as provided below. The mediator does not have authority to impose a settlement on any party to the Dispute. Upon termination of the mediation, the mediator shall notify the parties to the Dispute in writing of the date on which the mediation terminated.

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

(d) 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; provided, however, that consent shall not be required for attendance by representatives of any party's insurer to the extent that participation is required by applicable policies of insurance. There shall be no stenographic record of the mediation process.

(e) Expenses of Mediation. The expenses of witnesses for either side shall be paid by the party producing the 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 expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless the parties to the Dispute otherwise agree. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with the mediation.

(f) Enforcement of Agreements. Any written agreement by the Respondent and the Claimant entered into through mediation for the purposes of resolving the Dispute shall be enforceable against either party in accordance with Section 15.4.

15.3.3 Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 15.3.1 and Section 15.3.2, the Claimant shall have 30 days following termination of mediation proceedings (as determined by the mediator in writing) to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 15.3.3. If the Claimant does not submit the Dispute to arbitration within 30 days after termination of mediation proceedings, the Claimant 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 Claimant on account of the Dispute; provided, nothing herein shall release or discharge any party from any liability to persons who are not a party to the proceedings. Arbitration pursuant to this Section 15.3.3 shall not be combined with any other arbitration without the consent of all parties to this arbitration.

(a) Necessary Parties. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Person shall be required to participate in the arbitration proceeding if (i) all parties against whom the Person would have necessary or permissive cross-claims or counterclaims (a "Necessary Party") are not or cannot be joined in the arbitration proceedings, or (ii) the enforcement of this Section 15.3.3 would materially impair insurance coverage for the Person that would have otherwise provided the Person protection with respect to the Dispute.

(b) Opt Out. If any party to an arbitration determines in good faith that it cannot join a Necessary Party in the arbitration or that its insurance coverage applicable to the Dispute would be materially impaired, the party may elect not to participate in the arbitration and allow any claims against it to be determined by other legal proceedings. If a party makes such an election, it must give written notice of its election to all other parties in the arbitration. Within 10 days following receipt of such a notice, any other party to the arbitration that would (or reasonably might) be adversely affected by the absence of the party that elected not to participate may likewise elect not to participate in the arbitration by giving written notice to all other remaining parties. If any party wishes to contest whether a party electing not to participate in the arbitration is entitled to make that election, it shall commence a legal action seeking a judicial determination of the validity of the election and arbitration proceedings will be stayed until that issue is finally determined judicially. Any such judicial proceeding to determine the validity of an election not to participate in arbitration shall deal only with that issue and shall not be used for a determination of the issues being decided in the arbitration.

(c) Place. The arbitration proceedings shall be held in Scottsdale, Arizona, unless otherwise agreed by the parties and the arbitrator.

(d) Arbitrator. A single arbitrator shall be selected. The arbitrator shall have served as a judge of the Arizona Superior Court, the Arizona Court of Appeals, or the Arizona Supreme Court, by appointment of the Governor. The arbitrator shall be neutral and impartial and shall not have any relationship to the parties or interest in the Property. The

arbitrator shall not have served as mediator in the Dispute. The parties to the Dispute shall meet to select the arbitrator within 10 days after the Dispute is submitted to final and binding arbitration pursuant to Section 15.3.3. If an arbitrator resigns or becomes unwilling or unable to continue to serve as an arbitrator in the subject Dispute, a replacement shall be selected in accordance with this Section 15.3.3.

(e) 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.

(f) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(g) 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 any property subject to the Dispute, including, but not limited to, destructive or invasive testing; and (vi) trial briefs. 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.

(h) 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 summary 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.

(i) Final Award. THE DECISION AND AWARD WILL BE MADE BY THE ARBITRATOR WITHOUT A COURT TRIAL AND WITHOUT A JURY. Each party to the arbitration WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A JURY OR BY A COURT and agrees to accept the award of the arbitrator as final. The arbitrator shall decide all issues in the Dispute by strictly applying Arizona law, and this Section 15.3.3. Subject to the limitations imposed in this Section 15.3.3, the arbitrator shall have the authority to try all issues, whether of fact or law. The arbitrator shall render a final decision in writing no later than 60 days following the conclusion of the arbitration proceedings, or such longer period as the parties to the Dispute mutually agree in writing. 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 if not Arizona.

(j) Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the commercial arbitration rules or any other provision of this Section 15.3.3, 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.

(k) 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 the party. Each party to the Dispute shall share equally all charges of the arbitrator unless otherwise agreed to by the parties.

15.4 Enforcement of Resolution. If the parties to a Dispute resolve the Dispute through negotiation in accordance with Section 15.3.1, or by mediation in accordance with Section 15.3.2, and any party thereafter fails to abide by the terms of the agreed resolution, or if an arbitration award is made in accordance with Section and any party to the Dispute thereafter fails to comply with award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the agreed or awarded terms without the need to again comply with the procedures set forth in Section 15.3. In that event, the party taking action to enforce the terms of the 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 expenses reasonably incurred to enforce the agreed or awarded terms including, but not limited to, attorneys' fees, witness fees, costs and all litigation-related expenses.

15.5 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all mediation resolutions and arbitration decisions shall be confidential and not disclosed to anyone other than the mediator, arbitrator, the parties to the Dispute, the attorneys of the parties to the Dispute and expert witness (where applicable to their testimony), except, with the prior written consent of all parties to the Dispute, confidential information may be disclosed to third parties. Prior to disclosure, all third parties must agree in writing to keep such information confidential.

15.6 Statutes of Limitations. Nothing in Section 15.3 shall be considered to toll, stay, reduce, or extend any applicable statute of limitations. All statutes of limitation applicable to claims that are subject to mediation and arbitration pursuant to the alternative dispute resolution provisions of Section 15.3 shall apply to the commencement of proceedings pursuant to Section 15.3 and nothing herein shall be construed to mean that any mediator or arbitrator shall have authority to consider Disputes that would otherwise be barred by applicable statutes of limitation.

15.7 Disputes between Owners. In the event of a Dispute between two or more Owners, not covered by the dispute resolution provisions of Section 15.3, the Owners are hereby strongly encouraged (but not required) to employ the dispute resolution procedures set forth above for resolution of the Dispute. The Board of the Association shall offer such mediation, conciliation and other services as may be desired by the affected Owners to assist with resolution of the Dispute but shall have no power or authority to make binding decisions regarding the matter in issue between the Owners. The preceding sentence shall in no way be construed as limiting power or authority the Board might otherwise have to enforce and construe the provisions of this Declaration for the Association's own purposes.

16. AMENDMENT

16.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" (or some comparable title), which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Amendments may be adopted at a meeting of the Owners upon the approval thereof of two-thirds of the Owners (excluding Declarant) or without any meeting if all Owners have been duly notified and if two-thirds of the Owners (excluding Declarant) consent in writing to the amendment. In all events, the amendment when adopted shall bear the signature of the President and shall be attested by the secretary, who shall verify that the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording in the Maricopa County Recorder's office or at such later date as may be specified in the amendment.

16.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration that is properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

16.3 Required Approvals. Notwithstanding the provisions of the foregoing sections of this Section 16:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to the action shall be approved by all of the Owners and/or all lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by law.

(b) Until the Transition Date, this Declaration may not be amended by the Owners pursuant to Section 16.1 without the prior written consent of Declarant, which may be withheld for any or no reason.

(c) The following provisions of this Declaration may not be amended at any time without the prior written consent of Declarant: Sections 2.11, 2.12, 3.3, 3.7.2, 4, 13, 14.5, 15, this 16.3(c), 16.4 and 19, and Appendix definitions A-11 and A-36.

16.4 Declarant's Right to Amend. Notwithstanding any other provision of this Section 16, until the Transition Date, Declarant reserves the right to amend this Declaration without the approval of the Board or any other Person, except as specifically set forth in this Section 16.4. After the conveyance of the first Lot to an Owner, Declarant may not amend the following provisions of this Declaration without the approval of the Owners as provided in Section 16.1: Section 2.2 (to change the number of Memberships attributable to each Lot or to change the number of votes for each Lot or Membership), Section 5.3.4 (to increase the cap on

increases in Regular Assessments), the second sentence of Section 5.5 (to increase the amount of a Capital Improvement Assessment that may be collected without a vote of a Majority of a Quorum of Owners), and this Section 16.4 (to delete any references to Sections that require the approval of the Owners to amend).

17. TERM; TERMINATION

17.1 Term. This Declaration shall be effective upon the date of its recordation and, as amended from time to time, shall continue in full force and effect until January 1, 2100. Thereafter, this Declaration shall continue (as amended from time to time) for consecutive periods of 25 years each, unless there is an affirmative vote, not more than 360 days prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, to terminate this Declaration by a vote of at least 80% of the Owners at a duly held meeting of the Owners, or without any meeting if all Owners have been duly notified and if at least 80% of the Owners consent in writing to the termination within the 360-day period.

17.2 Termination. This Declaration may be terminated at any time upon a vote in favor of termination by 80% of the Owners **and with the consent** of Declarant (so long as Declarant or a Related Party owns any of the Property in fee or beneficially). Declarant may, but shall not be obligated to, release its consent rights by recorded instrument. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the Maricopa County Recorder's office a Certificate of Termination, duly signed by the President or a vice president of the Association and attested by the secretary or an assistant secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration shall have no further force and effect, as of the date of recordation of the Certificate of Termination (or such later date as may be specified in the Certificate of Termination), and the Association shall be dissolved.

18. GENERAL PROVISIONS

18.1 Notices. Notices provided for in the Property Documents shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice of change of address to all Owners. All notices to Owners shall be to their respective Lots or to the last address shown on the records of the Association. Notices addressed as above shall be deemed delivered when mailed by United States mail, or when delivered in person with written acknowledgment of the receipt thereof.

18.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

18.3 Severability. If any provision of the Property Documents, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Property Documents, and of the application of any such

provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of the Property Documents shall be construed as if the invalid part were never included therein.

18.4 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration is unlawful, void or voidable for violation of the rule against perpetuities, then the provision shall continue until 21 years after the death of the survivor of the now living descendants of President George W. Bush, United States Senator John McCain and United States Senator Jon Kyl.

18.5 Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for the Owner's respective Lot.

18.6 Power of Attorney. Whenever the Association is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do any act including, but not limited to, actions in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner, each Owner hereby constitutes and appoints the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

19. DISCLAIMER OF REPRESENTATIONS; NO COVENANTS OR RESTRICTIONS; ZONING AND PLAN

19.1 Disclaimer of Representations. Notwithstanding anything to the contrary in this Declaration, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out.

19.2 No Express or Implied Covenants or Restrictions. Nothing in this Declaration shall create, or be deemed to create, any express or implied covenants or restrictions with respect to any real property that has not been subjected to this Declaration.

20. RIGHTS AND OBLIGATIONS

Each grantee of Declarant, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and the heirs, successors and assigns of the foregoing Persons, accepts the grant, conveyance or agreement subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Further, all impositions and obligations imposed by this Declaration and other Property Documents shall be deemed and taken to be covenants running with the land and equitable

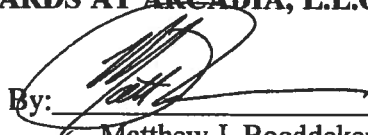
servitudes, and shall bind any Person having at any time any interest or estate in the Property, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such an interest.

[END]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the date set forth above.

DECLARANT:

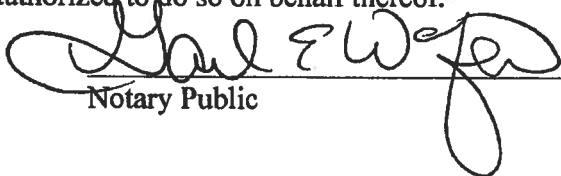
THE VINEYARDS AT ARCADIA, L.L.C., an Arizona limited liability company

By: 
Matthew J. Boeddeker

Its: Managing Member

STATE OF ARIZONA)
) s.s.
County of Maricopa)

The foregoing instrument was acknowledged before me this 28 day of August, 2003 by Matthew J. Boeddeker, the Managing Member of The Vineyards at Arcadia, L.L.C., an Arizona limited liability company, being authorized to do so on behalf thereof.


Notary Public

My commission expires:



APPENDIX A**DEFINITIONS**

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of each word in the term capitalized.

A-1. "Area of Common Responsibility" means any area that is not owned, leased or otherwise held by the Association (and is therefore not part of the Common Areas) but for which the Association has maintenance, repair, and/or operational responsibility by the terms of this Declaration or any other applicable real property covenants, by requirements of governmental authorities, or by contract. Any area described in the preceding sentence shall continue to be an Area of Common Responsibility only so long as the Association's responsibility for it continues.

A-2. "Articles" means the Articles of Incorporation of the Association, as they may be amended from time to time.

A-3. "Assessments" shall include the following:

A-3.1 "Regular Assessment" means the amount that is to be paid by each Owner as the Owner's Proportionate Share of the Common Expenses of the Association, as provided in Section 5.3.

A-3.2 "Special Assessment" means a charge against a particular Owner or a particular Lot, directly attributable to the Owner or Lot, to reimburse the Association for costs incurred in bringing the Owner or the Lot into compliance with the provisions of the Property Documents, or a fine levied against a particular Owner or Lot in accordance with the Property Documents, or any other charge designated as a Special Assessment in the Property Documents, together with attorneys' fees, witness fees (including expert witness fees), costs, litigation-related expenses and other charges payable by the Owner or chargeable to the Lot pursuant to the provisions of this Declaration, as provided in Section 5.4.

A-3.3 "Reconstruction Assessment" means the amount that is to be paid by each Owner representing the Owner's Proportionate Share of the cost to the Association for reconstruction of any portion of the Common Areas, as provided in Section 7.

A-3.4 "Capital Improvement Assessment" means the amount that is to be paid by each Owner representing the Owner's Proportionate Share of the cost to the Association for the installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of Section 5.5.

A-3.5 "Benefited Assessment" means a charge against each Lot within a particular portion of the Property, representing the Lot's share of additional costs, which are incurred by the Association in connection with a particular feature, characteristic or service that, in the opinion of the Board, should be borne (in whole or in substantial part) by Lots located within a particular portion of the Property. A Benefited Assessment shall be payable in addition to, and not in lieu of, Regular Assessments payable by all Owners in the Property.

A-4. "Association" means The Vineyards at Arcadia Homeowners Association, an Arizona nonprofit corporation, its successors and assigns.

A-5. "Association Rules" means the rules and regulations adopted by the Board pursuant to Section 2.10.

A-6. "Board" means the Board of Directors of the Association provided for in the Articles.

A-7. "Bylaws" means the bylaws of the Association adopted in accordance with the Articles, as the Bylaws may be amended from time to time.

A-8. "Common Areas" means all real property (and the improvements and amenities thereon) that may from time to time be owned or leased by the Association or otherwise held by the Association for the common use and enjoyment of the Owners. The Common Areas do not include any Areas of Common Responsibility. Any real property, and improvements and amenities thereon, that are described as "common areas" in the Plat shall be deemed to be "Common Areas" as that term is defined herein and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration. Common Areas may be abandoned or modified as provided in Section 1.1.5.

A-9. "Common Expenses" means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Property, and in owing or leasing any portions thereof, and in otherwise performing its rights and responsibilities under this Declaration including, but not limited to, the following:

A-9.1 The costs of maintenance, management, operation, repair and replacement of the Common Areas, any Areas of Common Responsibility, and all other areas in the Property that are managed or maintained by the Association except to the extent that those areas are being managed or maintained through a Special Assessment or a Benefited Assessment;

A-9.2 Unpaid Assessments;

A-9.3 The costs of managing and administering the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

A-9.4 The costs of utilities and services (including, but not limited to, water, electricity, sewer, trash pick-up and disposal services) that are provided to the Association or the Common Areas or Areas of Common Responsibility, or are provided to Owners pursuant to Section 2.23 by a designated service provider as a basic level of service, and landscaping maintenance and other services that generally benefit and enhance the value and desirability of the Property and are provided by the Association;

A-9.5 The costs of insurance maintained by the Association;

A-9.6 Reasonable reserves, as required or permitted herein, for contingencies, replacements and other proper purposes to meet anticipated costs and expenses including, but not

limited to, repair and replacement of those Common Areas and Areas of Common Responsibility that must be repaired or replaced on a periodic basis;

A-9.7 Any costs that the Board may elect to incur to bond the members of the Board, officers of the Association, any professional managing agent or any other Person handling the funds of the Association;

A-9.8 Taxes paid by the Association;

A-9.9 Amounts paid by the Association for discharge of any lien or encumbrance levied against all or any portion of the Common Areas or the Association's interest in any Areas of Common Responsibility;

A-9.10 Costs incurred by the Design Review Committee, or by Declarant in exercising its rights under Section 10.9;

A-9.11 Costs incurred by any other committees established by the Board or the President;

A-9.12 The costs of any access control systems and patrol or similar services including, but not limited to, those services and facilities described in Section 3.7, other than those that will be charged to individual Lots or those that will be charged as a Benefited Assessment; and

A-9.13 Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas or any Areas of Common Responsibility (excepting reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to, the Property Documents, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

A-10. "CPI" is defined in Section 5.3.4.

A-11. "Declarant" means The Vineyards at Arcadia, L.L.C., an Arizona limited liability company, its successors and assigns, or any Person to whom Declarant's rights hereunder are hereafter assigned in whole or in part by recorded instrument, or any Mortgagee of Declarant that acquires title to or succeeds to all or substantially all of the interest of Declarant in the Property by reason of the foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under the Mortgage of said Mortgagee. The term "Declarant," as used herein, shall include not only the named Declarant but also any of the foregoing successors, assigns, assignees of right(s) and Mortgagees. An assignment by recorded instrument of all of Declarant's rights shall vest in the assignee all of Declarant's rights hereunder (including, but not limited to, all of Declarant's easements, rights of consent or approval and voting rights) on the same terms that they were held by Declarant hereunder. An assignment by recorded instrument of part of Declarant's rights shall vest in the assignee the specific Declarant's right(s) named in the instrument of assignment on the same terms that they were held by Declarant hereunder. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Declarant's rights shall not deprive the

assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of Declarant's rights hereunder.

A-12. "Declaration" means this instrument, as from time to time amended.

A-13. "Default Rate of Interest" means an annual rate of interest equal to the greater of (i) 18% per annum or (ii) 4% plus the prime rate announced by Bank One, Arizona, NA (and charged to its largest and most creditworthy customers). The Default Rate of Interest shall be adjusted as and when the announced prime rate is adjusted. Therefore, if, during any periods while interest is accruing, the announced prime rate plus 4% per annum is less than 18%, interest shall accrue during those periods at 18% per annum. Notwithstanding anything in this Declaration to the contrary, if, during any periods, the highest lawful rate of interest that may, under applicable law, be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions of this Declaration, is less than the rate provided above, the Default Rate of Interest payable by that Person during those periods shall be the highest lawful rate. If Bank One, Arizona, NA should cease doing business or no longer announce its prime rate as described above, the Board may compute interest based upon the announced prime rate of any other bank doing business in Maricopa County, Arizona. If banks should cease announcing prime rates, the Board may elect to use 18% as the Default Rate of Interest, or may specify the rate, in lieu of the prime rate, for purposes of the computation hereunder that the Association would reasonably have to pay to borrow money at the time.

A-14. "Design Guidelines" means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted (pursuant to Section 10.3) by the Design Review Committee, or by Declarant prior to the Transition Date.

A-15. "Design Review Committee" means the committee provided for in Section 10.

A-16. "Insurance Trustee" is defined in Section 7.7.

A-17. "Lot" means a subdivided lot as shown on the Plat (a "Lot" includes the residential dwelling unit, garages, structures and other improvements constructed thereon).

A-18. "Majority of Owners" means the Owners holding more than 50% of the total votes entitled to be cast by all Owners (including, unless otherwise specifically provided herein, any votes held by Declarant).

A-18.1 Any specified fraction or percentage "of the Owners" means the Owners holding that fraction or percentage of the total votes entitled to be cast by Owners (including, unless otherwise specifically provided herein, any votes held by Declarant).

A-18.2 Unless otherwise specified, any provision herein requiring the approval "of the Owners" means the approval of a "Majority of the Owners."

A-19. "Membership" means a membership in the Association.

A-20. "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Arizona

law) as security for the performance of an obligation including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

A-21. "Mortgagee" means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

A-22. "Mortgagor" means the obligor under a Mortgage.

A-23. "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether an Owner's immediate family member, guest, tenant or other individual.

A-24. "Owner" means the record owner of fee simple title to a Lot, whether one or more Persons and whether or not the Lot is subject to any Mortgage, including contract purchasers, but excluding those having an interest in a Lot merely as security for the performance of an obligation. If a Lot is subject to a deed of trust pursuant to Arizona law (as amended from time to time), legal title shall be deemed to be in the trustor under the deed of trust.

A-25. "Parcel" means that parcel of real property referred to in the recitals hereof and described in Exhibit "A" hereto.

A-26. "Person" means an individual, corporation, partnership, limited liability company, trustee or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

A-27. "Plat" means the plat of subdivision applicable to the Parcel as first recorded in the official records of Maricopa County, Arizona, and as thereafter from time to time amended.

A-28. "President" means the duly elected or appointed president of the Association.

A-29. "Property" means the Parcel, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

A-30. "Property Documents" means this Declaration, the Articles, the Bylaws, the Association Rules, and the Design Guidelines, as they may be amended from time to time.

A-31. "Proportionate Share" means:

A-31.1 In the case of Benefited Assessments, that fraction wherein the numerator is one and the denominator is the total number of Lots in the portion of the Property subject to the Benefited Assessment, and

A-31.2 In all other cases, that fraction wherein the numerator is one and the denominator is the sum of the total number of Lots in the Property at the time the calculation is made.

A-32. "Related Parties" means the constituent members of Declarant; the members, partners, shareholders and owners of the constituent members and their constituent entities; affiliates of Declarant; the affiliates of constituent members; and the officers, directors, members, shareholders, trustees and other principals of all of the foregoing entities, and their respective successors and assigns.

A-33. "Retail Purchaser" means a Person who purchases a Lot in a retail transaction and shall not include Declarant, any Related Party, or any Person who acquires a Lot (i) in a bulk sale transaction, or (ii) by distribution (as distinguished from purchase), or (iii) in any similar transaction.

A-34. "Successor Owner" is defined in Section 12.2.

A-35. "Taking" is defined in Section 8.1.

A-36. "Transition Date" means 90 days following the date on which neither Declarant nor any Related Party owns fee title or beneficial title to any portion of the Property and Declarant has approved all Architectural and Design Guidelines for each Lot or such earlier date as Declarant voluntarily specifies in an instrument recorded in the official records of the Maricopa County.

EXHIBIT "A"
Legal Description of Parcel

The lots and tracts included in that certain Final Plat of The Vineyards at Arcadia recorded in the official records of Maricopa County, Arizona, in Book 649 of Maps at page 27

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BURTON T. COHEN, P.C.
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1 OF 9

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SECOND AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
THE VINEYARDS AT ARCADIA

This Second Amendment To Declaration Of Covenants, Conditions And Restrictions For The Vineyards At Arcadia is made as of May 26, 2009, ~~2009~~, by The Vineyards At Arcadia Homeowners Association ("Association").

RECITALS

A. A Declaration Of Covenants, Conditions And Restrictions For The Vineyards At Arcadia was recorded on August 28, 2003, at Instrument No. 2003-1205808, and thereafter re-recorded on September 4, 2003, at Instrument No. 2003-1238736, records of Maricopa County, Arizona ("Declaration").

B. An Amendment to the Declaration was recorded on October 10, 2003, at Instrument No. 2003-1425325, records of Maricopa County, Arizona.

C. Capitalized terms used in this Second Amendment without definitions shall have the meanings given to such terms in the Declaration.

D. Article 16, Section 16.1 of the Declaration provides that the Declaration may be amended by an instrument in writing, signed by the President and attested by the Secretary, with any amendment to have been first approved by a majority of the Board of Directors prior to adoption by the Owners, and approved at a meeting/consented to in writing by two-thirds of the Owners.

E. This Second Amendment to the Declaration was first approved by a majority of the Board of Directors, and thereafter approved in writing by two-thirds of the Owners.

F. In the event of any inconsistency between the provisions of the Declaration and the provisions of this Second Amendment, the provisions of this Second Amendment shall be controlling.

AMENDMENT

Now, therefore, the Declaration is amended in each of the following respects:

1. The first sentence of Section 5.13, Contribution To Reserves, shall be deleted in its entirety, and the following shall be inserted in place thereof:

“Upon each transfer of record title of a Lot, the new Owner thereof shall be obligated to pay to the Association a non-refundable Transfer Fee of \$5,000.00, or such other amount as may be specified by the Board Of Directors in a duly adopted Resolution, which shall be effective upon adoption and remain in effect unless thereafter changed. Anything in the previous sentence to the contrary notwithstanding, no Transfer Fee shall be payable upon any of the following: (i) a transfer or conveyance by devise or intestate succession; (ii) a gratuitous transfer or conveyance between spouses, parent and child, siblings, or grandparent and grandchild; (iii) a transfer or conveyance to or from a corporation, partnership, limited liability company or other legal entity in which the grantor/grantee owns a controlling legal interest; (iv) a transfer or conveyance to the Association. All moneys received by the Association hereunder shall be deposited into a segregated Reserve Account, to be used exclusively for capital improvements to the Common Areas. All amounts due hereunder shall be deemed Assessments and be a continuing lien upon the transferred Lot.”

2. The last sentence of Section 11.3, Signs, shall be deleted in its entirety, and the following shall be inserted in place thereof:

- “(d) One “For Sale” sign, not exceeding 18 inches by 24 inches, and a sign rider, not exceeding 6 inches by 24 inches, on any Lot;
- (e) One security or alarm sign, on any Lot;
- (f) One political sign, as defined by Arizona Law, not earlier than 45 days before the day of any election and not later than 7 days after an election, not exceeding 24 inches by 24 inches, on any Lot.

This Second Amendment to the Declaration shall become effective upon the date of recording hereof.

Except as expressly amended herein, the Declaration remains in full force and effect.

